

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF
COLORADO

Proceeding No. 17G-0823TO

Civil Penalty Assessment Notice 119423

PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO,

Complainant,

v.

DYNAMITE TOWING INC,

Respondent.

STIPULATION AND SETTLEMENT AGREEMENT

Staff of the Public Utilities Commission (Staff) and Respondent Dynamite Towing Inc (Respondent) (collectively, the Parties) enter into this Stipulation and Settlement Agreement (Agreement) in the above-referenced proceeding as a complete and final resolution of all issues that were or could have been raised in this proceeding. Tony Tharp has authority to enter this Agreement on behalf of Respondent.

Background

1. On November 19, 2017, Staff issued Respondent Civil Penalty Assessment Notice No. 119423 (the CPAN) seeking civil penalties of \$4,743.75 (or \$2,371.88 if paid within 10 days). The CPAN alleged 10 violations of 4 CCR 723-6-

6005(b)(I)(B); 1 violation of 4 CCR 723-6-6508(b)(I) and 1 violation of 4 CCR 723-6-6509(a)(II). The CPAN was served via certified mail on December 1, 2017.

Settlement Agreement

2. Staff and Respondent hereby stipulate and agree as follows:
3. Staff agrees to dismiss counts 1 through 10, and count 12 of the CPAN, making the new amount of the CPAN \$1,265.00 (\$632.50 if paid within 10 days).
4. Respondent admits liability to the remaining violation contained in the CPAN.
5. Respondent agrees to comply with all Colorado and federal statutes and rules concerning the towing of vehicles with proper authorization.
6. The Agreement herein has been reached in the spirit of compromise and in light of the uncertainties of trial. The Agreement has also been reached to avoid the costly expense of litigation. The Agreement promotes administrative efficiency by avoiding the time and expense that would be necessarily devoted to hearing this matter. The public interest is served by requiring the payment by Respondent of a civil penalty in the amount of \$700.00 under the terms in this Agreement. In reducing the penalty, Staff considered the following mitigating factors pursuant to Commission Rule 1302(b):
 - a. Respondent contacted Staff within 10 days of receipt of the CPAN and actively engaged in efforts to resolve this matter.
 - b. Respondent provided documentation to support the dismissal of the above listed counts.

- c. Respondent has hired a new Business Manager to deal with the day-to-day operations of the company.
- d. Respondent refunded the Complainant in the case the full amount of the tow.
- e. Respondent has revised his written agreements and tow invoices to reflect the new towing rules.
- f. Assessing Respondent a civil penalty under the terms herein is sufficient motivation for Respondent to remain in compliance with the Public Utilities Laws and Commission Rules on a going-forward basis

7. In consideration of Respondent's admission of liability, and for the reasons expressed above, Staff agrees reducing the amount of the civil penalty from \$1,265.00 to \$700.00 is appropriate and in the public interest. This \$700.00 settlement amount consists of a \$608.70 penalty, plus a fifteen-percent surcharge of \$91.30 pursuant to § 24-34-108(2), C.R.S.

8. Respondent shall pay the total amount of \$700.00 in one (1) payment. The payment of \$700.00 is due within ten (10) days of the date a recommended decision in this case becomes the decision of the due to a lapse of 20 days from the date of the recommended decision with no Commission action, or due to the Commission's final order approving this settlement agreement.

9. If Respondent fails to make the one-time 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.

10. Respondent further agrees that if, during any investigation(s) conducted by Staff within twelve months of the date of a Commission final order in this proceeding,

the Commission finds any violations of rules or statutes concerning any of the admitted violations, Respondent shall be liable for the full civil penalty, less payments made. In this event, the remaining full civil penalty will be due immediately. Respondent and Staff agree that the specific intent of this provision is to prevent further violations of the Public Utilities Laws and Commission Rules, both federal and state.

11. All matters that were raised or could have been raised in this proceeding relating to the issues specifically identified and addressed herein have been resolved by this Agreement. This Agreement may be executed in counterparts, each of which when taken together shall constitute the entire Agreement of the Parties, and no further modification of this Agreement is allowed, except in writing by the parties, and further agreed to in an order issued by the Commission.

12. Respondent's failure to complete its payment obligations as set forth in this 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 to file any other form of appeal.

13. In the event that this Agreement is modified or not approved in its entirety, either Party, at that Party's option, may withdraw from this Agreement by filing a notice with the Commission in this proceeding within seven days of entry of such Order. In that event, this Agreement shall be void and this matter shall be set for hearing.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

Executed this ____ day of February, 2018.

STAFF OF THE COLORADO
PUBLIC UTILITIES COMMISSION

By: Anthony Cummings

Anthony Cummings
Lead Criminal Investigator, Investigations and Compliance
Colorado Public Utilities Commission
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DYNAMITE TOWING INC

By: Tony Tharp

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Approved as to form:

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