

Decision No. R22-0496

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22G-0199TO

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

MR. JOSE A CORDERO DOING BUSINESS AS 303 CO TOWING ALSO KNOWN AS
CORDERO'S TOWING & SERVICES, LLC,

RESPONDENT.

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

Mailed Date: August 19, 2022

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I. STATEMENT

1. This proceeding concerns Civil Penalty Assessment Notice (CPAN) No. 130126 issued by Commission Staff on May 12, 2022 against Respondent Jose Cordero, doing business as 303 CO Towing, also known as Cordero's Towing & Services, LLC (Cordero's Towing). The

CPAN assessed Cordero's Towing a total penalty of \$13,915.00 for one violation of § 40-10.1-107(1), C.R.S., and one violation of § 40-10.1-401(1)(a), C.R.S. The nature of the violations is listed as:

Failure to maintain and file evidence of financial responsibility in sums as required by the Public Utilities Commission (Failed to have the required insurance on file with the PUC while acting as a towing carrier); and

Operating and/or offering to operate as a Towing Carrier in intrastate commerce without first having obtained a permit. (Towed a vehicle from an accident scene located at 4070 Globville Rd in Denver, CO to their impound located at 1707 E. 68th Ave. in Denver, CO.)

2. On May 26, 2022, the Colorado Public Utilities Commission Trial Staff (Staff) timely intervened of right in this proceeding.

3. On June 1, 2022, the Commission referred this proceeding to an Administrative Law Judge (ALJ) by minute entry.

4. By Decision No. R22-0375-I, issued June 21, 2022, the undersigned ALJ adopted procedures and scheduled this matter for a hearing to occur on August 1, 2022 at 9:00 a.m.

5. Staff and Respondent are the only parties to this proceeding.

6. At the scheduled time and place, the undersigned ALJ called the matter for hearing. Staff appeared through counsel and participated. At the beginning of the hearing, Staff indicated to the undersigned that they had spoken with Respondent the previous Friday and Respondent stated that they did not plan on attending the hearing. Indeed, Respondent did not appear. During the course of the hearing, Hearing Exhibits 1 through 15 were identified, offered, and admitted into evidence.¹ Joseph Potts, Criminal Investigator for the Commission, testified in support of the allegations contained in the CPAN at issue herein.

¹ Recommended Decision R22-0110, Proceeding No. 22C-0045-INS, issued February 28, 2022, was admitted by administrative notice as Hearing Exhibit 15.

7. 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.

8. In accordance with § 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

9. Investigator Potts is an Investigator with the Commission. As part of his duties, he investigates complaints filed with the Commission. He is familiar with Commission statutes and Commission rules that govern towing operators.

10. Investigator Potts investigated Cordero's Towing, leading to the issuance of CPAN 130126.

11. Jose Cordero owns Cordero's Towing.

12. Cordero's Towing is a towing carrier that has had an active towing carrier permit with the Commission in the past. The towing carrier permit has been active, on and off, since 2016.

13. Jose Cordero is the operator and CEO of Cordero's Towing. Another person, Corrina Zuniga, is the registered agent for the company. Hearing Exhibit 2 at 3.

14. Cordero's Towing had their towing permit revoked by the Commission in 2020 and 2022. Hearing Exhibit 2 at 4. In 2020, their permit was revoked after their insurance was cancelled. After their permit was first revoked in 2020, Cordero's Towing obtained a new permit. However, their permit was revoked again in March 2022. See, Hearing Exhibit 15. Since the revocation in March of 2022, Cordero's Towing has not held an active towing permit as of the time of the hearing.

15. Investigators with the Commission have also issued three violation warning letters to Cordero's Towing in 2020 and 2021. Hearing Exhibit 3.

16. The first letter, Investigation #126534, dated December 23, 2020, was sent alleging failure to register the tradename of 303 CO Towing with the Commission. Hearing Exhibit 3 at 1. Cordero's Towing was operating under that name, despite it not being registered with the Commission. Cordero's Towing never registered this tradename with the Commission. Hearing Exhibit 3 at 1-2.

17. The second letter, Investigation #128230, dated September 16, 2021, alleged that Cordero's Towing was operating without a permit or insurance. Cordero's Towing never responded to these violations. Hearing Exhibit 3 at 3-4.

18. The third letter, Investigation # 129229, dated October 18, 2021, alleged that Cordero's Towing was operating without a permit or insurance. This also was never remedied. Hearing Exhibit 3 at 5-6.

19. The investigation into Cordero's Towing leading to issuance of the CPAN was initiated by an individual named Natasha Boyer who sent a complaint to the Commission about the company in January 2022. Ms. Boyer was involved in an auto accident after a snowstorm, and her insurance carrier arranged for Cordero's Towing to tow her vehicle from the scene of the accident. When her vehicle was picked up for the tow, she was not given any paperwork regarding who was taking her vehicle or where the vehicle would be towed to. Ms. Boyer ultimately contacted the Denver Police Department, who advised her to contact the Commission; she did so and filed a complaint.

20. As a result of the investigation, Investigator Potts determined that Cordero's Towing was operating without a permit and without having proof of insurance on file, and caused issuance of the CPAN at issue herein.

21. Upon first being assigned the complaint for Investigation, Investigator Potts spoke with the Ms. Boyer during January 2022. Ms. Boyer conveyed that she was ultimately able to retrieve her vehicle after contacting her insurance company, but she had to hire a third party from a different towing carrier to retrieve her vehicle.

22. Investigator Potts next attempted to acquire documentation from Ms. Boyer's insurance company and their third-party dispatch service to show that Cordero's Towing had in fact picked up the vehicle and where it was taken, but he was unsuccessful.

23. On March 2, 2022, Investigator Potts drove to an address that he had discovered during his investigation that may have belonged to Cordero's Towing. The property was a large multi-use commercial property with several businesses operating on it, each separated with chain link fencing. On his initial drive through the property, Investigator Potts did not find anything resembling a storage facility or impound yard for vehicles that had been towed. However, after asking one of the employees he encountered, Investigator Potts was directed to an inconspicuous corner lot. The lot had no signage present, but several stored vehicles. A Cordero's Towing tow truck was visible through a chain link fence.

24. Investigator Potts took photographs of the area and the property. Hearing Exhibit 5; Hearing Exhibit 6; Hearing Exhibit 7; Hearing Exhibit 8. The area did not have any signage, and the Cordero's Tow truck located on the property was what led Investigator Potts to suspect the lot belonged to Cordero's Towing. Investigator Potts also took photographs of some the vehicles he observed on the lot, particularly those where he could see a license plate.

25. After finding Cordero's lot and vehicles, Investigator Potts returned to his office and ran the license plate information on the vehicles he observed to find the vehicle's owners. He was able to locate some of the owners and attempted to contact them.

26. One owner Investigator Potts contacted was Jeffrey Banninger. Mr. Banninger spoke with Investigator Potts and stated he was aware his vehicle was stored by Cordero's Towing. Mr. Banninger had been involved in an auto accident several days before. His insurance company dispatched Cordero's Towing to have his vehicle removed from the scene of the accident. Mr. Banninger offered to provide copies of the documentation regarding his vehicle and the tow if he received it from his insurance company. However, he never did.

27. Investigator Potts spoke with another vehicle owner, Mr. Hickling. Like Mr. Banninger, Mr. Hickling had been involved in an accident and his insurance company had dispatched the services of Cordero's Towing to tow his vehicle. Mr. Hickling provided Investigator Potts a screen shot of a text message he had received right after the towing carrier had been dispatched. The text message from the towing carrier stated they were en route to retrieve the vehicle. The text message also states that the name of the towing carrier coming to retrieve the vehicle is "303 Co Towing." Hearing Exhibit 9.

28. Investigator Potts felt it was significant that the text message identified the towing carrier, since it was not registered with the Commission.

29. Mr. Hickling also provided to Investigator Potts a copy of the bill sent to Mr. Hickling's insurance company. See Hearing Exhibit 10. Like the text message, the bill indicates that the name of the towing carrier was "303 Co Towing." Hearing Exhibit 10. The bill also identified the location where the vehicle was towed to, which was the same address as the lot that Investigator Potts had visited and observed the vehicles at.

30. Based on the invoice and the text message, Investigator Potts concluded that Jose Cordero operated as 303 Co Towing and Cordero's Towing and Services. As a result, Investigator Potts contacted the registered agent of Cordero's Towing and Services, Ms. Zuniga.

31. During their conversation, Investigator Potts asked about the status of the permit for 303 Co Towing; Ms. Zuniga stated that they were operating that permit underneath the Cordero's Towing and Services. When Investigator Potts brought up to Ms. Zuniga that Cordero's Towing and Services' permit had been revoked on January 27, 2022, Ms. Zuniga claimed that the vehicles found at the tow yard were not theirs, or they were waiting on tires or other services. Investigator Potts told her he had already spoken to the registered owners of the vehicles and knew they were towed there. Investigator Potts stated that Ms. Zuniga then paused for a moment and said, "Okay, what are we looking at?" Investigator Potts construed this response as an admission.

32. In response, Investigator Potts told Ms. Zuniga he would need to review all the towing invoices and tow tickets for every vehicle that was located or being stored at their lot on the day he visited, March 2, 2022. Investigator Potts eventually received the information, but noted that Ms. Zuniga exceeded the timeline on a number of occasions and would provide only half of the requested documents at times. Specifically, of the 10 to 15 vehicles he had noticed on the lot, Investigator Potts only received a copy of five of the separate tow tickets in two different batches.

33. The invoices received from Ms. Zuniga were contained in Hearing Exhibit 11.

34. Investigator Potts felt it was significant that the invoices reflect the date and identify the towing carrier as 303 Co Towing. Hearing Exhibit 11. Additionally, the invoices reflect that the company was towing vehicles from their tow yard, located at 1707 East 68th Avenue, to other locations in the Denver metro area.

35. Investigator Potts never received invoices for the two vehicles belonging to the owners he spoke with.

36. Based on the invoices, Investigator Potts concluded that Cordero's Towing operated without a permit and that Ms. Zuniga failed to provide all of the invoices for vehicles being stored on the lot.

37. Email conversations between Investigator Potts and Ms. Zuniga were admitted and contained in Hearing Exhibit 12. Investigator Potts felt it was significant to note that, at the time of the emails, there were still vehicles located on Cordero's lot, but the majority of vehicles that Investigator Potts noted were there were starting to disappear.

38. After reviewing all of the evidence and speaking with his supervisor, Investigator Potts opted to pursue a CPAN against Cordero's Towing.

39. Investigator Potts served the CPAN on Mr. Jose Cordero on May 11, 2022. Hearing Exhibit 13 at 2-5. The CPAN alleged two violations: one for failure to maintain and file evidence of financial responsibility in sums as required by the Public Utilities Commission and one for operating and/or offering to operate as a towing carrier in intrastate commerce without first having obtained a permit. Hearing Exhibit 13 at 1. The first violation was based on Cordero's Towing operating without a permit; the second violation was based on evidence of their operation continuing (dates on the invoices, etc.) showing they were conducting towing activities after their permit was suspended on January 27, 2022.

40. During July, 2022, and after serving the CPAN, Investigator Potts learned additional information about Cordero's Towing. Investigator Potts explained he received a screen shot of a text message from another towing carrier. This text message was sent to the towing carrier from a customer who had contacted the other towing carrier because their name was similar to 303 Co

Towing. The customer was looking for their vehicle. The text message states that a carrier named 303 CO Towing is enroute to pick up a vehicle. Hearing Exhibit 14. This led Investigator Potts to believe that 303 CO Towing was continuing to operate in mid-July, or July 13, 2022. Investigator Potts attempted to speak with the person who originally received the text message from 303 CO Towing, but they did not return his call.

41. Staff is seeking a full pursuit of the CPAN in this case and for the Commission to issue a cease and desist order issued against Cordero's Towing. Investigator Potts felt there were no mitigating factors in this proceeding; in fact, he believed there were aggravating factors to be considered, especially their prior history of willfully disregarding warning of the Commission.

III. DISCUSSION

42. Commission enforcement personnel have authority to issue CPANs under § 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.

43. 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."² 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.³ The preponderance standard

² § 24-4-105(7), C.R.S.

³ See, § 13-25-127(1), C.R.S. and 4 CCR 723-1-1500.

requires the finder of fact to determine whether the existence of a contested fact is more probably than its non-existence.⁴ 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.

44. 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, § 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.”⁵ 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 acknowledgement 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.”⁶

⁴ *Swain v. Colorado Dept. of Revenue*, 717 P.2d 507 (Colo. App. 1985).

⁵ § 40-7-116, C.R.S.

⁶ § 40-7-116, C.R.S.

45. The evidence establishes the Commission's jurisdiction in this proceeding. The CPAN was served upon Respondent in person and in accordance with § 40-7-116, C.R.S.

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

47. Towing carriers are required to maintain and file with the commission evidence of financial responsibility in such sum, for such protection, and in such form as the commission may be rule require as the commission deems necessary to adequately safeguard the public interest.⁷ Here, Investigator Potts' investigation demonstrated that Respondent, who had a history of warnings and revocations of their permit from the Commission, did not file evidence of their financial responsibility with the Commission as required.

48. Towing carriers cannot operate or offer to operate as a towing carrier in intrastate commerce without having first obtained a permit therefor from the commission. In the case at hand, Respondent's permit had been revoked in January 2022 when they failed to file evidence of their financial responsibility. However, the evidence also shows continued operations. In fact, there is evidence they have continued operating even after receiving notice of this proceeding and CPAN, as of July 2022.

49. 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 40-7-112, 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.

⁷ § 40-10.1-107(1), C.R.S.

50. 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...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.

51. Despite three previous violation letters sent by Commission staff and being aware of Commission rules, Respondent continued to engage in conduct in violation of Commission rules. Respondent further failed to appear to address the allegations against him and provided no evidence in mitigation. Staff also is unaware of any factors in mitigation.

52. Based on the evidence presented and findings of fact, the ALJ find that the following civil penalty achieves the following purposes underlying civil penalty assessments to the maximum extent possible 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.

53. Staff further requests that the Commission order Mr. Cordero to cease and desist from operating as a towing carrier. Such relief is consistent with the explicit prohibition in the rules and will be ordered below.

54. A civil penalty of \$12,650.00, including the 15 percent surcharge, will be assessed for the proven violation in Count 1 of CPAN No. 130126.

55. A civil penalty of \$1,265.00, including the 15 percent surcharge, will be assessed for the proven violation in Count 2 of CPAN No. 130126.

56. Pursuant to § 40-6-109(2), C.R.S., the Administrative Law Judge recommends that the Commission enter the following order.

IV. ORDER

A. The Commission Orders That:

1. Mr. Jose Cordero, doing business as 303 CO Towing, also known as Cordero's Towing & Services, LLC (Cordero's Towing), is assessed a civil penalty, including an additional 15 percent surcharge, in the amounts of \$12,650.00 and \$1,265.00 for the violations discussed and found above, totaling \$13,915.00.

2. No later than 30 days following the date of the final Commission decision issued in this Proceeding, Cordero's Towing shall pay to the Commission the civil penalties and the surcharge assessed in Ordering Paragraph No. 1.

3. Respondent Cordero's Towing shall cease and desist from operating as a towing carrier until he has complied with the requirements of all Commission decisions and rules.

4. Proceeding No. 22G-0199TO is closed.

5. 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.

6. 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.

7. If exceptions to this Recommended 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)



ATTEST: A TRUE COPY

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

Doug Dean, Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

G. HARRIS ADAMS

Administrative Law Judge