

Decision No. R19-0985

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19G-0526TO

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

TOWING OPERATIONS LLC DOING BUSINESS AS WYATT'S TOWING,

RESPONDENT.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
ROBERT I. GARVEY
APPROVING SETTLEMENT AGREEMENT,
MODIFYING TERMS OF CPAN,
IMPOSING CIVIL PENALTY ASSESSMENT,
AND VACATING EVIDENTIARY HEARING**

Mailed Date: December 9, 2019

I. STATEMENT

1. On September 26, 2019, Trial Staff of the Commission (Staff) served Towing Operations LLC, doing business as Wyatt's Towing (Respondent) with Civil Penalty Assessment Notice (CPAN) No. 124673 arising out of one alleged violation of *Rule 6508(b)(I) of the Rules Regulating Transportation by Motor Vehicle, 4 Code of Colorado Regulations 723-6*.

2. On October 16, 2019, the matter was referred to an Administrative Law Judge (ALJ).

3. On October 28, 2019, by Decision No. R19-0875-I, a hearing was set in this matter for December 17, 2019.

4. On December 2, 2019, the parties filed their Joint Motion for Approval of the Stipulation and Settlement Agreement (Agreement).

5. According to the terms of the Agreement, Respondent admits liability to the violation set forth in the CPAN, and Staff and Respondent agree to the following:

- i. The Respondent will pay one-half of the total amount of the CPAN or \$550.00, plus \$82.50, for a total penalty amount of \$632.50.
- ii. The Respondent will pay the penalty amount on one lump sum of \$632.50 within 14 days after the Settlement Agreement becomes an order of the Commission.
- iii. The Respondent agrees that it will comply with the requirements of 4 CCR 723-6-6508(b)(I).
- iv. If the Respondent violates any of the terms in this Settlement Agreement, the full amount of the balance owed for the penalty will be due and owing immediately.¹

6. Staff considered the following mitigating factors:

- i. The Respondent contacted the [Public Utilities Commission (PUC)] within 10 days to resolve this proceeding;
- ii. The Respondent actively worked with the PUC to discuss the issues that led to the CPAN and to resolve the CPAN;
- iii. The Respondent was at a disadvantage in this case because the investigators involved in the case departed the PUC after the CPAN was issued. Communication issues between Respondent and Staff led to a delay in resolving the CPAN beyond the 10 day period provided for in the CPAN.²

7. Respondent further agrees to pay \$632.50 in one payment. The payment is due within 14 days of the date that this Recommended Decision becomes a decision of the Commission (i.e., 20 days from the mailed date, unless exceptions are filed).

8. If Respondent fails to make the payment when due, Respondent shall be liable for the full civil penalty amount of \$1,265.00, less any payments made, which amount will be due immediately.

¹ Agreement, p. 3.

² *Id.* at p. 2.

9. Respondent agrees and stipulates that failure to complete its payment obligations as set forth in the 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.

10. The parties additionally agree that the Agreement has been reached to avoid the costly expense of litigation and that the Agreement promotes administrative efficiency by avoiding the time and expense that would be required to hear this matter.

II. FINDINGS AND CONCLUSIONS

11. The undersigned ALJ finds good cause to approve and adopt the Agreement. It is found that the civil penalty of \$632.50 is sufficient to motivate the Respondent to avoid any further violations of Commission regulations.

12. The ALJ finds it is in the public interest to conserve valuable resources by adopting the terms of the Agreement and avoiding a hearing in this matter.

13. Therefore, pursuant to the terms of the Agreement entered into between Respondent and Staff, Respondent is assessed a civil penalty of \$632.50, payable according to the terms of the Agreement as delineated above.

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

III. ORDER

A. The Commission Orders That:

1. The Joint Motion to Approve Settlement and Stipulation Agreement (Agreement) filed by the parties on December 2, 2019 is granted.

2. The Evidentiary Hearing scheduled for December 17, 2019 is vacated.

3. The Agreement entered into between Transportation Staff of the Commission and Towing Operations LLC doing business as Wyatt's Towing (Wyatt's Towing), is approved. A copy of the Agreement, attached hereto as Appendix A, is incorporated herein by reference. Parties shall comply with the terms of the Agreement.

4. Wyatt's Towing is assessed a penalty of \$1,265.00. However, \$632.50 of the civil penalty assessed, including the corresponding 10 percent surcharge, is suspended if Wyatt's Towing makes the payment of \$632.50 as discussed above.

5. In the event that Wyatt's Towing should default on the terms of the Agreement as described above, the full amount of the civil penalty assessment of \$1,265.00 shall become immediately due and payable, less any amounts previously paid on the CPAN.

6. If Wyatt's Towing abides by the terms of the Agreement after this Recommended Decision becomes a final Commission Decision, then the suspension of the assessed amount shall become permanent.

7. The 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 § 40-6-106, 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 recommended 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 a basic finding 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 Recommended 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

ROBERT I. GARVEY

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director