Decision No. R23-0766

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23C-0497-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 4 CCR 723-6-6008 OF THE RULES REGULATING TRANSPORTATION BY MOTOR VEHICLE.

RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
AVIV SEGEV
REVOKING AUTHORITIES AND PERMITS

Mailed Date: November 22, 2023

TABLE OF CONTENTS

I. STATEMENT AND SUMMARY

1. This Recommended Decision grants the relief sought in the Public Utilities Commission Staff's (Commission Staff or Staff) Complaints against the motor-carrier Respondents listed in Appendix A to this Recommended Decision, revoking Respondents' authorities and permits based on their failure to keep currently effective proof of financial responsibility on file with the Public Utilities Commission (Commission or PUC). This Recommended Decision also provides avenues for Respondents listed in Appendix A to avoid revocation by taking action before this Recommended Decision becomes effective and dismisses the Complaints against three Respondents.

II. BACKGROUND, FINDINGS, LAW, ANALYSIS, AND CONCLUSIONS

A. Background

2. On October 6, 2023, Commission Staff instituted the cases in this proceeding by "Order of Summary Suspension and Complaint and Notice of Hearing" (Complaints) against the motor carrier-Respondents[1] in this proceeding.[2]

3. The Complaints against each of the Respondents allege that the Commission received notice from the Respondents' insurance or surety carriers that the Respondents' insurance or surety coverage will be cancelled as specifically identified in each Complaint.[3] The Complaints further notify Respondents that their authorities or permits have been, or will be, summarily suspended on the date specified in each Complaint, and informs Respondents that a hearing will

[1] This proceeding involves numerous Respondents against whom the Commission initiated Complaints by sending each Respondent an "Order of Summary Suspension and Complaint and Notice of Hearing." Hearing Exhibit 2. Each of the Complaints is assigned a unique "Case No.," and specifies the unique grounds that provide the basis for each Complaint. Each of the "Case No." indicated in the Complaints is part of this single proceeding.

[2] Hearing Exhibit 2.

[3] *Id.*

be held by video-conference on October 25, 2023, at 11:00 a.m. to determine whether their authorities or permits should be permanently revoked for failing to maintain proper evidence of insurance or surety coverage with the Commission.[4]

4. On October 24, 2023, Staff filed Hearing Exhibits 1 through 5 and served the same on Respondents by e-mail.[5]

5. On October 25, 2023, at approximately 11:00 a.m., the Administrative Law Judge (ALJ) held the hearing, as noticed in the Complaints. Staff appeared with counsel. Mr. Fahrettin Merakli appeared on behalf of Black Olive Vip Limo LLC (Black Olive). Skyler Nielsen appeared on behalf of Experience Guide LLC (Experience Guide). Robel Ataya appeared on behalf of ON TIME DENVER LIMO LLC (Denver Limo). No other Respondent appeared.

6. During the hearing, Ms. Marquita Riley testified on behalf of Staff and Hearing Exhibits 1-5, 200-202, 300, and 400 were admitted into evidence during the hearing.

B. Factual Findings

7. Ms. Riley is responsible for reviewing Commission records and coordinating with other Commission Staff to commence proceedings against motor carriers to suspend and revoke their permits and authorities when they do not have effective proof of insurance or surety coverage on file with the Commission. Ms. Riley assisted with initiating this proceeding against Respondents because the Commission received notice from each of the Respondents' insurance or surety carriers of the imminent cancellation of their insurance or surety coverage.[6]

[4] Hearing Exhibits 2-3.

[5] *See* Notice Concerning the Service of Exhibits 1 through 5 for the October 25, 2023 Show Cause Hearing on Respondents (Notice), filed on October 24, 2023.

[6] Hearing Exhibits 1-3.

8. Ms. Riley testified that the Commission served the Complaints and Attachment A to the Complaints upon the Respondents by United States mail on October 6, 2023, at the addresses, and upon the persons identified as designated agents for the Respondents, as provided in the Commission's files.[7]

9. Respondents provided the Commission the addresses and identities of their designated agents that were used to serve the Complaints in this proceeding. The Certificate of Service for the Complaints demonstrates that the Commission served the Respondents by mailing the Complaints addressed as indicated in the "Hearing Cycle Listing."[8] The "Hearing Cycle Listing." is Hearing Exhibit 1.[9] Hearing Exhibit 1 includes the transportation carriers listed in Hearing Exhibit 5, the transportation carriers' designated agents and addresses on file with the Commission as of October 6, 2023, and an indication that the transportation carriers' insurance or surety faced imminent termination.[10]

10. On October 24, 2023, Ms. Riley searched Commission records to determine whether any Respondents took other action rendering it unnecessary to revoke their permits, such as coming into compliance with their financial responsibility obligations, cancelling their permits, or initiating a Commission proceeding which may impact this proceeding (*e.g.,* application seeking to suspend a permit). She identified Respondents who came into compliance with their financial responsibility obligations or took other action rendering it unnecessary to revoke their permits after the Complaints were mailed. She created an updated list of Respondents who remained out of

[7] Hearing Exhibits 1-4.
[8] Hearing Exhibit 4.
[9] *See* Hearing Exhibits 1 and 4.
[10] *See also* Hearing Exhibit 2.

compliance with the Commission's financial responsibility requirements as of October 24, 2023. That list is Hearing Exhibit 5.[11]

11. Ms. Riley testified that on October 24, 2023, Hearing Exhibits 1 through 5 were served on Respondents who remained out of compliance as of that date at their e-mail addresses on file with the Commission.[12] Ms. Riley explained that the Respondents had previously provided their e-mail addresses to the Commission.

12. On the day of the hearing, October 25, 2023, Ms. Riley, again, reviewed Commission records to determine if any of the Respondents listed in Hearing Exhibit 5 took action to come into compliance with respect to their financial responsibility obligations. Ms. Riley learned that none of the Respondents in this Proceeding came into compliance with respect to their financial responsibility obligations since the time Ms. Riley last checked the Commission's records.

13. Ms. Riley asked that the permits and authorities of the Respondents listed in Hearing Exhibit 5 be revoked for failing to meet their financial responsibility obligations.

14. Black Olive owns PUC No. LL-03720.[13] The Complaint against Black Olive alleges that it failed to ensure that proof of active Liability coverage (Commission Form E) is on file with the Commission in the form and manner required.[14] Mr. Merakli testified that he had recently moved and attempted to obtain insurance coverage for

[11] In contrast, Hearing Exhibit 1 is the list of carriers who were non-compliant when the Commission issued the Complaints on October 6, 2023. As the difference in the number of carriers listed in Hearing Exhibits 1 and 5 makes evident, several carriers came into compliance since the Commission issued the Complaints and, as a result, the Complaints against them were withdrawn by Staff prior to the commencement of the hearing on October 25, 2023. All the carriers listed in Hearing Exhibit 5 are listed in Hearing Exhibit 1.

[12] *See* Notice.

[13] Hearing Exhibit 2 at 5.

[14] *Id.*

Black Olive. Upon such attempt, Mr. Merakli was notified by the insurance company that the address submitted to the insurance company did not match with Black Olive's address and the insurance company could therefore not file Form E with the Commission on Black Olive's behalf.[15] Mr. Merakli testified that he then updated Black Olive's address with the Secretary of State, but, at that time, did not know that he needed to update Black Olive's address with the Commission.[16] Mr. Merakli testified that he mailed the change of address form for Black Olive to the Commission on October 24, 2023.[17]

15. Experience Guide owns PUC No. LL-03603.[18] The Complaint against Experience Guide alleges that it failed to ensure that proof of active Liability coverage (Commission Form E) is on file with the Commission in the form and manner required.[19] Mr. Nielsen testified that Experience Guide had sold off its only operating shuttle van on August 29, 2023, and is anticipating that Experience Guide would acquire a new shuttle van within 60 days. Mr. Nielsen testified that upon being made aware of this Proceeding, Mr. Nielsen called the Commission and was made aware that Experience Guide would need to file a Permit Cancellation form with the Commission, because Experience Guide was not seeking to operate at this time. Mr. Nielsen testified that he filed the Permit Cancellation form with the Commission on October 25, 2023.[20]

16. Denver Limo owns PUC No. LL-03912.[21] The Complaint against Denver Limo alleges that it failed to ensure that proof of active Liability coverage (Commission Form E) is on

[15] *See* Hearing Exhibit 200.
[16] *See* Hearing Exhibit 202.
[17] *See* Hearing Exhibit 200.
[18] Hearing Exhibit 2 at 6.
[19] *Id.*
[20] *See* Hearing Exhibit 300.
[21] Hearing Exhibit 2 at 16.

file with the Commission in the form and manner required.[22] Mr. Araya testified that Denver Limo's insurance coverage is active until November 3, 2023[23] and that he did not receive a notice of the Proceeding until October 24, 2023, because Mr. Araya had recently moved. Mr. Araya further testified that he was aware that Denver Limo's insurer had not filled out and sent to the Commission proof of Mr. Araya's insurance.

C. Applicable Law.

1. Financial Responsibility Requirements and the Commission's Authority to Revoke Permits and Authorities.

17. Generally, motor carriers holding a Commission permit, authority, or certificate must maintain and file evidence of financial responsibility with the Commission in such sum, for such protection, and in such form as the Commission deems necessary to adequately safeguard the public interest.[24] Motor carriers must ensure their insurance or surety coverage is kept continuously effective during the life of a certificate or permit to operate.[25] Commission Rule 6008, 4 CCR 723-6, identifies the amount, type of protection, and form for the insurance or surety coverage that motor carriers must maintain at all times in order to safeguard the public interest.

18. Specifically, motor carriers must obtain and keep motor vehicle liability insurance or surety bond coverage in force at all times.[26] In addition to motor vehicle liability coverage, towing carriers and household goods movers must maintain and keep cargo liability insurance or surety bond coverage in force at all times.[27] Towing carriers must obtain and keep workers'

---

[22] *Id*.
[23] See Hearing Exhibit 400.
[24] § 40-10.1-107(1), C.R.S. (2021); Rule 6008 of the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6.
[25] § 40-10.1-107(3), C.R.S.
[26] Rule 6008(a)(I), 4 CCR 723-6.
[27] Rule 6008(a)(I) and (III), 4 CCR 723-6.

compensation insurance in force at all times; and towing carriers providing storage must obtain and keep garage keepers' liability insurance in force at all times.[28] And, in addition to motor vehicle liability and cargo liability coverage, household goods movers must obtain and keep general liability insurance or surety coverage in force at all times.[29]

19. Motor carriers are responsible for maintaining and filing evidence of the required financial responsibility coverage with the Commission.[30] They must ensure their insurance or surety coverage is kept continuously effective during the life of a certificate or permit to operate.[31] Insurers and sureties must notify the policy or bond holder *and* the Commission when terminating a policy or bond at least 30 days before the effective date of termination; failing that, termination is not valid.[32] As a result, the Commission regularly receives notice from insurance or surety carriers about imminent policy or bond terminations for motor carriers licensed by the Commission.[33]

20. Notice of cancellation from a motor carrier's insurance or surety carrier is evidence that the motor carrier no longer has proof of financial responsibility on file with the Commission.[34] Failure to have proof of current and effective insurance or surety coverage on file with the Commission creates a rebuttable presumption that the carrier is in violation of the financial responsibility requirements.[35]

[28] Rule 6008(a)(IV) and (V), 4 CCR 723-6.
[29] Rule 6008(a)(VI), 4 CCR 723-6.
[30] § 40-10.1-107(1), C.R.S., and Rule 6008(a), 4 CCR 723-6.
[31] § 40-10.1-107(3), C.R.S.
[32] § 40-10.1-107(4), C.R.S.
[33] *Id*.
[34] Rule 6008(e), 4 CCR 723-6.
[35] *Id*.

21. Section 40-10.1-112(1)(a) and (c), C.R.S., provides that a Commission-issued authority or permit may be suspended, revoked, altered, or amended if it is established to the satisfaction of the Commission at a properly-noticed hearing that the holder of that authority or permit has violated Article 10.1, Title 40 of the Colorado Revised Statutes, or any applicable Commission rule. Rules 6009 and 6011, 4 CCR 723-6, also provide the Commission authority to revoke a permit or authority in the circumstances here.

2. Notice and Service Requirements

22. The Commission must provide Respondents with notice of the Complaints against them, including sufficient facts to adequately advise Respondents of the relief sought and how they are alleged to have violated the law, as well as the time affixed for a hearing on the Complaints.[36] Such notice must be served upon the Respondents, which may be accomplished by mail.[37]

23. Regulated motor carriers must provide the Commission "its designation of the name, mailing address, and physical address of a Person upon whom service may be made of any lawful notice, order, process, or demand."[38] That person is the motor carrier's designated agent upon whom the Commission may serve complaints and other notices.[39] And, regulated motor carriers are responsible for updating the Commission on changes to their designated agent, including the agent's mailing and email addresses, within two days of the change.[40] Service on a motor carrier's designated agent on file with the Commission is service upon the carrier and is

[36] §§ 40-10.1-112(1) and 40-6-108, C.R.S.; Rule 1302(h), 4 CCR 723-1, of the Commission's Rules of Practice and Procedure; *see also* § 24-4-105(2), C.R.S.

[37] § 40-6-108(3), C.R.S.; Rule 1205(a) and (d), 4 CCR 723-1; *see also* § 24-4-104(10), C.R.S.

[38] Rule 6006(a), 4 CCR 723-6.

[39] *Id.*; Rule 1205(a) and (d), 4 CCR 723-1.

[40] Rule 6006(b), 4 CCR 723-6.

"prima facie evidence" that the carrier received notice.[41] A certificate of service issued by the Commission's Director is *prima facie* evidence that service has been obtained.[42]

24. In addition, Commission Rule 1205(a), 4 CCR 723-1, requires that a person filing any pleading or other document with the Commission must serve all other parties; the same rule allows parties to serve pleadings and documents by e-mail.

3. Burden of Proof

25. Staff carries the burden of proof by a preponderance of the evidence to demonstrate that the allegations in the Complaints are true and that the Complaints were properly served on each of the Respondents.[43] The preponderance standard requires the fact finder to determine whether the existence of a contested fact is more probable than its non-existence.[44] A party has met this burden of proof when the evidence, on the whole, tips in favor of that party.[45]

D. Findings, Analysis, and Conclusions

26. The ALJ concludes that Staff demonstrated by a preponderance of the evidence that it properly served the Complaints and Attachment A thereto upon each of the Respondents listed in Hearing Exhibit 5 by mailing them to the designated agents and addresses on file with the Commission for each of the Respondents.[46]

27. The ALJ finds that the Complaints and Attachment A thereto comply with the relevant notice requirements because they: (a) inform Respondents that the Commission has

[41] Rule 6006(c) and (d), 4 CCR 723-6.
[42] § 40-6-108(3), C.R.S.
[43] § 24-4-105(7), C.R.S.; Rule 1500, 4 CCR 723-1.
[44] *Swain v. Colorado Dep't of Revenue*, 717 P.2d 507, 508 (Colo. App. 1985).
[45] *Schocke v. State Dep't of Revenue*, 719 P.2d 361, 363 (Colo. App. 1986).
[46] Hearing Exhibits 1 through 5; § 40-6-108(3), C.R.S.; Rules 1205(a) and (d) and 1302(g)(II)(e), 4 CCR 723-1; and Rule 6006(a) and (c), 4 CCR 723-6.

received insurance or surety cancellation notices for each Respondent and the effective date of such cancellation; (b) advise Respondents that their authorities or permits are summarily suspended as of the coverage cancellation date; (c) notify Respondents that they may not conduct operations under their authorities or permits after the coverage cancellation and summary suspension date; (d) inform Respondents that the Commission has initiated a proceeding to permanently revoke their permits or authorities for failing to maintain and provide proof of effective insurance or surety coverage; (e) notify Respondents of the date, time, and means to attend the remote hearing on the Complaints at which Respondents have an opportunity to present data, views, and arguments; and (f) advise Respondents of the legal authority for the Complaints and relief sought.[47]

28. In addition, the ALJ concludes that on October 24, 2023, Staff served Hearing Exhibits 1 to 5 on Respondents listed in Hearing Exhibit 5 at the e-mail addresses which Respondents provided. As such, Respondents had the opportunity to review those exhibits before and during the hearing.[48] The ALJ finds that Staff established by a preponderance of the evidence that the Commission received notice from the insurance or surety providers for the motor carriers identified in Hearing Exhibit 5 that their insurance or surety coverage was or will be cancelled or terminated.[49] This creates the rebuttable presumption that the Respondent carriers listed in Hearing Exhibit 5 are in violation of their respective financial responsibility requirements.[50]

29. The preponderance of the evidence established that the Respondents listed in Hearing Exhibit 5, including Black Olive, Experience Guide, and Denver Limo, are out of

[47] Hearing Exhibits 1, 2, and 4; Rule 6009(e), 4 CCR 723-6; *see* §§ 40-6-108 and 24-4-105(2), C.R.S.
[48] *See* Rule 1205(a), 4 CCR 723-1; *see* Notice and Exhibit A to Notice; Hearing Exhibit 5. Exhibits were displayed on the video-conference screen during the hearing and were available to download during the hearing.
[49] Hearing Exhibit 2.
[50] Rule 6008(e), 4 CCR 723-6.

compliance with their respective financial responsibility requirements per § 40-10.1-107(3), C.R.S., and Rule 6008, 4 CCR 723-6 as of the time of the hearing. 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 in such form and in such manner as required by § 40-10.1-107, C.R.S., and Rule 6008, 4 CCR 723-6, as noted in the Complaints against each Respondent listed in Hearing Exhibit 5. Finally, the ALJ concludes that Staff met its burden of proof to show by a preponderance of the evidence that the allegations in the Complaints against Respondents listed in Hearing Exhibit 5[51] are true.

30. Indeed, the Commission's only means of performing its important duty to the public to ensure that persons who hold an active motor carrier authority meet their financial responsibility obligations is to require documentation of the carriers' current and effective insurance or surety furnished in a uniform format to the Commission. The holder of the authority is responsible for ensuring that documentation is provided to the Commission. § 40-10.1-107, C.R.S., and Rule 6008, 4 CCR 723-6. The Respondents listed in Hearing Exhibit 5 have failed to do so. This failure warrants revocation of their permits or authorities.

31. Respondents may take action before the effective date of this Decision to avoid revocation. First, carriers may avoid revocation by: (a) obtaining insurance or surety coverage as required by Rule 6008, 4 CCR 723-6; and (b) causing proof of that insurance to be filed with the Commission in the form and manner required by Rule 6008, 4 CCR 723-6. The Complaints against carriers who take this action before the effective date of this Decision will be dismissed, and their

[51] Hearing Exhibit 5 is attached to this Recommended Decision as Appendix A.

permits will not be revoked. In addition, limited regulation carriers,[52] luxury limousine carriers, household goods movers, towing carriers, and hazardous materials carriers who submit a form to cancel their permits or authorities before the effective date of this Decision may avoid revocation of their permits. The Complaints against carriers who take this action before the effective date of this Decision will be dismissed, and their permits will not be revoked. Permit cancellation forms are available on the Commission's website at: https://drive.google.com/file/d/0B3u7jb_duOQ2QWlrMFlvUDJoNjQ/view

32. Fully regulated intrastate carriers, including common carriers operating a shuttle service, sightseeing service, charter service, taxicab service, and contract carriers who submit an application to suspend their authority under Rule 6205, 4 CCR 723-6, before the effective date of this Recommended Decision, may also avoid revocation of their permits. The Complaints against carriers who take this action before the effective date of this Decision will be dismissed, and their permits will not be revoked. Applications to suspend a common carrier authority are available at: https://drive.google.com/file/d/0B3u7jb_duOQ2dXZ0UTNlXzBvRlU/view.

And applications to suspend a contract carrier authority are available at:

https://drive.google.com/file/d/0B3u7jb_duOQ2U2JQS2dvek5HWm8/view.

33. Having a permit revoked, cancelled, or suspended does not always mean that a carrier's business is permanently terminated. Generally, Commission rules allow many types of motor carriers, including luxury limousine, household goods movers, and towing carriers, to obtain new permits without difficulty by filing an application.[53] For the most part, such permits may be

[52] Limited regulation carriers are defined as carriers who provide transportation service by charter bus, children's activity bus, fire crew transport, luxury limousine, Medicaid client transport, or off-road scenic charter. Rule 6001(qq), 4 CCR 723-6.

[53] While the ALJ does not warrant or otherwise guarantee this outcome, it is her understanding that carriers may request that a prior permit number be reinstated as part of the carrier's application for a permit.

obtained by completing an application that can be submitted to the Commission online, providing related supporting information and proof of financial responsibility, and paying a fee.[54]

34. Applications for luxury limousine, towing, or household goods mover permits are available at the following link: https://doraapps.state.co.us/puc/TransportationApplications/. Referenced carrier types who voluntarily cancel their permits or whose permits are revoked may reapply for a permit.

35. As provided below, this Recommended Decision will not become effective for 20 days after the date the Decision is mailed. This allows ample time for Respondents to take action to avoid a final Commission decision revoking their permits or authorities.

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

III. ORDER

A. The Commission Orders That:

1. The authorities and permits listed in Appendix A, attached hereto, are revoked as of the effective date of this Recommended Decision.

[54] Rule 6302 (luxury limousine application and permit); Rule 6503 (towing carrier application and permit); and Rule 6603 (household goods mover carrier application and permit). Carriers concerned about their ability to comply with application requirements may request that the Commission waive an application requirement, per Rule 1003(a), 4 CCR 723-1. That rule allows parties to request a waiver of a Commission rule; in deciding whether to waive a rule, the Commission may consider hardship, equity, or more effective implementation of a rule on an individual basis. 4 CCR 723-1. Such requests are decided on an individual and case-by-case basis and are outside the scope of this proceeding. *See* Rule 1003(a), 4 CCR 723-1.

2. Paragraph No. 1 of this Order section of this Recommended Decision will be void and the Complaint dismissed as to any Respondent who takes one of the following actions before the effective date of this Recommended Decision:

a. files the required Certificate of Insurance or surety with the Commission;

b. files an Application to Suspend their permit or authority with the Commission, if allowed by Commission rules; or

c. submits a permit cancellation form to the Commission, if allowed by Commission rules.

3. Proceeding No. 23C-0497-INS 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 will 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, this Recommended Decision will 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 Recommended Decision are filed, they may not exceed 30 pages in length, unless the Commission finds good cause and permits this limit to be exceeded.

(S E A L)

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

AVIV SEGEV

Administrative Law Judge

ATTEST: A TRUE COPY

Rebecca E. White,
Director