

Decision No. R14-0028

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 13G-1153EC

COLORADO PUBLIC UTILITIES COMMISSION

,
COMPLAINANT,

V.

A CUSTOM COACH TRANSPORTATION, LLC,

RESPONDENT.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
PAUL C. GOMEZ
APPROVING SETTLEMENT AGREEMENT; MODIFYING
TERMS OF CPAN; IMPOSING CIVIL PENALTY
ASSESSMENT; AND VACATING HEARING**

Mailed Date: January 10, 2014

I. STATEMENT

1. The captioned proceeding was initiated on October 24, 2013, when the Staff of the Colorado Public Utilities Commission (Commission) issued Civil Penalty Assessment Notice (CPAN) No. 107977 to A Custom Coach Transportation, LLC (Respondent), alleging one violation of Commission regulations for permitting a driver to operate without furnishing a list of traffic violations every 12 months, 4 *Code of Colorado Regulations* (CCR) 723-6-6102(a)(I) of the Commission's Rules Regulating Transportation by Motor Vehicle and 49 *Code of Federal Regulations* (CFR) § 391.11(b)(6); one violation of failure to investigate driver safety performance history within 30 days of employment, 4 CCR 723-6-6102(a)(I) and 49 CFR § 391.23(a)(2); one violation of failure to notify driver of his or her rights regarding review,

correct, and/or rebut investigative information, 4 CCR 723-6-6102(a)(I) and 49 CFR 391.23(i)(1); one violation of failure to review driving records to determine minimum requirements, 4 CCR 723-6-6102(a)(I) and 49 CFR 391.25(c)(2); six violations for failure to maintain and retain accurate and true time records including supporting documentation and verification of time records, 4 CCR 723-6-6103(d)(II)(C); and two violations for permitting a driver to drive after having been on duty for 16 consecutive hours, 4 CCR 723-6-6103(d)(II)(A). The total amount of the civil penalty assessment for the above violations is \$9,900.00. Respondent was served with a copy of CPAN No. 107977 on October 29, 2013 by personal service.

2. On November 4, 2013, Staff of the Commission filed its entry of appearance in this matter through its legal counsel, the Office of the Colorado Attorney General.

3. On November 26, 2013, the Commission referred this matter to an Administrative Law Judge (ALJ) for disposition. The matter was subsequently assigned to the undersigned ALJ.

4. By Interim Decision No. R13-1548-I issued December 17, 2013, a hearing on the CPAN was set for January 13, 2014.

5. On January 9, 2014, Staff and Respondent filed a Joint Motion to Approve Stipulation and Settlement Agreement and Waive Response Time (Motion). The parties represent that they have agreed upon a settlement that resolves all issues and the stipulation of certain facts that may be considered as mitigating factors as required for a decision of approval of the settlement agreement pursuant to 4 CCR 723-1-1302(b) of the Commission's Rules of Practice and Procedure. The Stipulation and Settlement Agreement entered into between the parties was filed contemporaneously with the Motion.

6. According to the terms of the Stipulation and Settlement Agreement, Staff and Respondent agree and stipulate to the following:

- a. Respondent will admit liability for the violations set forth in CPAN No. 107977.
- b. Respondent and Staff agree to reduce the total amount of the civil penalty assessment contained in CPAN No. 107977 from \$9,900.00 to \$4,950.00 which is to be paid in six monthly installments of \$825.00, with the first monthly installment to be made on or before January 22, 2014, and the following payments to be made on or before the 22nd day of each successive month.
- c. The reduced civil penalty assessment is based upon the condition that payment is received by the Commission in a timely fashion.

7. Facts in mitigation asserted by the stipulation include: (1) Respondent acknowledges wrongdoing for the violations; (2) Respondent has fully cooperated with Staff in the resolution of this matter; (3) Respondent agrees to take appropriate measures to immediately correct the violations noted in the CPAN.

8. Additionally the parties agree that should any of the conditions set out above not be met, the original civil penalty assessment of \$9,900.00 will become immediately due and payable to the Commission without hearing. Respondent agrees and stipulates that its failure to complete its payment obligations as set forth above shall also be deemed a waiver by Respondent of any and all rights to file exceptions and/or all rights to file an application for rehearing, reargument, or reconsideration or any other form of appeal of this Decision.

9. Respondent further agrees that if, during any investigation conducted by Staff within 12 months of the date of a final Commission Decision in this proceeding, any violations for the rules which Respondent admitted liability is found, Respondent shall be liable for the full civil penalty assessment of \$9,900.00, less any payments made.

10. In addition, Respondent agrees and stipulates that failure to complete its payment obligations as set forth in the Settlement Agreement is to be deemed as a waiver by Respondent of any and all rights to file exceptions and/or a request for rehearing, reargument, or reconsideration, or any other form of appeal.

11. The parties agree that all matters that were raised or could have been raised in this proceeding relating to CPAN No. 107977 have been resolved by the Stipulation and Settlement Agreement. The parties agree that the Stipulation and Settlement Agreement has been reached to avoid the costly expense of litigation and that the Stipulation and Settlement Agreement promotes administrative efficiency by avoiding the time and expense that would be required to hear this matter.

II. FINDINGS AND CONCLUSIONS

12. The undersigned ALJ finds good cause to grant the Stipulation and Settlement Agreement. It is found that a civil penalty assessment of \$4,950.00 (which includes a 10 percent surcharge pursuant to § 24-34-108, C.R.S.) regarding CPAN No. 107977 will motivate Respondent to avoid similar violations of Commission regulations.

13. The ALJ finds it in the public interest to conserve valuable resources by adopting the terms of the Settlement Agreement. CPAN No. 107977 will be modified according to the terms of the Settlement Agreement.

14. Therefore, pursuant to the terms of the Stipulation and Settlement Agreement entered into between Respondent and Staff, Respondent is assessed a civil penalty of \$4,950.00 payable according to the terms of the Stipulation and Settlement Agreement as delineated above for violation of Commission regulations for permitting a driver to operate without furnishing a list of traffic violations every 12 months, 4 CCR 723-6-6102(a)(I) and 49 CFR § 391.11(b)(6);

one violation of failure to investigate driver safety performance history within 30 days of employment, 4 CCR 723-6-6102(a)(I) and 49 CFR § 391.23(a)(2); one violation of failure to notify driver of his or her rights regarding review, correct, and/or rebut investigative information, 4 CCR 723-6-6102(a)(I) and 49 CFR 391.23(i)(1); one violation of failure to review driving records to determine minimum requirements, 4 CCR 723-6-6102(a)(I) and 49 CFR 391.25(c)(2); six violations for failure to maintain and retain accurate and true time records including supporting documentation and verification of time records, 4 CCR 723-6-6103(d)(II)(C); and two violations for permitting a driver to drive after having been on duty for 16 consecutive hours, 4 CCR 723-6-6103(d)(II)(A).

15. Failure to abide by the terms agreed to will result in reinstatement of the full civil penalty amount of \$9,900.00 due and payable immediately.¹ Therefore, the initial civil penalty assessment of \$9,900.00 is imposed and suspended.

16. In accordance with § 40-6-109, C.R.S., it is recommended that the Commission enter the following order.

III. ORDER

A. It Is Ordered That:

1. The Stipulation and Settlement Agreement entered into between Transportation Staff of the Commission and A Custom Coach Transportation, LLC is approved.

2. The initial civil penalty assessment of \$9,900.00 is imposed and suspended.

¹ A review of the file in this proceeding indicates that Respondent has made its initial payment of \$825.00 on January 7, 2014.

3. A reduced Civil Penalty Assessment of \$4,940.00 is assessed against A Custom Coach Transportation, LLC pursuant to the terms of the Stipulation and Settlement Agreement as detailed above.

4. A Custom Coach Transportation, LLC shall be held to the terms of the Settlement Agreement by making monthly payments of \$825.00 on the 22nd day of each month commencing no later than January 22, 2014.

5. In the event that A Custom Coach Transportation, LLC should default on the terms of the Settlement Agreement as described above, the full amount of the civil penalty assessment of \$9,900.00 shall become immediately due and payable, less any amounts already paid, pursuant to the terms of the Settlement Agreement.

6. Response time to the Joint Motion to Approve Stipulation and Settlement Agreement is waived.

7. The hearing in this matter scheduled for January 13, 2014 is vacated.

8. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

9. As provided by § 40-6-106, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

a.) If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the recommended decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b.) If a party seeks to amend, modify, annul, or reverse a basic finding of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge; and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

10. If exceptions to this Recommended Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

PAUL C. GOMEZ

Administrative Law Judge