

Decision No. R14-1258

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14G-0205TO

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

MICHAEL LEACH, DOING BUSINESS AS ACE TOWING,

RESPONDENT.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
APPROVING STIPULATION
AND SETTLEMENT AGREEMENT**

Mailed Date: October 17, 2014

I. STATEMENT

1. On March 5, 2014, Commission Staff (Staff) of the Public Utilities Commission (Commission) filed Civil Penalty Assessment Notice (CPAN) No. 108810 against Michael Leach, doing business as Ace Towing (Respondent) seeking to assess civil penalties against Respondent for violation of Colorado statutes and Commission Rules. As originally charged, the CPAN sought the assessment of a civil penalty, including a 10 percent surcharge in the total amount of \$36,300.00.

2. On March 26, 2014, the Commission referred the CPAN to an administrative law judge (ALJ) for disposition.

3. On June 9, 2014, Staff filed a “Motion to Amend CPAN and to Waive Response Time” (Motion to Amend). The Motion to Amend sought to amend the CPAN to dismiss Count 2 of the CPAN. Count 2 of the CPAN sought to assess a total of \$12,100 (including a 10 percent surcharge) against Respondent. On June 11, 2014, the ALJ granted Staff’s Motion to Amend. Decision No. R14-0625-I. As amended, the CPAN seeks to assess a total civil penalty of \$24,200, including a 10 percent surcharge.

4. After several continuances, the matter was scheduled for an evidentiary hearing for October 27 and 28, 2014. Decision No. R14-0941-I issued August 5, 2014.

5. On September 17, 2014, Staff filed a “Notice of Agreement in Principle and Unopposed Motion to Vacate Hearing Dates and Related Prehearing Deadlines” (Motion). The Motion sought to vacate the hearing date and procedural deadlines because the parties reached a settlement in principle. The ALJ granted the Motion, vacated the hearing and related deadlines, and set a deadline of October 10, 2014 for the parties to file their settlement agreement. Decision No. R14-1157-I issued September 18, 2014.

6. The parties timely filed a fully executed “Stipulation and Settlement Agreement” (Stipulation) and “Joint Motion to Approve Stipulation and Settlement Agreement and to Waive Response Time” (Joint Motion). All parties and their counsel signed the Stipulation. Because the Stipulation is unopposed, the ALJ will grant the parties’ request to waive the response time to the Joint Motion. Rule 1400(b) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1.

7. The Joint Motion requests that the ALJ approve the parties’ Stipulation without modification. Through the Stipulation, the parties reached a comprehensive settlement in the spirit of compromise and in light of the uncertainties of trial. They note that the Stipulation

promotes administrative efficiency by avoiding the time and expense that would be necessarily devoted to hearing this matter. The parties agree that all issues that have been or could have been raised in this proceeding are resolved by their Stipulation.

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) 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 currently financial situation;
- (d) With the Assistance of Commission Staff, Respondent has a renewed understanding regarding Commission towing carrier requirements and is confident Respondent can remain compliant going forward;
- (e) Assessing Respondent a civil penalty of \$12,700.00 under the terms of the Stipulation is sufficient to motivate Respondent to remain compliant with the Public Utilities Laws and Commission Rules on a going-forward basis.

Stipulation attached hereto as 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 \$12,700 for Counts 1 and 3 through 21 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 agreed-upon penalty with an initial payment of \$2,500.00 within 15 days of the date the Commission order regarding the Stipulation becomes final. Thereafter, Respondent shall pay 12 monthly installment of \$850.00 each, which is due 30 days after the date of the prior payment. Appendix A, ¶ 5.

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

11. If Respondent does not make any payment when due, Respondent will be liable for the full civil penalty of \$24,200.00, minus any payments made to date; the full amount shall be due and payable immediately. Appendix A, ¶ 6.

12. 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.

13. Based upon Respondent's admissions in the Stipulation, the ALJ finds that Respondent committed the violations alleged in Counts 1, and 3 through 21 of CPAN No. 108810. The ALJ finds that the Respondent should be assessed a civil penalty for Counts 1, and 3 through 21 of the CPAN. The maximum civil penalty for these violations is \$24,200.00, including a 10 percent surcharge.

14. 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.

15. The ALJ finds the total payment of \$12,700.00 achieves the following purposes underlying the 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 his past behavior. The ALJ finds that the Stipulation is just, reasonable, and in the public interest.

16. The Stipulation is granted without modification and the Joint Motion is granted.

17. 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).

18. 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:**

19. The “Joint Motion to Approve Stipulation and Settlement Agreement and to Waive Response Time” (Joint Motion) is granted.

20. The response to the Joint Motion is waived.

21. The “Stipulation and Settlement Agreement” (Stipulation) is approved without modification. The parties to the Stipulation may seek enforcement of the terms of the Stipulation as they deem appropriate and necessary.

22. A copy of the Stipulation, attached hereto as Appendix A, is incorporated as a part of this Decision and Order by reference.

23. The parties shall comply with the terms of the Stipulation.

24. Per the terms of the Stipulation, Michael Leach, doing business as Ace Towing, is hereby assessed a civil penalty of \$12,700.00, including a 10 percent surcharge, for Counts 1 and 3 through 21 of Civil Penalty Assessment Notice No. 108810.

25. Proceeding No 14G-0205TO is closed.

26. 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.

27. 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.

28. 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