

**THE STATE CORPORATION COMMISSION OF THE
STATE OF KANSAS**

Before Commissioners: Susan K. Duffy, Chair
Shari Feist Albrecht
Dwight D. Keen

In the Matter of the Investigation of **Charles Ethan Ball**)
d/b/a Cow Chow Express of Garden City, Kansas,)
Regarding the Violation of the Motor Carrier Safety) Docket No. 20-TRAM-173-PEN
Statutes, Rules and Regulations and the Commission's)
Authority to Impose Penalties, Sanctions and/or the)
Revocation of Motor Carrier Authority)

ORDER GRANTING STAFF'S MOTION TO DISMISS REQUEST FOR HEARING

This matter comes before the State Corporation Commission of the State of Kansas (Commission) on the Motion to Dismiss Charles Ethan Ball d/b/a Cow Chow Express's (Cow Chow's) Request for Hearing. Having examined its files and records and being fully advised on the premises, the Commission finds and concludes as follows:

1. On October 1-2, 2019, Commission Staff (Staff) Special Investigator Penny Fryback conducted a compliance review of the operations of Cow Chow Express. As a result of this investigation, the special investigator identified four (4) violations of the Motor Carrier Safety Regulations.

2. On October 17, 2019, the Commission issued a Penalty Order in this docket assessing a \$2,750 civil penalty against Cow Chow for violations found during an October 1-2, 2019, compliance review. The Penalty Order was sent certified mail on October 18, 2019.

3. On November 10, 2019, the Penalty Order was returned as "Unclaimed."

4. On November 13, 2019, the Penalty Order was sent by regular mail to Cow Chow's address on file with the Commission. Pursuant to K.S.A. 77-531(b), "service by mail is complete upon mailing."

5. On December 19, 2019, Cow Chow submitted its request for hearing, which was filed in this docket on that same date.

6. Cow Chow's Request for Hearing stated the attachments to the Commission's Penalty Order related to a different company. Cow Chow stated that "movant is unable to answer the allegations contained in the Penalty Order because they are not evidenced by any documents or investigation relating to him or his business."¹

7. On January 9, 2020, the Commission issued an Amended Penalty Order to Cow Chow attaching the correct documents corresponding to the violations alleged to have been committed by Cow Chow. In its Amended Penalty Order the Commission stated it "enters this Amended Penalty Order to correct the oversight and provides the documents to Cow Chow Express."²

8. On January 30, 2020, Staff filed its Motion to Dismiss Request for Hearing, stating Cow Chow's "sole ground for requesting a hearing has been resolved by the Commission's issuance of an Amended Penalty Order providing the correct attachments which correspond to the violations alleged against" Cow Chow.

9. Cow Chow did not file a response to Staff's Motion to Dismiss.

10. The Commission finds Cow Chow's Request for Hearing has been rendered moot by the issuance of the Amended Penalty Order. Additionally, the Commission finds Staff's request reasonable and hereby grants Staff's Motion to Dismiss Cow Chow's Request for Hearing.

¹ Request for Hearing, ¶5, Dec. 19, 2019.

² Amended Penalty Order, ¶5, Jan. 9, 2019.

IT IS THEREFORE, BY THE COMMISSION ORDERED THAT:

A. Staff's Motion to Dismiss Cow Chow's Request for Hearing is hereby granted.

B. Any party may file and serve a petition for reconsideration pursuant to the requirements and time limits established by K.S.A. 77-529(a)(1).³

C. The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further orders as it may deem necessary and proper.

BY THE COMMISSION IT IS SO ORDERED.

Duffy, Chair; Albrecht, Commissioner; Keen, Commissioner

Dated: 03/10/2020



Lynn M. Retz
Executive Director

AAL

³ K.S.A. 66-118b; K.S.A. 77-503(c); K.S.A. 77-531(b).

CERTIFICATE OF SERVICE

20-TRAM-173-PEN

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of first class mail/hand delivered on 03/11/2020.

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/S/ DeeAnn Shupe

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