

BEFORE THE PUBLIC UTILITIES COMMISSION

STATE OF COLORADO

Docket No. 10F-973TO

PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO,

Complainant,

v.

PAUL H. EPLER, d/b/a ACTION TOWING

Respondent.

STIPULATION AND SETTLEMENT AGREEMENT

Staff of the Public Utilities Commission (Staff) and Paul H. Epler (Respondent) (collectively the “Parties”) enter into this Stipulation and Settlement Agreement (Agreement) in the above-referenced Docket as a complete and final resolution of all issues. Respondent acknowledges and agrees that he chose to proceed *pro se* and represent himself in this matter as provided for in 4 CCR 723-1-1201(b).

Background

By Decision No. R11-0395, Administrative Law Judge (ALJ) Mana L. Jennings-Fader approved an Amended Stipulation and Settlement Agreement, as amended by such Decision (hereinafter the “Settlement Agreement”).¹ Decision No. R11-0395 became the decision of the Commission by operation of law on May 2, 2011 (hereinafter referred to as the “Order”).

¹ The Amended Stipulation and Settlement Agreement was attached to Decision No. R11-0395 as Appendix A. The amendments to the Amended Stipulation and Settlement Agreement ordered by the ALJ are detailed in the recommended decision.

Among the Commission orders contained in the Order is a directive that “Paul H. Epler shall cease and desist from operating as a towing carrier pursuant to title 40, article 13, C.R.S., for a period of one year from the date of a final Commission decision approving the Amended Stipulation and Settlement Agreement, as amended by this Decision.”² In addition, the Order specifies that the order to cease and desist is to “apply to Paul H. Epler personally and to his involvement in any manner with any towing carrier that offers towing services, including, but not limited to, Mr. Epler’s involvement as an owner, officer, agent, employee, manager, independent contractor or driver of any such carrier”³ The Order also states that in the event Paul H. Epler is found by the Commission to be in violation of the Order, the provisions of paragraphs 3.F, 3.G, and 5 of the Settlement Agreement shall be enforced.⁴

On April 19, 2012, Staff filed a Motion to Reopen Docket and to Schedule Evidentiary Hearing (Motion). In that filing, Staff (a) asserted that Respondent has violated Decision No. R11-0395; (b) requested that this docket be reopened; and (c) requested that an evidentiary hearing be held so that the Commission can make findings of fact and law as to whether such a violation has occurred and so that, if a violation is found to have occurred, the remedies provided for in the Order can be enforced and the Commission can impose any other remedies it deems appropriate.

On May 25, 2012, the Commission issued Decision No. C12-0566-I in which the Commission granted the Motion; reopened this docket; and referred this docket to an ALJ. The Honorable Mana L. Jennings-Fader was assigned this matter and scheduled an evidentiary hearing. The evidentiary hearing has been vacated to allow the filing and consideration of this

² Order at p. 10, ordering paragraph 8.

³ Order at p. 10, ordering paragraph 9.

⁴ Order at p. 10, ordering paragraph 10.

Agreement. Staff and Respondent hereby submit the Agreement and ask that it be approved without modification.

Settlement Agreement

1. Staff and Respondent hereby stipulate and agree as follows:
 - A. Respondent admits to violating the Order, and will be ineligible to be issued another towing carrier permit for eight (8) years from the effective date of the order approving this Agreement. In addition, Respondent agrees not to hold himself out as an owner of any towing carrier for eight (8) years from the effective date of the order approving this Agreement.
 - B. All other aspects of the Order remain in full force and effect.
 - C. In the event Mr. Epler is found by the Commission to be in violation this Agreement, he agrees to 1) be permanently ineligible to be issued another towing carrier permit and 2) permanently barred from involvement in any way with any towing carrier, including but not limited to, involvement as an owner, agent, employee, manager, independent contractor or driver of any such carrier, and employment in any storage lost used by a towing carrier.
2. 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. For these reasons, the Parties submit the public interest is served by approving this Agreement.
3. The Parties agree 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 this Agreement. This 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 further agreed to in an order issued by the Commission.

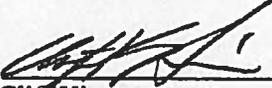
4. In the event that this Agreement is modified or not approved in its entirety, either Party, at that Party's option, may withdraw from this Agreement by filing a notice with the Commission in this Docket within seven (7) days of entry of such Order. In that event, this matter shall be set for hearing.

EXECUTED this 5th day of October 2012.

STAFF OF THE COLORADO
PUBLIC UTILITIES COMMISSION

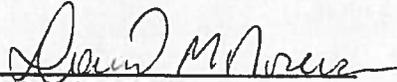
approved as to form:

JOHN W. SUTHERS, ATTORNEY GENERAL

By: 

Cliff Hinson
1560 Broadway Suite 250
Denver, Colorado 80202

Manager, Compliance and Investigations
Colorado Public Utilities Commission

By: 

David M. Nocera
Senior Assistant Attorney General
Business and Licensing Section
1525 Sherman Street, 5th Floor
Denver, Colorado 80203
Telephone: (303) 866-5295
Facsimile: (303) 866-4139
dave.nocera@state.co.us

**COUNSEL FOR STAFF OF THE
PUBLIC UTILITIES COMMISSION**

*Counsel of Record

PAUL H. EPLER, RESPONDENT

By: _____

Paul H. Epler
305 A Juanita Street
Colorado Springs, CO 80909
Telephone: (719) 229-6388

EXECUTED this 4th day of October 2012.

STAFF OF THE COLORADO
PUBLIC UTILITIES COMMISSION

approved as to form:

JOHN W. SUTHERS, ATTORNEY GENERAL

By: _____

Cliff Hinson
1560 Broadway Suite 250
Denver, Colorado 80202

Manager, Compliance and Investigations
Colorado Public Utilities Commission

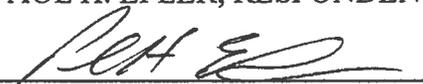
By: _____

David M. Nocera
Senior Assistant Attorney General
Business and Licensing Section
1525 Sherman Street, 5th Floor
Denver, Colorado 80203
Telephone: (303) 866-5295
Facsimile: (303) 866-4139
dave.nocera@state.co.us

**COUNSEL FOR STAFF OF THE
PUBLIC UTILITIES COMMISSION**

*Counsel of Record

PAUL H. EPLER, RESPONDENT

By:  _____

Paul H. Epler
305 A Juanita Street
Colorado Springs, CO 80909
Telephone: (719) 229-6388