

Decision No. R23-0554-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23F-0372TO

RASHAINA MAKER,

COMPLAINANT,

V.

BUGS TOWING, LLC,

RESPONDENT.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
ORDERING RESPONDENT TO SATISFY OR ANSWER,
REQUIRING RESPONDENT TO MAKE FILINGS AS TO
ITS LEGAL REPRESENTATION, RESCHEDULING
EVIDENTIARY HEARING, AND ESTABLISHING
PROCEDURES FOR THE HEARING**

Mailed Date: August 23, 2023

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A. It Is Ordered That:10

I. STATEMENT AND PROCEDURAL BACKGROUND

1. On July 18, 2023, Complainant Rashaina Maker (Complainant) filed a Formal Complaint (Complaint) against Bugs Towing, LLC (Respondent). The Complaint alleges that Respondent improperly towed Complainant’s vehicle on June 19, 2023; a 24-hour notice was not placed on the vehicle prior to being towed; Respondent is in violation of House Bill 22-1314; and Complainant was not permitted to retrieve belongings from the vehicle. With the Complaint, the Complainant filed attachments containing: a photo of the vehicle prior to being towed; a partial copy of a text message conversation; and two pages from House Bill 22-1314 in support of her Complaint.

2. On July 24, 2023, the Commission issued an Order Setting Hearing and Notice of Hearing, scheduling an evidentiary hearing in this matter for October 3, 2023 at 9:00 a.m., before an Administrative Law Judge (ALJ). At the same time, the Commission issued an Order to Satisfy or Answer which ordered that within 20 days of the date the Order to Satisfy or Answer was mailed to Respondent, that Respondent: (a) satisfy the matters in the Complaint and provide the Commission sufficient evidence of the same; or (b) file an answer to the Complaint with the Commission.¹

3. On August 2, 2023, the Commission referred this proceeding to an ALJ for disposition by minute entry.

¹ Attachment C at 1.

II. FINDINGS AND CONCLUSIONS

A. Order to Satisfy or Answer

4. A review of the Commission's records reveals that the Order to Satisfy or Answer, the Complaint, and the Order Setting Hearing and Notice of Hearing were not served upon Respondent. The Order to Satisfy or Answer initiated the procedural schedule governing this Proceeding, including the scheduled hearing and deadline to satisfy or answer. As such, the procedural deadlines dependent upon the date of service of the Complaint, the Order to Satisfy or Answer, and the Order Setting Hearing and Notice of Hearing must be modified to reflect the new service date upon Respondent (this Decision's mail date).

5. To cure the procedural deficiency resulting from the above documents not being served on Respondent, this Decision serves the Order to Satisfy or Answer, the Complaint and attachments, and the Order Setting Hearing and Notice of Hearing on Respondent.² In addition, although this Decision serves the Order Setting Hearing and Notice of Hearing for procedural completeness, the hearing date scheduled by that Order is vacated and will not take place on that date. A new hearing date is set forth below.

6. This Decision repeats the language in the Order to Satisfy or Answer (below) and modifies the deadline for Respondent to satisfy or answer that is set forth in the Order to Satisfy or Answer. Specifically, Respondent must satisfy or answer the Complaint consistent with the below requirements within 20 days of this Decision's mail date. The Commission may grant any

² The Order to Satisfy or Answer, Order Setting Hearing and Notice of Hearing, and Complaint with attachments are provided in Attachment C to this Decision.

relief it deems appropriate if the Complaint is not satisfied or answered by that deadline, consistent with the below requirements.

7. Consistent with the above discussion, Respondent is notified that:

- *A formal Complaint has been filed against you in the above entitled and captioned case.*
- *You are ordered to satisfy the matters in the complaint or to answer the complaint in writing within 20 days from service upon you of this order and copy of the attached complaint. The date of service upon you is this Decision's mail date.*
- *If the complaint is satisfied and adequate evidence of satisfaction is presented to the Commission, the complaint shall be dismissed.*
- *If the Complaint is not satisfied, or if adequate evidence of its satisfaction is not presented to the Commission, or if no answer is filed within the time required, the allegations of the Complaint may be deemed admitted, and the Commission may grant so much of the relief sought in the complaint as within its power and jurisdiction or may set the complaint for hearing. This includes granting any relief within its authority that the Commission deems appropriate.*

B. Remote Evidentiary Hearing and Unified Numbering System for Hearing Exhibits

8. Because the Order to Satisfy or Answer, the Complaint and the Order Setting Hearing and Notice of Hearing were not served upon Respondent on July 24, 2023 as anticipated, the ALJ finds the October 3, 2023 hearing date must be modified to provide additional time for Respondent to satisfy or answer the Complaint, and for the parties to prepare for an evidentiary hearing, assuming one is necessary. As such, this Decision vacates the October 3, 2023 hearing, and reschedules it for October 17, 2023 (as ordered below).

9. The evidentiary hearing will be conducted by videoconference using the Zoom web-based platform. Holding the hearing remotely enables the hearing to be rescheduled without significant delay and without inconvenience to the parties. The procedures developed for the

remote evidentiary hearing are intended to replicate, as practicable, evidence presentation as it occurs when parties and witnesses are present in the hearing room. For example, participating by videoconference allows parties and witnesses to view exhibits on the video-conference screen while the exhibits are being offered into evidence and witnesses testify about them.

10. This Decision and Attachments A and B provide important information and instructions to facilitate holding the remote hearing, which all parties must follow. Attachment A to this Decision provides information about the Zoom platform and how to use Zoom to participate in the remote hearing. Attachment B outlines requirements to allow the parties to present electronic evidence, which are critical to ensuring the parties are able to present and view electronic evidence during the video conference hearing. For these reasons, it is **extremely important** that the parties carefully review and follow all requirements in Attachments A and B, as well as those in this Decision (below).

11. To minimize the potential that the remote hearing may be disrupted by non-participants, the link and meeting ID, or access code, to attend the hearing will be provided to the parties by email approximately one week before the hearing, and the parties and witnesses will be prohibited from distributing that information to anyone not participating in the hearing. The parties must ensure that they have provided the Commission with a current and valid email address at which this important information can be sent.

12. At the hearing, the parties may call witnesses, present evidence, and make arguments in support of their position. Evidence includes documentary exhibits, testimony, and other tangible items that a party wishes the ALJ to consider in reaching a decision as to the allegations in this Proceeding. Given that the hearing will accommodate remote participation by video conference, exhibits must be presented electronically. The parties are responsible for

preparing the exhibits consistent with the requirements in this Decision and Attachment B so they may be presented electronically during the hearing.

13. The Public Utilities Commission Administrative Hearings Section uses box.com to receive and manage exhibits that are first presented in this type of remote evidentiary hearing.³ As such, it is essential that the parties ensure they are able to access and use box.com prior to and during the evidentiary hearing. To this end, the parties will be provided box.com links and instructions to: (a) upload exhibits for use during the hearing; and (b) download exhibits once they are presented during the hearing.

14. Each party must: (a) pre-mark all hearing exhibits with a hearing exhibit number within their assigned number block before uploading the exhibits to the party's designated box.com folder; (b) sequentially page-number each page of exhibits longer than two pages, with the first page number as "page 1" regardless of content, *before* uploading the exhibits to the party's designated box.com folder; and (c) upload all pre-marked exhibits into each party's respective designated box.com folder prior to presenting them during the hearing.

15. In order to efficiently organize the numbering and preparation of exhibits for the hearing, the parties must use a unified numbering system for all hearing exhibits. Blocks of hearing exhibit numbers are assigned as follows: Complainant Rashaina Maker (Complainant) filed a Formal Complaint (Complaint) against Bugs Towing, LLC (Respondent).

- Complainant Rashaina Maker is assigned hearing exhibit numbers 100 to 199; and
- Respondent Bugs Towing LLC is assigned hearing exhibit numbers 200 to 299.

³ Box.com is a web-based document sharing service. When exhibits are first presented during the hearing, the Commission will receive them electronically from each party's box.com folder for display.

C. Respondent Must Be Represented by an Attorney or Establish that It Is Entitled to Be Represented by a Non-Attorney

16. Respondent is advised and on notice that generally, parties appearing before the Commission must be represented by an attorney authorized to practice law in Colorado.⁴ However, an individual may appear without an attorney on behalf of a company after establishing it is eligible to do so.⁵ For a formally organized corporation like Respondent to be represented by a non-attorney, all the below conditions must be met:

- The company must not have more than three owners;
- The amount in controversy must not exceed \$15,000; and
- The non-attorney individual seeking to represent the company must provide the Commission with satisfactory evidence demonstrating his or her authority to represent the company in the proceeding.⁶

17. It is presumed that a corporation's officers, a partnership's partners, a limited partnership's members, and persons authorized to manage a limited liability company have authority to represent the company in the proceeding.⁷ A written resolution from a company specifically authorizing the individual to represent the company's interests in the proceeding may also be relied upon as evidence of the individual's authority to represent the company.⁸

18. Should Respondent wish to be represented by a non-attorney in this Proceeding, it must submit a filing by September 12, 2023 establishing that it meets the above requirements. In addition, the filing must identify the non-attorney who Respondent seeks to represent it and

⁴ Rule 1201(a) of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1.

⁵ § 13-1-127, C.R.S.; Rule 1201(b)(II), 4 CCR 723-1. Another exception is that an individual is permitted to represent his or her interests in a Commission proceeding without an attorney. This applies to the Complainant here. Rule 1201(b)(I), 4 CCR 723-1.

⁶ § 13-1-127(2) and (2.3)(c), C.R.S.; Rule 1201(b)(II), 4 CCR 723-1.

⁷ § 13-1-127(2) and (2.3)(c), C.R.S.

⁸ § 13-1-127(3). C.R.S.

provide evidence demonstrating his or her authority to represent Respondent. If Respondent does not qualify to be represented by a non-attorney, or otherwise fails to make the filing establishing that it is entitled to be represented by a non-attorney by the stated deadline, Respondent must have a licensed attorney in the state of Colorado enter an appearance on its behalf on this Proceeding by September 12, 2023.

19. If Respondent fails to have an attorney enter an appearance on its behalf or fails to make a filing consistent with the above requirements that establishes it is entitled to be represented by a non-attorney by the above deadline, Respondent's filings in this Proceeding may be disregarded, and a decision granting Complainant all the relief sought may be entered.

20. *Respondent is advised and on notice* that the ALJ will not entertain a motion to continue the scheduled hearing based on Respondent's unreasonable delay to have counsel enter an appearance or make a filing establishing that it may be represented by a non-attorney.

D. Additional Procedural Notices and Advisements

21. The parties are on notice that the ALJ retains the discretion to change the method by which the hearing will be conducted and that additional procedural requirements may be addressed in future Decisions.

22. The parties are advised that this proceeding is governed by the Rules of Practice and Procedure found at 4 CCR 723-1. The ALJ expects the parties to comply with these rules. The rules are available on the Commission's website (<https://puc.colorado.gov/pucrules>) and in hard copy from the Commission.

23. Each party is specifically advised that all filings they make in this Proceeding *must be served* upon all other parties in accordance with Rule 1205 of the Rules of Practice and Procedure, 4 CCR 723-1.

24. The parties are encouraged to register to use the Commission's free E-Filing system, accessible at: <https://www.dora.state.co.us/pls/efi/EFI.homepage>. Registering for the E-Filing system allows parties to make filings and be served with filings (including Decisions) in this Proceeding electronically through the E-Filing system, which allows parties to receive notice of filings and orders soon after they are filed.

25. The parties are advised and on notice that failing to appear at the scheduled evidentiary hearing may result in the Commission granting the complete relief requested by the appearing opposing party, including granting all relief sought in the Complaint or such relief as the Commission deems appropriate, or dismissing the Complaint without prejudice.

E. Informal Video-Conference Practice Session

26. If any party so requests, an informal practice video-conference session will be scheduled to give the parties an additional opportunity to practice using Zoom and box.com before the hearing.

27. The parties may contact Commission Legal Assistants by email at casey.federico@state.co.us or stephanie.kunkel@state.co.us to schedule an informal practice video-conference session.

28. The parties will receive information and a link to participate in the informal practice session by email.

III. ORDER**A. It Is Ordered That:**

1. All procedural deadlines dependent upon the date of service of the Complaint, the Order to Satisfy or Answer, and the Notice and Order Setting Hearing, are modified consistent with the above discussion, and as set forth below.

2. Respondent, Bugs Towing LLC, (Respondent) must Satisfy or Answer the attached Complaint consistent with ¶¶ 6-7 above and with the Order to Satisfy or Answer within 20 days of the mail date of this Decision. The Order to Satisfy or Answer and the Complaint (with attachments) are included with this Decision as Attachment C, and are served on Respondent with this Decision, on this Decision's mail date.

3. If Respondent fails to comply with the above-referenced requirements to satisfy or answer the Complaint, the Complaint will be deemed admitted and the Commission may grant the Complainant relief within its power and jurisdiction.

4. On or by the close of business on September 12, 2023, Respondent must either: (a) make a filing with the Commission establishing that it is entitled to be represented by a non-attorney consistent with the requirements outlined in ¶¶ 16-18 above; or (b) have a licensed attorney enter an appearance on its behalf.

5. The evidentiary hearing scheduled by the Notice Setting Hearing and Notice of Hearing for October 3, 2023 is vacated. No hearing will take place on that date.

6. A remote evidentiary hearing on the above-captioned Complaint is scheduled as set forth below:

DATE: October 17, 2023
TIME: 9:00 a.m.
PLACE: By video-conference using Zoom.

7. The evidentiary hearing will be held remotely via Zoom.⁹ No one should appear in-person for the evidentiary hearing.

8. The parties and witnesses in the evidentiary hearing may not distribute the Zoom link and access code to anyone not participating in the remote evidentiary hearing.

9. All participants in the hearing must comply with the requirements in Attachments A and B to this Decision, which are incorporated herein.

10. **Video-Conference Participation.** Counsel for the parties, the parties, and witnesses, as applicable, are expected to attend the evidentiary hearing by videoconference using the Zoom platform.

11. **Evidence Presentation at the Evidentiary Hearing.** Because the participation in the evidentiary hearing will be via videoconference, all evidence must be presented electronically. Each party is responsible for ensuring that they and their respective witnesses: (a) have access to all exhibits that will be presented electronically during the hearing; and (b) can download and view documents available from box.com during the hearing.¹⁰ The parties must also comply with all procedural requirements relating to the evidentiary presentation outlined in this Decision.

⁹ Instructions for using Zoom platform are provided in Attachment A to this Decision.

¹⁰ Instructions for using Box.com platform are provided in Attachment B to this Decision.

12. In addition, the parties must comply with Attachments A and B to this Decision, which are incorporated as if fully set forth.

13. An informal Zoom practice session will be held upon request.

14. The parties must comply with the requirements established in this Decision and must make the filings as required by the adopted procedural schedule.

15. This Decision is effective immediately.

(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 "Rebecca E. White".

Rebecca E. White,
Director