

Decision No. R14-0380

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14G-0166EC

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

BAYERA MIDEKSSA DOING BUSINESS AS BM LIMO,

RESPONDENT.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
ROBERT I. GARVEY
APPROVING SETTLEMENT AGREEMENT;
MODIFYING TERMS OF CPAN; IMPOSING
CIVIL PENALTY ASSESSMENT; AND
WAIVING RESPONSE TIME TO MOTION**

Mailed Date: April 9, 2014

I. STATEMENT

1. This proceeding concerns Civil Penalty Assessment Notice (CPAN) No. 108847 issued by Staff of the Public Utilities Commission (Staff) on February 21, 2013 against Bayera Midekssa, doing business as BM Limo (Respondent or BM Limo). The CPAN alleges two violations of *Rule 6309(e), of the Rules Regulating Transportation by Motor Vehicle, 4 Code of Colorado Regulations 723-6*.

2. On March 17, 2014, counsel for Staff filed his entry of appearance in the above captioned proceeding.

3. On March 19, 2014, the Commission also referred the matter to an administrative law judge (ALJ) to decide the merits of the CPAN.

4. By Interim Decision No. R14-0314-I, issued March 21, 2014, an evidentiary hearing was scheduled for May 15, 2014.

5. On April 4, 2014, the parties filed their Stipulation and Settlement Agreement (Settlement Agreement) and Joint Motion to Approve Stipulation and Settlement Agreement and to Waive Response Time (Motion).

6. According to the terms of the Settlement Agreement, Staff and Respondent agree to the following:

- a) Respondent admits liability to all the violations in the CPAN.
- b) Respondent agrees to comply with all Colorado and federal statutes and rules concerning luxury limousine operational requirements.
- c) Staff agrees to reduce the amount of the civil penalty from \$1,100.00 to \$660.00.

7. The \$660.00 settlement amount includes a 10 percent surcharge pursuant to § 24-34-108, C.R.S.

8. Respondent agrees to pay the reduced penalty of \$660.00 in three installment payments of \$220.00 each. The first installment of \$220.00 is due within 10 days of the Commission's final order approving this settlement agreement and each successive installment payment is due 30 days following the prior installment's due date. Failure to make any installment payment when due shall cause the Respondent to be immediately liable for the full amount of the CPAN (\$1,100.00) less any amounts paid.

9. Respondent agrees that during any investigation conducted by Staff, within 12 months of the date of a final Commission decision in this Proceeding, the Commission finds

any violations of the same rules or statutes, or rules or statutes of a similar nature as the violations the Respondent has admitted liability to in this proceeding, Respondent shall be liable for the full civil penalty in this proceeding, less payments made.

10. For purposes of this Settlement Agreement, a final Commission decision shall mean the date when the Recommended Decision of the ALJ approving or modifying this Settlement Agreement becomes a decision of the Commission.

11. Respondent agrees and stipulates that the failure to complete its payment obligations as set forth in the Settlement Agreement shall also be deemed a waiver by Respondent of any and all rights to file exceptions and/or a request for rehearing, reargument, and reconsideration or any other form of appeal.

12. The parties additionally agree that the Settlement Agreement has been reached to avoid the costly expense of litigation and that the Settlement Agreement promotes administrative efficiency by avoiding the time and expense that would be required to hear this matter.

13. Finally the parties considered the following mitigating factors:

- a) The Respondent acknowledged wrongdoing;
- b) The Respondent admits the maximum level of culpability for all violations in the CPAN;
- c) Assessing the Respondent a civil penalty of \$660.00 is sufficient to motivate the Respondent to remain in compliance with the Public Utilities Laws and Commission Rules on a going-forward basis.

II. FINDINGS AND CONCLUSIONS

14. The undersigned ALJ finds good cause to grant the Motion to approve the Settlement Agreement. It is found that the civil penalty of \$660.00 is sufficient to motivate the Respondent to avoid any further violations of Commission regulations.

15. The ALJ finds it is in the public interest to conserve valuable resources by adopting the terms of the Settlement Agreement and avoiding a hearing in this matter.

16. Therefore pursuant to the terms of the Settlement Agreement entered into between Respondent and Staff, Respondent is assessed a civil penalty of \$660.00 payable according to the terms of the Settlement Agreement as delineated above. Failure to abide by the Settlement Agreement will result in reinstatement of the full civil penalty amount of \$660.00 less any amounts already paid, due immediately.

17. Response time to the Motion shall be waived.

18. Approval of the settlement will 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).

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

III. ORDER

A. It Is Ordered That:

1. The Motion to Approve Stipulation and Settlement Agreement is granted.
2. The evidentiary hearing scheduled for May 15, 2014 is vacated.
3. The Stipulation and Settlement Agreement entered into between Staff of the Commission and Respondent Bayera Midekssa, doing business as BM Limo, is approved. A copy of the Agreement, attached hereto as Appendix A, is incorporated herein by reference. Parties shall comply with the terms of the Agreement.

4. Bayera Midekssa, doing business as BM Limo is assessed a penalty of \$1,100.00, however, \$440.00 of the civil penalty assessed, including the corresponding 10 percent surcharge is suspended on the conditions set forth above.

5. Respondent shall pay a total of \$660.00 in three installment payments of \$220.00 each. The first payment of \$220.00 shall be made no later than 10 days following the Commission's final decision in this proceeding and each successive installment payment is due 30 days following the prior installment's due date.

6. In the event that Bayera Midekssa, doing business as BM Limo, should default on the terms of the Settlement Agreement as described above, the full amount of the civil penalty assessment of \$1,100.00 shall become immediately due and payable, less any amounts paid pursuant to the terms of the Stipulation and Settlement Agreement.

7. The Request for Waiver of Response Time is granted.

8. Response time to the Joint Motion to Approve Stipulation and Settlement Agreement is waived.

9. Proceeding No. 14G-0166EC is closed.

10. The 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.

11. 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 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.

12. 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

ROBERT I. GARVEY

Administrative Law Judge