

Decision No. R14-0363

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14G-0173EC

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

NUMBER 1 LIMO SERVICE,

RESPONDENT.

**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 DENYING
AS MOOT THE REQUEST TO WAIVE RESPONSE TIME**

Mailed Date: April 4, 2014

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I. STATEMENT

1. On February 24, 2014, the Commission served Civil Penalty Assessment Notice or Notice of Complaint No. 108793 (CPAN) on Number 1 Limo Service (Respondent),

which the CPAN identified as the holder of PUC Permit No. LL-02107. That CPAN commenced this Proceeding.

2. On February 28, 2014, counsel for Trial Staff of the Commission (Staff) entered his appearance in this Proceeding. In that filing and pursuant to Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1007(a),¹ Staff counsel identified the testimonial Staff and the advisory Staff in this matter.

3. On March 19, 2014, by Minute Order, the Commission assigned this Proceeding to an Administrative Law Judge (ALJ).

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

5. In Count 1, the CPAN alleges that, on December 11, 2013, Respondent violated 49 *Code of Federal Regulations* (CFR) § 390.35, as made applicable in Colorado by Rule 4 CCR 723-6-6102(a)(I).² The maximum civil penalty for this alleged violation is \$ 2,500; the maximum surcharge mandated by § 24-34-108, C.R.S., is \$ 250; and the maximum assessment for Count 1 is \$ 2,750.

6. In Count 2, the CPAN alleges that, on December 24, 2013, Respondent violated 49 CFR § 390.35, as made applicable in Colorado by Rule 4 CCR 723-6-6102(a)(I). The maximum civil penalty for this alleged violation is \$ 2,500; the maximum surcharge mandated by § 24-34-108, C.R.S., is \$ 250; and the maximum assessment for Count 2 is \$ 2,750.

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

² This Rule is found in the Rules Regulating Transportation by Motor Vehicle, Part 6 of 4 *Code of Colorado Regulations*.

7. In the CPAN, Staff requests that the Commission assess the maximum civil penalty for the two alleged violations, plus the surcharge required by § 24-34-108, C.R.S., for a total maximum assessment of \$ 5,500.

8. On March 14, 2014, the Parties filed (in one document) a Joint Motion to Approve Stipulation and Settlement Agreement [Motion to Approve] and [to] Waive Response Time [Motion for Waiver]. The Parties also filed on March 14, 2014 their Stipulation and Settlement Agreement (Stipulation).

9. The ALJ will deny as moot the Motion for Waiver because the 14-day response time to the Motion to Approve has expired.

10. 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

11. Respondent holds PUC Permit No. LL-02107. Pursuant to that authority, Respondent provides luxury limousine service in intrastate commerce in Colorado.

12. The CPAN was served on Respondent by certified mail, return receipt requested. CPAN at 1. Respondent does not dispute service.

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

14. In Count 1, the CPAN alleges that, on December 11, 2013, Respondent violated 49 CFR § 390.35, as made applicable in Colorado by Rule 4 CCR 723-6-6102(a)(I). In the Stipulation at ¶ 1, Respondent admits, and on this basis the ALJ finds, that

on December 24, 2013, Respondent violated 49 CFR § 390.35, as made applicable in Colorado by Rule 4 CCR 723-6-6102(a)(I), in that Respondent made, or caused to be made, fraudulent or intentionally false statements or records or reproduced fraudulent records, or both. The ALJ finds that the Respondent should be assessed a civil penalty for this admitted violation.

15. In Count 2, the CPAN alleges that, on December 24, 2013, Respondent violated 49 CFR § 390.35, as made applicable in Colorado by Rule 4 CCR 723-6-6102(a)(I). In the Stipulation at ¶ 1, Respondent admits, and on this basis the ALJ finds, that on December 24, 2013, Respondent violated 49 CFR § 390.35, as made applicable in Colorado by Rule 4 CCR 723-6-6102(a)(I), in that Respondent made, or caused to be made, fraudulent or intentionally false statements or records or reproduced fraudulent records, or both. The ALJ finds that the Respondent should be assessed a civil penalty for this admitted violation.

16. For the two admitted violations, Respondent is liable for a maximum assessment of \$ 5,500. The Parties have negotiated a total assessment of \$ 2,750. The \$ 2,750 assessment includes both a civil penalty of \$ 2,500 for the admitted violations and the 10 percent surcharge imposed pursuant to § 24-34-108, C.R.S. (*i.e.*, \$ 250) Stipulation at ¶ 4.

17. The Parties have agreed to conditions on the assessment.

18. First, Respondent will pay the assessment in five installments of \$ 550 each. Respondent will make each payment to the Commission. The first payment will be due within ten days following the date of a final Commission decision in this matter.³ Each of the four remaining payments will be due every 30 days thereafter until the assessment is paid in full. Stipulation at ¶ 5.

³ As used in the Stipulation and as used in this Decision, final Commission decision means the date on which this Recommended Decision approving the Stipulation becomes a decision of the Commission.

19. Second, if Respondent fails to make a timely installment payment, Respondent will be liable for the maximum assessment of \$ 5,500, less any payment made; and the maximum assessment of \$ 5,500, less any payment made, will be due and payable immediately. Stipulation at ¶ 6. In the event it fails to complete its payment obligations as stated in the Stipulation, Respondent expressly waives “any and all rights to file exceptions and/or a request for rehearing, reargument, and reconsideration, or to file any other form of appeal.” *Id.* at ¶ 9.

20. Third, if Respondent fails to make any installment payment in full, Respondent will be liable for the maximum assessment of \$ 5,500, less any payment made; and the maximum assessment of \$ 5,500, less any payment made, will be due and payable immediately. Stipulation at ¶ 6. In the event it fails to complete its payment obligations as stated in the Stipulation, Respondent expressly waives “any and all rights to file exceptions and/or a request for rehearing, reargument, and reconsideration, or to file any other form of appeal.” *Id.* at ¶ 9.

21. Fourth and finally, if Staff finds, during any investigation(s) conducted within 12 months following the date of a final Commission decision in this matter, “any violations of the same rules or statutes or of a similar nature as any of the violations for which Respondent has admitted liability [in this Proceeding], Respondent shall be liable for the” maximum assessment of \$ 5,500, less any amount paid. This amount will be due and payable immediately. Stipulation at ¶ 7.

22. The Parties stipulate to facts that, in their opinion, support the Stipulation. These facts are: (a) Respondent admits that it committed the violations; (b) Respondent admits to the maximum level of culpability in this Proceeding; (c) Respondent operates a one vehicle/one driver limousine service, and imposition of a larger assessment would cause Respondent financial hardship; (d) Respondent understands and acknowledges that it must

maintain, in its records, accurate and true copies of its charter orders and that it must present true and accurate copies of its records; and (e) Respondent cooperated with Staff to resolve this matter without litigation. Stipulation at ¶ 3. In addition, the Parties agree that, in view of the small size of Respondent's limousine business, the recommended assessment is sufficient to motivate Respondent to remain in compliance with the applicable statutes and rules. *Id.* The ALJ adopts these stipulated facts, some of which are facts in mitigation.

23. As additional support for the Stipulation, the Parties state that settlement was reached in the spirit of compromise and that settlement promotes administrative efficiency and conserves the resources of the Commission and the Parties. Stipulation at ¶ 3. The Parties understand and acknowledge that the Stipulation "will not have precedential effect on any other Commission matters." Motion at ¶ 3 (citations omitted).

24. On the facts of this case, the ALJ finds to be reasonable, and will accept, the imposition of the maximum assessment of \$ 5,500 and the reduction of that assessment to \$ 2,750 *provided* the stated conditions are met. This advances the public interest in transportation safety and in assuring compliance with applicable Commission rules.

25. On the facts of this case, the ALJ finds to be reasonable, and will accept, the condition pursuant to which Respondent will pay the \$ 2,750 assessment in five equal payments to be made on a regular schedule.

26. On the facts of this case, the ALJ finds to be reasonable, and will accept, the condition pursuant to which Respondent immediately becomes liable for the full assessment of \$ 5,500 (less any payment made) in the event Respondent fails to make, in full, a scheduled payment. This is a significant incentive for Respondent to comply with the terms of the Stipulation.

27. On the facts of this case, the ALJ finds to be reasonable, and will accept, the condition pursuant to which Respondent immediately becomes liable for the full assessment of \$ 5,500 (less any payment made) in the event Respondent fails to make full payment of the reduced assessment of \$ 2,750. This is a significant incentive for Respondent to comply with the terms of the Stipulation.

28. The ALJ reviewed the Stipulation in light of Rule 4 CCR 723-1-1302(b),⁴ the purposes of civil penalty assessments, and the record. The ALJ considered the public safety purposes of the Commission rule that Respondent has 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 considered the fact that, as acknowledged by the Parties, this Stipulation will have no precedential effect.

29. The ALJ finds that an assessment of \$ 2,750 and imposition of the conditions together achieve the following purposes underlying civil penalty assessments: (a) deterring future violations by Respondent; (b) motivating Respondent to comply with the law in its luxury limousine operations; (c) punishing Respondent for its past behavior; and (d) motivating others to comply with the law in their luxury limousine operations.

30. Based on review of the Stipulation and consideration of the factors discussed, the ALJ finds that the imposition of the maximum assessment of \$ 5,500 is reasonable; that the reduction of that assessment to \$ 2,750, provided the stated conditions are met, is reasonable;

⁴ That Rule lists eight factors that the Commission considers when determining whether to impose a civil penalty in a contested proceeding. The ALJ is aware that this is a settlement and not a contested proceeding and that, as a result, the Rule is not applicable. The ALJ considered these factors as guidance.

that the stated conditions are reasonable; and, consequently, that the Stipulation is just and reasonable.

31. The Motion to Approve states good cause, and granting the Motion to Approve will not prejudice any party. The ALJ will grant the Motion to Approve and will approve the Stipulation.

32. Based on the findings and discussion above, Respondent will be ordered to pay the reduced assessment of \$ 2,750 in accordance with the provisions of the Stipulation and this Decision. In addition, in accordance with the Stipulation and this Decision, Respondent will be liable for the full assessment of \$ 5,500, less any payment made, if Respondent fails to meet any of the conditions stated in the Stipulation.

33. 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 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 is granted.

3. Consistent with the discussion above, the Stipulation and Settlement Agreement filed on March 14, 2014 is approved.

4. Subject to the conditions stated below, Number 1 Limo Service (Respondent) is assessed a total of \$ 5,500 (which includes a civil penalty and, as required by § 24-34-108,

C.R.S., a 10 percent surcharge), and all but \$ 2,750 (which includes a civil penalty and, as required by § 24-34-108, C.R.S., a 10 percent surcharge) is suspended.

5. Respondent shall pay \$ 2,750 in five payments to be made in accordance with the provisions of ¶ 5 of the Stipulation and Settlement Agreement attached to this Decision as Appendix A.

6. 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 \$ 5,500, less any payment made pursuant to the Stipulation and Settlement Agreement. If this Ordering Paragraph No. 6 is invoked, the full assessment of \$ 5,500, less any payment made, is due and payable immediately.

7. 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 nonetheless is a condition imposed by this Decision because the Stipulation and Settlement Agreement attached to this Decision as Appendix A is incorporated by reference.

8. The Joint Motion for Waiver of Response Time is denied as moot.

9. 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.

10. 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.

11. 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

MANA L. JENNINGS-FADER

Administrative Law Judge