

Decision No. R14-0961

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14G-0644EC

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

TEASERS LIMOUSINE LLC, DOING BUSINESS AS ON DEMAND
TRANSPORTATION, LIMOUSINES ETC., ROCKSTAR LIMO,

RESPONDENT.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
GRANTING JOINT MOTION; APPROVING
STIPULATION AND SETTLEMENT AGREEMENT,
SUBJECT TO CONDITIONS; DISMISSING
COUNTS 7, 8, AND 9 WITH PREJUDICE; ASSESSING
CIVIL PENALTY, SUBJECT TO CONDITIONS; AND
WAIVING RESPONSE TIME TO JOINT MOTION**

Mailed Date: August 8, 2014

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I. STATEMENT

1. On June 10, 2014, the Commission served Civil Penalty Assessment Notice or Notice of Complaint No. 108457 (the CPAN) on Teasers Limousine LLC, doing business as On Demand Transportation, Limousines Etc., Rockstar Limo (Teasers or Respondent). That CPAN commenced this Proceeding.

2. On June 30, 2014, counsel for Trial Staff of the Commission (Staff) entered their 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 trial Staff and the advisory Staff in this Proceeding.

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

4. On July 2, 2014, by Minute Order, the Commission assigned this Proceeding to an Administrative Law Judge (ALJ).

5. The CPAN stated that, if it chose to do so, Respondent could pay one-half of the maximum assessment stated in the CPAN within ten days from the date of service. If made, the payment would constitute Respondent's admission of liability and would resolve this matter. Respondent elected not to make the payment. As a consequence, the ALJ deemed the CPAN to be contested.

6. On July 3, 2014, by Decision No. R14-0760-I, the ALJ ordered Staff to make a filing and ordered Respondent to make an election.

7. On July 15, 2014, Staff filed (in one document) a Notice of Settlement in Principle and Unopposed Motion to Stay.

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

8. On July 16, 2014, by Decision No. R14-0833-I, the ALJ granted the Unopposed Motion to Stay, in part; vacated the requirements established in Decision No. R14-0760-I; and required the Parties to file, not later than August 1, 2014, the settlement agreement.

9. On August 1, 2014, the Parties filed (in one document) a Joint Motion to Approve Stipulation and Settlement Agreement and [to] Waive Response Time. A Stipulation and Settlement Agreement (Settlement Agreement) accompanied that filing.²

10. With respect to the Joint Motion to Waive Response Time, the ALJ finds that the motion states good cause and is a joint filing. As no party will be prejudiced, the ALJ will grant the Joint Motion to Waive Response Time and will waive response time to the Joint Motion to Approve Stipulation and Settlement Agreement (Joint Motion to Approve).

11. 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

12. Respondent Teasers is a limited liability company that does business as On Demand Transportation, Limousines Etc., and Rockstar Limo. Respondent holds Commission-issued Permit No. LL-01468 and operates its luxury limousine service pursuant to that authority.

13. Respondent does not dispute service of the CPAN. The record establishes, and the ALJ finds, that the Commission served the CPAN on Respondent by personal service.

² The Settlement Agreement is attached to this Decision as Appendix A.

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

15. As served, the CPAN contained nine counts. In the Settlement Agreement at 2 at ¶ 1, Staff dismisses Counts No. 7, No. 8, and No. 9. The ALJ will dismiss Counts No. 7, No. 8, and No. 9 with prejudice. As a result of the dismissals, the CPAN now contains Counts No. 1 through No. 6.

16. The CPAN alleges that: (a) on April 20, 2014, Respondent twice violated Rule 4CCR 723-6-6105(c)³ (Counts No. 1 and No. 4); (b) on April 21, 2014, Respondent twice violated Rule 4CCR 723-6-6105(c) (Counts No. 2 and No. 5); and (c) on April 22, 2014, Respondent twice violated Rule 4 CCR 723-6-6105(c) (Counts No. 3 and No. 6).

17. In the Stipulation at 2at ¶ 2, Respondent admits, and on this basis the ALJ finds, that on each of the three stated dates, Respondent twice violated Rule 4CCR 723-6-6105(c), as alleged in the CPAN, by failing to submit a driver's fingerprints to the Commission within ten days of the driver's being contracted or employed to drive for Respondent. The ALJ finds that the Respondent should be assessed a civil penalty for these six admitted violations.

18. The maximum civil penalty for each admitted violation is \$ 275; the maximum surcharge mandated by § 24-34-108, C.R.S., is \$ 27.50; and the maximum assessment is \$ 302.50. The maximum civil penalty for the six admitted violations is \$ 1,650. With the mandated statutory surcharge (*i.e.*, \$ 165), the total maximum assessment for the six admitted violations is \$ 1,815.

³ This Rule is found in the Rules Regulating Transportation by Motor Vehicle, Part 6 of 4 *Code of Colorado Regulations* 723.

19. The Parties have negotiated a reduced total assessment of \$ 1,100. The \$ 1,100 total assessment includes both a civil penalty of \$ 1,000 for the six admitted violations and the surcharge mandated by § 24-34-108, C.R.S. (*i.e.*, \$ 100). Settlement Agreement at 3 at ¶ 5.

20. The Parties have agreed to four conditions on the reduced assessment.

21. First, Respondent will

comply with all Colorado and federal statutes and rules, in particular Colorado statute and Commission rules regarding submission of drivers' fingerprints to the PUC, within 10 days of a driver being contracted to drive, for purposes of a fingerprint-based criminal history record check.

Settlement Agreement at 2 at ¶ 3.

22. Second, Respondent will pay the \$ 1,100 total assessment in two equal installment payments of \$ 550 each. The first installment payment is due not later than 10 days following the date of the final Commission decision that approves the Settlement Agreement, and the second installment payment is due 30 days after the due date of the first installment payment. Settlement Agreement at 3 at ¶ 6.

23. Third, in the event that Respondent fails to pay either of the installment payments on time and in full, Respondent will be liable for the entire total assessment of \$ 1,815 (less any amount paid), which amount will be due and payable immediately. Settlement Agreement at 3 at ¶ 7.

24. Fourth and finally, if Staff finds, during any investigation(s) conducted within 12 months of the date on which the Decision approving the Settlement Agreement becomes final, "any violations of rules or statutes the same 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 \$ 1,815, less any amount paid. This amount will be due and payable immediately. Settlement Agreement at 4 at ¶ 8.

25. The Parties stipulate to facts that, in their opinion, support the Settlement Agreement. These stipulated facts are: (a) Respondent acknowledges that it committed the violations alleged in the CPAN; (b) Respondent admits to the maximum level of culpability for the admitted violations; (c) Respondent agrees to comply fully with federal and state statutes and rules applicable to luxury limousine service; (d) the two drivers identified in the CPAN are no longer employed as a driver for Respondent; (e) “Respondent has been educated regarding compliance with [Rule 4 CCR 723-6-6105(c)] and ensured [*sic*] Staff all future drivers Respondent employs to drive will be in compliance with the rule” (Settlement Agreement at 3 at ¶ 4.e); (f) Respondent cooperated with Staff to resolve this matter without litigation and supplied all information requested by Staff; and (g) the \$ 1,100 assessment is sufficient to motivate Respondent to remain in compliance with the applicable statutes and rules. *See generally* Settlement Agreement at 2-3 at ¶ 4. The ALJ adopts these stipulated facts, some of which are facts in mitigation.

26. As additional support for the Settlement Agreement, the Parties state that they reached the settlement in the spirit of compromise and that the settlement of all issues promotes administrative efficiency and conserves the resources of the Commission and the Parties. Joint Motion to Approve at ¶ 3. The Parties understand and acknowledge that the Settlement Agreement “will not have precedential effect on any other Commission matters.” *Id.* (citations omitted).

27. On the facts of this case, the ALJ finds to be reasonable, and will accept, the imposition of the maximum assessment of \$ 1,815 and the reduction of that maximum

assessment to \$ 1,100 *provided* Respondent meets the conditions contained in the Settlement Agreement. This advances the public interest in transportation safety and in assuring compliance with the statute and applicable rules.

28. The ALJ finds to be reasonable, and will accept, the condition pursuant to which Respondent will comply with applicable federal and state law, as discussed in the Settlement Agreement.

29. On the facts of this case, the ALJ finds to be reasonable, and will accept, the condition pursuant to which Respondent will pay the \$ 1,100 total assessment in two equal installment payments as specified in the Settlement Agreement.

30. On the facts of this case, the ALJ finds to be reasonable, and will accept, the condition pursuant to which Respondent will immediately become liable for the full assessment of \$ 1,815, less any amount paid, in the event Respondent fails to make either of the two installment payments as specified in the Settlement Agreement.

31. On the facts of this case, the ALJ finds to be reasonable, and will accept, the condition pursuant to which Respondent will immediately become liable for the full assessment of \$ 1,815, less any amount paid, in the event Staff finds, during any investigation(s) conducted within 12 months of the date on which the Decision approving the Settlement Agreement becomes final, “any violations of rules or statutes the same or of a similar nature as any of the violations for which Respondent has admitted liability” in this Proceeding. Settlement Agreement at 4 at ¶ 8. This is a significant incentive for Respondent to comply with the statute and applicable rules.

32. The ALJ reviewed the Settlement Agreement in light of Rule 4 CCR 723-1-1302(b),⁴ the purposes of civil penalty assessments, and the record in this Proceeding. The ALJ considered the public safety purpose of the Rule that Respondent 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 further considered the fact that, as the Parties acknowledge, neither this Decision approving the Settlement Agreement nor the Settlement Agreement will have any precedential effect.

33. The ALJ finds that the \$ 1,100 assessment and the imposition of the conditions together achieve the following purposes underlying civil penalty assessments: (a) deterring future violations by Respondent; (b) motivating Respondent and similarly-situated transportation carriers to comply with the law in their transportation operations; (c) punishing Respondent for its past behavior; and (d) assuring that Respondent remains in compliance with the law.

34. Based on a review of the Settlement Agreement and consideration of the factors discussed, the ALJ finds that the imposition of the maximum assessment of \$ 1,815 is reasonable; that the reduction of that maximum assessment to \$ 1,100 is reasonable, provided the stated conditions are met; that the stated conditions are reasonable; and, consequently, that the Settlement Agreement is just, is reasonable, and is in the public interest.

35. The Joint Motion to Approve states good cause, and granting the Joint Motion to Approve will not prejudice any party. The ALJ will grant the Joint Motion to Approve and will approve the Settlement Agreement.

⁴ That Rule lists eight factors that the Commission considers when determining whether to impose a civil penalty in a contested proceeding. Because this is a settlement, the ALJ considered these factors as guidance.

36. Based on the findings and discussion above, the ALJ will order Respondent to pay the reduced assessment of \$ 1,100 in accordance with the provisions of the Settlement Agreement.

37. Based on the findings and discussion above, and in accordance with the terms of the Settlement Agreement, the ALJ will order that Respondent will be liable for the full assessment of \$ 1,815, less any amount paid, if Respondent fails to meet one or more of the conditions stated in the Settlement Agreement and in this Decision.

38. 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, filed August 1, 2014, 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, which motion was filed on August 1, 2014, is granted.

3. Consistent with the discussion above, the Stipulation and Settlement Agreement filed on August 1, 2014 is approved.

4. Consistent with the discussion above, Counts No. 7, No. 8, and No. 9 in Civil Penalty Assessment Notice or Notice of Complaint No. 108457 are dismissed with prejudice.

5. Respondent Teasers Limousine LLC, doing business as On Demand Transportation, Limousines Etc., Rockstar Limo (Respondent), is bound by, and must abide by, the terms of the Stipulation and Settlement Agreement filed on August 1, 2014 in this Proceeding.

6. Consistent with the discussion above and subject to the conditions stated below, Respondent is assessed a total of \$ 1,815 (which includes a civil penalty of \$ 1,650 and, as required by § 24-34-108, C.R.S., a surcharge of \$ 165); and all but a total assessment of \$ 1,100 (which includes a civil penalty of \$ 1,000 and, as required by § 24-34-108, C.R.S., a surcharge of \$ 100) is suspended.

7. Consistent with the Stipulation and Settlement Agreement attached to this Decision as Appendix A and the discussion above, if Respondent meets all conditions imposed by this Decision and established in the Stipulation and Settlement Agreement attached to this Decision as Appendix A, the \$ 1,815 assessment is reduced permanently to the \$ 1,100 assessment.

8. Consistent with the Stipulation and Settlement Agreement attached to this Decision as Appendix A and the discussion above, Respondent shall pay the \$ 1,100 assessment in two equal installment payments. Respondent shall make the payments in accordance with the payment schedule established in the Settlement Agreement.

9. 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 one or more of the provisions of the Stipulation and Settlement Agreement shall result in Respondent's being liable for the full assessment of \$ 1,815, less any payment made. If this Ordering Paragraph No. 9 is invoked, the full assessment of \$ 1,815, less any payment made, is due and payable immediately.

10. 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 is a condition

imposed on Respondent by this Decision because the Stipulation and Settlement Agreement attached to this Decision as Appendix A is incorporated by reference.

11. The Joint Motion to Waive Response Time is granted.

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

13. 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.

14. 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.

15. 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)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MANA L. JENNINGS-FADER

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director