

Decision No. R14-1038

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 12G-870TO

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

JOHN STELLABOTTE, DOING BUSINESS AS J & J TOWING,

RESPONDENT.

PROCEEDING NO. 12G-871TO

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

JOHN STELLABOTTE, DOING BUSINESS AS J & J TOWING,

RESPONDENT.

PROCEEDING NO. 12G-872TO

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

JOHN STELLABOTTE, DOING BUSINESS AS J & J TOWING,

RESPONDENT.

PROCEEDING NO. 12G-873TO

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

JOHN STELLABOTTE, DOING BUSINESS AS J & J TOWING,

RESPONDENT.

PROCEEDING NO. 12G-874TO

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

JOHN STELLABOTTE, DOING BUSINESS AS J & J TOWING,

RESPONDENT.

PROCEEDING NO. 12G-875TO

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

JOHN STELLABOTTE, DOING BUSINESS AS J & J TOWING,

RESPONDENT.

PROCEEDING NO. 12G-876TO

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

JOHN STELLABOTTE, DOING BUSINESS AS J & J TOWING,

RESPONDENT.

PROCEEDING NO. 12G-877TO

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

JOHN STELLABOTTE, DOING BUSINESS AS J & J TOWING,

RESPONDENT.

PROCEEDING NO. 12G-878TO

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

JOHN STELLABOTTE, DOING BUSINESS AS J & J TOWING,

RESPONDENT.

PROCEEDING NO. 12G-879TO

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

JOHN STELLABOTTE, DOING BUSINESS AS J & J TOWING,

RESPONDENT.

PROCEEDING NO. 12G-880TO

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

JOHN STELLABOTTE, DOING BUSINESS AS J & J TOWING,

RESPONDENT.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
GRANTING MOTION AND DISMISSING
CONSOLIDATED PROCEEDINGS WITH PREJUDICE**

Mailed Date: August 26, 2014

I. STATEMENT

1. On August 1, 2012, the Commission served Civil Penalty Assessment Notice or Notice of Complaint (CPAN) No. 104054 on J & J Towing (J & J). That CPAN commenced Proceeding No. 12G-870TO.

2. On August 1, 2012, the Commission served CPAN No. 104063 on J & J. That CPAN commenced Proceeding No. 12G-871TO.

3. On August 1, 2012, the Commission served CPAN No. 104159 on J & J. That CPAN commenced Proceeding No. 12G-872TO.

4. On August 1, 2012, the Commission served CPAN No. 104223 on J & J. That CPAN commenced Proceeding No. 12G-873TO.

5. On August 1, 2012, the Commission served CPAN No. 104247 on J & J. That CPAN commenced Proceeding No. 12G-874TO.

6. On August 1, 2012, the Commission served CPAN No. 104257 on J & J. That CPAN commenced Proceeding No. 12G-875TO.

7. On August 1, 2012, the Commission served CPAN No. 104260 on J & J. That CPAN commenced Proceeding No. 12G-876TO.

8. On August 1, 2012, the Commission served CPAN No. 104061 on J & J. That CPAN commenced Proceeding No. 12G-877TO.

9. On August 1, 2012, the Commission served CPAN No. 104281 on J & J. That CPAN commenced Proceeding No. 12G-878TO.

10. On August 1, 2012, the Commission served CPAN No. 104398 on J & J. That CPAN commenced Proceeding No. 12G-879TO.

11. On August 1, 2012, the Commission served CPAN No. 104402 on J & J. That CPAN commenced Proceeding No. 12G-880TO.

12. On August 22, 2012, counsel for testimonial (litigation) Staff of the Commission (Staff) entered his appearance in Proceedings No. 12G-870TO through No. 12G-880TO. In

those filings and pursuant to Rule 4 *Code of Colorado Regulations* 723-1-1007(a),¹ Staff counsel identified the litigation Staff and the advisory Staff in each proceeding.

13. On August 29, 2012, by Minute Order entered in each proceeding, the Commission assigned Proceedings No. 12G-870TO, No. 12G-871TO, No. 12G-872TO, No. 12G-873TO, No. 12G-874TO, No. 12G-875TO, No. 12G-876TO, No. 12G-877TO, No. 12G-878TO, No. 12G-879TO, and No. 12G-880TO to an Administrative Law Judge (ALJ).

14. On September 4, 2012, by Decision No. R12-1028-I, the ALJ consolidated Proceedings No. 12G-870TO, No. 12G-871TO, No. 12G-872TO, No. 12G-873TO, No. 12G-874TO, No. 12G-875TO, No. 12G-876TO, No. 12G-877TO, No. 12G-878TO, No. 12G-879TO, and No. 12G-880TO (Consolidated Proceeding).

15. On August 22, 2012, the Commission issued an Order Setting Hearing and Notice of Hearing in each of the 11 Proceedings. Each Notice of Hearing scheduled an evidentiary hearing for October 15, 2012. On September 25, 2012, by Decision No. R12-1114-I, the ALJ vacated the evidentiary hearing in the Consolidated Proceeding.

16. On September 25, 2012, Staff filed its Motion to Amend CPAN to Substitute Respondent. In that filing, Staff sought to substitute John Stellabotte, doing business as J&J Towing, as the respondent in each of the 11 Proceedings. On October 12, 2012, by Decision No. R12-1184-I, the ALJ granted the motion and substituted John Stellabotte, doing business as J&J Towing, as the Respondent in each of the 11 Proceedings. Reference in this Recommended Decision to Respondent is to John Stellabotte, doing business as J&J Towing.

17. Staff and Respondent, collectively, are the Parties in each of the 11 Proceedings.

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

18. On November 9, 2012, by Decision No. R12-1319-I, the ALJ scheduled a prehearing conference in this matter. Review of the Commission files in this Consolidated Proceeding reveals that the Commission mailed, by first class postage, Decision No. R12-1319-I to Mr. Stellabotte on November 9, 2012. As of the date of this Decision, that mailing has not been returned to the Commission as undeliverable. Mr. Stellabotte is presumed to have received that Interim Decision.

19. On November 28, 2012, the ALJ called the prehearing conference to order as scheduled. Staff was present, but neither Mr. Stellabotte nor a representative of Mr. Stellabotte appeared. Staff proposed, and the ALJ found acceptable, a procedural schedule.

20. On November 28, 2012, by Decision No. R12-1379-I and as pertinent here, the ALJ scheduled the February 6 and 7, 2013 evidentiary hearing and established a procedural schedule in this matter.

21. On December 19, 2012, Staff filed a Request for Issuance of Subpoenas to Testify. On December 20, 2012, the ALJ signed the requested 17 subpoenas and returned them to Staff for service. On January 15, 2013, by Decision No. R13-0088-I, the ALJ vacated those Subpoenas to Testify.

22. On December 19, 2012, Staff filed its list of witnesses and complete copies of the exhibits it intended to offer in its direct case.

23. On January 14, 2013, Staff filed a Motion to Stay Docket. As pertinent here, Staff represented: (a) Respondent was the defendant in Case No. 12 CR 3669, a criminal prosecution then pending in El Paso County District Court; (b) the criminal charges included ten Class 4 felony counts and five habitual offender counts, all related to motor vehicle theft, and a significant number involving the events that underpin the CPANs in the Consolidated

Proceeding; (c) Respondent was arrested on January 2, 2013 and was incarcerated; and (d) if Respondent is convicted, the mandatory minimum sentence is 24 years. Staff asked that the Consolidated Proceeding be stayed pending resolution of the criminal case. By Decision No. R13-0088-I, the ALJ granted the motion and stayed the Consolidated Proceeding pending further order.

24. To keep the ALJ informed of the progress of the criminal proceeding, Staff filed: (a) its First Status Report on October 22, 2013; (b) its Second Staff Report on December 16, 2013; and (c) its Third Status Report on February 21, 2014.

25. On May 28, 2014, Staff filed a Motion to Dismiss with Prejudice (Motion). In that filing, and as good cause for granting the relief sought, Staff stated that, on May 23, 2014, Respondent was convicted in the El Paso County criminal case of felony counts that carry a minimum mandatory sentence of 24 years in prison. As a result, Staff no longer wished to pursue the civil penalties sought against Respondent.

26. The ALJ held the Motion in abeyance pending receipt of documentation from the El Paso County District Court confirming the sentence imposed on Respondent.

27. On August 25, 2014, Staff filed its Notice of Filing Sentencing Order in Support of Motion to Dismiss. Appended to that filing is the El Paso County District Court Judgment of Conviction, Sentence entered on August 22, 2014 in Case No. 12 CR 3669 (*People v. Stellabotte*). The Judgment of Conviction, Sentence states, at 1, that the District Court ordered Mr. Stellabotte remanded to the custody of the Colorado Department of Corrections to serve a sentence of 24 years less time served. The sentence is for a mandatory period.

28. The ALJ finds that the Motion states good cause and that no party will be prejudiced if the Motion is granted. The ALJ will grant the Motion and will dismiss with prejudice each of the 11 Proceedings that constitute this Consolidated Proceeding.

29. Pursuant to § 40-6-109(2), C.R.S., the Administrative Law Judge recommends that the Commission enter the following order.

II. ORDER

A. The Commission Orders That:

1. The Motion to Dismiss with Prejudice, which motion was filed on May 28, 2014, is granted.

2. Each of the 11 Proceedings that constitute this Consolidated Proceeding and that are listed in this Decision is dismissed with prejudice.

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.



Doug Dean

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge