

Decision No. R14-0036

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 13G-1070EC

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

MOHAMED ABOUD, DOING BUSINESS AS A J LIMO SERVICE,

RESPONDENTS.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
GRANTING JOINT MOTION; APPROVING
STIPULATION AND SETTLEMENT AGREEMENT,
SUBJECT TO CONDITIONS; ASSESSING CIVIL
PENALTY, SUBJECT TO CONDITIONS; AND
WAIVING RESPONSE TIME TO JOINT MOTION**

Mailed Date: January 13, 2014

I. STATEMENT

1. On October 8, 2013, the Commission served Civil Penalty Assessment Notice or Notice of Complaint to Appear No. 107792 (the CPAN) on Mohamed Aboud, doing business as A J Limo Service (Aboud or Respondent). The CPAN commenced this Proceeding.

2. On October 30, 2013, counsel for Trial Staff of the Commission (Staff) entered his appearance in this matter. In that filing and pursuant to Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1007(a),¹ Staff counsel identified the trial Staff and the advisory Staff in this matter.

¹ That Rule is found in the Rules of Practice and Procedure, Part 1 of 4 *Code of Colorado Regulations* 723.

3. Respondent is an individual, is a party in this matter, and is not represented by an attorney in this matter. Pursuant to Rule 4 CCR 723-1-1201(b)(I), an individual who is not an attorney may represent his or her own interests.

4. Staff and Respondent, collectively, are the Parties.

5. On October 30, 2013, by Minute Order, the Commission referred this matter to an Administrative Law Judge (ALJ).

6. The CPAN stated that, if he chose to do so, Respondent could pay one-half of the maximum assessment stated in the CPAN within ten days from the date of service. If made, the payment would constitute Respondent's admission of liability and would resolve this matter.

7. Respondent elected not to make the payment. As a consequence, the ALJ deemed the CPAN to be contested.

8. On November 7, 2013, by Decision No. R13-1408-I, the ALJ scheduled a December 13, 2013 evidentiary hearing in this matter.² By that Interim Decision, the ALJ also established the procedural schedule in this matter.

9. On November 20 2013, and pursuant to the established procedural schedule, Staff filed its Exhibit and Witness List. Complete copies of Staff's exhibits accompanied this filing.

10. Respondent did not file his list of witnesses and copies of his exhibits.

11. On December 13, 2013, pursuant to Decision No. R13-1508-I, the ALJ called the evidentiary hearing to order. Staff was present and was represented by counsel. Respondent was present and appeared *pro se*. As a preliminary matter, the Parties informed the ALJ that they had reached an agreement in principle that, if accepted, would be a full settlement. The Parties

² On December 6, 2013, by Decision No. R13-1508-I, the ALJ changed the time of the hearing.

requested time to reduce their agreement to writing. Based on the Parties' representations, the ALJ ordered the Parties to file their agreement and adjourned the evidentiary hearing.

12. On January 10, 2014, the Parties filed a Joint Motion to Approve Stipulation and Settlement Agreement and [to] Waive Response Time. A Stipulation and Settlement Agreement (Settlement Agreement) accompanied that filing.³

13. With respect to the Joint Motion [to] Waive Response Time, the ALJ finds that the motion states good cause and is a joint filing. As no party will be prejudiced, the ALJ will grant the Joint Motion [to] Waive Response Time and will waive response time to the Joint Motion to Approve Stipulation and Settlement Agreement (Joint Motion to Approve).

14. In accordance with § 40-6-109, C.R.S., the ALJ now transmits to the Commission the record in this Proceeding along with a written recommended decision.

II. FINDINGS, DISCUSSION, AND CONCLUSION

15. Respondent Aboud is an individual who does business as A J Limo Service. Respondent holds Commission-issued Permit No. LL-742 and operates a luxury limousine service pursuant to that authority.

16. The Commission served the CPAN by certified mail, return receipt requested. Respondent does not dispute service.

17. Respondent does not challenge the Commission's jurisdiction. The record establishes, and the ALJ finds, that the Commission has subject matter jurisdiction over this case and personal jurisdiction over Respondent.

³ The Settlement Agreement is attached to this Decision as Appendix A.

18. The CPAN contains one count. That count alleges that, on October 1, 2013, Respondent violated 49 *Code of Federal Regulations* (CFR) § 391.45(a), as made applicable in Colorado by Rule 4 CCR 723-6-6102(a)(I).⁴ In the Settlement Agreement at ¶ 1, Respondent admits, and on this basis the ALJ finds, that on October 1, 2013, Respondent violated 49 CFR § 391.45(a), as alleged in the CPAN, by allowing a driver to drive when that driver had not been medically examined and certified. The ALJ finds that the Respondent should be assessed a civil penalty for this admitted violation.

19. The maximum civil penalty for the admitted violation is \$ 1,100; the maximum surcharge mandated by § 24-34-108, C.R.S., is \$ 110; and the maximum assessment is \$ 1,210.

20. The Parties have negotiated a reduced total assessment of \$ 675. The \$ 675 assessment includes both a civil penalty of \$ 613.64 for the admitted violation and the surcharge imposed pursuant to § 24-34-108, C.R.S. (*i.e.*, \$ 61.36). Settlement Agreement at ¶ 4.

21. The Parties have agreed to three conditions on the reduced assessment.

22. First, Respondent will “comply with the Colorado and federal statutes and rules concerning luxury limousine service[.]” Settlement Agreement at ¶ 2.

23. Second, Respondent will pay -- and, on January 2, 2014,⁵ did pay -- the \$ 675 assessment in one payment. Settlement Agreement at ¶ 5.

24. Third and finally, if Staff finds, during any investigation(s) conducted within 12 months of the date on which the Decision approving the Settlement Agreement becomes final, “any violations for any of the Counts in which Respondent admitted liability [in this Proceeding]

⁴ This Rule is found in the Rules Regulating Transportation by Motor Vehicle, Part 6 of 4 *Code of Colorado Regulations* 723.

⁵ The Settlement Agreement mistakenly states that Respondent made the payment on January 2, 2013.

..., Respondent shall be liable for the” maximum assessment of \$ 1,210, less any amount paid. This amount will be due and payable immediately. Settlement Agreement at ¶ 6.

25. The Parties stipulate to facts that, in their opinion, support the Settlement Agreement. These stipulated facts are: (a) Respondent acknowledges that he committed the violation alleged in the CPAN; (b) Respondent admits to the maximum level of culpability for the admitted violation; (c) Respondent agrees to comply fully with federal and state statutes and rules applicable to luxury limousine service; (d) Respondent cooperated with Staff to resolve this matter without litigation; and (e) the \$ 675 assessment is sufficient to motivate Respondent to come into, and to remain, in compliance with the applicable statutes and rules. Settlement Agreement at ¶¶ 2 and 3. The ALJ adopts these stipulated facts, some of which are facts in mitigation.

26. As additional support for the Settlement Agreement, the Parties state that they reached the settlement in the spirit of compromise and that the settlement of all issues promotes administrative efficiency and conserves the resources of the Commission and the Parties. Joint Motion to Approve at ¶ 4. The Parties understand and acknowledge that the Settlement Agreement “will not have precedential effect on any other Commission matters.” *Id.* (citations omitted).

27. On the facts of this case, the ALJ finds to be reasonable, and will accept, the imposition of the maximum assessment of \$ 1,210 and the reduction of that maximum assessment to \$ 675 *provided* the conditions contained in the Settlement Agreement are met. This advances the public interest in transportation safety and in assuring compliance with the statute and applicable rules.

28. The ALJ finds to be reasonable, and will accept, the condition pursuant to which Respondent will comply with the applicable federal and state law governing luxury limousines.

29. On the facts of this case, the ALJ finds to be reasonable, and will accept, the condition pursuant to which Respondent will pay the \$ 675 assessment in one payment. Settlement Agreement at ¶ 5.

30. On the fact of this case, the ALJ finds to be reasonable, and will accept, the condition pursuant to which Respondent will immediately become liable for the full assessment of \$ 1,210, less any amount paid, in the event Staff finds, during any investigation(s) conducted within 12 months of the date on which the Decision approving the Settlement Agreement becomes final, “any violations for any of the Counts in which Respondent has admitted liability” in this Proceeding. Settlement Agreement at ¶ 6. This is a significant incentive for Respondent to comply with the statute and applicable rules.

31. The ALJ reviewed the Settlement Agreement in light of Rule 4 CCR 723-1-1302(b),⁶ the purposes of civil penalty assessments, and the record in this Proceeding. The ALJ considered the public safety purposes of the federal rule that Respondent admitted violating. The ALJ also considered Commission guidance provided in previous civil penalty decisions, considered the purposes served by civil penalties, considered the stipulated facts, and considered the range of assessments found to be reasonable in other civil penalty cases. The ALJ further considered the fact that, as the Parties acknowledge, neither this Decision approving the Settlement Agreement nor the Settlement Agreement will have any precedential effect.

⁶ That Rule lists eight factors that the Commission considers when determining whether to impose a civil penalty in a contested proceeding. Because this is a settlement, the ALJ considered these factors as guidance.

32. The ALJ finds that the \$ 675 assessment and the imposition of the conditions together achieve the following purposes underlying civil penalty assessments: (a) deterring future violations by Respondent; (b) motivating Respondent and similarly-situated transportation carriers to comply with the law in their transportation operations; (c) punishing Respondent for his past behavior; and (d) bringing Respondent into compliance with the law.

33. Based on a review of the Settlement Agreement and consideration of the factors discussed, the ALJ finds that the imposition of the maximum assessment of \$ 1,210 is reasonable; that the reduction of that assessment to \$ 675 is reasonable, provided the stated conditions are met; that the stated conditions are reasonable; and, consequently, that the Settlement Agreement is just, is reasonable, and is in the public interest.

34. The Joint Motion to Approve states good cause, and granting the Joint Motion to Approve will not prejudice any party. The ALJ will grant the Joint Motion to Approve and will approve the Settlement Agreement.

35. Based on the findings and discussion above, the ALJ will order Respondent to pay the reduced assessment of \$ 675 in accordance with the provisions of the Settlement Agreement. The ALJ notes that Respondent made this payment, in full, on January 2, 2014.

36. Based on the findings and discussion above, and in accordance with the terms of the Settlement Agreement, the ALJ will order that Respondent will be liable for the full assessment of \$ 1,210, less any amount paid, if Respondent fails to meet one or more of the conditions stated in the Settlement Agreement and in this Decision.

37. Pursuant to § 40-6-109(2), C.R.S., the Administrative Law Judge recommends that the Commission enter the following Order.

III. ORDER

A. The Commission Orders That:

1. The Stipulation and Settlement Agreement, filed January 10, 2014, is attached to this Decision as Appendix A and is incorporated here by reference as if fully set out.

2. Consistent with the discussion above, the Joint Motion to Approve Stipulation and Settlement Agreement, which motion was filed on January 10, 2014, is granted.

3. Consistent with the discussion above, the Stipulation and Settlement Agreement filed on January 10, 2014 is approved.

4. Respondent Mohamed Aboud, doing business as A J Limo Service (Respondent), is bound by, and must abide by, the terms of the Stipulation and Settlement Agreement filed on January 10, 2014 in this Proceeding.

5. Consistent with the discussion above and subject to the conditions stated below, Respondent is assessed \$ 1,120, which includes a civil penalty of \$ 1,100 and, as required by § 24-34-108, C.R.S., a surcharge of \$ 110; and all but a total assessment of \$ 675 (which includes a civil penalty of \$ 613.64 and, as required by § 24-34-108, C.R.S., a surcharge of \$ 61.36) is suspended.

6. Consistent with the Stipulation and Settlement Agreement attached to this Decision as Appendix A and the discussion above, if Respondent meets all conditions imposed by this Decision and established in the Stipulation and Settlement Agreement attached to this Decision as Appendix A, the \$ 1,120 assessment is reduced to a \$ 675 assessment.

7. Consistent with the Stipulation and Settlement Agreement attached to this Decision as Appendix A and the discussion above, Respondent shall pay, and has paid, the \$ 675 assessment in one payment.

8. Consistent with the Stipulation and Settlement Agreement attached to this Decision as Appendix A and the discussion above, the failure of Respondent to comply with the provisions of the Stipulation and Settlement Agreement shall result in Respondent's being liable for the full assessment of \$ 1,210, less any payment made. If this Ordering Paragraph No. 8 is invoked, the full assessment of \$ 1,210, less any payment made, is due and payable immediately.

9. Any condition contained in the Stipulation and Settlement Agreement attached to this Decision as Appendix A that is not set out in these Ordering Paragraphs is a condition imposed on Respondent by this Decision because the Stipulation and Settlement Agreement attached to this Decision as Appendix A is incorporated by reference.

10. The Joint Motion to Waive Response Time is granted.

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

12. 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.

13. As provided by § 40-6-109, 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 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 basic findings 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.

14. If exceptions to this 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

MANA L. JENNINGS-FADER

Administrative Law Judge