

THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

Before Commissioners: Susan K. Duffy, Chair  
Dwight D. Keen  
Andrew J. French

In the Matter of the Investigation of Charles )  
Ethan Ball, d/b/a Cow Chow Express of )  
Garden City, KS, regarding violations of KS )  
Motor Carr. Safety Statutes, Rules, and Regs. ) Docket No. 20-TRAM-173-PEN  
And the Commission's Authority to Impose )  
penalties, Sanctions and/or Revocation of )  
Motor Carrier Authority. )

**ORDER GRANTING MOTION TO DISMISS REQUEST FOR HEARING**

This matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having reviewed the pleadings and record, the Commission makes the following findings and conclusions:

**I. BACKGROUND**

1. On October 17, 2019, the Commission issued a Penalty Order in the instant docket assessing a \$2,750 civil penalty against Charles Ethan Ball d/b/a/ Cow Chow Express of Garden City, KS (Cow Chow) for violations found during an October 1-2, 2019, compliance review.<sup>1</sup>

2. On December 19, 2019, Cow Chow filed a request for hearing, noting the documents attached to the original order were not related to Cow Chow.<sup>2</sup>

3. In its request for hearing, Cow Chow stated that the attachments to the Commission's Penalty Order related to a different company, and as such, "is unable to answer

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<sup>1</sup> Penalty Order, Oct. 17, 2019.

<sup>2</sup> Request for Hearing, Dec. 19, 2019.

the allegations contained in the Penalty Order because they are not evidenced by any documents or investigation relating to him or his business.”<sup>3</sup>

4. On January 9, 2020, the Commission filed an Amended Penalty Order to Cow Chow attaching the correct documents corresponding to the violations alleged to have been committed by Cow Chow and explaining the Amended Penalty Order was issued to correct the oversight and provide the documents to Cow Chow.<sup>4</sup>

5. On January 30, 2020, after receiving no correspondence from Cow Chow, Commission Staff (Staff) filed a Motion to Dismiss Request for Hearing.<sup>5</sup> The Commission filed an Order Granting Staff’s Motion to Dismiss Request for Hearing on March 10, 2020.<sup>6</sup> In the Order Granting Staff’s Motion to Dismiss Request for Hearing, the Commission stated “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).”<sup>7</sup> No petition for reconsideration was filed by Cow Chow.

6. On April 8, 2020, Staff filed a Motion to Suspend Intrastate Motor Carrier Operations (Motion to Suspend) after Cow Chow failed to comply with the Commission’s Order Granting Motion to Dismiss. At the time the Motion to Suspend was filed, ninety (90) days had passed since the issuance of the Amended Penalty Order, and payment of the penalty was sixty (60) days past due. The Motion to Suspend was served on Cow Chow and Cow Chow’s counsel.<sup>8</sup>

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<sup>3</sup> Cow Chow Request for Hearing, ¶ 5 (Dec. 19, 2019).

<sup>4</sup> Amended Penalty Order, ¶ 5 (Jan. 9, 2020).

<sup>5</sup> Staff’s Motion to Dismiss Request for Hearing, Jan. 30, 2020.

<sup>6</sup> Order Granting Staff’s Motion to Dismiss Request for Hearing, Mar. 10, 2020.

<sup>7</sup> Order Granting Staff’s Motion to Dismiss Request for Hearing, Ordering Clause B, Mar. 10, 2020.

<sup>8</sup> Staffs Motion to Suspend Intrastate Motor Carrier Operations, Certificate of Service, Apr. 8, 2020.

7. On April 14, 2020,<sup>9</sup> the Commission issued an Order Suspending Intrastate Motor Carrier Operations (Order Suspending Operations).<sup>10</sup> The Order Suspending Operations was served on both Cow Chow and Cow Chow's counsel.<sup>11</sup> The Commission's Order Suspending Operations stated "any party may request a hearing on the above issues by submitting a written request...to the Executive Director, at 1500 S.W. Arrowhead Road, Topeka, Kansas 66604 within fifteen (15) days form the date of service of this Order."<sup>12</sup>

8. On June 1, 2020, forty-eight (48) days after the Commission issued the Order Suspending Operations, the Kansas Attorney General received a Request for Hearing stating new grounds for a hearing regarding the findings contained in the Amended Penalty Order that was issued January 9, 2020.

9. At the time Staff received correspondence from the Attorney General containing Cow Chow's second hearing request, Cow Chow was sixty-eight (68) days beyond the deadline to file a Petition for Reconsideration of the Commission's Order Granting Staff's Motion to Dismiss Request for a Hearing, and thirty-five (35) days beyond the deadline to file a request for a hearing on the Commission's Order Suspending Operations.

10. On June 15, 2020, Staff filed a Motion to Dismiss Request for Hearing in which Staff discussed the procedural history of the docket, discussed Cow Chow's failure to respond to the pleadings in the docket, and requested the Commission grant its motion and dismiss Cow Chow's request as untimely.<sup>13</sup>

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<sup>9</sup> Motion to Suspend Intrastate Motor Carrier Operations, Apr. 8, 2020.

<sup>10</sup> Order Suspending Intrastate Motor Carrier Operations, Apr. 14, 2020.

<sup>11</sup> *See id.*, Certificate of Service, Apr. 14, 2020.

<sup>12</sup> *Id.*, Ordering Clause C, Apr. 14, 2020. K.S.A. 77-542(a) provides in relevant part, "[ a ]ny notice of agency action resulting in a right to request a hearing pursuant to the Kansas administrative procedure act must include a statement informing the person that a written request for a hearing must be filed with the agency within 15 days of service of the notice."

<sup>13</sup> Staff's Motion to Dismiss Request for Hearing, Jun. 15, 2020.

## II. FINDINGS AND CONCLUSIONS

11. Pursuant to K.S.A. 66-1,111, K.S.A. 66-1,112, K.S.A. 66-1,114, K.S.A. 66-1,14b and 66-1,115, the Commission is given full power, authority and jurisdiction to supervise and control motor carriers, as defined in 49 C.F.R. Part 390.5 as adopted by K.A.R. 82-4-3f, doing business or procuring business in Kansas, and is empowered to do all things necessary and convenient for the exercise of such power, authority and jurisdiction.

12. The record in this docket demonstrates that Cow Chow has repeatedly failed to respond to pleadings in this matter. Additionally, Cow Chow was given ample opportunity to timely petition the Commission for a hearing; however, Cow Chow failed to do so. These failures are evidenced by the fact that Cow Chow is sixty-eight (68) days beyond the deadline to file a Petition for Reconsideration and thirty-five (35) days beyond the deadline to file a request for hearing on the Commission's Order Suspending Operations. Because Cow Chow's request for a hearing on the Commission's Order Suspending Operations is untimely, and because Cow Chow has demonstrated a disregard for the deadlines set forth in this docket, the Commission finds that Staff's Motion to Dismiss Request for Hearing should be granted.

### **THEREFORE, THE COMMISSION ORDERS:**

- A. Staff's Motion to Dismiss Request for Hearing is granted.
- B. Charles Ethan Ball, d/b/a Cow Chow Express of Garden City, Kansas, shall remain obligated to comply with the Amended Penalty Order issued in this docket, including:
  - a. Cow Chow must submit payment of the \$2,750 penalty within 30 days of this order.
  - b. Cow Chow Express must submit a Corrective Action Plan (CAP) within 30 days of the date of this order to Transportation Staff, documenting the

violations described in the Amended Penalty Order, including specific and detailed information explaining the carrier's efforts and concrete steps taken to ensure the violations do not occur in the future.

- c. A representative from Cow Chow is ordered to attend a Commission-sponsored safety meeting. Due to public safety concerns the Commission has temporarily suspended such seminars, but Cow Chow remains obligated to attend a Commission sponsored safety seminar within 90 days of the Commission resuming such classes.
- d. Cow Chow Express is ordered to submit to one follow-up safety compliance review within 18 months from the date of the Amended Penalty Order. Transportation Staff will contact the motor carrier at a later date to determine an appropriate time for this review.

C. 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).<sup>14</sup>

**BY THE COMMISSION IT IS SO ORDERED.**

Duffy, Chair; Keen, Commissioner; French, Commissioner.

Dated: 07/14/2020



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Lynn M. Retz  
Executive Director

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<sup>14</sup> 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 and electronic service on 07/14/2020.

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