

Decision No. R22-0479

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22G-0172EC

CCOLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

TAD BUONAMICI DOING BUSINESS AS LONGEST LIMOS LLC AND/OR LONG LIMO PRO,

RESPONDENT.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
G. HARRIS ADAMS
ASSESSING CIVIL PENALTY**

Mailed Date: August 12, 2022

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I. STATEMENT

1. This is a civil penalty assessment proceeding brought by the Staff of the Colorado Public Utilities Commission (Staff) against the Respondent, Tad R. Buonamici, doing business as Longest Limos, LLC and/or Long Limo Pro (Longest Limos).

2. On April 19, 2022, Staff issued Civil Penalty Assessment Notice or Notice of Complaint to Appear (CPAN) No. 130807 against Longest Limos and commenced this proceeding.

3. On May 11, 2022, the Commission referred this matter to an Administrative Law Judge (ALJ) for disposition by minute entry.

4. Staff and Longest Limos are the Parties to this proceeding.

5. The CPAN assesses a total penalty of \$13,915.00 for one violation of § 40-10.1-107(1), C.R.S. for the alleged failure to maintain and file evidence of financial responsibility in sums as required by the Public Utilities Commission, and one violation of §40-10.1-302(1)(a), C.R.S. for operating and/or offering to operate, as a limited regulation carrier in intrastate commerce, a luxury limousine without first having obtained a valid permit from the Commission. Hearing Exhibit 7. This filing commenced this Proceeding.

6. By Decision Nos. R22-0314-I, issued May 19, 2022, R22-0356-I, issued June 9, 2022, and Decision No. R22-0366-I, issued June 15, 2022, a hearing was scheduled to commence in this proceeding on July 13, 2022.

7. At the scheduled time and place, the undersigned ALJ called the matter for hearing. Staff appeared through counsel. Respondent appeared without an attorney. During the hearing, Hearing Exhibits 1 through 12 were identified, offered, and admitted into evidence. Hubert Barton, Criminal Investigator for the Commission, testified on behalf of Staff. Mr. Buonamici testified on his own behalf.

8. The undersigned ALJ has considered all arguments and evidence presented, even if such argument and/or evidence is not specifically addressed herein, in reaching this Recommended Decision.

9. In accordance with Section 40-6-109, C.R.S., the ALJ now transmits to the Commission the record and exhibits in this proceeding along with a written recommended decision.

II. FINDINGS

10. Mr. Barton works with the Commission as a Criminal Investigator. As part of his duties, he investigates complaints regarding motor carrier compliance. He was assigned to investigate the complaint leading to issuance of CPAN No. 130807.

11. In his investigation, Mr. Barton concluded that Mr. Buonamici operated as a luxury limousine carrier without first obtaining a required permit from the Commission and he failed to maintain and file required evidence of financial responsibility with the Commission.

12. Mr. Buonamici formed Longest Limos LLC in 2006. Hearing Exhibit 1. Longest Limos operated as a luxury limousine carrier pursuant to Permit No. LL-01515. The permit was cancelled January 1, 2019. *Id.*

13. In Proceeding No. 19G-0663EC, Mr. Buonamici was charged with the identical violations as the ones at issue herein. Approving a settlement in that proceeding, the Commission assessed and partially suspended a civil penalty. Decision No. R20-0016, issued January 8, 2020. In accordance with the settlement, the civil penalty was to be paid in ten monthly payments, commencing in March 2020. Mr. Buonamici failed to pay the civil penalty imposed by a final decision of the Commission within the time prescribed for payment, resulting in lifting of the partial suspension. Having submitted two timely payments, the total amount of the civil penalty of \$13,915.00 was reduced to an outstanding amount owed to \$12,105.75.

14. Investigating a recent complaint, Mr. Barton accessed Longest Limo's website and searched its online presence. He found Longest Limos was offering and advertising

limousine services under its cancelled permit, No. LL-01515, Mr. Barton also found contact information for Mr. Buonamici on the website. Hearing Exhibit 4.

15. Mr. Barton contacted Mr. Buonamici, via phone call and text messages, incognito, and posed as a customer seeking Longest Limo's services. Mr. Barton testified that Mr. Buonamici responded intending to do business with him. Hearing Exhibit 6. Then, Mr. Buonamici backed out of dealing with Mr. Barton shortly after corresponding with him.

16. Mr. Barton visited the lot where Mr. Buonamici stored vehicles offered for limousine services and was allowed to enter the property to inspect the vehicles, which he states were visibly not safe to transport customers. Photographs of the vehicles were taken by Mr. Barton and were included as part of his investigation. Hearing Exhibits 8 through 10.

17. Based upon the results of his investigation, Mr. Barton caused the issuance of CPAN No. 130807, alleging violations found throughout his investigation. The CPAN contains one count for violation of Section 40-10.1-107(1), C.R.S. for \$12,650.00; and one count for violation of Section 40-10.1-302(1)(a), C.R.S. for \$1,265.00; the total civil penalty amounting to \$13,915.00. The CPAN alleges that both violations took place on April 12, 2022. The CPAN was served upon Mr. Buonamici at his Fort Collins, Colorado address on April 18, 2022. Mr. Buonamici acknowledged and signed the CPAN that day. Hearing Exhibit 7.

18. In this proceeding, Staff seeks complete payment of the prior CPAN No. 124028 issued to Mr. Buonamici, and CPAN No. 130807 in this proceeding.

19. During the hearing, Mr. Buonamici was remorseful. He admitted that Mr. Barton's testimony was true and he did not challenge the testimony or the charges in the CPAN. He testified about the severe impact of the COVID-19 pandemic upon his family, especially the financial impact upon he and his wife who both owned their own businesses. As a result of these impacts, he could not afford to continue operations and breached obligations undertaken in the

prior settlement approved by the Commission. Prior to the hearing, he ceased all operations and sold all the vehicles used in the business, except two. He opined the last two would be sold shortly after the hearing.

III. DISCUSSION

20. Commission enforcement personnel have authority to issue CPANs under Section 40-7-116, C.R.S. That statute provides that the Commission has the burden of demonstrating a violation by a preponderance of the evidence. The Commission only has penalty assessment authority to the extent provided by statute and the Commission must follow the provisions of those statutes when it imposes such penalties against towing carriers.

21. Except as otherwise provided by statute, the Administrative Procedure Act imposes the burden of proof in administrative adjudicatory proceedings upon "the proponent of an order."¹ As provided in Commission Rule 4 CCR 723-1-1500 of the Commission's Rules of Practice and Procedure, "[t]he proponent of the order is that party commencing a proceeding." Here, Staff is the proponent since it commenced the proceeding through issuance of the CPAN. Complainant bears the burden of proof by a preponderance of the evidence.² The preponderance standard requires the finder of fact to determine whether the existence of a contested fact is more probable than its non-existence.³ While the quantum of evidence that constitutes a preponderance cannot be reduced to a simple formula, a party has met this burden of proof when the evidence, on the whole and however slightly, tips in favor of that party.

¹ 1 § 24-4-105(7), C.R.S.

² See, § 13-25-127(1), C.R.S. and 4 CCR 723-1-1500.

³ *Swain v. Colorado Dept. of Revenue*, 717 P.2d 507 (Colo. App. 1985)

22. Section 40-7-116, C.R.S., mandates a number of procedures for the imposition of civil penalties by the Commission. After specifying that the listed officials are the ones authorized to issue civil penalty assessments for violations of law, Section 40-7-116(1)(a), C.R.S., states that, “When a person is cited for the violation, the person operating the motor vehicle involved shall be given notice of the violation in the form of a civil penalty assessment notice.” Section 40-7-116(1)(b), C.R.S., further directs that the civil penalty assessment notice “shall be tendered by the enforcement official, either in person or by certified mail, or by personal service by a person authorized to serve process under rule 4(d) of the Colorado rules of civil procedure.”⁴ Section 40-7-116(1)(b) (I)-(VII), C.R.S., further directs that the civil penalty assessment notice “... shall be tendered by the enforcement official;” and that it “shall contain” [t]he “name and address of the person cited for the violation; [a] citation to the specific statute or rule alleged to have been violated; [a] brief description of the alleged violation, the date and approximate location of the alleged violation; and the maximum penalty amounts prescribed for the violation; [t]he date of the notice; [a] place for the person to execute a signed acknowledgment of receipt of the civil penalty assessment notice; [a] place for the person to execute a signed acknowledgment of liability for the violation; and [s]uch other information as may be required by law to constitute notice of a complaint to appear for hearing if the prescribed penalty is not paid within ten days.”⁵

23. The evidence establishes the Commission’s jurisdiction in this proceeding. The CPAN was served upon Respondent in person, in accordance with Section 40-7-116, C.R.S.

⁴ § 40-7-116, C.R.S.

⁵ *Id.*

24. Commission Staff met its burden of proof when the evidence, on the whole, tipped in its favor and was not rebutted by Respondent.

25. Motor carriers are required to maintain and file with the Commission the Commission evidence of financial responsibility as the Commission deems necessary to adequately safeguard the public interest. Section 40-10.1-107(1), C.R.S. Here, the evidence shows that Respondent offered limousine carrier services without maintaining and filing evidence of financial responsibility as required.

26. Limousine carriers are not allowed to operate or offer to operate a luxury limousine without first having obtained a permit from the Commission. § 40-10.1-302(1)(a), C.R.S. In the case at hand, Mr. Buonamici admitted operating and offering limousine services without a permit.

27. Having found the above violations of the cited regulations, it is necessary to determine the amount of the civil penalty to be assessed for these violations. Section 40-7-113, C.R.S., authorizes the Commission to consider aggravating or mitigating circumstances surrounding particular violations in order to fashion a penalty assessment that promotes the underlying purpose of such assessments.

28. In accordance with Rule 1302(b), Rules of Practice and Procedure:

[T]he Commission may impose a civil penalty, when provided by law, after considering evidence concerning ... the following factors:

- (I) [T]he nature, circumstances, and gravity of the violation;
- (II) [T]he degree of the respondent's culpability;
- (III) [T]he respondent's history of prior offenses;
- (IV) [T]he respondent's ability to pay;
- (V) [A]ny good faith efforts by the respondent in attempting to achieve compliance and to prevent future similar violations;
- (VI) [T]he effect on the respondent's ability to continue in business;

(VII) [T]he size of the business of the respondent; and

(VIII) [S]uch other factors as equity and fairness may require.

Rule 1302(b) of the Rules of Practice and Procedure, 4 CCR 723-1.

29. Despite receiving a previous CPAN for the same violations of Section 40-10.1-107(1), C.R.S and Section 40-10.1-302(1)(a), C.R.S. by Commission Staff and being aware of Commission rules, Respondent again offered limousine services without a permit and required proof of financial responsibility.

30. Respondent acknowledges all the violations listed in CPAN No. 130807 and does not dispute them. Staff did not find any factors in mitigation.

31. The undersigned considers Mr. Buonamici's conduct related to Proceeding No. 19G-0663EC to be both aggravating and mitigating to the present circumstances.

32. The Commission performs an important health and safety function of assuring that luxury limousine providers maintain proof of current, effective insurance on file for the benefit of the traveling public.

33. Respondents' knowing and intentional disregard for the safety of the traveling public for a second time inclines the undersigned toward the strongest enforcement available to this Commission. However, his conduct appears to have occurred out of desperation and necessity surrounding circumstances created by the COVID-19 pandemic. Thankfully in this case, there is no evidence of harm to the one originally bringing Mr. Buonamici's conduct to the attention of the Commission.

34. Mr. Buonamici is the sole owner of his business.

35. Mr. Buonamici admitted the violations in January 2020 and timely paid the first two payments. However, unable to operate his business at the onset of a pandemic, he was

unable to continue payments required by Decision No. R20-0016. As a result, he lost the benefit of the partial suspension.

36. In this proceeding, Mr. Buonamici appeared and participated in the hearing. He demonstrated remorse and again admitted the violations without contest. He has more likely than not disposed of all vehicles used to provide unlawful service. Although he plans to start another business, at the time of hearing, he did not know what it might be. The undersigned has not found that Mr. Buonamici should be prohibited from lawful operations in the future.

37. If assessed the maximum amount in this proceeding, total outstanding obligations to the Commission would exceed \$25,000.

38. Based on the evidence presented and findings of fact, the ALJ finds that reducing the amount of the civil penalty from \$13,915.00 to \$9,045.00 achieves the following purposes underlying civil penalty assessments within the Commission's jurisdiction: (a) deterring future violations, whether by other similarly situated carriers and by Respondent; (b) motivating Respondent to come into compliance with the law; and (c) punishing Respondent for its past illegal behavior.

39. A civil penalty of \$9,045.00 settlement amount consists of a \$7,865.22 penalty, plus a 15 percent surcharge of \$1,179.78 pursuant to § 24-34-108(2), C.R.S., will be assessed for the proven violations in Counts 1 and 2 of CPAN No. 130807.

IV. ORDER

A. The Commission Orders That:

1. Mr. Tad Buonamici, doing business as Longest Limos LLC and/or Long Limo Pro, is assessed a civil penalty \$7,865.22, plus an additional 15 percent surcharge in the amount of \$1,179.78, for the violations discussed and found above, totaling \$9,045.00.

2. Not later than 30 days following the date of the final Commission decision issued in this Proceeding, Respondent Tad Buonamici shall pay to the Commission the civil penalties and the surcharge assessed in Ordering Paragraph No. 1.

3. Proceeding No. 22G-0172EC is closed.

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. Before the Public Utilities Commission of the State of Colorado.

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.

6. 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.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

G. HARRIS ADAMS

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director