

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

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 )

**STAFF'S MOTION TO DISMISS REQUEST FOR HEARING**

The Staff of the State Corporation Commission of the State of Kansas (Staff and Commission, respectively) requests the Commission dismiss, with prejudice, the latest request for hearing filed by Charles Ethan Ball d/b/a Cow Chow Express of Garden City, Kansas (Cow Chow). In support of its Motion, Litigation Counsel states as follows:

1. 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<sup>1</sup>, and by first class mail on November 13, 2019 to the address on file with the Commission.<sup>2</sup>
2. On December 19, 2019, Cow Chow filed its request for hearing.
3. In the 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 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>

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<sup>1</sup> On November 10, 2019, the certified mailing of the Penalty Order was returned as "Unclaimed".

<sup>2</sup> Pursuant to K.S.A. 77-531(b), "service by mail is complete upon mailing."

<sup>3</sup> Request for Hearing, ¶5, Dec. 19, 2019.

4. 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 and explaining the Amended Penalty Order was issued to correct the oversight and provide the documents to Cow Chow Express.<sup>4</sup> The Amended Penalty Order was served on Cow Chow.<sup>5</sup>

5. On January 30, 2020, after receiving no further correspondence from Cow Chow, Staff filed its Motion to Dismiss Request for Hearing (Motion). In the Motion, Staff reasoned that Cow Chow's "sole ground for requesting a hearing had been resolved by the Commission's issuance of an Amended Penalty Order,"<sup>6</sup> which included the documentation supporting the penalty, and as such, dismissal was appropriate in light of the lack of response from Cow Chow. Staff's Motion was served on Cow Chow and Cow Chow's counsel.<sup>7</sup>

6. Neither Cow Chow nor its Counsel filed a response to Staff's Motion.

7. On March 10, 2020, the Commission issued its Order Granting Staff's Motion to Dismiss Request for Hearing (Order Granting Motion to Dismiss) finding "Cow Chow's Request for Hearing has been rendered moot by the issuance of the Amended Penalty Order."<sup>8</sup> The Order was served upon Cow Chow and Cow Chow's counsel.<sup>9</sup>

8. In the Order Granting Motion to Dismiss, the Commission explicitly stated that "[a]ny 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>10</sup> No Petition for Reconsideration was filed with

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<sup>4</sup> Amended Penalty Order, ¶5, Jan. 9, 2019.

<sup>5</sup> See *In Re Gershater*, 270 Kan. 620, 17 P.3d 929 (2001), for the principle that not serving an amended complaint on an attorney does not violate due process rights when subsequent opportunities to be heard and file an answer exist.

<sup>6</sup> Staff's Motion to Dismiss Request for Hearing, ¶7, Jan. 30, 2020.

<sup>7</sup> Staff's Motion to Dismiss Request for Hearing, Certificate of Service, Jan. 30, 2020.

<sup>8</sup> Order Granting Staff's Motion to Dismiss Request for Hearing, ¶8, Mar. 10, 2020.

<sup>9</sup> Order Granting Staff's Motion to Dismiss Request for Hearing, Certificate of Service, Mar. 10, 2020.

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

the Commission by Cow Chow. The Commission also stated that, that if Cow Chow “failed to pay the penalty of \$2,750 within thirty (30) days from the date of service of this Amended Penalty Order...the Commission will have the right to order further sanctions, including suspension of Cow Chow Express’ motor carrier operating authority without further notice.”<sup>11</sup>

9. On April 8, 2020, Staff filed its 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 Staff’s Motion to Suspend was filed, ninety (90) days had passed from the issuance of the Amended Penalty Order, and payment of the penalty was sixty (60) days past due. Staff’s Motion to Suspend was served on Cow Chow and Cow Chow’s counsel.

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10. On April 14, 2020, the Commission issued its Order Suspending Intrastate Motor Carrier Operations (Order Suspending Operations). The Commission served its Order Suspending Operations on Cow Chow and Cow Chow’s Counsel.<sup>13</sup> A certified mail receipt signed by Charles Ball showing a delivery date of April 19, 2020, was returned by U.S. mail. The certified mail receipt is attached hereto as **Exhibit A** and made a part hereof by reference. The certified mail receipt was sent to the address on record with the Commission for Cow Chow and the same address all mail in this proceeding had been sent, including mail that previously went unclaimed.

11. 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**

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<sup>11</sup> Amended Penalty Order, Ordering Clause E, Jan. 9, 2019.

<sup>12</sup> Staff’s Motion to Suspend Intrastate Motor Carrier Operations, Certificate of Service, Apr. 8, 2020.

<sup>13</sup> Order Suspending Intrastate Motor Carrier Operation, Certificate of Service, Apr. 14, 2020.

**1500 S.W. Arrowhead Road, Topeka, Kansas 66604 within (15) days from the date of service of this Order.**”(emphasis included in original document)<sup>14</sup>

12. 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.

13. On June 2, 2020, the Kansas Attorney General’s office forwarded Cow Chow’s request for hearing to Staff. A letter from the Kansas Attorney’s General’s office forwarding Cow Chow’s filing is attached hereto as **Exhibit B** and made a part hereof by reference. Cow Chow’s second request for hearing was received from the Kansas Attorney General’s Office and filed by Staff on June 3, 2020.

14. At the time Staff received the 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 March 10, 2020, Order Granting Staff’s Motion to Dismiss Request for Hearing, and thirty-five (35) days beyond the deadline to file a request for hearing on the Commission’s April 14, 2020, Order Suspending Operations.

15. Cow Chow, in its latest request for hearing, misstates the record in this docket, claiming “no written decision was ever made upon that request [for hearing, filed December 19, 2019].<sup>15</sup> Cow Chow fails to mention the January 9, 2020, Amended Penalty Order, which cured the defects in the original Penalty Order, and to which Cow Chow never responded, and the fact

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<sup>14</sup> Order Suspending Intrastate Motor Carrier Operation, 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>15</sup> 2<sup>nd</sup> Request for Hearing, ¶4e, Apr. 14, 2020.

that Cow Chow and its Counsel were also served with Staff's Motion to Dismiss,<sup>16</sup> and the Commission's Order Granting Staff's Motion to Dismiss.<sup>17</sup>

16. Since the filing of Cow Chow's December 19, 2019, request for hearing, it has repeatedly failed to respond to the pleadings in this matter. Cow Chow was explicitly provided the opportunity to respond to the Amended Penalty Order and/or request a hearing on that Amended Penalty Order, yet it failed to do so. Cow Chow had the opportunity to respond to Staff's Motion to Dismiss Request for Hearing, yet it failed to respond. The Commission explicitly informed Cow Chow that a Petition for Reconsideration to the Commission's Order Granting Staff's Motion to Dismiss could be filed, yet Cow Chow filed no such Petition. Cow Chow had every opportunity to respond or to Staff's Motion to Suspend, yet Cow Chow filed no response. And finally, the Commission again explicitly informed Cow Chow that it could request a hearing on the Commission's Order Suspending, yet Cow Chow failed to timely file. Moreover, Cow Chow offers no explanation as to the reasoning behind its failure to respond to the pleadings.

17. Therefore, Staff, moves the Commission to dismiss Cow Chow's latest request for a hearing, filed June 3, 2020, based on the fact that Cow Chow's filing is significantly untimely.

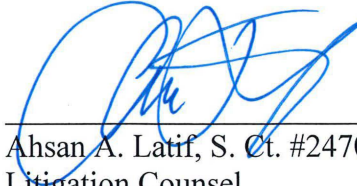
WHEREFORE, for the reasons set forth above, Staff respectfully requests the Commission grant this Motion and dismiss Cow Chow's request for hearing as untimely.

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<sup>16</sup> Staff's Motion to Dismiss Request for Hearing, Certificate of Service, Jan. 30, 2020.

<sup>17</sup> Order Granting Staff's Motion to Dismiss Request for Hearing, Certificate of Service, Mar. 10, 2020.


Respectfully submitted,

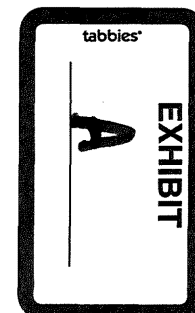


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For Commission Staff

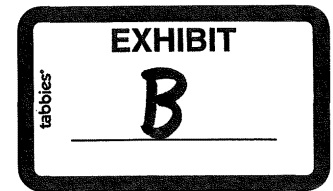
DER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>Complete items 1, 2, and 3. <b>PEN 005</b></p> <p>Print your name and address on the reverse so that we can return the card to you.</p> <p>Attach this card to the back of the mailpiece, on the front if space permits. <b>20-173-PEN</b></p> <p><b>CHARLES ETHAN BALL, OWNER</b>  <b>CHARLES ETHAN BALL D/B/A COW CHOW</b>  <b>EXPRESS</b>  <b>3980 W PARALLEL RD</b>  <b>GARDEN CITY, KS 67846-8953</b></p>		<p>A. Signature <b>Charles Ball</b> <b>6/7-9/11</b>  <input checked="" type="checkbox"/> Agent  <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) <b>Charles Ball</b> C. Date of Delivery <b>4/17/10</b></p> <p>Address different from item 1? <input type="checkbox"/> Yes          If delivery address below: <input type="checkbox"/> No</p>	
<p>            9590 9402 2218 6193 7313 55</p> <p>Title Number (Transfer from service label)  <b>7012 2920 0001 4263 5804</b></p>		<p>3. Service Type  <input type="checkbox"/> Adult Signature  <input type="checkbox"/> Adult Signature Restricted Delivery  <input checked="" type="checkbox"/> Certified Mail®  <input type="checkbox"/> Certified Mail Restricted Delivery  <input type="checkbox"/> Collect on Delivery  <input type="checkbox"/> Collect on Delivery Restricted Delivery  <input type="checkbox"/> Registered Mail®  <input type="checkbox"/> Registered Mail Restricted Delivery  <input type="checkbox"/> Return Receipt for Merchandise  <input type="checkbox"/> Signature Confirmation™  <input type="checkbox"/> Signature Confirmation Restricted Delivery</p>	
<p>Form <b>3811</b>, July 2015 PSN 7530-02-000-9053</p>		<p>Domestic Return Receipt</p>	





STATE OF KANSAS  
OFFICE OF THE ATTORNEY GENERAL

DEREK SCHMIDT  
ATTORNEY GENERAL



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120 SW 10TH AVE., 2ND FLOOR  
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June 2, 2020

Kansas Corporation Commission  
Dana Bradberry Legal Department  
1500 SW Arrowhead Road  
Topeka, Kansas 66604

**RE: *In The Matter of the Investigation of Charles Ethan Ball***  
***Docket No. 20-TRM-173-PEN***

Dear Ms. Bradberry:

Enclosed please find pleadings/documents that were received in the Office of the Attorney General for the above case. We are forwarding the same for your office to handle on behalf of the State of Kansas, any state agency, and/or a state employee defendant(s).

Please acknowledge only receipt of these documents. Thank you.

Sincerely,

OFFICE OF ATTORNEY GENERAL  
DEREK SCHMIDT

Chelsea Zamora  
Chelsea.Zamora@ag.ks.gov  
Legal Assistant Civil Litigation Division

Enclosures



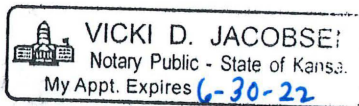
## VERIFICATION

STATE OF KANSAS )  
 ) ss.  
COUNTY OF SHAWNEE )

Ahsan A. Latif, of lawful age, being duly sworn upon his oath deposes and states that he is Litigation Counsel for the State Corporation Commission of the State of Kansas; that he has read and is familiar with the foregoing *Staff's Motion to Dismiss Request for Hearing*, and attests that the statements therein are true and correct to the best of his knowledge, information and belief.

  
Ahsan A. Latif, S. Ct. # 24709  
Litigation Counsel  
The State Corporation Commission  
of the State of Kansas

SUBSCRIBED AND SWORN to before me this 15<sup>th</sup> day of June, 2020



Vivian G. Jacobsen  
Notary Public

My Appointment Expires: June 30, 2022

## CERTIFICATE OF SERVICE

20-TRAM-173-PEN

I, the undersigned, certify that a true and correct copy of the above and foregoing Staff's Motion to Dismiss Request for Hearing was served via electronic service this 15th day of June, 2020, to the following:

CHARLES ETHAN BALL, OWNER  
CHARLES ETHAN BALL  
D/B/A COW CHOW EXPRESS  
3980 W PARALLEL RD  
GARDEN CITY, KS 67846-8953  
charlesball1993@gmail.com

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Vicki Jacobsen