

Decision No. R14-0401

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14G-0185EC

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

COLORADO LIMOS SERVICE,

RESPONDENT.

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

Mailed Date: April 15, 2014

I. STATEMENT, FINDINGS, AND CONCLUSIONS

1. On February 27, 2014, Commission Staff (Staff) with the Public Utilities Commission (Commission) filed Civil Penalty Assessment Notice (CPAN) No. 108645 against Colorado Limos Service (Respondent) seeking to assess civil penalties against Respondent in the amount of \$3,162.50, which includes a 10 percent surcharge.

2. On March 3, 2014, Staff filed an “Entry of Appearance and Notice Pursuant to Rule 1007(a).”

3. On March 19, 2014, the Commission referred the CPAN to an administrative law judge (ALJ) for disposition.

4. The CPAN charged Respondent with five counts of violating the Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* (CCR) 723-6. In particular, the CPAN charges Respondent with: one count of violating Rule 6102(a)(I) and 49 *Code of Federal Regulations* (C.F.R.) 396.17(a), using a commercial vehicle which was not periodically inspected; two counts of violating Rule 6103(d)(II)(c), failing to maintain and retain accurate and true time records; one count of violating Rule 6005(c)(I)(A), failing to produce records required to be maintained with the driver immediately upon request of an enforcement official; and one count of violating Rule 6309(c), stationing a luxury limousine in front of or across the street from a hotel or motel without a completed charter order.

5. By Decision No. R14-0341-I issued March 31, 2014, the ALJ scheduled the matter for a hearing and established deadlines for the parties to disclose witnesses and exhibits to be used at the evidentiary hearing.

6. On April 9, 2014, Staff filed a “Joint Motion to Approve Stipulation and Settlement Agreement and to Waive Response Time” (Joint Motion), and a “Stipulation and Settlement Agreement” (Stipulation). Both filings were executed by Staff and Respondent. Neither the Joint Motion nor the Stipulation provided information to support a conclusion that the individual who signed on behalf of Respondent has authority to represent Respondent.

7. On April 11, 2014, Staff filed a “Notice of Agreement in Principle and Unopposed Motion to Vacate Hearing Date and Related Hearing Deadlines” (Motion). The Motion sought to vacate the May 6, 2014 hearing and the related procedural deadlines set by Decision No. R14-0341-I. The ALJ granted that Motion on April 14, 2014, vacating the May 6th hearing and the deadlines set by Decision No. R14-0341-I. Decision No. R14-0393-I.

8. On April 14, 2014, Staff filed a second “Joint Motion to Approve Stipulation and Settlement Agreement and to Waive Response Time” (second Joint Motion), and a second “Stipulation and Settlement Agreement” (second Stipulation). The second Joint Motion and second Stipulation differ from the first ones in that they provide a factual basis to support the conclusion that the person who signed the documents on behalf of Respondent has authority to do so.

9. The second Joint Motion requests that the ALJ approve the parties’ second Stipulation without modification and waive the response time to it, since it is unopposed.

10. For good cause shown, and because the second Joint Motion is unopposed, the ALJ will waive the response time to the second Joint Motion as authorized by Rule 1400(b) of the Rules of Practice and Procedure, 4 CCR 723-1.

11. Through the second Stipulation, the parties reached a comprehensive settlement in the spirit of compromise and in light of the uncertainties of trial. They note that the second Stipulation promotes administrative efficiency by avoiding the time and expense that would be necessarily devoted to hearing this matter.

12. 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.

13. 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;
- (d) Respondent has corrected the violation in the CPAN relating to evidence of current inspection (Count 1 of the CPAN);
- (e) Assessing the full amount charged in the CPAN would cause financial hardship on Respondent;
- (f) Respondent was involved in an accident on or about February 20, 2014, which caused damage to his vehicle and injury to his person. As a result, his vehicle is unusable in commercial operation, and his ability to work is restricted in that he has a medical restriction against transporting passengers for commercial purposes; and
- (g) Assessing Respondent a civil penalty of \$500.00 under the terms of the Stipulation is sufficient motivation for Respondent to remain compliant with the Public Utilities Laws and Commission Rules on a going-forward basis.

Appendix A, ¶ 3.

14. Based upon Respondent's admission of liability and the factors identified above, the parties agreed to a reduced civil penalty of \$500.00 for Counts 1 through 5 of the CPAN under the terms of the second Stipulation.¹ Based upon these considerations, the parties contend that the proposed penalty amount is reasonable and in the public interest.

15. In the second Stipulation, Respondent agrees to pay the total amount of \$500.00 in one lump sum, due within ten days of the Commission's final decision approving the parties' second Stipulation. Appendix A, ¶ 5.

16. If Respondent does not make the payment when due, Respondent agrees that he will be liable for the full civil penalty of \$3,162.50, less any payments made; in such a circumstance, the full amount shall be due and payable immediately. Appendix A, ¶ 6.

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

17. The second Stipulation also states that Respondent agrees that if, during any “investigation(s) conducted by Staff within twelve months of the date of a Commission final order in this Docket, the Commission finds any violations of rules or statutes the same or of a similar nature as any of the violations for which Respondent has admitted liability, Respondent shall be liable for the full civil penalty, less payments made.” Appendix A, ¶ 7.

18. The second Stipulation resolves all issues and disputes in this proceeding.

19. The second Stipulation is signed by Mr. Tahir Geshow, a manager of Respondent, which is a Colorado limited liability company. The ALJ finds that Mr. Geshow has authority to enter into the Stipulation on behalf of Respondent.

20. Based upon Respondent’s admissions in the second Stipulation, the ALJ finds that Respondent committed the violations as charged in the CPAN. In particular, the ALJ finds that on December 18, 2013, Respondent committed one count of violating Rule 6102(a)(I), 4 CCR 723-6, and 49 C.F.R. 396.17(a) by using a commercial vehicle which was not periodically inspected. The ALJ further finds that on December 26 and 27, 2013, Respondent committed two counts of violating Rule 6103(d)(II)(c), 4 CCR 723-6, by failing to maintain and retain accurate and true time records. The ALJ finds that on January 29, 2014 Respondent committed one count of violating Rule 6005(c)(I)(A), 4 CCR 723-6, by failing to produce records required to be maintained with the driver immediately upon request of an enforcement official and one count of violating Rule 6309(c), 4 CCR 723-6, by stationing a luxury limousine in front of or across the street from a hotel or motel without a completed charter order.

21. The ALJ finds that the Respondent should be assessed a civil penalty for Counts 1 through 5 of the CPAN. The maximum civil penalty for these violations is \$3,162.50, including a 10 percent surcharge.

22. The ALJ finds the total payment of \$500.00 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.

23. The Stipulation is just and reasonable, particularly given Respondent's accident and physical injury.

24. 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).

25. 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 second "Stipulation and Settlement Agreement" filed on April 14, 2014 (Stipulation) is accepted and approved.

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.

4. Consistent with the discussion above, Colorado Limos Service is hereby assessed a civil penalty of \$500.00, including a 10 percent surcharge, for Counts 1 through 5 of Civil Penalty Assessment Notice No. 108645.

5. The full amount assessed, \$500.00, shall be due within ten days of the Commission's final decision in this proceeding.

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

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MELODY MIRBABA

Administrative Law Judge