

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14C-0244-INS

IN THE MATTER OF COMMISSION ACTION AGAINST THE CERTIFICATE(S)
AND PERMIT(S) OF MOTOR CARRIERS CONCERNING FINANCIAL
RESPONSIBILITY PURSUANT TO § 40-10.1-112, C.R.S., AND RULE 6008, 4 CCR 723-6,
OF THE RULES REGULATING TRANSPORTATION BY MOTOR VEHICLES.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
REVOKING AUTHORITIES AND PERMITS
AND DISMISSING COMPLAINT AGAINST
COLORADO CRUISERS INC.**

Mailed Date: April 10, 2014

I. STATEMENT, FINDINGS OF FACT, AND CONCLUSIONS

1. The cases listed on the attached Appendix A (Hearing Exhibit 1) were instituted by “Order of Summary Suspension and Complaint and Notice of Hearing” (Complaint), issued by the Commission Director and served upon the Respondents on March 21, 2014 (Hearing Exhibit 2) by United States mail, at the most recent addresses on file with the Commission for the Respondents.

2. The Complaint provided notice of the nature of the allegations against the Respondents. Hearing Exhibit 2. In particular, the Complaint against each of the Respondents listed on Appendix A alleges that the Public Utilities Commission (Commission) has received notice of cancellation from the Respondents’ insurance or surety companies to cancel the Respondents’ insurance or surety coverage as specifically identified in each Complaint. *Id.* The Complaint further notifies the Respondents that their authorities or permits have been summarily suspended and that at the date, time and location noticed in the Complaint, a hearing will be held regarding whether their authorities or permits should be permanently revoked,

as a result of the Respondents' failure to maintain proper evidence of insurance or surety coverage on file with the Commission. *Id.*

3. At the designated date, time, and location, April 8, 2014 at 12:00 p.m. in a Commission Hearing Room, at 1560 Broadway, Suite 250, Denver, Colorado, the undersigned Administrative Law Judge (ALJ) called the cases for hearing.

4. Commission Staff member Vanessa Condra appeared through counsel and testified on behalf of the Staff of the Commission (Staff). Mr. Ricardo Trevizo, a non-attorney, appeared on behalf of Rick's Limo Service, LLC (Rick's). Mr. Keith Coville, a non-attorney, appeared on behalf of Colorado Cruisers Inc., doing business as Colorado Crewz-In (Colorado Cruisers). No other Respondent appeared.

5. Hearing Exhibits 1, 2, and 3 were admitted into evidence during the hearing. Ms. Vanessa Condra testified on behalf of Staff. Mr. Trevizo testified on behalf of Rick's; Mr. Coville testified on behalf of Colorado Cruisers.

A. Rick's and Colorado Cruisers' Representation

6. Neither Mr. Trevizo nor Mr. Coville is licensed to practice law in the State of Colorado. Both wished to represent their respective companies in this proceeding. Staff did not object to Rick's and Colorado Cruisers' request to be represented by non-attorneys.

7. During the hearing, the ALJ addressed whether Rick's and Colorado Cruisers may be represented in this proceeding by their non-attorney delegates. The ALJ found that they both met the necessary requirements to be represented by the non-attorneys who appeared on their behalf.

8. In particular, based upon the evidence provided during the hearing, Rick's met the requirements of Rule 1201(b) of the Rules of Practice and Procedure, 4 *Code of Colorado*

Regulations (CCR) 723-1 and § 13-1-127, C.R.S. Rick's may be represented by a non-attorney in this proceeding because it has provided satisfactory evidence that: it is a closely-held entity comprised of one owner, Mr. Ricardo Trevizo, that the amount in controversy is less than \$15,000, and that Mr. Trevizo has authority to represent Rick's.¹

9. Likewise, based upon evidence Colorado Cruisers provided during the hearing, Colorado Cruisers met the requirements of Rule 1201(b), 4 CCR 723-1 and § 13-1-127, C.R.S. Colorado Cruisers may be represented by a non-attorney in this proceeding because it has provided satisfactory evidence that: it is a closely-held entity comprised of no more than three owners, that the amount in controversy is less than \$15,000, and that Mr. Coville is authorized to represent Colorado Cruisers.²

B. The Commission's Requirements Relating to Financial Responsibility

10. Pursuant to § 40-10.1-107, C.R.S., and Rule 6007 of the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6, every motor carrier must keep and maintain evidence of financial responsibility in such sum, for such protection, and in such form as the Commission deems necessary to adequately safeguard the public interest.

11. In addition to motor vehicle liability insurance, towing carriers must maintain several specific types of financial responsibility coverage. In particular, towing carriers providing storage must obtain and keep in force at all times garage keeper's liability insurance coverage and cargo liability insurance. Rules 6007(a)(I), (III), and (IV), 4 CCR 723-6.

12. The motor carriers are responsible for filing proof of the required financial responsibility coverage with the Commission. § 40-10.1-107, C.R.S., and Rule 6007,

¹ Mr. Trevizo is Rick's sole owner.

² Mr. Coville is one of three owners of Colorado Cruisers and is the company's Chief Financial Officer. He provided sworn testimony that he has authority to represent the company.

4 CCR 723-6. Failure to have proof of these financial responsibility requirements on file with the Commission creates a rebuttable presumption that the carrier is in violation of the financial responsibility requirements. Rule 6007(e), 4 CCR 723-6.

13. The required certificates of insurance cannot be terminated or cancelled unless and until the insurance carrier provides 30 days' written notice of the same. Rule 6007(i), 4 CCR 723-6. Consequently, the Commission regularly receives notice from insurance carriers when they have cancelled the insurance of motor carriers who are licensed by the Commission.

14. Section 40-10.1-112, C.R.S., and the Commission's rules implementing that section, provide that after hearing upon notice to the holder of any certificate or permit, and upon proof of violation, a Commission issued authority or permit may be suspended, revoked, altered, or amended if it is established to the satisfaction of the Commission that the holder of that authority or permit has violated any applicable statute, rule, regulation, or Commission decision. Rule 6008, 4 CCR 723-6; *see* Hearing Exhibit 2. Staff carries the burden of proof by a preponderance of the evidence to prove that the allegations of the Complaint are true. The preponderance standard requires the finder of fact to determine whether the existence of a contested fact is more probable than its non-existence. *Swain v. Colorado Department of Revenue*, 717 P.2d 507, 508 (Colo. App. 1985). A party has met this burden of proof when the evidence, on the whole, slightly tips in favor of that party.

C. Witness Testimony

15. Ms. Condra testified that the Complaints were served upon the Respondents listed on Appendix A by United States mail, at the most recent addresses on file with the Commission.

16. The ALJ finds and concludes that the Complaints are in compliance with Rule 6008(a), 4 CCR 723-6 since they were served upon the Respondents listed on Appendix A

by United States mail, at the most recent addresses on file with the Commission and provide notice of the nature of the allegations and relief sought against the Respondents. Hearing Exhibit 2. The ALJ further finds that Service was proper.

17. Ms. Condra stated that the required Form E certificate of insurance (Form E) was filed on behalf of Colorado Cruisers on April 7, 2014. Ms. Condra explained that motor carriers are required to ensure that the Form E filed on their behalf is filed in the name of their company as that name is stated in their Commission issued permit, license, or authority. And, according to Ms. Condra, in the case of Colorado Cruisers, the Form E filed on April 7, 2014 does not meet the Commission's requirements because Colorado Cruisers filed a separate request with the Commission to change its permitted name from Colorado Cruisers Inc., doing business as Colorado Crewz-In to Colorado Cruisers Inc., (thereby dropping "doing business as Colorado Crewz-In."). This request was not granted as of the time of the hearing. Because this request had not been granted as of the time of the hearing, the Commission's permit for Colorado Cruisers is still in the name of Colorado Cruisers Inc., doing business as Colorado Crewz-In. That is the exact same name under which the Form E, evidencing proof of insurance, was filed on April 7, 2014.

18. Mr. Coville testified for Colorado Cruisers. He apologized on behalf of his company for any mistakes that may have occurred in filing the Form E on April 7, 2014 and promised to correct any errors immediately. He explained that the company's prior insurance company cancelled Colorado Cruiser's policy, despite the fact that the company had a clean record. He had difficulty locating a new insurance provider, and was only able to find a new insurance company within a week prior to the hearing. That is the reason the Form E was filed the day before the hearing. It appeared to the ALJ that Mr. Coville was unaware that there were

any problems with the Form E until Ms. Condra testified at the hearing. Mr. Coville provided Hearing Exhibit 3 as evidence that Colorado Cruisers does have motor vehicle liability insurance as required by Commission rules.

19. Mr. Trevizo testified for Rick's. He explained that Rick's insurance lapsed because, as the company's sole driver, the company was unable to pay for insurance after he was unable to work due to an illness. Mr. Trevizo stated that he is aware of his obligations under the Commission's rules and Colorado law and that he will pay for insurance and ensure the proper proof of insurance is on file with the Commission. He requested that Rick's be given additional time to comply with the Commission's insurance requirements. The ALJ sympathizes with Mr. Trevizo's difficulties. However, as of the date of the hearing, Rick's was not in compliance with the proof of insurance requirements and still had made arrangements to purchase insurance as required. The Commission owes an important duty to the public to ensure that permitted motor carriers have the required proof of financial responsibility on file with the Commission. Nevertheless, set forth in ordering paragraph 3 below, Rick's will have an additional opportunity to file the appropriate proof of insurance before this Decision becomes effective.

20. Staff recommended and requested that the authorities and permits of the Respondents listed in Appendix A be revoked.

21. The ALJ finds that Staff established by a preponderance of the evidence that the Commission received notice from the insurance providers for the carriers identified in Appendix A that their insurance has been cancelled or terminated. This creates the rebuttable presumption that the carriers are in violation of their respective financial responsibility requirements. Rule 6007(e), 4 CCR 723-6.

22. With the exception of Colorado Cruisers, no Respondent rebutted this presumption. In fact, Mr. Trevizo confirmed that Rick's does not have proof of insurance on file with the Commission and is in violation of its financial responsibility requirements as of the date of the hearing.

23. Except for Colorado Cruisers, the ALJ finds that Staff established by a preponderance of the evidence that the Commission's records do not show a currently effective level of financial responsibility, including, but not limited to motor vehicle liability insurance, garage keeper's liability insurance and cargo liability insurance, in such form and in such manner as required for the Respondents as stated in Appendix A. § 40-10.1-107, C.R.S., and Rule 6007, 4 CCR 723-6. With the exception of Colorado Cruisers, the ALJ finds that Staff met its burden of proof as to the Respondents listed in Appendix A.

24. The ALJ finds that Staff failed to meet its burden of proof against Colorado Cruisers. To the contrary, the evidence demonstrated that Colorado Cruisers has on file with the Commission, a current and valid Form E that was filed on April 7, 2014. That Form E is filed in the name of Colorado Cruisers Inc., doing business as Colorado Crewz-In, which is the name under which Colorado Cruisers is currently permitted. The fact that Colorado Cruisers has filed a request to change the name under which its Commission permit is issued does not change this.³ *Supra*, ¶ 17. The ALJ could find no rule or statute supporting Ms. Condra's assertion that Colorado Cruisers' Form E is invalid because the company has *requested*, but not received, the Commission's approval for a name change. In any event, particularly given the preponderance of the evidence standard, the ALJ finds that Colorado Cruisers has overcome the rebuttable

³ If the Commission grants the requested name change, Colorado Cruisers should file a new Form E to ensure it has on file a certificate of insurance for the current name under which Colorado Cruisers is permitted.

presumption that it was in violation of its financial responsibility requirements. Rule 6007(e), 4 CCR 723-6. The ALJ will recommend that the March 21, 2014 Complaint against Colorado Cruisers located in Hearing Exhibit 2 be dismissed with prejudice. This means that Colorado Cruisers' permit will not be revoked pursuant to the Complaint, unless the Commission decides otherwise.

25. As to the remaining Respondents, the Commission must fulfill its important duty to the public to guarantee that those persons who hold an authority or permit from the Commission have current, effective insurance as required by law. The Commission's only means of performing this important health and safety function is to have documentation of that fact furnished in a uniform format to the Commission. The holder of the authority is responsible for providing that documentation to the Commission. § 40-10.1-107, C.R.S.; Rule 6007, 4 CCR 723-6.

26. Except for Colorado Cruisers, because the Respondents listed in Appendix A have failed to keep currently effective proof of financial responsibility on file with the Commission, including but not limited to motor vehicle liability insurance, garage keeper's liability insurance, and cargo liability insurance, the authorities and permits listed in Appendix A should be revoked.

27. Pursuant to § 40-6-109, C.R.S., the ALJ transmits to the Commission the record of this proceeding, this recommended decision containing findings of fact and conclusions thereon, and a recommended order.

II. ORDER

A. The Commission Orders That:

1. Consistent with the discussion above, except for the permit or authority owned by Colorado Cruisers Inc., doing business as Colorado Crewz-In (Colorado Cruisers) the

Respondents' authorities or permits listed in Appendix A attached hereto are revoked as of the effective date of this Decision.

2. The March 21, 2014 Complaint in this proceeding against Colorado Cruisers, located at Hearing Exhibit 2, p.3, is dismissed with prejudice.

3. Ordering Paragraph No. 1 shall be void and the case dismissed as to any affected Respondent who files the required Certificate of Insurance with the Commission before the effective date of this Recommended Decision.

4. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

5. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

a) **If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.**

b) If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

6. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MELODY MIRBABA

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director