

Decision No. R14-0340-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14G-0205TO

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

MICHAEL LEACH, DOING BUSINESS AS, ACE TOWING,

RESPONDENT.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
SCHEDULING HEARING AND
ESTABLISHING DEADLINES**

Mailed Date: March 28, 2014

I. STATEMENT

1. On March 5, 2014, Commission Staff (Staff) with the Public Utilities Commission (Commission) filed Civil Penalty Assessment Notice (CPAN) No. 108810 against Michael Leach, doing business as Ace Towing (Respondent) seeking to assess civil penalties against Respondent in the amount of \$36,300.00, which includes a 10 percent surcharge for violation of Colorado statutes and Commission Rules.

2. On March 19, 2014, Staff filed an “Entry of Appearance and Notice Pursuant to Rule 1007(a).”

3. On March 26, 2014, the Commission referred the CPAN to an administrative law judge (ALJ) for disposition.

A. Burden of Proof at Evidentiary Hearing

4. The ALJ will hold an evidentiary hearing on the CPAN. At the hearing, Staff will carry the burden to prove by a preponderance of the evidence that Respondent committed the violations charged in the CPAN. Respondent will have an opportunity to present evidence in its defense. This means that Respondent will be given an opportunity to question any witness who testifies on behalf of Staff and will be able to present witnesses and evidence (in the form of exhibits), in its defense.

5. Respondent may have counsel represent it in this proceeding. Respondent is responsible for hiring and paying for its attorney.

6. Non-attorneys will be held to the same standards as attorneys.

B. Disclosure of Evidence to Be Offered at Hearing

7. In anticipation of the hearing, the ALJ will order the parties to make disclosures of the witnesses and exhibits that they intend to present at the hearing in support of their position.

8. Witness lists shall include a description of the witnesses' testimony and the witnesses' last known address and telephone number. Witnesses are those persons who will testify on behalf of a party. All witnesses shall be sworn in before commencing their testimony.

9. Mr. Michael Leach may testify without filing a witness list.¹ However, if Respondent wishes for any other person to testify on its behalf, Respondent must file a witness list as required by this Decision.

10. Whether Respondent is required to file a witness list as stated above *does not* impact Respondent's responsibility to file and serve an exhibit list and exhibits.

¹ It is reasonable to presume that Mr. Leach will testify on his own behalf regarding his position on the CPAN.

11. An exhibit is any document or other tangible item the party wishes the ALJ to consider in reaching a decision in this matter.

12. As referenced in this Decision, serving a party with any document (*e.g.*, witness and exhibit lists and exhibits) means that the party is required to give the document to the other party to the proceeding. Service may be accomplished by United States Mail, or through the Commission's E-filing system, if the party being served is registered with the E-filing system.

13. Reference to filing a document means that the party shall provide the document to the Commission. The filing must include a reference to the proceeding name and number.

14. All parties are advised that this proceeding is governed by the Rules of Practice and Procedure found at 4 *Code of Colorado Regulations* (CCR) 723-1 and the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6. The ALJ expects the parties to comply with the Rules of Practice and Procedure. Both sets of rules are available on the Commission's website (www.dora.colorado.gov/puc) and in hard copy from the Commission.

II. ORDER

A. It Is Ordered That:

1. A hearing on the merits of the Civil Penalty Assessment Notice in this matter will be held as follows:

DATE: May 22, 2014
TIME: 10:00 a.m.
PLACE: Commission Hearing Room
1560 Broadway, 2nd Floor
Denver, Colorado

2. At the above date, time, and place you will be given the opportunity to be heard if you so desire.

3. Commission Staff shall file and serve exhibit and witness lists and exhibits **on or by 5:00 p.m. on May 1, 2014.**

4. Michael Leach, doing business as Ace Towing (Respondent) shall file and serve exhibit and witness lists and exhibits **on or by 5:00 p.m. on May 8, 2014.** If Mr. Leach will be his only witness, he need not file a witness list. However, if Respondent wishes for any other person to testify on its behalf, Respondent must file a witness list as required by this paragraph.

5. All exhibits shall be identified by sequential numbers (*e.g.*, Exhibit 1, Exhibit 2, Exhibit 3). The exhibits shall include the following information: exhibit number, proceeding number, name of the witness who will testify to the exhibit's foundation, and the date of the hearing. The parties may utilize the Commission's exhibit stamp to include this information on the exhibits; the parties are advised that they must have all their exhibits stamped prior to the time the hearing is scheduled to begin.

6. At the hearing, the parties shall bring an original and two copies of each exhibit they intend to introduce, along with a completed exhibit list in the format set forth in Appendix A to this Decision.

7. If any exhibit is longer than two pages, the party offering the exhibit shall sequentially number each page of the exhibit. The parties shall comply with all mandates in this Decision.

8. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MELODY MIRBABA

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director