

Decision No. R14-1044

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14G-0600HHG

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

DONALD T. AGUILAR IN HIS CAPACITY AS OWNER OF FAST WIND MOVING &
DELIVERY SERVICES, LLC AND FAST WIND MOVING & DELIVERY SERVICES, LLC,

RESPONDENT.

PROCEEDING NO. 14G-0610HHG

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

DONALD T. AGUILAR IN HIS CAPACITY AS OWNER OF FAST WIND MOVING &
DELIVERY SERVICES, LLC AND FAST WIND MOVING & DELIVERY SERVICES, LLC,

RESPONDENT.

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

Mailed Date: August 27, 2014

I. STATEMENT

1. On June 4, 2014, the Public Utilities Commission's Staff (Staff) issued Civil Penalty Assessment Notice (CPAN) No. 108689 against Donald T. Aguilar in his Capacity as Owner of Fast Wind Moving & Delivery Services, LLC and Fast Wind Moving and Delivery Services LLC (Fast Wind or Respondent). That filing commenced Proceeding No. 14G-0600HHG.

2. On June 4, 2014, Staff issued CPAN No. 109505 against Fast Wind. That filing commenced Proceeding No. 14G-0610HHG.

3. On June 18, 2014, counsel for Staff entered their appearances in both Proceeding No. 14G-0600HHG and Proceeding No. 14G-0610HHG.

4. On June 25, 2014, by Minute Order, the Commission referred both proceedings to an Administrative Law Judge (ALJ).

5. On July 1, 2014, by Interim Decision No. R14-0743-I, an evidentiary hearing was scheduled in Proceeding No. 14G-0600HHG to be held on August 7, 2014.

6. On July 1, 2014, by Interim Decision No. R14-0745-I, an evidentiary hearing was scheduled in Proceeding No. 14G-0610HHG to be held on August 12, 2014.

7. On July 3, 2014, Staff filed its Motion to Consolidate Proceedings and Waive Response Time in both Proceeding No. 14G-0600HHG and Proceeding No. 14G-0610HHG.

8. On July 8, 2014, by Interim Decision No. R14-0775-I, the Motion to Consolidate Proceedings and Waive Response Time was granted and the evidentiary hearing was scheduled for August 7, 2014.

9. On August 6, 2014, Staff filed its Motion to Vacate Hearing and Stay Proceeding. As grounds, Staff stated that the parties had reached a settlement in the proceeding and wished to vacate the hearing.

10. On August 7, 2014, by Interim Decision No. R14-0958-I, the evidentiary hearing was vacated and the proceeding was stayed.

11. On August 25, 2014, the parties filed their Stipulation and Settlement Agreement and Joint Motion to Approve Stipulation and Settlement Agreement and to Waive Response Time (Settlement Agreement).

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

- i. Respondents admits liability to all the violations in the CPAN.
- ii. Respondents agree to comply with all Colorado and federal statutes and rules concerning motor carriers of household goods..
- iii. Staff agrees to reduce the amount of the civil penalty from \$27,830.00 to \$2,550.00

13. Respondent agrees to make a payment in three separate installment payments. The first payment of \$850.00 is due 15 days after the Commission's approval of the Settlement Agreement becomes final and each remaining installment every 30 days thereafter until fully paid. 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.

14. Respondent agrees the failure to timely pay the settlement amount as provided herein will result in Respondent being liable for the full civil penalty of \$27,830.00 less payments made without any further hearing or administrative or adjudicatory process.

15. Respondent agrees and stipulates 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.

16. Respondent agrees that if during any investigation(s) conducted by Staff within 12 months of the date of a Commission final decision in this proceeding, any violations for the rules or statutes in which Respondent admitted liability in this proceeding or any violations for any rules or statutes of a similar nature, is found by the Commission, Respondent shall be liable for the full civil penalty in this proceeding, less payments made. In this event the remaining full civil penalty in this proceeding will be due immediately.

17. 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.

18. Finally the parties considered the following mitigating factors:

- i. Respondent acknowledges his wrongdoing.
- ii. Respondent admitted to the maximum level of culpability for all the violations in the CPAN;
- iii. Respondent Donald Aguilar has applied for a permit to operate as a mover under the name Designers Choice Moving & Delivery Services, and has provided Staff with a Certificate of Good Standing from the Colorado Secretary of State.
- iv. Respondents have supplied evidence of required insurance, and these insurance policies were in place at the time of the events that led to issuance of CPANs 108689 and 109505.
- v. Respondents have paid the penalty assessed in Decision 11R-1300, Proceeding No, 11G-650HHG.
- vi. Respondents have reached a settlement with the customer in CPAN 108689 regarding the customer's property, and the claimed

damages suffered by the customer in CPAN 109505 are being resolved through an insurance claim.

- vii. Assessing the Respondent a civil penalty of \$2,550.00 under the terms herein is sufficient to motivate Respondents to remain compliant with the Public Utilities Laws and Commission Rules on a going forward basis.

II. FINDINGS AND CONCLUSIONS

19. The undersigned ALJ finds good cause to grant the Settlement Agreement. It is found that the civil penalty of \$2,550.00 is sufficient to motivate the Respondent to avoid any further violations of Commission regulations.

20. 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.

21. Therefore pursuant to the terms of the Settlement Agreement entered into between Respondent and Staff, Respondent is assessed a civil penalty of \$2,550.00 payable according to the terms of the Settlement Agreement as delineated above. Failure to abide by the agreed upon terms will result in reinstatement of the full civil penalty amount of \$27,830.00 less any amounts already paid, and will be due immediately.

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

III. ORDER

A. The Commission Orders That:

1. The Stipulation and Settlement Agreement (Settlement Agreement) entered into between Transportation Staff of the Commission and David Aguilar in his capacity as owner of Fast Wind Moving & Delivery Services LLC and Fast Wind Moving and Delivery Services, LLC, is approved.

2. The civil penalty of \$27,830.00 is imposed and suspended according to the terms of the Settlement Agreement.

3. A reduced Civil Penalty Assessment of \$2,550.00 is assessed against David Aguilar in his capacity as owner of Fast Wind Moving & Delivery Services LLC and Fast Wind Moving and Delivery Services, LLC, pursuant to the terms of the Settlement Agreement as detailed above.

4. In the event that David Aguilar in his capacity as owner of Fast Wind Moving & Delivery Services LLC and Fast Wind Moving and Delivery Services, LLC should default on the terms of the Settlement Agreement as described above, the full amount of the civil penalty assessment of \$27,830.00 shall become immediately due and payable, less any amounts paid pursuant to the terms of the Settlement Agreement.

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

6. 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.

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

ROBERT I. GARVEY

Administrative Law Judge