

Decision No. R24-0646

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24G-0194HHG

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

MICHELLE MARIE ROJAS & MARGERTO B ROJAS DOING BUSINESS AS MEAN
MOMMA BOSS BITCH MOVING,

RESPONDENT.

**RECOMMENDED DECISION
ASSESSING CIVIL PENALTY, ISSUING CEASE AND
DESIST ORDER, AND CLOSING PROCEEDING**

Issued Date: September 11, 2024

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I. STATEMENT

1. On May 1, 2024, the Staff of the Public Utilities Commission (“Staff”) issued Civil Penalty Assessment or Notice of Complaint to Appear No. 140139 (“CPAN”) against Michelle Marie Rojas & Margerto B. Rojas, doing business as Mean Momma Boss B1tch Moving (“Mean Mama”) (collectively “Respondents”) alleging one count of violating § 40-10.1-107(1), C.R.S. and one count of § 40-10.1-502(1)(a), C.R.S. on April 11, 2024. The CPAN states that the civil penalty assessed for the alleged violations is \$13,915.00, but that if Respondent pays the civil penalty within ten calendar days of its receipt of the CPAN, the civil penalty will be reduced to \$6,957.50. Finally, the CPAN states that, if the Public Utilities Commission (“PUC” or “Commission”) does not receive payment within ten days, the CPAN will convert into a Notice of Complaint to Appear and a hearing will be scheduled at which Staff will seek the “Total Amount” of \$13,915.00.¹ The CPAN also states that the Commission may order Respondent to cease and desist from violating statutes and Commission rules.²

2. On June 17, 2024, the Commission referred this proceeding by minute entry to an Administrative Law Judge (“ALJ”) for disposition.

3. On July 29, 2024, by Decision No. R24-0542-I, an evidentiary hearing was scheduled for August 27, 2024.

4. At the scheduled time and place, the hearing was convened. Staff appeared through counsel. Respondents appeared on behalf of themselves. Staff offered the testimony of Joseph Potts, Criminal Investigator, and Lloyd Swint, Manager of the Investigations and Compliance Unit. During the course of the hearing, Hearing Exhibits 100 through 113 were

¹ Hearing Exhibit 107, at 3.

² *Id.*

identified, offered and admitted into evidence. At the conclusion of the hearing the ALJ took the matter under advisement.

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

II. FINDINGS OF FACT

6. No person shall operate or offer to operate as a mover in intrastate commerce, or advertise services as a mover, without first having obtained a permit from the Commission. § 40-10.1-502, C.R.S. Movers of household goods are required to maintain and file with the commission evidence of financial responsibility. § 40-10.1-502, C.R.S.

7. Joseph Potts is a Criminal Investigator (“CI”) for the Commission. He investigated a complaint filed by Troy Reagles regarding Mean Mama’s moving of his household goods.

8. During his investigation, CI Potts found that Mr. Reagles saw Respondents’ advertisement on Craigslist offering household good moving services. *See* Hearing Exhibit 100. Mr. Reagles negotiated with and hired Respondents to move his household goods from his home in Aurora, Colorado to a location in Wellington, Colorado. Mr. Reagles provided a summary of the contract, dated April 10, 2024, for the move on April 11, 2024. Hearing Exhibit 101. However, he was unable to provide CI Potts a copy of the full contract because the link provided to him had expired. Mr. Reagles paid the contract amount on April 11, 2024, as instructed, utilizing the Walmart2Walmart service. He provided CI Potts with a photo taken of his receipt from Wal*Mart. Hearing Exhibit 102. After completing the wire transfer through Walmart2Walmart, Mr. Reagles did not hear from the company. He later contacted them again and was informed that payment of an additional \$600 would be required to complete the move.

Unable to afford the remainder, Mr. Reagles felt that his property was being “held hostage” so he filed a complaint with the Commission, as well as other agencies.

9. CI Potts identified Respondents listed as “Ben” and “Marie” using information in the Craigslist ad. He also identified Mean Momma using records from the Secretary of State. Hearing Exhibit 103.

10. Mr. Swint testified that he previously investigated a case in 2018 involving Mr. & Ms. Rojas and a previous company that they owned. Mr. Swint also investigated the relationship between Mr. & Ms. Rojas in connection with a “current” application with the Commission. He confirmed that Mr. & Ms. Rojas were married on February 4, 2017. Hearing Exhibit 108. Based upon his investigation, Mr. Swint concluded that the Rojas operated their business together as a married couple.

11. Mr. Swint also located a warning letter to Ms. Rojas, dated May 7, 2018, from a case he investigated for the same violations at issue here. Hearing Exhibit 105. That letter led to a civil penalty assessment for the same violations at issue here. Hearing Exhibit 106. By Decision No. R19-0179, a civil penalty was assessed in the amount of \$13,915 and Ms. Rojas was ordered to cease and desist further operation as a mover of household goods until such time as she has complied with all Colorado statutes and Commission rules governing such operation.

12. CI Potts and Mr. Swint determined that Respondents were neither permitted Household Goods Movers at the time Mr. Reagles’ household goods were moved nor was there proof of financial responsibility on file with the Commission at that time.

13. On May 1, 2024, CI Potts issued CPAN No. 140139 to Respondents for one alleged violation of § 40-10.1-107(1), C.R.S., and one alleged violation of § 40-10.1-502(1)(a), C.R.S. Hearing Exhibit 107.

14. Mr. and Ms. Rojas each testified in support of their case. They acknowledge and admit that they moved Mr. Reagle's household goods, doing business as Mean Mama, at a time when they did not hold a permit issued by the Commission and that proof of financial responsibility was not on file with the Commission.

15. Mr. Rojas testified that he is an experienced mover, having worked for multiple other companies and is proud of the quality service that he provides. Mr. Rojas states that he threw himself at the mercy of the court, and explained that he was unaware of permitting and insurance requirements for household good movers operating within Colorado. He expressed remorse for not knowing and complying with the law. He states that after he was told that Secretary of State registration was required, it was done.³ He also testified that insurance was in effect at the time of the violation, and he tried to present it to the PUC. Although he tried filing the same with the Commission, he was unsuccessful. A copy of the Certificate of Property Insurance dated April 3, 2024, was admitted into evidence. Hearing Exhibit 111.

16. Mr. Rojas maintained that he is trying to make an honest living, and that he was only trying to help his family and for he and his wife to survive hard times.

17. Respondents deny any actual knowledge of the prior investigation, warning, and civil penalty proceeding. Contrary to this proceeding, Ms. Rojas did not appear at the evidentiary hearing in Proceeding No. 18G-0792HHG. Decision No. R19-0179 at ¶4. Hearing Exhibit 106.

18. Ms. Rojas testified that she never received notification of the civil penalty in 2018. Had she, she maintains that she would have responded as she did in this proceeding. She said this is her first time trying to run a moving company, and is quick to acknowledge that she

³ Although, that registration expired on November 1, 2023, before all times relevant to this proceeding. Hearing Exhibit 103

had a lot to learn and is continuing to learn. She incorrectly believed a permit not to be necessary for intrastate household good movers, confusing interstate and intrastate moving. She was not aware of the required compliance items.

19. Ms. Rojas is the one who arranged for and purchased the insurance coverage that was in place at the time of the move giving rise to the current CPAN. She tried to file it with the Commission and did provide proof of insurance during the course of the hearing.

20. Ms. Rojas testified that Mr. Rojas had filed an application for a household goods permit. Hearing Exhibit 112 was admitted as the information from Mr. Rojas' application filed on May 1, 2024. As explained by Mr. Swint, that application was dismissed due to the outstanding penalty assessment from 2018. *See* Hearing Exhibit 113. Approval of such an application would not be considered until the prior civil penalty proceeding is resolved. Further, Mr. Swint explained that the Commission's system will not allow proof of insurance for a household good mover until a permit is in place. Because Respondents never had an approved permit, it would have been impossible for an insurance agent to file the required proof of insurance.

III. DISCUSSION

21. The evidence establishes the Commission's jurisdiction in this proceeding. The CPAN was served in accordance with § 40-7-116, C.R.S. The Commission has subject matter jurisdiction over this case and personal jurisdiction over Respondents.

22. 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 preponderance standard requires the finder of fact to determine whether the existence of a contested fact is more probable than its

non-existence. *Swain v. Colorado Department of Revenue*, 717 P.2d 507 (Colo. App. 1985). A party has met this burden of proof when the evidence, on the whole, slightly tips in favor of that party.

23. CPAN No. 140139 alleges that Respondents operated and/or offered to operate as a mover of household goods in intrastate commerce without first having obtained a permit from the Commission and failing to maintain and file evidence of financial responsibility in sums as required by the Public Utilities Commission. §§ 40-10.1-107(1) and 40-10.1-502(1)(a), C.R.S.

24. The evidence shows that at all times relevant to this proceeding, Respondents offered to, and did, move Mr. Reagles' household goods in interstate commerce. At the time of such move, Respondents neither held an active permit authorizing operations as a household goods mover nor maintained on file evidence of financial responsibility in sums as required by the Commission.

25. Based upon the evidence of record, it is found that Respondents violated § 40-10.1-107(1), C.R.S., as alleged in Count 1 of the CPAN and § 40-10.1-502(1)(a), C.R.S., as alleged in Count 2 of the CPAN.

26. Having found violations of the cited statutes, 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 assess civil penalties. The Commission is authorized to consider aggravating or mitigating circumstances surrounding particular violations in order to fashion a penalty assessment that promotes the underlying purpose of such assessment. § 40-7-113, C.R.S. In accordance with Rule 1302(b) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1, the Commission may impose a civil penalty,

where provided by law, after considering any evidence concerning some or all of the following factors:

- (I) the nature, circumstances, and gravity of the violation;
- (II) the degree of the respondent's culpability;
- (III) the respondent's history of prior offenses;
- (IV) the respondent's ability to pay;
- (V) any good faith efforts by the respondent in attempting to achieve compliance and to prevent future similar violations;
- (VI) the effect on the respondent's ability to continue in business;
- (VII) the size of the business of the respondent; and
- (VIII) such other factors as equity and fairness may require.

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

27. In May 2018, Mr. Swint contacted the Respondents and sent a warning letter advising of Commission requirements and potential penalties for failure to obtain a Commission permit and to obtain and file the proper insurance. Thereafter, CPAN No. 122014 was issued, initiating Proceeding No. 18G-0792HHG.

28. Unlike this proceeding, the respondent failed to appear in the case or respond in any way, and thus offered no defense. The ALJ found no evidence that the Respondent had applied for or obtained a Commission permit to be a mover of household goods or obtained or filed the proper insurance coverage with the Commission. Decision No. R19-0179, at ¶. 40. Ms. Rojas was found to have provided intrastate moving services without a permit and without proof of insurance on file—the same allegations here. A civil penalty in the amount of \$13,915.00 was assessed and a cease and desist was issued against Respondent. *Id.* at 12.

29. Staff demonstrated that Mr. & Ms. Rojas were doing business as Bad Mamma in this proceeding. Respondents offered and provided household good moving services to Mr. Reagles without a permit and without proof of financial responsibility on file with the Commission. Mr. Swint made clear that the Rojas' will be unable to obtain the permit required to operate their business until that former CPAN proceeding is resolved.

30. Respondents participated fully in their defense and appeared for hearing to present several mitigating factors. During the hearing, Respondents were remorseful and took responsibility for their conduct. Mr. & Mrs. Rojas admit that they had neither the necessary permit nor had they filed proof of financial responsibility with the Commission when moving Mr. Reagles' household goods. They are trying to earn a living through their small business in a field where Mr. Rojas has much experience. He has worked for many other moving companies but was unaware of regulatory requirements to operate their own business.

31. Respondents also demonstrated a desire and efforts to achieve compliance and prevent similar violations in the future. Respondents had insurance coverage in effect on the date of the violation and it was impossible to file proof of insurance with the Commission without Respondent's already having a permit to operate as a mover of household goods. Mr. Rojas applied for the permit required to provide household good moving services on the day they received the CPAN initiating this proceeding. The doomed application was denied due to the outstanding civil penalty obligation due from Proceeding 18G-0792HHG. They attempted to show proof of their insurance to the Commission, despite it not being on file at the time of the violation.

32. Although difficult to believe, the Rojas' testified that they were unaware of the prior penalty proceeding as well as the resulting penalty assessment. Some credibility is found as

to the lack of actual knowledge based upon the dramatically different response between the two proceedings.⁴ Not relying solely on that testimony, the undersigned also focuses upon the assessment necessary in this proceeding to deter future noncompliance, the size of the company at issue, Respondents' ability to pay, and balancing the Commission's interest in encouraging compliance. The undersigned concludes that a large penalty assessment here will not encourage future compliance.

33. Respondents understand they will not be able to operate without a permit. They also understand they will be unable to obtain a permit until the civil penalty in 18G-0792HHG is resolved. The prior penalty proceeding is a sizable financial barrier to entry for a small business struggling with limited resources. To significantly increase or even double that barrier in this proceeding will likely not foster compliance and would perhaps create an impossible situation with no solution for Respondents. Based upon the unique circumstances present here, and to attempt to offer a more feasible path to success and compliance, no additional monetary penalty will be assessed.

34. Staff also requests a cease and desist order be issued in this proceeding.

35. Section 40-10.1-112(1), C.R.S., authorizes the Commission to issue a cease and desist order. That statute states, in relevant part:

Except as specified in subsection (3) of this section, the commission, at any time, by order duly entered, *after hearing upon notice to the motor carrier and upon proof of violation, may issue an order to cease and desist ...* for the following reasons:

- (a) A violation of [article 10.1 of title 40, C.R.S.,] or of any term or condition of the motor carrier's certificate or permit;
- (b) Exceeding the authority granted by a certificate or permit;

⁴ Referencing Respondent's potential lack of knowledge in no way lessens Respondent's obligations to know and understand that they must comply with Commission rules and Colorado law.

(c) A violation or refusal to observe any of the proper orders or rules of the commission.

(Emphasis supplied.)

36. The CPAN states: “**Notice: Upon proof of any violation alleged above, the Public Utilities Commission may order you to cease and desist activities in violation of statutes and Commission rules.**” Hearing Exhibit No.107 (italics and bolding in original). Thus, Respondent had notice that a cease and desist order could issue in this proceeding.

37. Staff has proven the violations alleged in the CPAN and the ALJ finds that Respondents should be ordered to cease and desist from operating or offering to operate as a household goods mover without a permit. Thus, compliance along with resolution of the prior CPAN provides an opportunity to operate their business in their chosen profession. Whether through payment, modification of decision, or otherwise, Respondents can now focus upon resolution of the prior CPAN and the public interest will be served by increasing the likelihood that compliance will be possible.

38. Respondents are advised and are on notice that violation of the cease and desist order contained in this Decision may result in the Commission’s taking further action, both administrative and judicial, as permitted by statute.

IV. CONCLUSIONS

39. Staff has sustained its burden of proving the allegations contained in Counts 1 and 2 of CPAN No. 140139 by a preponderance of the evidence as required by § 40-7-116, C.R.S.

40. The total civil penalty for such violations is \$0.00.

41. The Respondents shall be ordered to cease and desist from operating as a mover of household goods until obtaining a Commission permit and obtaining and filing with the Commission proof of financial responsibility.

42. Pursuant to § 40-6-109(2), C.R.S., the ALJ recommends that the Commission enter the following order.

V. ORDER

A. The Commission Orders That:

1. As alleged in Civil Penalty Assessment Notice No. 140139, Respondents Michelle Marie Rojas & Margerto B. Rojas, doing business as Mean Momma Boss B1tch Moving (“Respondents”), violated one count of § 40-10.1-107(1), C.R.S., and one count of § 40-10.1-502(1)(a), C.R.S., on April 11, 2024.

2. No monetary civil penalty is assessed.

3. Respondents shall immediately cease and desist further operation as a mover of household goods until such time as they have complied with all Colorado statutes and Commission rules governing such operation.

4. Proceeding No. 24G-0194HHG is now 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 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