

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 9G-032HHG
Civil Penalty Assessment Notice No. 90028

STIPULATION AND SETTLEMENT AGREEMENT

COLORADO PUBLIC UTILITIES COMMISSION,

Complainant,

v.

Move and Tune, Inc.,

Respondent.

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OFFICE OF THE
ATTORNEY GENERAL

Staff of the Public Utilities Commission (Staff) and Move and Tune, Inc.(Respondent) enter into this Stipulation and Settlement Agreement (Agreement) in the above-referenced docket as a complete and final resolution of all issues. Staff and Respondent shall be collectively referred to as Parties.

Background

1. On January 21, 2009 the Colorado Public Utilities Commission (CPUC or Commission) issued Respondent Civil Penalty Assessment Notice No. 90028 (the CPAN) seeking civil penalties of \$1100.00 (or \$550.00 if paid within 10 days) along with an additional amount of \$165.00 representing a possible surcharge pursuant to C.R.S. § 24-34-108 in the event the penalty is assessed and collected. The total amount in the Notice totaled \$1265.00 (or \$632.50 if paid within ten days of service of the CPAN). The alleged violation occurred on January 20, 2009. The CPAN alleged Respondent violated C.R.S. § 40-14-103(1) [Advertised as a household goods mover without being registered with the Commission] as Count 1 of the CPAN, which is incorporated into this Stipulation and Settlement Agreement and referenced as Exhibit 1.

2. On February 11, 2009, the undersigned counsel for Staff entered her appearance on behalf of Staff.

3. On February 12, 2009, the Commission set a hearing in this matter on March 17, 2009 at 9:00 a.m.

4. By Minute Order, the Commission Assigned this proceeding to an Administrative Law judge (ALJ).

5. By Decision No. R09-0157-I, the ALJ required Respondent either to show cause why it should be permitted to proceed without counsel or obtain counsel in this matter. Respondent was required to make the filing, or counsel was to enter an appearance, on or before March 6, 2009.

6. The hearing was vacated at the request of the Parties by Stipulated Motion on February 25, 2009, due to a conflict in schedule by Staff counsel on the hearing date. The parties requested a new hearing date of May 6, 2009. In Decision No. R09-0205-I, the ALJ granted the motion to Vacate and to Re-schedule the hearing date, waived response time, and reset the evidentiary hearing for May 6, 2009 at 9:00 a.m. at a Commission Hearing Room, 1560 Broadway, Suite 250, Denver, CO.

7. On April 13, 2009, Respondent filed a Motion for Continuance and Trial Staff of the Commission filed a Response to the Motion for Continuance, a further Motion for an Additional Order on the Status of this Docket and Waiver of Response time. The Motion for Continuance asked the ALJ to continue the hearing due to the ill health, surgery and extensive recovery undergone by the Respondent's principal. Staff's motion stated that Staff was unopposed to the Motion of the Respondent and further requested that the ALJ order the parties to update the ALJ as to the status of the docket by August 1, 2009 to file either (1) a motion for approval of a stipulated settlement and a stipulated settlement agreement, or (2) a motion for an

agreed upon hearing date, or (3) another motion for extension of time to reschedule a hearing based on the health condition of the Respondent on August 1, 2009 and to waive response time.

8. In Decision No. R09-434-I, the ALJ granted the motion for continuance, vacated the hearing date of May 6, 2009, granted Staff's request for a filing by the parties on or before August 3, 2009 requiring the parties to file one of the following: (a) motion for approval of a settlement agreement and the settlement agreement; (b) motion to schedule hearing date and the proposed hearing date; or (c) a motion for an additional extension of time, which motion shall be based on the health of Move and Tune, Inc.'s principal, and waiving response time.

9. On July 29, 2009, Staff of the Commission filed a Motion for Extension of Time requesting an extension of time until September 9, 2009, to file a settlement agreement because the Respondent's principal was still recuperating from his surgery and his illness and was unable to participate in the settlement process in time to file a final settlement agreement by August 3, 2009 and for waiver of response time. Staff requested additional time to and including September 9, 2009, within which to file either a motion for approval of settlement agreement and the settlement agreement or a motion to schedule a hearing date and three proposed hearing dates. The Motion further stated that Counsel for Staff had contacted Counsel for Respondent who was in support of Staff's motion for extension of time, motion for additional filing time, and for waiver of response time.

10. On July 30, 2009, by Decision R09-0822-I, the ALJ granted the motion for Extension of time, and granted the motion for waiver of response time, and waived response time, and ordered the Parties to file either a motion for approval of a settlement agreement and the settlement agreement or a motion to schedule hearing date and three proposed hearing dates.

11. The Agreement herein has been reached in the spirit of compromise and in light of the uncertainties of trial. The Agreement has also been reached to avoid the costly expense of

litigation. The Parties note that the Agreement promotes administrative efficiency by avoiding the time and expense that would be necessarily devoted to hearing this matter. Lastly, the Parties acknowledge that this Agreement will not have precedential effect on any other Commission matters. *See Colorado Ute Elec. Ass'n, Inc. v. PUC*, 602 P.2d 861, 865 (Colo. 1979); *B & M Serv., Inc. v. PUC*, 429 P.2d 293, 296 (Colo. 1967).

12. The Parties submit the public interest is served by assessing Respondent the reduced civil penalty of \$500.00 to be paid within thirty (30) days of a final Commission decision accepting the Stipulation and Settlement Agreement. This total amount includes the 15% surcharge per the above mentioned statutory provision in paragraph 1. Because the Respondent is the principal employee and owner of Move and Tune, Inc., he cannot afford the full assessment of the civil penalty without undue financial hardship.

13. Staff is satisfied that these facts and the terms set forth below are sufficient to motivate Respondent to comply with the Colorado Public Utilities law relating to advertising as a household goods carrier without being registered with the Commission and the Commission's Rules in the future.

Stipulation and Settlement Agreement

1. This Stipulation and Settlement Agreement is entered into by and between Trial Staff of the Commission (“Staff”) and Move and Tune, Inc., (“Respondent”) as a result of Docket No 09G—032HHG in which the Respondent was cited in a civil penalty notice assessment (“CPAN”) for a violation of the Colorado Revised Statutes.
2. The Respondent admits liability to the violation in CPAN No 90028—that is, Violation No. 1 which is attached as Exhibit 1.
3. This Agreement has been reached in consideration of Respondent’s admission of liability in Paragraph 2 above, and in the spirit of compromise and in light of the uncertainties of trial, and to avoid the costly expense of litigation. The Parties also agree that this Agreement promotes administrative efficiency by avoiding the time and expense that would be necessarily devoted to a full hearing on this matter, as well as in consideration of the amount of monies that would have been spent by either party on attorney’s fees and costs. For these reasons and the reasons set out in Paragraph 4 below, The Parties have agreed to a reduction in the amount of the civil penalty from \$1265.00 (\$1100.00 + \$165.00 [15% Surcharge]) .
4. The Respondent has agreed to make one full payment of negotiated settlement amount of \$500.00, including the 15% surcharge, by certified funds in person no later than thirty (30) days after the Commission final order and to complete all other requirements of the Respondent set forth in this stipulation and settlement agreement.

5. The Respondent has recognized and agreed that failure to either make the one full payment or to make the payment in certified funds or to complete all of its obligations as set forth in this stipulation and settlement agreement will result in the Respondent being liable for the full penalty amount of \$1265.00 without any further hearing or administrative or adjudicatory process.
6. Respondent agrees and stipulates that failure to complete its obligations as set forth in this stipulation and settlement agreement and/or to pay the settlement amount within thirty (30) days of the Commission final order shall also be deemed as a waiver by Respondent of any and all rights to file exceptions and/or to all rights to file a request for rehearing, reargument and reconsideration or any other form of appeal. This result will mean that no payment plan is needed. Nor will any additional administrative or adjudicatory time and expense be incurred by the Commission, Staff and/or the Respondent.
7. Respondent further agrees that if it should be found in violation within two years of the date of Commission final order in this docket for the Count in which the Respondent has admitted liability, Respondent shall be liable for the full amount pertaining to this docket of \$1265.00, less any payments made in accordance with paragraph 4 above. In the event such failure occurs, such payment shall be due and payable immediately.
8. Respondent also agrees that it must maintain its Household Good Permit (s) in good standing, pay the annual renewal of its permit as required as well as agreeing to purchase the annual stamps as required pursuant to Commission Rule 4 CCR 723-6-6009. In the event any or all of the additional requirements set forth in this Paragraph 8 are not complied with, the Respondent shall be liable for the full

amount pertaining to this docket of \$1265.00, less any payments made in accordance with paragraph 4 above. In the event such failure occurs, the additional payment shall be due and payable immediately. Both Respondent and Staff agree that the specific intent of Paragraphs 7 and 8 is to prevent further violations of Commission rules.

9. In addition to the reasons expressed in paragraphs 4, 5, and 6 above, Staff and Respondent have agreed to the following stipulation of facts and obligations to be considered by the ALJ for consideration of approval of this agreement pursuant to Commission Rule 1302(b):
 - a. Upon discovery during the course of the investigation that the Respondent had failed to pay his annual renewal fee and for all annual stamps for his vehicles, the Respondent began to take corrective actions and has now paid the annual renewal fee and annual stamps fees in full.
 - b. The Respondent has admitted to the maximum level of culpability for all violations.
 - c. Both Parties stipulate that the Respondent, simultaneously with properly obtaining an annual permit and vehicle stamps, has proper household goods moving and liability insurance, and initiated contact with Staff of the Commission prior to the hearing date to begin discussions on settlement and corrective actions that he needed to take to be in compliance with Colorado Statutes and Commission Rules. Both Staff and Respondent consider this communication and discussions to be a good faith showing of an attempt to be in compliance with Commission Rules as well as a fact indicating the Respondent's intent to admit his liability and to correct the identified alleged violations listed in the CPAN. .
 - d. The Parties also stipulate to the fact that the Respondent's principal, is an officer, owner and a driver for Move and Tune, Inc., a Colorado corporation. Both parties also stipulate that Move and Tune, Inc. is a very small business. Both Parties stipulate that the settlement amount of penalty will cause a loss of the revenues equal to at least one household goods move. Both Parties stipulate that the imposition of the full penalty amount for the violations incurred by Move and Tune, Inc. would result a significant loss of net income to the Company and to its principal. Both Parties are aware of the significant health issues, costs and loss of income incurred by Move and Tune, Inc.'s principal during the last six months. It is the position of both parties that such a loss could impact the Company's ability to remain in business.

10. The Parties agree that all matters that were raised or could have been raised in this docket relating to the issues specifically identified and addressed herein have been resolved by the Stipulation and Agreement. This Stipulation and Agreement shall not be construed against any Party and shall be construed as written by both Parties. This Stipulation and Agreement may be executed in counterparts, each of which when taken together shall constitute the entire Agreement of the Parties, and no further modification of this Agreement is allowed, except in writing by the parties, and as provided in an further order issued by the Public Utilities Commission.
11. In the event this Agreement is modified or not approved in its entirety, either Staff or Respondent, at that party's option, may withdraw from this Agreement by filing a notice with the Commission in this docket within seven (7) days of entry of such Order. In that event, this docket shall be set for hearing.

EXECUTED this 6th day of Sept 2009.

STAFF OF THE COLORADO
PUBLIC UTILITIES COMMISSION

Approved as to form:

JOHN W. SUTHERS, ATTORNEY GENERAL

By: Robert Laws by jsww
Robert Laws

By: Jean S. Watson-Weidner
Jean S. Watson-Weidner, #21036*

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**COUNSEL FOR STAFF OF THE
PUBLIC UTILITIES COMMISSION**
*Counsel of Record

By: 

Robert Cookman, Individually
and as Owner and Officer of
Move and Tune, Inc.
2650 South Broadway
Denver, Colorado 80210

Approved as to form:

By: 

Forest E. Clark, Jr., Attorney at Law
Attorney for Respondent, Move and Tune, Inc.
655 Broadway, Suite 550
Denver, CO 80203

CERTIFICATE OF SERVICE

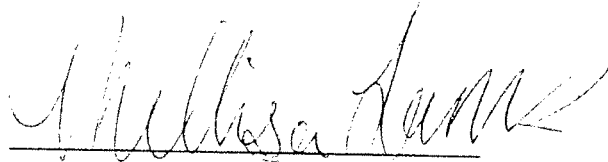
This is to certify that I have duly served the within STIPULATION AND SETTLEMENT AGREEMENT upon all parties herein by depositing copies of same in the United States mail, first class postage prepaid, or as otherwise indicated, at Denver, Colorado, this 9th day of September, 2009, addressed as follows:

Forest E. Clark Jr.
655 Broadway, Suite 550
Denver, CO 80203

Bob Laws
Public Utilities Commission
1580 Logan Street, OL-2
Denver, CO 80203
BY INTERDEPARTMENTAL MAIL

John Opeka
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Dino Ioannides
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Public Utilities Commission
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A handwritten signature in cursive script, appearing to read "Melissa Damm", is written over a horizontal line.