

Decision No. R14-0228

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14G-0024EC

PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO,

COMPLAINANT,

V.

JAMES O'HARA DENNY V, IN HIS OFFICIAL CAPACITY AS OWNER/OPERATOR OF
TREASURE CHEST TOURS, LLC, AND TREASURE CHEST TOURS, LLC,

RESPONDENTS.

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

Mailed Date: March 3, 2014

I. STATEMENT

1. The captioned proceeding was initiated on December 26, 2013, when the Staff of the Colorado Public Utilities Commission (Commission) issued Civil Penalty Assessment Notice (CPAN) No. 108088 to James O'Hara Denny V in his official capacity as owner/operator of Treasure Chest Tours, LLC and Treasure Chest Tours, LLC (Respondents), alleging one violation of § 40-10.1-302(1)(a), C.R.S., for operating or offering to operate a luxury limousine in intrastate commerce without first having obtained a permit; and one violation of § 40-10.1-107(1), C.R.S., for failure to maintain and file with the Commission evidence of financial responsibility pursuant to Commission Rule 4 *Code of Colorado Regulations* (CCR)

723-6-6007(a)(I) of the Commission's Rules Regulating Transportation by Motor Vehicle. The total amount of the civil penalty assessment for the above violations is \$13,310.00. Respondent was served with a copy of CPAN No. 108088 on January 2, 2014 by a deputy of the Arapahoe County Sheriff's Office.

2. On January 28, 2014, Staff of the Commission (Staff) filed its entry of appearance in this matter through its legal counsel, the Office of the Colorado Attorney General.

3. On January 29, 2014, the Commission referred this matter to an Administrative Law Judge (ALJ) for disposition. The matter was subsequently assigned to the undersigned ALJ.

4. CPAN No. 108088 provides that if Respondent wishes to contest the allegations contained therein, or if Respondent does not pay the penalty amount within ten days of its receipt of the CPAN, 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. 108088 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.

5. Respondent failed to respond to the CPAN by indicating it admits that it violated the laws and Commission Rules indicated by paying the civil penalty assessment within the time periods specified in CPAN No. 108088; nor did Respondent contact the Commission to set a hearing date regarding the alleged violations contained in CPAN No. 108088. Therefore, the matter was set for hearing on March 6, 2014.

6. On February 28, 2014, Staff and Respondent filed a Joint Motion to Approve Stipulation and Settlement Agreement and Waive Response Time (Motion). According to the Motion, Staff and Respondent reached a comprehensive settlement agreement that resolves all

the issues raised in this proceeding. The Stipulation and Settlement Agreement entered into between the parties was filed contemporaneously with the Motion.

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

- a. Respondents will admit liability for the violations set forth in CPAN No. 108088.
- b. Respondents agree to comply with all Colorado and federal statutes and rules regarding limited regulation carriers and motor carriers.
- c. Respondents and Staff agree to reduce the total amount of the civil penalty assessment contained in CPAN No. 108088 from \$13,310.00 to \$7,320.00 which is to consist of a penalty of \$6,654.55 plus a 10 percent surcharge of \$665.45 pursuant to § 24-24-108, C.R.S. which is to be paid in one installment within 10 days of final Commission Decision in this matter.
- d. The reduced civil penalty assessment is based upon the condition that payment is received by the Commission in a timely fashion.

8. Facts in mitigation asserted by the Stipulation and Settlement Agreement include:

(1) Respondents acknowledge wrongdoing; (2) Respondents admit the maximum level of culpability for all violations contained in CPAN No. 108088; (3) Respondents actively and timely contacted Staff to resolve the issue; (4) Respondents have ceased operating as a motor carrier until such time as proper authority is obtained from the Commission; (5) Respondents agree to pay the reduced civil penalty assessment in one lump sum rather than requesting installment payments over time; (6) Assessing Respondent a civil penalty of \$7,320.00 under the terms of the Stipulation and Settlement Agreement is sufficient to motivate Respondent to remain compliant with Commission Rules and Public Utilities Laws going forward.

9. Additionally, the parties agree that should any of the conditions set out above not be met, the original civil penalty assessment of \$13,310.00, less any payments made will be immediately due and payable.

10. Respondents further agree that if, during any investigation conducted by Staff within 12 months of the date of a final Commission Decision in this proceeding, if any violations for the rules which Respondents admitted liability is found, Respondents shall be liable for the full civil penalty assessment of \$13,310.00, less any payments made. Under such circumstances, the civil penalty assessment will be immediately due and payable.

11. 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.

12. The parties agree that all matters that were raised or could have been raised in this proceeding relating to CPAN No. 108088 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

13. The undersigned ALJ finds good cause to grant the Stipulation and Settlement Agreement. It is found that a civil penalty assessment of \$7,320.00 (which includes a 10 percent surcharge pursuant to § 24-34-108, C.R.S.) regarding CPAN No. 108088 will motivate Respondent to avoid similar violations of Commission regulations.

14. The ALJ finds it in the public interest to conserve valuable resources by adopting the terms of the Settlement Agreement. CPAN No. 108088 will be modified according to the terms of the Settlement Agreement.

15. Therefore, pursuant to the terms of the Stipulation and Settlement Agreement entered into between Respondent and Staff, Respondent is assessed a civil penalty of \$7,320.00 payable according to the terms of the Stipulation and Settlement Agreement as delineated above for one violation of § 40-10.1-302(1)(a), C.R.S., for operating or offering to operate a luxury limousine in intrastate commerce without first having obtained a permit, and one violation of § 40-10.1-107(1), C.R.S., for failure to maintain and file with the Commission evidence of financial responsibility pursuant to Commission Rule 4 CCR723-6-6007(a)(I)

16. Failure to abide by the terms agreed to will result in reinstatement of the full civil penalty amount of \$13,310.00, less any payment received, due and payable immediately. Therefore, the initial civil penalty assessment of \$13,310.00 is imposed and suspended.

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. The Stipulation and Settlement Agreement entered into between Transportation Staff of the Commission and James O'Hara Denny V in his official capacity as owner/operator of Treasure Chest Tours, LLC and Treasure Chest Tours, LLC is approved.

2. The initial civil penalty assessment of \$13,310.00 is imposed and suspended.

3. A reduced Civil Penalty Assessment of \$7,320.00 is assessed against James O'Hara Denny V in his official capacity as owner/operator of Treasure Chest Tours, LLC

and Treasure Chest Tours, LLC pursuant to the terms of the Stipulation and Settlement Agreement as detailed above.

4. James O'Hara Denny V in his official capacity as owner/operator of Treasure Chest Tours, LLC and Treasure Chest Tours, LLC shall be held to the terms of the Settlement Agreement by making one payment of \$7,320.00 within ten days after the Commission's approval of the Settlement Agreement becomes final.

5. In the event that James O'Hara Denny V in his official capacity as owner/operator of Treasure Chest Tours, LLC and Treasure Chest Tours, LLC should default on the terms of the Settlement Agreement as described above, the full amount of the civil penalty assessment of \$13,310.00 shall become immediately due and payable, less any amounts already paid, pursuant to the terms of the Settlement Agreement.

6. The evidentiary hearing scheduled for March 6, 2014 is vacated.

7. 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.

8. 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 notranscript 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.

9. 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