

Decision No. R14-1206

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14G-0860CP

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

COLORADO CAB COMPANY LLC DOING BUSINESS AS DENVER YELLOW CAB,

RESPONDENT.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
G. HARRIS ADAMS
CLOSING PROCEEDING**

Mailed Date: October 1, 2014

I. STATEMENT

1. This proceeding concerns Civil Penalty Assessment Notice (CPAN) No. 109844 issued by Commission Staff on August 14, 2014 to Colorado Cab Company LLC, doing business as Yellow Cab (Yellow Cab). The CPAN charges one count of operating in conflict with approved tariff (Count 1), and five counts of failure to provide records upon request (Counts 2 through 6). The CPAN assessed Yellow Cab a total penalty of \$1,815.00, including an additional 10 percent surcharge.

2. The CPAN was served by certified mail on August 14, 2014. The tenth day following service, August 24, 2014, fell on a Sunday, so the conclusion of the ten-day period in

which Yellow Cab could opt to pay the 50 percent reduced amount was extended to Monday, August 25, 2014.

3. CPAN No. 109844 advises:

By making the prescribed payments, you are deemed to have acknowledged liability. Your payment may be made in person by money order, credit card, cash, or check. Your 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. The address to make the payment is: Public Utilities Commission, 1560 Broadway, Suite 250, Denver, CO 80202

(Bolding in original)

4. The CPAN further advised Yellow Cab of four options to resolve the matter.

The first option states:

Within ten calendar days of receipt of this Civil Penalty Assessment Notice, you may pay the reduced total amount shown in the "Total Amount If[sic] Paid Within 10 Calendar Days" section, which the Public Utilities Commission will accept as payment in full, with surcharge, and as your acknowledgement that you are liable for the violations herein.

5. On August 25, 2014, Yellow Cab paid the reduced total amount shown in the "Total Amount if Paid Within 10 Calendar Days" section on the face of the CPAN for all six counts. No other filing was made in this proceeding on that date. Yellow Cab admitted all violations.

6. On September 3, 2014, Colorado Cab Company LLC's Motion to Set Hearing and to Address Inadvertent Overpayment of Civil Penalty was filed. Yellow Cab claims that on August 25, 2014, NYC by its General Manager, Randy Jensen, signed and filed the CPAN form admitting liability for violations 1 and 2, and stating that NYC requests a hearing on alleged violations 3, 4, 5, and 6. Exhibit 1 attached to the motion purports to be the referenced filing.

The motion also claims that NYC “intended to pay \$302.50 at the 50% rate for violations 1 and 2. NYC did not intend to pay the additional \$605.00 for alleged violations 3, 4, 5 and 6 because NYC stated its intent to contest those violations in the same filing.”

7. More than a week after the matter was resolved, Yellow Cab made its filing claiming there was a prior intention to admit liability to only two of the claims alleged in the CPAN and that there was no intention to pay the additional \$605.00 for alleged violations 3, 4, 5, and 6. Rather, intent was expressed to contest counts 3, 4, 5, and 6.

8. On September 24, 2014, Commission Staff filed its response to Yellow Cab’s motion. Staff states that Yellow Cab admitted the violations and paid the reduced penalty, concluding this proceeding. Staff points out that a review of the Commission’s file in this matter shows that the filing claimed to have been made by Yellow Cab was not filed (other than as an exhibit to the motion). Staff contends the circumstances more likely demonstrate Yellow Cab’s desire that it not have admitted the claimed violations. Staff contends the matter is, and should stay, resolved and the matter be closed.

9. Exhibit 2 to the motion is a file stamped copy of the receipt for payment in the reduced penalty amount.

10. Exhibit 1 to the motion, the document upon which Yellow Cab’s request is based, is not file stamped. Exhibit 1 was not previously filed with the Commission.

11. Yellow Cab was specifically advised of the procedure to resolve this matter and avoid the need for hearing. Being so advised, it complied with the required procedure. Yellow Cab timely acknowledged liability, fully resolving the matter without hearing. The matter was resolved on August 25, 2014.

12. The undersigned also finds, like Commission Staff, that it is far more likely that Yellow Cab wishes that it had not admitted liability. This conclusion is even more obvious in the fact that the reduced penalty was paid for all counts, not only the ones now claimed it intended not to contest. In addition to failing to request a hearing on disputed claims, full payment is a strong indication that the deliberate submission was knowingly and voluntarily made.

13. Respondent's acknowledgement in compliance with the notice provided constitutes a binding judicial admission. *See Kempter v. Hurd*, 713 P.2d 1274, 1279-1280 (Colo. 1986). The attempt to rescind the admission will not be allowed.

14. The Motion to Set Hearing will be denied. Payment of the reduced penalty will be acknowledged and the matter will be closed. As a result, Proceeding No. 14G-0860CP may now be closed.

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

II. ORDER

A. The Commission Orders That:

1. Colorado Cab Company LLC's Motion to Set Hearing and to Address Inadvertent Overpayment of Civil Penalty filed on September 3, 2014, is denied.

2. Payment of the reduced total penalty amount of \$907.50 (including the additional 10 percent surcharge) set forth in Civil Penalty Assessment Notice No. 109844 by Colorado Cab Company LLC, doing business as Yellow Cab resolved the Civil Penalty Assessment Notice.

3. Proceeding No. 14G-0860CP is closed.

4. 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.

5. 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.

6. 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

G. HARRIS ADAMS

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director