

Decision No. R14-1131

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14G-0877EC

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

AMERICAN PRIDE LIMO SERVICES LLC DOING BUSINESS AS AMERICAN PRIDE
LIMO SERVICE LLC,

RESPONDENT.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
ACCEPTING STIPULATION WITH
MODIFICATION AND ASSESSING CIVIL PENALTY**

Mailed Date: September 15, 2014

I. STATEMENT, FINDINGS, AND CONCLUSIONS

1. On August 20, 2014, trial Staff (Staff) of the Public Utilities Commission (Commission) filed Civil Penalty Assessment Notice (CPAN) No. 110189 against American Pride Limo Services LLC, doing business as American Pride Limo Services LLC (Respondent). The CPAN seeks the Commission to assess a maximum civil penalty against Respondent in the amount of \$1,100.00, including a 10 percent surcharge for two counts of violating Rule 6103(c)(II)(d) of the Commission's Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* (CCR) 723-6, failing to maintain and retain accurate and true time records, on July 30, 2014 and July 31, 2014.

2. On September 10, 2014, the Commission referred the CPAN to an administrative law judge (ALJ) for disposition.

3. Also on September 10, 2014, Staff filed a “Joint Motion to Approve Stipulation and Settlement Agreement and to Waive Response Time” (Joint Motion) and the “Stipulation and Settlement Agreement” (Stipulation). The Stipulation is attached to this Decision and incorporated herewith as if fully set forth, as Appendix A.

4. Both the Joint Motion and the Stipulation are executed by Staff’s counsel and a representative for Respondent, Mr. Yasir Ahmed. Mr. Ahmed is a manager for Respondent, and has authority to enter into the Stipulation on behalf of Respondent. *See* Joint Motion, ¶ 1 and Stipulation.

5. The Joint Motion requests that the ALJ approve the parties’ Stipulation without modification.

6. Through the Stipulation, the parties reached a comprehensive settlement in the spirit of compromise and in light of the uncertainties of trial and addresses all matters that were or could have been raised in this proceeding. They note that the Stipulation promotes administrative efficiency by avoiding the time and expense that would be necessarily devoted to hearing this matter.

7. Respondent does not challenge the Commission’s jurisdiction in this proceeding. The Commission has subject matter jurisdiction over this case and personal jurisdiction over Respondent.

8. In the Stipulation, the parties considered the following factors they believe to be mitigating:

- (a) Respondent acknowledges wrongdoing;

- (b) Respondent admits the maximum level of culpability for all counts in the CPAN;
- (c) Respondent is a one car, one driver operation;
- (d) Payment of the total amount of the CPAN, or the 50% amount within the 10-day period, would create a financial hardship on Respondent, given his current financial situation;
- (e) With the assistance of PUC Staff, Respondent has a renewed understanding regarding PUC Hours of Service requirements and is confident that Respondent can remain compliant going forward;
- (f) Assessing Respondent a civil penalty of \$600.00 under the terms of the Stipulation is sufficient motivation for Respondent to remain compliant with the Public Utilities Laws and Commission Rules on a going-forward basis.

Appendix A, ¶ 3.

9. Based upon Respondent's admission of liability and the factors identified above, the parties agreed to a reduced civil penalty of \$600 for Counts 1 and 2 of the CPAN under the terms of the Stipulation.¹ Based upon these considerations, the parties contend that the proposed penalty amount is reasonable and in the public interest.

10. In the Stipulation, Respondent agrees to pay the total of \$600.00 in three installment payments of \$200.00. The first payment shall be due within ten days of the Commission's final decision approving their Stipulation. The second payment is due within 30 days of the date the first payment is made; and the third payment is due within 30 days of the date the second payment is made. Appendix A, ¶ 5.

11. Under the Stipulation, if Respondent does not make the installment payments when due, Respondent shall be liable for the full civil penalty of \$1,100.00, minus any payments made; the full amount shall be due and payable immediately. Appendix A, ¶ 6.

¹ This settled amount is inclusive of the mandatory 10 percent surcharge required by § 24-34-108, C.R.S.

12. The Stipulation also states that 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, the Commission finds any violations of rules or statutes of the same *or of a similar nature* as any of the violations for which Respondent has admitted liability, that Respondent shall be liable for the full civil penalty, less any payments made; the remaining balance on the full civil penalty shall be due immediately. Appendix A, ¶7. The Stipulation does not define “of a similar nature,” thereby creating ambiguity in its meaning and potential effect. The ALJ will not accept this ambiguous language, as it is not clear and understandable, and on that basis, is unenforceable. The ALJ will modify ¶ 7 of the Stipulation to exclude the phrase “or of a similar.” The ALJ does so to ensure clarity and to ensure that the Stipulation is reasonable, just, and enforceable.

13. Based upon Respondent’s admissions in the Stipulation, the ALJ finds that on July 30 and 31, 2014, Respondent committed two counts of violating of Rule 6103(d)(II)(c), failing to maintain and retain accurate and true time records.

14. The ALJ finds that the Respondent should be assessed a civil penalty for Counts 1 and 2 of the CPAN. The maximum civil penalty for these violations is \$1,100.00, including a 10 percent surcharge.

15. In accordance with Rule 1302(b), Rules of Practice and Procedure 4 CCR 723-1,

The Commission may impose a civil penalty, when provided by law ... will consider any evidence concerning ... the following factors:

- (I) the nature, circumstances, and gravity of the violation;
- (II) the degree of the respondent’s culpability;
- (III) the respondent’s history of prior offenses;
- (IV) the respondent’s ability to pay;

- (V) any good faith efforts by the respondent in attempting to achieve compliance and to prevent future similar violations;
- (VI) the effect on the respondent's ability to continue in business;
- (VII) the size of the respondent's business; and
- (VIII) such other factors such as equity and fairness may require.

16. The ALJ finds the total payment of \$600.00 achieves the following purposes underlying civil penalty assessment: (a) deterring future violations by Respondent; (b) motivating Respondent to comply with the law in the future; and (c) punishing Respondent for its past behavior.

17. The Stipulation is just and reasonable, as modified herein.

18. The Joint Motion seeks the Stipulation to be approved without modification. The ALJ has modified the Stipulation as stated in above. *Supra*, ¶ 12. Consequently, the Stipulation is granted with a modification and the Joint Motion is granted in part.

19. Approval of the Stipulation does not have a precedential affect upon other Commission matters. *See Colorado Ute Elec. Ass'n, Inc. v. PUC*, 602 P.2d 861, 865 (Colo. 1979); *B & M Serv., Inc. v. PUC*, 429 P.2d 293, 296 (Colo. 1967).

20. 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 "Joint Motion to Approve Stipulation and Settlement Agreement and to Waive Response Time" is granted in part.

2. The “Stipulation and Settlement Agreement” (Stipulation) signed by Commission Staff and Mr. Yasir Ahmed on behalf of American Pride Limo Services LLC, doing business as American Pride Limo Services LLC (Respondent) is accepted and approved as modified by this Decision in ¶ 12 above.

3. A copy of the Stipulation, attached hereto as Appendix A, is incorporated by reference as if fully set forth herein.

4. The parties shall comply with the terms of the Stipulation as modified.

5. Consistent with the terms of the Stipulation, Respondent is hereby assessed a civil penalty of \$600.00, including a 10 percent surcharge, for Counts 1 and 2 of Civil Penalty Assessment Notice No. 110189.

6. Proceeding No 14G-0877EC is closed.

7. 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.

8. 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.

9. 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

MELODY MIRBABA

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director