

Decision No. R24-0072

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23G-0480TO

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

SERGIO CORNEJO DOING BUSINESS AS MNS TOWING LLC,

RESPONDENT.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
G. HARRIS ADAMS
ASSESSING CIVIL PENALTY; ORDERING REFUND;
AND CLOSING PROCEEDING**

Mailed Date: January 31, 2024

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I. STATEMENT

1. This Proceeding concerns Civil Penalty Assessment Notice (CPAN) or Notice of Compliance to Appear No. 135384 (CPAN No. 135384) issued by Trial Staff of the Public Utilities Commission (Staff) on September 22, 2023, to Sergio Cornejo, doing business as MNS Towing

LLC (MNS or Respondent). The CPAN assesses MNS a total penalty of \$4,111.25 for a total of seven violations of Rules 6007(b), 6509(a), 6512(c) of the Rules Regulating Transportation by Motor Vehicle 4 *Code of Colorado Regulations* 723-6, and §§ 40-10.1-401(1)(a), 40-10.1-405(2)(a)(I), 40-10.1-405(2)(a)(II), 40-10.1-405(3)(a), C.R.S. The nature of the violations is listed in the CPAN as follows:

- (1) Motor Carrier failed to maintain all records required by PUC rules, either in original format or electronic format, or as ordered by the Commission, for three years. (Not provided by carrier).
 - (2) Tow carrier failed to complete tow record/invoice for a nonconsensual tow. (Not provided by the carrier).
 - (3) Failure of the towing carrier holding a motor vehicle in storage to make notifications required by statute (Not provided by carrier).
 - (4) Operating and/or offering to operate as a Towing Carrier in intrastate commerce without first having obtained a permit. (The Respondent's permit was INACTIVE from 02/09/2023-03/22/2023).
 - (5) Towing carrier failed to take required photographs of vehicle condition, prior to connecting to the vehicle (Not provided by the carrier).
 - (6) Towing carrier failed to take required photographs of the reason for the vehicle being towed, prior to connecting the vehicle (Not provided by carrier).
 - (7) Failure to have proper authorization prior to the performance of a nonconsensual tow (No tow invoice or other document to show authorization-Not provided by carrier).¹
2. On November 3, 2023, Staff timely filed Intervention as of Right in this proceeding.
 3. On November 15, 2023, the Commission referred this Proceeding to an Administrative Law Judge (ALJ) by minute entry.

¹ See Hearing Exhibit 103.

4. By Decision No. R23-0803-I, issued December 5, 2023, the undersigned ALJ acknowledged Staff's intervention, adopted procedures, and scheduled this matter for a hearing to occur on January 17, 2024, at 10:00 a.m.

5. On December 29, 2023, a Motion to Amend CPAN (Motion to Amend) was filed by Staff.

6. Staff and Respondent are the only parties to this Proceeding.

7. At the scheduled time and place, the matter was called for hearing. Staff appeared through counsel and participated in the hearing. Respondent did not appear. The ALJ found that Respondent was properly served with Decision No. R23-0803-I.

8. As a preliminary matter, the ALJ reviewed the Commission's file and found that no response to the Motion to Amend was filed by Respondent. In accordance with Rule 1400(d) of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1, the motion was found to be confessed. Based upon good cause shown, the motion was then granted. The oral ruling is memorialized by this Recommended Decision.

9. The CPAN No. 135384 was amended to correct the date of the seven violations from March 9, 2023, to March 8, 2023. Staff next requested to dismiss counts number 1 and 3 from CPAN No. 135384, and the request was granted.

10. During the course of the hearing, Hearing Exhibits 101, 101C, 102, 103, 105, and 105C were identified, offered, and admitted into evidence. Criminal Investigator Jay Estrada (Investigator Estrada) testified in support of the allegations contained in the CPAN at issue herein.

11. The undersigned ALJ has considered all arguments and evidence presented, even if such arguments and/or evidence are not specifically referenced herein, in reaching this Recommended Decision.

12. 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

13. Investigator Estrada is a Criminal Investigator in the Transportation Section of the Colorado Public Utilities Commission. Investigator Estrada's duties include investigating complaints filed with the Commission. He is familiar with Colorado statutes and Commission rules that govern towing operators.

14. Investigator Estrada conducted an investigation of MNS initiated based upon an informal complaint filed by Ms. Bonnie Huff, leading to the issuance of CPAN No. 135384.

15. At all times pertinent herein, Sergio Anthuar Cornejo Alcala (Sergio Cornejo) owned and operated MNS.²

16. Investigator Estrada reviewed Commission records, as well as documents and information that he obtained from Respondent and Ms. Huff prior to issuance of CPAN No. 135384.³

17. At all times pertinent herein, MNS' PUC Permit No. T-04287 was "INACTIVED" due to permit expiration."⁴

18. On or about March 8, 2023, at approximately 8:58 pm, MNS towed a silver 2008 Chevy Silverado bearing license plate CYJ-262 (Ms. Huff's vehicle).⁵

19. The invoice for the tow of Ms. Huff's vehicle on March 8, 2023 (Hearing Exhibit 105 or MNS' invoice), indicates that: Respondent's address and storage lot was located at

² See Hearing Exhibit 101.

³ See Hearing Exhibits 101, 102, 103, and 105.

⁴ See Hearing Exhibit 102.

⁵ See Hearing Exhibit 105.

403 N Circle Dr., Colorado Springs, Colorado, 80909; MNS' phone number was 719-217-3304; Ms. Huff's "[v]ehicle was... parked on property without permit displayed;"⁶ MNS assessed a total of \$249.98 for the tow of Ms. Huff's Vehicle, including a \$203 "Towing Charge," \$7.98 "Mileage" charge, and \$39 "Storage" charge."⁷

20. MNS' invoice did not include: an invoice number; the full name of the person who authorized the tow; a complete/legible signature of the person who authorized the tow; information for the tow driver; and information of the tow vehicle.⁸

21. Investigator Estrada requested that MNS provide photographs of Ms. Huff's vehicle in connection with the tow. Despite being requested, MNS failed to produce photographs of Ms. Huff's vehicle.

22. Respondent's address on file with the Commission, as of the time of the issuance of MNS' invoice was 2910 Gunnison Street, Colorado Springs, CO 80909.⁹

23. Respondent's storage lot address on file with the Commission, as of the date of the issuance of MNS' invoice was 403 North Circle Drive, Colorado Springs, CO 80909.¹⁰

24. Respondent's phone number on file with the Commission, as of the date of the issuance of MNS' invoice was 719-310-4589.¹¹

25. On March 9, 2023, Ms. Huff paid MNS \$249.98 for the release of her vehicle.¹²

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *See* Hearing Exhibit 101.

¹⁰ *Id.*

¹¹ *Id.*

¹² *See* Hearing Exhibit 105.

26. At the conclusion of his investigation, on September 22, 2023, Investigator Estrada issued CPAN No. 135384.¹³

27. On September 26, 2023, Respondent was served and accepted delivery of CPAN No. 135384.¹⁴

28. Staff is seeking a full pursuit of the remaining counts in CPAN No. 135384, as amended, as well as a refund for the \$249.98 tow fee paid by Ms. Huff.

III. DISCUSSION

29. Commission enforcement personnel have authority to issue CPANs under §40-7-116, C.R.S. This 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.

30. 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.”¹⁵ 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. Staff bears the burden of proof by a preponderance of the evidence.¹⁶ The preponderance standard requires the finder of fact to determine whether the existence of a contested fact is more probable than its non-existence.¹⁷ While the quantum of evidence that constitutes a preponderance cannot be

¹³ See Hearing Exhibit 103.

¹⁴ *Id.*

¹⁵ § 24-4-107(7), C.R.S.

¹⁶ See § 13-25-127(1), C.R.S. and 4 CCR 723-1-1500.

¹⁷ *Swain v. Colorado Dept. of Revenue*, 717 P.2d 507 (Colo. App. 1985).

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.

31. Section 40-7-116, C.R.S. mandates a number of procedures for the imposition of civil penalties by the Commission. Section 40-7-116(1)(a), C.R.S., states in part: “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.”¹⁸ 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.”¹⁹

32. The evidence establishes the Commission’s jurisdiction in this proceeding. CPAN No. 135384 was served upon Respondent in person and in accordance with § 40-7-116, C.R.S.

¹⁸ § 40-7-116, C.R.S.

¹⁹ § 40-7-116, C.R.S.

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

34. Towing carriers shall use and complete all applicable portions of a tow record/invoice form for all nonconsensual tows, whether the motor vehicle is removed from private property or retrieved before removal (commonly known as a drop).²⁰ In the case at hand, Respondent's invoice failed to include an invoice number, the full name of the person who authorized the tow, a complete/legible signature of the person who authorized the tow, information for the tow driver, and information of the tow vehicle.²¹

35. 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.²² In the case at hand, Respondent's PUC permit had been inactive due to permit expiration from the period of February 9, 2023, through March 22, 2023.²³ However, the evidence also shows conducted operations.

36. Before connecting to a nonconsensually towed vehicle, towing carriers must document vehicle's condition and the reason for tow by: taking at least four photographs of the vehicle, with at least one photograph taken from the front, one photograph taken from the rear, one photograph taken from the driver's side, and one photograph taken from the passenger's side; and taking a photograph that shows the reason for the vehicle being towed without consent.²⁴ In the case at hand, Respondent failed to provide any photographs taken.

²⁰ 4 CCR 723-6-6509(a).

²¹ See Hearing Exhibit 105.

²² § 40-10.1-401(1)(a), C.R.S.

²³ See Hearing Exhibit 102.

²⁴ §§ 40-10.1-405(2)(a)(I), 40-10.1-405(2)(a)(II), C.R.S.

37. Towing carriers shall not nonconsensually tow a vehicle from private property without proper authorization.²⁵ In the case at hand, Respondent failed to list the full name and signature of the party who authorized the vehicle tow on the tow invoice.²⁶

38. 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.

39. 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.

²⁵ § 40-10.1-405(3)(a), C.R.S.

²⁶ See Hearing Exhibit 105.

40. Despite being aware of Commission rules, Respondent engaged in conduct in violation of Commission rules. Respondent further failed to appear to address the allegations against him and provided no evidence in mitigation.

41. Based on the evidence presented and findings of fact, the ALJ finds 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.

42. A civil penalty of \$275.00, plus any applicable statutory surcharges (currently 15 percent, totaling \$316.25), will be assessed for the proven violation in Counts 2 of CPAN No. 135384.

43. A civil penalty of \$1,100.00, plus any applicable statutory surcharges (currently 15 percent, totaling \$1,265.00), will be assessed for the proven violation in Count 4 of CPAN No. 135384.

44. A civil penalty of \$275.00, plus any applicable statutory surcharges (currently 15 percent, totaling \$316.25), will be assessed for the proven violation in Count 5 of CPAN No. 135384.

45. A civil penalty of \$275.00, plus any applicable statutory surcharges (currently 15 percent, totaling \$316.25), will be assessed for the proven violation in Count 6 of CPAN No. 135384.

46. A civil penalty of \$275.00, plus any applicable statutory surcharges (currently 15 percent, totaling \$316.25), will be assessed for the proven violation of Count 7 of CPAN No. 135384.

47. Staff further requests that the Commission order Respondent to refund Ms. Huff's tow charge payment of \$249.98. Such relief is consistent with Rule 6511(g) of the Rules Regulating Transportation by Motor Vehicle 2 CCR 723-6, and will be granted, as ordered below.

48. 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. The Motion to Amend CPAN filed by Staff of the Public Utilities Commission on December 29, 2023, is granted.

2. Counts 1 and 3 of CPAN No. 135384 are dismissed.

3. Mr. Sergio Cornejo, doing business as MNS Towing LLC (MNS), is assessed a civil penalty of \$2,200.00, plus applicable statutory surcharges (currently 15 percent, totaling \$2,530.00) for the proven violations in Counts 2, 4, 5, 6, and 7 of CPAN No. 135384.

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

5. In accordance with Rule 6511(g) of the Rules Regulating Transportation by Motor Vehicle 4 *Code of Colorado Regulations* 723-6, Respondent shall refund \$249.98 to Ms. Bonnie Huff no later than 30 days following the date of the final Commission decision issued in this Proceeding.

6. Proceeding No. 23G-0480TO is closed.

7. 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.

8. 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.

9. 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)



ATTEST: A TRUE COPY

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

G. HARRIS ADAMS

Administrative Law Judge

Rebecca E. White,
Director