

Decision No. R14-0210

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.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
PAUL C. GOMEZ
ACCEPTING PAYMENT AND CLOSING PROCEEDING**

Mailed Date: February 25, 2014

I. STATEMENT

1. The captioned proceeding was initiated on December 12, 2013, when the Staff of the Colorado Public Utilities Commission (Commission) issued Civil Penalty Assessment Notice (CPAN) No. 108176 to Adam Jerrod Kastning, doing business as A Personal Touch Recovery (Respondent), alleging one violation of operating as a towing carrier without first obtaining a permit, in violation of § 40-10.1-401(1)(a), C.R.S. The total amount of the civil penalty assessment for the above violation is \$1,210.00. Respondent was served with a copy of CPAN No. 108176 on December 13, 2013 by certified mail, return receipt requested.

2. On January 7, 2014, Staff of the Commission filed its entry of appearance in this matter through the Colorado Attorney General's Office.

3. On January 8, 2014, 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. R14-0038-I issued January 13, 2014, a hearing was set in this proceeding for February 27, 2014.

5. CPAN No. 108176 provides that if Respondent wishes to contest the allegations contained therein, or if Respondent does not pay the penalty amount of \$605.00 within ten days of its receipt of the CPAN, or the full amount of \$1,210.00 thereafter, Respondent is obliged, within 15 days of such receipt, to contact the Commission to set the matter for hearing. In the absence of such a contact, CPAN No. 108176 provides that it will become a Complaint to Appear Notice and that the Commission will set a hearing date without regard to Respondent's wishes.

6. On February 18, 2014, Respondent paid the full amount of \$1,210.00. (See Receipt No. 44835 issued on February 18, 2014).

7. On February 19, 2014, Michael J. Axelrad, Assistant Attorney General representing Commission Transportation Staff in this proceeding sent an e-mail to the undersigned ALJ indicating that Staff did not want this matter to be closed due to the receipt of payment. A copy of the email is attached to this Decision as Attachment A.

8. Pursuant to § 40-6-109, C.R.S., the ALJ hereby transmits to the Commission the record in this proceeding, along with a written recommended decision.

II. FINDINGS

9. CPAN No. 108176 provides in relevant part that a party served with a CPAN has four options to resolve it as follows:

1.) Within 10 calendar days of receipt of the CPAN, Respondent may pay the reduced total amount which the Commission will accept as payment in full, with the surcharge, and as the Respondent's acknowledgement of liability for the violations contained in the CPAN;

2.) Within 10 calendar days of receipt of the CPAN, Respondent may pay the reduced amount for each acknowledged violation which the Commission will accept as payment in full, with the surcharge, and as Respondent's acknowledgement of liability for the indicated violations, but Respondent may contest the remaining violations;

3.) If Respondent does not pay the reduced penalty amount within 10 days after issuance of the CPAN, it becomes a Notice of Complaint to Appear; however, the Commission will accept Respondent's payment in full of the full total civil penalty assessment as Respondent's acknowledgement that Respondent is liable for the violations contained in the CPAN; or,

4.) If Respondent wishes to contest any of the violations contained in the CPAN, Respondent must contact the Commission no later than the 15th day after receipt of the CPAN in order to schedule a hearing.

10. In this instance, Respondent paid the full penalty assessment prior to the February 27, 2014 hearing in this proceeding. Therefore, Respondent is in full compliance with the terms of CPAN No. 108176.

11. The e-mail from Mr. Axelrad indicates that the parties reached a settlement agreement in this proceeding, but had not memorialized the terms to a document. Mr. Axelrad further indicates that the penalty assessment paid by Respondent exceeds the amount due

under the settlement agreement. As a result, Mr. Axelrad requests in his e-mail that the matter not be closed due to receipt of payment from Respondent, and that Staff be given an additional two weeks to finalize and file the settlement agreement.

12. Whether Respondent entered into a preliminary settlement agreement with Staff prior to his payment of the CPAN is irrelevant. No formal settlement agreement was filed with the Commission in this proceeding. Respondent was free to pay the CPAN amount due at any time prior to the hearing in this proceeding. Moreover, Respondent is instructed in the CPAN that the Commission will accept payment in full as Respondent's acknowledgement of liability of the violations contained in the CPAN, even after the CPAN becomes a Notice of Complaint to Appear.

13. The undersigned ALJ is concerned that Staff's legal counsel chose to send an email regarding Respondent's payment of the CPAN rather than filing an appropriate motion. There is no indication that Respondent also received a copy of the email other than Mr. Axelrad's representation that he copied Respondent at his last known address, therefore raising concerns of an improper *ex parte* communication in violation of Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1106, Commission's Rules of Practice and Procedure.

14. Pursuant to Rule 4 CCR 723-1-1107, this Decision is to serve as full disclosure of the potential *ex parte* communication in this Proceeding No. 13G-1313TO.

15. The payment in full of \$1,210.00 for CPAN No. 108176 is accepted in resolution of this matter and as acknowledgement that Respondent is liable for the violations contained in CPAN No. 108176.

16. The evidentiary hearing in this proceeding scheduled for February 27, 2014 is vacated and this proceeding will be closed.

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

III. ORDER

A. The Commission Orders That:

1. Payment of the total civil penalty amount of \$1,210.00 by Adam Jerrod Kastning, doing business as, A Personal Touch Recovery as set forth in Civil Penalty Assessment Notice No. 108176 is accepted by the Colorado Public Utilities Commission as full payment of the same.

2. The hearing scheduled for February 27, 2014 in this proceeding is vacated.

3. Proceeding No. 13G-1313TO is closed.

4. 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.

5. 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.

6. 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

PAUL C. GOMEZ

Administrative Law Judge