

Decision No. R04-0258

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 03G-428CP

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

TONY DASSINGER,

RESPONDENT.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
KEN F. KIRKPATRICK
ACCEPTING STIPULATION AND
ENTERING CEASE AND DESIST ORDER**

Mailed Date: March 11, 2004

Appearances:

Michael Santisi, Assistant Attorney General, Denver, Colorado, for
the Staff of the Commission; and

Tony Dassinger, Denver, Colorado, *Pro Se*.

I. STATEMENT

1. This proceeding was instituted by the issuance of Civil Penalty Assessment Notice (CPAN) No. 28338 on September 22, 2003. The CPAN alleges four violations, namely, two violations of § 40-10-104(1), C.R.S., operating with no certificate of public convenience and necessity; and two violations of § 40-10-110, C.R.S., operating as a motor vehicle carrier without liability insurance. The matter was originally scheduled for a hearing to be held on December 19, 2003. That hearing was continued, and on February 26, 2004, Staff of the

Commission (Staff) and Respondent Tony Dassinger (Dassinger) filed their Motion to Approve Stipulation for Entry of Cease and Desist Order and Settlement of Civil Penalties and for Waiver of Response Time along with a Stipulation. A hearing on the Motion and Stipulation was held on March 10, 2004 in a Commission hearing room in Denver, Colorado. Two witnesses testified, and two exhibits were admitted.

2. In accordance with § 40-6-109, C.R.S., the undersigned now transmits to the Commission the record and exhibits in this proceeding along with a written recommended decision.

II. FINDINGS AND CONCLUSIONS

3. Dassinger provided transportation service to passengers over the public highways of the state as a motor vehicle carrier for compensation on August 29, 2003 and November 22, 2003 without a certificate of public convenience and necessity issued from this Commission.

4. Dassinger provided the above transportation services on August 29, 2003 and September 22, 2003 without having proof of liability insurance on file with this Commission.

5. Staff issued the CPAN in the amount of \$1,600.

6. The Stipulation calls for a deferred penalty of \$1,600. The Stipulation contains a cease and desist order preventing Dassinger from performing any conduct similar to that set out in the CPAN. Dassinger further consents to the entry of a permanent injunction against him should he be found to violate the cease and desist order. Finally, if he is found to violate the cease and desist order the entire \$1,600 will become due and payable no later than the tenth day after the violation is established.

7. Respondent has agreed to cooperate, cease the conduct complained of, and also pay a civil penalty in the amount of \$12,000 that was previously assessed.

8. In addition, Dassinger has provided information to the Staff against another individual who is providing transportation services without proper authority from this Commission. That individual is the subject of a District Court action that was filed in large part due to the information provided by Dassinger. Without the information provided by Dassinger, the District Court action could not have been filed.

9. The Stipulation calls for financial sanction, namely a deferred one, which is outside the range normally approved by this Commission. However, the Administrative Law Judge (ALJ) finds that there was an extraordinary degree of cooperation by Dassinger that resulted in important enforcement actions that could not have been taken without the assistance of Dassinger. Aside from the deferral of the civil penalty amount, there are other substantial sanctions contained in the Stipulation that reflect the severity of the violations. The ALJ finds and concludes that the Stipulation is in the public interest and should be accepted. Therefore the Motion to Approve the Stipulation and Entry of Cease and Desist Order will be granted.

10. 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 Motion to Approve Stipulation for Entry of Cease and Desist Order and Settlement of Civil Penalties filed February 26, 2004, is granted. The Stipulation, attached to this Order as Appendix A, is incorporated into this Order as if fully set forth.

2. Respondent Tony Dassinger is assessed a civil penalty of \$1,600. However, Mr. Dassinger shall not be liable for this civil penalty unless he is found to be in violation of the cease and desist order issued in this docket at any time within five years of the effective date of this Order. In the event Mr. Dassinger is found by the Commission to be in violation of such cease and desist order, he will be liable for and will pay the Commission the \$1,600 civil penalty no later than the tenth day after the effective date of the Commission Order establishing his liability for such violation. This liability shall be in addition to any other civil or criminal liability that may arise from such violation pursuant to the terms of this Stipulation or otherwise.

3. 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.

4. 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.

5. 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.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge