

Decision No. R14-0256

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14G-0023EC

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

REZA MAHLOUJI, DOING BUSINESS AS SUPERIOR TOWNCAR SERVICES.,

RESPONDENT.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
ACCEPTING STIPULATION WITH
MODIFICATIONS AND ASSESSING CIVIL PENALTY**

Mailed Date: March 7, 2014

I. STATEMENT, FINDINGS, AND CONCLUSIONS

1. On January 3, 2014, Commission trial Staff (Staff) with the Public Utilities Commission (Commission) filed Civil Penalty Assessment Notice (CPAN) No. 108351 against Reza Mahlouji, doing business as Superior Towncar Services (Respondent) seeking to assess a maximum civil penalty against Respondent in the amount of \$1,705.00, including a 10 percent surcharge.

2. Respondent is an individual, and is not represented by an attorney in this matter. Pursuant to Rule 1201(b)(I), 4 *Code of Colorado Regulations* (CCR) 723-1, an individual who is not an attorney may represent his or her own interests.

3. The CPAN charged Respondent with four counts of violating the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6. In particular, Respondent is charged with two counts of violating Rule 6103(d)(II)(c), failing to maintain and retain accurate and true time records, and two counts of violating Rule 6105(g)(III), allowing a driver to drive when the driver's qualification status has expired.

4. Respondent requested a hearing on the CPAN. The Commission scheduled a hearing for February 18, 2014 at 9:00 a.m.

5. On January 29, 2014, the Commission referred the CPAN to an administrative law judge (ALJ) for disposition.

6. Staff informally notified the ALJ that the parties were engaging in settlement discussions, and that they required additional time to continue those discussions. As a result, on February 7, 2014, the ALJ vacated the February 18, 2014 hearing. Decision No. R14-0157-I.

7. On February 19, 2014, Staff filed a "Joint Motion to Approve Stipulation and Settlement Agreement and Waive Response Time" (Joint Motion), and a "Stipulation and Settlement Agreement" (Stipulation). Both filings were executed by Staff and Respondent. The Stipulation is attached hereto as Appendix A.

8. The Joint Motion requests that the ALJ approve the parties' Stipulation without modification.

9. Through the Stipulation, the parties reached a comprehensive settlement in the spirit of compromise and in light of the uncertainties of trial. They note that the Stipulation promotes administrative efficiency by avoiding the time and expense that would be necessarily devoted to hearing this matter. Lastly, the parties acknowledge that their Stipulation will not

have precedential effect on any other Commission matters. *See Colorado Ute Elec. Ass'n, Inc. v. PUC*, 602 P.2d 861, 865 (Colo. 1979); *B & M Serv., Inc. v. PUC*, 429 P.2d 293, 296 (Colo. 1967).

10. Respondent does not challenge the Commission's jurisdiction in this proceeding. The Commission has subject matter jurisdiction over this case and personal jurisdiction over Respondent.

11. In the Stipulation, the parties considered the following factors they believe to be mitigating:

- (a) Respondent acknowledges wrongdoing;
- (b) Respondent admits the maximum level of culpability for all counts in the CPAN;
- (c) Respondent actively and timely contacted Staff to resolve the issue, and has fully cooperated with Staff in resolving this matter without the need for mitigated evidentiary proceeding;
- (d) Respondent has paid in full a prior penalty, which had been ordered in Proceeding No. 12G-104EC;
- (e) Respondent is the only driver for his business, and operates only one vehicle, and the full amount of the CPAN would cause financial hardship;
- (f) assessing Respondent a civil penalty of \$1,023.00 under the terms of the Stipulation is sufficient to motivate Respondent to remain compliant with the Public Utilities Laws and Commission Rules on a going-forward basis.

Appendix A, ¶ 3.

12. Based upon Respondent's admission of liability and the factors identified above, the parties agreed to a reduced civil penalty of \$1,023.00 for Counts I through IV of the CPAN under the terms of the Stipulation.¹ Based upon these considerations, the parties contend that the proposed penalty amount is reasonable and in the public interest.

¹ This settled amount is inclusive of the mandatory 10 percent surcharge required by § 24-34-108, C.R.S.

13. In the Stipulation, Respondent agrees to pay the total amount of \$1,023.00 in three installments of \$341.00.² Appendix A, ¶ 4. The first payment is due within 20 days of the Commission's final decision approving the settlement agreement. *Id.* The second installment is due no later than 30 days after the first installment payment (50 days after the Commission's final order). The third installment "shall be due no later than the second installment payment (80 days after the Commission's final order)." The ALJ construes this to mean that the third installment is due no later than *30 days after* the second installment, which is 80 days after the Commission's final order. *Id.* The Stipulation shall be modified to be consistent with the ALJ's construction of this provision.

14. If Respondent does not make the installment payments when due, Respondent agrees that he will be liable for the full civil penalty, minus any payments made; the full amount shall be due and payable immediately. Appendix A, ¶ 6.

15. The Stipulation also states that Respondent agrees that if, during any "investigation(s) conducted by Staff within 12 months of the date a Commission final order in this Docket, any violations for any Counts in which respondent admitted liability is found, Respondent shall be liable for the full civil penalty less payments made, which shall be due immediately." Appendix A, ¶ 7. The ALJ construes this provision of the Stipulation to mean that if Respondent is found liable by the Commission of having committed any of the violations to which he has admitted liability in this proceeding, based upon acts that occurred within 12 months of the final Commission decision in this proceeding, that the full amount of the civil

² The Stipulation references two different amounts, \$1,023.00, and \$1,031.00 as the stipulated penalty. Appendix A, ¶¶ 3-5. The ALJ construes the parties' references to mean that Respondent shall pay a total of \$1,023.00. This is based upon the Stipulation's requirement that Respondent make three installment payments of \$341.00; three payments in that amount equal \$1,023.00.

penalty shall immediately be due and payable, less payments made. The Stipulation shall be modified to be consistent with the ALJ's construction of this provision.

16. Based upon Respondent's admissions in the Stipulation, the ALJ finds that on November 6 and 8, 2013, Respondent committed two counts of violating of Rule 6103(d)(II)(c), failing to maintain and retain accurate and true time records, and that on November 7 and 11, 2013, Respondent committed two counts of violating Rule 6105(g)(III), allowing a driver to drive when the driver's qualification status has expired.

17. The ALJ finds that the Respondent should be assessed a civil penalty for Counts 1 through 4 of the CPAN. The maximum civil penalty for these violations is \$1,705.00, including a 10 percent surcharge.

18. In accordance with Rule 1302(b), Rules of Practice and Procedure 4 CCR 723-1,

The Commission may impose a civil penalty, when provided by law, ... will consider any evidence concerning ... the following factors:

- (I) the nature, circumstances, and gravity of the violation;
- (II) the degree of the respondent's culpability;
- (III) the respondent's history of prior offenses;
- (IV) the respondent's ability to pay;
- (V) any good faith efforts by the respondent in attempting to achieve compliance and to prevent future similar violations;
- (VI) the effect on the respondent's ability to continue in business;
- (VII) the size of the respondent's business; and
- (VIII) such other factors such as equity and fairness may require.

19. The ALJ finds the total payment of \$1,023.00 achieves the following purposes underlying civil penalty assessment: (a) deterring future violations by Respondent;

(b) motivating Respondent to comply with the law in the future; and (c) punishing Respondent for his past behavior.

20. The Stipulation is just and reasonable, as construed and modified herein.

21. The Joint Motion seeks the Stipulation to be approved without modification. The ALJ has construed certain provisions of the Stipulation to ensure both clarity and that the Stipulation is reasonable and just. *Supra*, ¶¶ 13 and 15. The Stipulation shall be modified as stated in ¶¶ 13 and 15. Consequently, the Stipulation is granted with modifications and the Joint Motion is granted in part.

22. Approval of the Stipulation does not have a precedential affect upon other Commission matters. *See Colorado Ute Elec. Ass'n, Inc. v. PUC*, 602 P.2d 861, 865 (Colo. 1979); *B & M Serv., Inc. v. PUC*, 429 P.2d 293, 296 (Colo. 1967).

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

II. ORDER

A. The Commission Orders That:

1. The “Stipulation and Settlement Agreement” (Stipulation) is accepted and approved as modified by this Decision in paragraphs 13 and 15 above.

2. A copy of the Stipulation, attached hereto as Appendix A, is incorporated by reference.

3. The parties shall comply with the terms of the Stipulation, with the modifications discussed in paragraphs 13 and 15 above.

4. Reza Mahlouji, doing business as Superior Towncar Services, is hereby assessed a civil penalty of \$1,023.00, including a 10 percent surcharge, for \$1,023 for Counts 1 through 4 of Civil Penalty Assessment Notice No. 108351.

5. Proceeding No 14G-0023EC is closed.

6. 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.

7. 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.

8. 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

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

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MELODY MIRBABA

Administrative Law Judge