

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

Docket No. 13G-0006EC
Civil Penalty Assessment Notice No. 104852

PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO,

Complainant,

v.

PEACOCK LLC, D/B/A PEACOCK LIMOUSINE SERVICE,

Respondent.

STIPULATION AND SETTLEMENT AGREEMENT

Staff of the Public Utilities Commission (Staff) and Peacock LLC, d/b/a Peacock Limousine Service (Respondent) (collectively the “Parties”) enter into this Stipulation and Settlement Agreement (Agreement) in the above-referenced Docket as a complete and final resolution of all issues that were or could have been raised in this proceeding.

Background

On December 28, 2012, the Commission issued Respondent Civil Penalty Assessment Notice No. 104852 (the “CPAN”) seeking civil penalties of \$4345.00¹ (or \$2172.50 if paid within 10 days). The CPAN alleged six violations. Count 1 alleged a violation of 4 *Code of Colorado Regulations* (CCR) 723-6-6102(a)(I) and 49 CFR 391.51(a). Count 2 alleged a violation of 4 *Code of Colorado Regulations* (CCR) 723-6-6102(a)(I) and 49 CFR 396.3(b)(2). Count 3 alleged a violation of 4 *Code of Colorado Regulations* (CCR) 723-6-6102(a)(I) and 49 CFR 396.3(b)(2). Count 4 alleged a violation of 4 *Code of Colorado Regulations* (CCR) 723-6-

¹This amount includes the 10% surcharge pursuant to C.R.S. § 24-34-108. The breakout of this amount is a penalty amount of \$3950.00 and a 10% surcharge of \$395.00.

6102(a)(I) and 49 CFR 396.3(b)(2). Count 5 alleged a violation of 4 *Code of Colorado Regulations* (CCR) 723-6-6102(a)(I) and 49 CFR 391.17(a). Count 6 alleged a violation of 4 *Code of Colorado Regulations* (CCR) 723-6-6102(a)(I) and 49 CFR 391.17(a). A brief explanation of each violation is set forth in the CPAN in the “Nature of Violation” column.

After Respondent’s receipt of the CPAN and during the ten calendar day period in which Respondent was allowed to acknowledge liability and pay the reduced penalty amount, Mr. Victor Joseph² contacted Staff on behalf of Respondent and indicated that Respondent was interested in acknowledging liability for all violations and paying the reduced penalty amount. However, he inquired whether it would be possible to pay the penalty amount in installments as making a lump-sum payment would be very difficult. Staff indicated that it was receptive to the idea but was not authorized to make such an arrangement and it would need Commission approval. Staff agreed to ask that the matter be immediately docketed, to enter into a written settlement agreement with Respondent under the terms outlined below, and to join Respondent in presenting and advocating for approval of such settlement agreement.

Shortly thereafter, the matter was assigned Docket No. 13G-0006EC. Staff forwarded a request for counsel to the Colorado Attorney General’s office and the undersigned Senior Assistant Attorney General entered his appearance on behalf of Staff on January 10, 2013. It was then discovered that Staff had made a clerical error in captioning the CPAN and Staff decided that this should be corrected prior to finalizing and presenting a settlement agreement for consideration and approval. Staff determined that it was important that the CPAN correctly name the culpable party (*i.e.*, Peacock LLC) and that any settlement agreement be executed on behalf of and binding on the same. Thus, Staff filed a Motion to Amend Civil Penalty Assessment Notice (Staff’s Motion) on January 16, 2013. By Decision No. R13-0229-I, this

² Mr. Victor Joseph is a business manager for Peacock LLC.

Motion was granted and the CPAN and caption was amended as set forth above. The Parties then finalized and executed the Agreement.

Settlement Agreement

Staff and Respondent hereby stipulate and agree as follows:

1. The person signing this Agreement below on behalf of Respondent represents that he is the sole member of Peacock LLC and is authorized to execute this Agreement on behalf of Respondent and by doing so intends to and does fully bind Respondent to the terms of the Agreement

2. Respondent acknowledges timely receipt of all relevant notices, pleadings and orders, including the CPAN, Staff's Motion, Decision No. R13-0169-I, Staff's Response to Decision No. R13-0169-I, and Decision No R13-0229-I.

3. Respondent admits liability to all violations in the CPAN.

4. Respondent agrees to immediately cure all identified defects and come into and remain in compliance with all applicable statutes and regulations.

5. Staff and Respondent agree to a negotiated settlement amount of \$2172.54. This amount includes the 10% surcharge pursuant to C.R.S. § 24-34-108. The breakout of this amount is a penalty of \$1975.04 and a 10% surcharge of \$197.50. Respondent agrees to make payment of the negotiated settlement amount of \$2172.54 in six (6) separate monthly installments of \$362.09, with the first payment due within fifteen (15) days after the Commission's approval of this Agreement becomes final and each remaining installment due every thirty (30) days thereafter until fully paid. For purposes of this Agreement, a final Commission decision shall mean the date when the Recommended Decision of the Administrative Law Judge approving or modifying this Agreement becomes a decision of the Commission. Payment may be made in person by money order, credit

card, cash or check. Payment may be made through the mail by money order or check. If payment is made by mail, the date of payment is the postmarked date.

6. Respondent agrees that failure to timely pay the settlement amount as provided herein will result in Respondent being liable for the full civil penalty amount of \$4345.00, less payments made, without any further notice, hearing or administrative or adjudicatory process. In the event Respondent fails to make any payment in the timeframe specified herein, the full civil penalty amount of \$4345.00, less payments made, shall be immediately due and payable.

7. The Agreement herein has been reached in the spirit of compromise and in light of the uncertainties of trial. The Agreement has also been reached to avoid the costly expense of litigation. The Parties note that the Agreement promotes administrative efficiency by avoiding the time and expense that would be necessarily devoted to hearing this matter. The Parties submit the public interest is served by assessing Respondent a reduced civil penalty of \$2172.54 under the terms herein. In reducing the penalty, the Parties considered the following mitigating factors pursuant to Commission Rule 1302(b):

- a. Respondent acknowledges wrongdoing.
- b. Respondent admits the maximum level of culpability for all the violations in the CPAN.
- c. This is the first time Respondent was issued a CPAN for the violations therein.
- d. Respondent fully cooperated with Staff in resolving this matter without the need for a litigated evidentiary proceeding.
- e. Assessing Respondent a civil penalty of \$2172.54 under the terms herein is sufficient to motivate Respondent to remain compliant with the Public Utilities Laws and Commission Rules on a going-forward basis.

8. In consideration of Respondent's admission of liability in paragraph 3 and agreement in paragraph 4, and for the reasons expressed in paragraph 7, Staff agrees reducing the amount of the civil penalty to \$2172.54 is appropriate and in the public interest.

9. Respondent agrees and stipulates that failure to complete its payment obligations as set forth in this 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. This result will mean neither the Commission nor Staff will incur additional time and expense to prosecute the full civil penalty.

10. The Parties agree all matters that were raised or could have been raised in this Docket relating to the issues specifically identified and addressed herein have been resolved by this Agreement. This Agreement may be executed in counterparts, each of which when taken together shall constitute the entire Agreement of the Parties, and no further modification of this Agreement is allowed, except in writing by the parties, and further agreed to in an order issued by the Commission.

11. In the event that this Agreement is modified or not approved in its entirety, either Party, at that Party's option, may withdraw from this Agreement by filing a notice with the Commission in this Docket within seven (7) days of entry of such Order. In that event, this Agreement shall be void and this matter shall be set for hearing.

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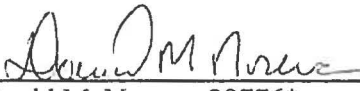
EXECUTED this 27th day of February 2013.

approved as to form:

STAFF OF THE COLORADO
PUBLIC UTILITIES COMMISSION

JOHN W. SUTHERS,
ATTORNEY GENERAL

By: 
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By: 
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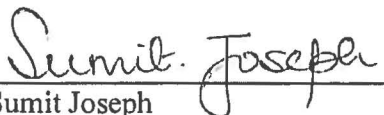
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