

Decision No. C14-0667

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 13G-1313TO

PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO,

COMPLAINANT,

V.

ADAM JERROD KASTNING, DOING BUSINESS AS, A PERSONAL TOUCH RECOVERY,

RESPONDENT.

**COMMISSION DECISION ALLOWING
SETTLEMENT AGREEMENT TO BE FILED**

Mailed Date: June 18, 2014

Adopted Date: June 18, 2014

I. BY THE COMMISSION

A. Statement

1. On March 17, 2014, Staff of the Public Utilities Commission (Staff), filed exceptions to Decision No. R14-0210 (Recommended Decision). Staff requests the Commission amend the Recommended Decision to impose a lesser penalty on Adam Jerrod Kastning, doing business as A Personal Touch Recovery (Respondent) and authorize a refund of the difference pursuant to settlement Staff alleges it negotiated with Respondent. We permit Staff two weeks from the mail date of this Decision to file a settlement agreement for Commission consideration consistent with Rule 1408 of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1; in the event no settlement agreement is received in the time allowed, exceptions filed by Staff are denied.

B. Background, Findings, and Conclusions

2. Respondent was issued a Civil Penalty Assessment Notice (CPAN) in December of 2013, alleging operation as a towing carrier without first obtaining a permit, in violation of § 40-10.1-401(1)(a), C.R.S., with a civil penalty assessment that totaled \$1,210. By order of the assigned Administrative Law Judge (ALJ), a hearing was set for February 27, 2014.

3. On February 18, 2014, Respondent paid the civil penalty assessment in full. On February 19, 2014, as indicated in the Recommended Decision, counsel representing Staff emailed the ALJ indicating that Staff and Respondent had reached a settlement, but the terms were not yet memorialized. In the email, counsel requested that the matter not be closed due to payment and that Staff be given an additional two weeks to finalize and file the settlement agreement. Staff made no subsequent filings in the proceeding.

4. By the Recommended Decision issued February 25, 2014, the ALJ accepted the payment in full and vacated the hearing. The ALJ noted that no formal settlement was filed with the Commission and Respondent was free to pay the CPAN amount at any time prior to hearing. Further, the ALJ noted concern that Staff chose to send an email instead of filing a motion.

5. Staff filed exceptions on March 17, 2014, requesting the Commission amend the Recommended Decision to impose a lesser civil penalty of \$750 and order Staff to refund Respondent \$460. Staff acknowledges that the ALJ was legally correct in dismissing the case upon payment, but argues Respondent negotiated in good faith with Staff and imposing the full civil penalty does an injustice to Respondent. Staff does not attach a settlement agreement or indicate the terms of a final agreement in its exceptions.

6. We agree that the ALJ was correct in his determination to accept payment in full and not consider the email in lieu of a properly filed motion. Rule 1408 requires that any

settlement agreement be “reduced to writing and ... filed along with a motion requesting relief with regard thereto.” Further, parties are encouraged to provide comprehensive reasoning regarding the terms of a settlement. Staff did not properly request additional time for filing or file documentation for the ALJ to consider settlement in this instance; however, we agree with Staff that, if settlement was reached, Respondent should not be harmed by Staff’s mistake.

7. We therefore permit Staff two weeks to file a settlement in this proceeding for Commission consideration. If a settlement is received on or before July 2, 2014, the Commission can consider its terms and determine whether the settlement should be accepted and a refund granted. If no settlement is filed in the time permitted, exceptions are denied as of July 2, 2014, and payment of the total civil penalty amount of \$1,210 by Respondent is accepted as full payment of CPAN No. 108176, as set forth in the Recommended Decision.

II. ORDER

A. The Commission Orders That:

1. Consistent with the discussion above, Staff of the Commission (Staff) is permitted until July 2, 2014, two weeks from the Mailed Date of this Decision, to file a settlement agreement for Commission consideration. If no settlement agreement is filed in the time permitted, the exceptions filed by Staff on March 17, 2014, are denied, effective July 2, 2014.

2. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
June 18, 2014.**

(S E A L)



ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JOSHUA B. EPEL

PAMELA J. PATTON

GLENN A. VAAD

Commissioners