

Decision No. R14-0697

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14G-0464EC

PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO,

COMPLAINANT,

V.

ADDIS HABTAMU ZELEKE SR., DOING BUSINESS AS, ADDIS TRANSPORT DENVER,

RESPONDENT.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
PAUL C. GOMEZ
APPROVING SETTLEMENT AGREEMENT;
MODIFYING TERMS OF CPAN; AND,
IMPOSING CIVIL PENALTY ASSESSMENT**

Mailed Date: June 25, 2014

I. STATEMENT

1. The captioned proceeding was initiated on May 13, 2014, when the Staff of the Colorado Public Utilities Commission (Staff) issued Civil Penalty Assessment Notice (CPAN) No. 109416 to Addis Habtamu Zeleke, Sr., doing business as Addis Transport Denver (Respondent), alleging six violations of Commission Rule 4 *Code of Colorado Regulations* (CCR) 723-6-6105(c), Rules Regulating Transportation by Motor Vehicle, for failure of a driver to submit to the commission a set of his or her fingerprints within 10 days of being employed or contracted to driver for a passenger carrier; and one violation of 4 CCR 723-6-6102(a)(I) and 49 *Code of Federal Regulations* (CFR) § 396.17(a) for using a commercial motor vehicle

not periodically inspected. The dates of the alleged violations were March 29, 30, and 31, 2014 and April 30, 2014. The total amount of the civil penalty assessment for the above violations is \$3,025.00. Respondent was served with a copy of CPAN No. 109416 on May 13, 2014 by personal service by Commission Criminal Investigator Brian Gates.

2. Although legal counsel for Staff did not file its entry of appearance in this matter, on May 28, 2014 Staff filed a Notice of Settlement in Principle and Unopposed Motion to Stay. Staff indicated that it had reached a verbal settlement agreement with Respondent in this proceeding and would file a motion for approval of stipulation and settlement agreement within a short period of time.

3. On May 30, 2014, Staff and Respondent filed a Joint Motion to Approve Stipulation and Settlement Agreement (Joint Motion) indicating that the parties had reached a comprehensive settlement in this matter and requested approval of the settlement agreement in its entirety. Filed contemporaneously with the Joint Motion was the parties' executed Stipulation and Settlement Agreement (Settlement Agreement).

4. On June 5, 2014, the Commission referred this matter to an Administrative Law Judge (ALJ) for disposition. The matter was subsequently assigned to the undersigned ALJ.

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

- a. Respondent will admit liability for the violations set forth in CPAN No. 109416.
- b. Respondent has submitted drivers' fingerprints to the Commission in order to conduct a criminal history record check.
- c. Respondent and Staff agree to reduce the total amount of the civil penalty assessment contained in CPAN No. 109416 from \$3,025.00 to \$1,000.00 which is to consist of a penalty of \$909.09, and a 10 percent surcharge of \$90.91 pursuant to § 24-34-108,

C.R.S., which is to be paid in one installment within 15 days of a final Commission Decision approving the Settlement.

- d. The reduced civil penalty assessment is based upon the condition that payment is received by the Commission in a timely fashion.

6. Facts in mitigation asserted by the Settlement Agreement include: (1) Respondent acknowledges wrongdoing; (2) Respondent admits to the maximum level of culpability for all violations contained in CPAN No. 109416; (3) Respondent submitted drivers' fingerprints in order to conduct criminal history record checks; (4) Respondent contacted Staff within two days of receiving the CPAN and discussed the matter with Staff in person; (5) Respondent provided Staff with evidence demonstrating an inability to pay, and the financial hardship that would result if the full CPAN amount was assessed; (6) Assessing Respondent a civil penalty of \$1,000.00 under the terms of the Settlement Agreement is sufficient to motivate Respondent to remain compliant with Commission Rules and Public Utilities Laws going forward.

7. Additionally, the parties agree that should any of the conditions set out above not be met, the original civil penalty assessment of \$3,025.00, less any payments made will be immediately due and payable.

8. Respondent further agrees that if, during any investigation conducted by Staff within 12 months of the date of a final Commission Decision in this proceeding, if any violations for the rules which Respondent admitted liability is found, Respondent shall be liable for the full civil penalty assessment of \$3,025.00, less any payments made. Under such circumstances, the civil penalty assessment will be immediately due and payable.

9. In addition, Respondent agrees and stipulates that failure to complete its payment obligations as set forth in the Settlement Agreement is to be deemed as a waiver by Respondent

of any and all rights to file exceptions and/or a request for rehearing, reargument, or reconsideration, or any other form of appeal.

10. The parties agree that all matters that were raised or could have been raised in this proceeding relating to CPAN No. 109416 have been resolved by the Settlement Agreement. The parties 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.

II. FINDINGS AND CONCLUSIONS

11. The undersigned ALJ finds good cause to grant the Settlement Agreement. It is found that a civil penalty assessment of \$1,000.00 (which includes a 10 percent surcharge pursuant to § 24-34-108, C.R.S.) regarding CPAN No. 109416 will motivate Respondent to avoid similar violations of Commission regulations.

12. The ALJ finds it in the public interest to conserve valuable resources by adopting the terms of the Settlement Agreement. CPAN No. 109416 will be modified according to the terms of the Settlement Agreement.

13. Therefore, pursuant to the terms of the Settlement Agreement entered into between Respondent and Staff, Respondent is assessed a civil penalty of \$1,000.00 payable according to the terms of the Settlement Agreement as delineated above for six violations 4 CCR 723-6-6105(c) and one violation of 4 CCR 723-6-6102(a)(I) and 49 CFR 396.17(a).

14. Failure to abide by the terms agreed to will result in reinstatement of the full civil penalty amount of \$3,025.00, less any payment received, due and payable immediately. Therefore, the initial civil penalty assessment of \$3,025.00 is imposed and suspended.

15. 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 Stipulation and Settlement Agreement (Settlement Agreement) entered into between Transportation Staff of the Commission and Addis Habtamu Zeleke, Sr., doing business as Addis Transport Denver, is approved.

2. The initial civil penalty assessment of \$3,025.00 is imposed and suspended.

3. A reduced Civil Penalty Assessment of \$1,000.00 is assessed against Addis Habtamu Zeleke, Sr., doing business as Addis Transport Denver pursuant to the terms of the Settlement Agreement as detailed above.

4. Addis Habtamu Zeleke, Sr., doing business as Addis Transport Denver shall be held to the terms of the Settlement Agreement by making one payment of \$1,000.00 within 15 days after the Commission's approval of the Settlement Agreement becomes final.

5. In the event that Addis Habtamu Zeleke, Sr., doing business as Addis Transport Denver should default on the terms of the Settlement Agreement as described above, the full amount of the civil penalty assessment of \$3,025.00 shall become immediately due and payable, less any amounts already paid, pursuant to the terms of the Settlement Agreement.

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 § 40-6-106, 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.

8. 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

PAUL C. GOMEZ

Administrative Law Judge