

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ-306
Administrative Law Judge Division

RESOLUTION

RESOLUTION ALJ-306, Adopting Citation Compliance Agreement between Douglas Dean, dba VIP Limo of Granite Bay and the Safety Enforcement Division Resolving Citation No. FC-573 (Case PSG-3364).

SUMMARY

This resolution approves the Citation Compliance Agreement between Douglas Dean, dba VIP Limo of Granite Bay and the Safety and Enforcement Division resolving Citation No. FC-573. Douglas Dean is permanently barred from receiving a permit or certificate from the Commission, pursuant to Public Utilities Code Section 5387(c)(1)(A).

BACKGROUND

Citation No. FC-573 (Citation) was issued to Douglas Dean, dba VIP Limo of Granite Bay (Dean) on February 8, 2013, for violating Public Utilities Code (Pub. Util. Code) § 5387(c)(1)(A) and § 5379 (14 counts of operating a bus without authority);¹ § 5391 (seven counts of failure to have the required minimum insurance level); § 5414.5 (five counts of advertising without authority); § 5374(a)(1)(I) and § 5381 (two counts of failure to enroll in controlled substance and alcohol testing programs); § 5374(a)(1)(D) and § 5381 (two counts of failure to enroll in the Pull Notice Program); and § 5381 and § 5389 (19 counts of providing false statements in records in an attempt to mislead Commission staff). The Citation imposed a fine of \$5000 for the violations. Dean appealed the Citation on March 29, 2013.

A prehearing conference was held on June 11, 2013, where counsel for Dean and counsel for the Safety and Enforcement Division (SED) appeared. An evidentiary

¹ Dean previously held charter party authority. On July 23, 2002, Dean was issued operating authority (TCP 15374) that was transferred to TCP 23758 on June 18, 2008. On December 30, 2009, Dean voluntarily revoked this authority, effective January 10, 2010.

hearing was scheduled for October 16, 2013. However, on October 16, 2013, parties informed Administrative Law Judge (ALJ) Rochester that parties reached a settlement whereby Dean would accept the Citation without admitting liability and pay a reduced fine of \$2500. As a result, no evidentiary hearing was held.

On October 16, 2013, parties delivered to ALJ Rochester a copy of the Citation Compliance Agreement between Dean and SED resolving Citation No. FC-573 (Agreement). Pursuant to the Agreement, Douglas Dean (1) agrees to sign the Citation without admitting to the truth of facts and allegations contained in the Citation, (2) agrees to pay a fine of \$2500 in monthly installments of \$210 per month for 11 months and \$190 for one month, and (3) acknowledges that § 5387 permanently bars him from receiving a permit or certificate from the Commission. The Agreement includes a Fine Installment Agreement listing the monthly payment amounts, and providing that Dean may also pay the full amount due at any time.

DISCUSSION

When SED and a cited party reach agreement to resolve a citation that has been appealed, the cited party would normally withdraw its appeal and the matter would not come before the Commission for further consideration. However, in this case, Dean asks the Commission formally adopt the Agreement in order to memorialize that the Citation was, in fact, contested and that Dean's payment of the Citation is wholly conditioned upon his not admitting any of the facts or allegations therein. As put by Counsel for Dean, "it has to be a settlement as opposed to just signing the citation."² SED agrees that the Agreement should be considered by the Commission and approved, if appropriate.

Dean does not admit to the truth of facts and allegations contained in the Citation, pursuant to the Agreement but Dean acknowledges that § 5387 permanently bars him from receiving a permit or certificate from the Commission. Pub. Util. Code § 5387(c)(1)(A) states that a charter-party carrier shall have its authority to operate as a charter-party carrier permanently revoked by the Commission or be permanently barred from received a permit or certificate from the Commission if it operates a bus without having been issued a permit or certificate from the Commission.

As noted above, the Fine Installment Agreement provides for, among other things, monthly installment payments and permits Dean to "also pay the full amount due at any time." (Emphasis added.) We understand the term "any time" as it is used in the Agreement to mean "any time within the one year period for which installment

² TR 1 at 4:17-25.

payments are scheduled.” Thus, the entire fine of \$2500 must be paid with one year of date that the first installment payment is due (discussed below).

In formal proceedings, the Commission has specific tests for granting a motion for approval of a settlement. In particular, Rule 12.1(d) provides that the Commission will not approve a settlement, whether contested or uncontested, unless it is reasonable in light of the whole record, consistent with law, and in the public interest.

Prior to January 1, 2015, appeals of citations issued to household goods carriers, charter party carriers, and passenger stage corporations were handled informally pursuant to guidelines established in Resolution (Res.) ALJ-187, adopted on September 22, 2005.³ As a result, the Commission’s Rules of Practice and Procedure (Rules) do not explicitly apply to this Citation appeal. Res. ALJ-187 at 3. However, the Commission may look to the Rules for guidance and may apply the Rules as appropriate and necessary. As discussed below, the Agreement satisfies the Commission’s requirements specified in Rule 12.1 for approval of formal settlements.

Prior to adopting a settlement, the Commission must be satisfied that the parties have a sound and thorough understanding of the issues and of all the underlying assumptions and data included in the record. This level of understanding of the issues and development of an adequate record is necessary to meet our requirements for considering any settlement.

The Agreement includes sufficient information to determine what Dean is obliged to do. As discussed below, the Agreement meets the tests for Commission adoption because the Agreement does not contravene or compromise any statutory provision or prior Commission decision and is consistent with the law, is reasonable, and in the public interest.

Based upon our review of the record, the parties demonstrate a thorough understanding of the issues and the underlying assumptions and data contained in the record. Therefore, the Agreement resolving the issues in this proceeding is offered by competent parties that are able and well-prepared to make informed choices in the

³ Res. ALJ-299, adopted July 2, 2014, established a pilot program that requires all citation appeals, revocation appeals and General Order (GO) 156 appeals to be filed with the Commission’s Docket Office so that interested parties, Commission staff, reviewing courts and the public at large will have a central location from which to access the record of citation appeals and GO 156 appeals. Res. ALJ-299 also enacts several procedural appellate rules and harmonizes others to further due process and administrative efficiency in processing citation appeals and GO 156 appeals. In particular, Res. ALJ-299 provides that, in the event the pilot program rules or the applicable General Order or citation resolution is silent on the procedural issue raised, the Commission’s Rules of Practice and Procedure apply.

settlement process. The Agreement is reasonable in light of the whole record because it represents a package of inter-related compromises made by the parties. The parties have balanced the issues important to them and the Agreement is a reasonable means by which to finally resolve the Citation. The Agreement reflects compromises made by the parties from their competing litigation positions. The Settlement does not contravene or compromise any statutory provision or prior Commission decision.

There is a public policy favoring the settlement of disputes to avoid costly and protracted litigation.⁴ The Agreement serves the public interest by resolving the issues in a collaborative and cooperative manner. By reaching agreement, the parties avoid the costs of further litigation in this proceeding, and eliminate the possible litigation costs for rehearing and appeal. Approval of the Agreement provides speedy and complete resolution of the Citation. In addition, the Agreement is in the public interest because it promotes public safety by discouraging and correcting non-compliant conduct. Therefore, the Agreement is adopted.

The first installment payment provided for under the Agreement shall be due not later than 30 days from the effective date of this resolution.

Adoption of the Agreement is binding on all parties. However, the Agreement does not bind the Commission or otherwise impose a precedent in this or any future proceeding.

COMMENTS

This is an uncontested matter in which the resolution grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Public Utilities Code, the otherwise applicable 30-day period for public review and comment is waived.

FINDINGS

1. Citation No. FC-573 was issued to Douglas Dean, on February 8, 2013, for violating Pub. Util. Code § 5387(c)(1)(A) and § 5379 (14 counts of operating a bus without authority); § 5391 (seven counts of failure to have the required minimum insurance level); § 5414.5 (five counts of advertising without authority); § 5374(a)(1)(I) and § 5381 (two counts of failure to enroll in controlled substance and alcohol testing programs); § 5374(a)(1)(D) and § 5381 (two counts of failure to enroll in the Pull Notice Program); and § 5381 and § 5389 (19 counts of providing false statements in records in an attempt to mislead Commission staff). The Citation imposed a fine of \$5000 for the violations.

⁴ D.88-12-083, 30 CPUC2d 189, 221.

2. Dean appealed the Citation on March 29, 2013.
3. An evidentiary hearing was scheduled for October 16, 2013. However, on October 16, 2013, parties informed the assigned ALJ that parties reached Agreement. As a result, no evidentiary hearing was held.
4. On October 16, 2013, parties delivered to assigned ALJ a copy of the Citation Compliance Agreement between Dean and SED resolving Citation No. FC-573.
5. Pursuant to the Agreement, Douglas Dean (1) agrees to sign the Citation without admitting to the truth of facts and allegations contained in the Citation, (2) agrees to pay a fine of \$2500 in monthly installments of \$210 per month for 11 months and \$190 for one month, and (3) acknowledges that § 5387 permanently bars him from receiving a permit or certificate from the Commission. The Agreement includes a Fine Installment Agreement listing the monthly payment amounts, and providing that Dean may also pay the full amount due at any time.
6. Pub. Util. Code § 5387 permanently bars Douglas Dean from receiving a permit or certificate from the Commission.

THEREFORE, IT IS ORDERED that:

1. The Citation Compliance Agreement between Douglas Dean, dba VIP Limo of Granite Bay and the Safety and Enforcement Division resolving Citation No. FC-573, attached to this resolution as Attachment 1, is approved.
2. Pursuant to Public Utilities Code Section 5387, Douglas Dean is permanently barred from receiving a permit or certificate from the Commission.
3. All outstanding motions and requests in this proceeding that are not specifically addressed in this decision are denied.
4. The appeal process for this Citation is closed.

This resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on _____, the following Commissioners voting favorably thereon:

TIMOTHY SULLIVAN
Executive Director

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