

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19C-0375-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 VEHICLES.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
G. HARRIS ADAMS
REVOKING AUTHORITIES AND PERMITS**

Mailed Date: July 29, 2019

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I. STATEMENT, FINDINGS, AND CONCLUSIONS

1. The Public Utilities Commission (Commission) instituted the cases listed on the attached Appendix A by “Order of Summary Suspension and Complaint and Notice of Hearing” (Complaint or Complaints) served upon the motor carriers (Respondents¹) on July 5, 2019, by United States mail, at the most recent addresses on file with the Commission for the Respondents. Hearing Exhibits 1 through 4.

2. The Complaints provide notice of the allegations against the Respondents. Hearing Exhibit 2. Specifically, the Complaint against each of the Respondents listed on Appendix A alleges 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. *Id.* 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 of the date, time, and location for a Commission hearing 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. *Id.*

3. As noticed in the Complaints, on July 24, 2019, at approximately 12:00 p.m., the undersigned Administrative Law Judge (ALJ) held the hearing on the Complaints. Commission Trial Staff member Vanessa Condra appeared through counsel and testified on behalf of Commission Staff (Staff). No Respondent appeared.

4. Hearing Exhibits 1 through 4 were admitted into evidence during the hearing.

¹ Reference to Respondents is a reference to each Respondent identified in Hearing Exhibit 4, which is Appendix A to this Decision.

A. Applicable Law.

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

5. Generally, motor carriers² holding a Commission permit, authority, or certificate must maintain 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. § 40-10.1-107, C.R.S.; Rule 6008 of the Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* (CCR) 723-6. Commission Rule 6008 identifies the amount, type of protection, and form that motor carriers must maintain at all times in order to safeguard the public interest.

6. Specifically, motor carriers must obtain and keep motor vehicle liability insurance or a surety bond coverage in force at all times. Rule 6008(a)(I), 4 CCR 723-6. 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. Rule 6008(a)(I) and (III), 4 CCR 723-6. And, in addition to motor vehicle liability and cargo liability coverage, household good movers must obtain and keep general liability insurance or surety coverage in force at all times. Rule 6008(a)(VI), 4 CCR 723-6.

7. Motor carriers are responsible for maintaining and filing evidence of the required financial responsibility coverage with the Commission. § 40-10.1-107(1), C.R.S., and Rule 6008(a), 4 CCR 723-6. They must ensure their insurance or surety coverage is kept continuously effective during the life of a certificate or permit to operate. § 40-10.1-107(3), C.R.S. Insurers and sureties must notify the policy or bond holder *and* the Commission when

² As referenced in this Decision, motor carriers are carriers who hold a Commission permit, authority, or certificate.

terminating a policy or bond at least 30 days before the effective date of termination; failing that, termination is not valid. § 40-10.1-107(4), C.R.S. As a result, the Commission receives notice from insurance or surety carriers about imminent policy or bond terminations for motor carriers licensed by the Commission. *Id.*

8. 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. Rule 6008(e), 4 CCR 723-6. 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. *Id.*

9. Sections 40-10.1-112(1)(a) and (c), C.R.S., provide 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 also provide the Commission authority to revoke a permit or authority in the circumstances here. 4 CCR 723-6.

2. Notice and Service Requirements.

10. 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. §§ 24-4-105(2), 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. Such notice must be served upon the Respondents, which may be done by mail. *Id.*; §§ 40-6-108(3) and 24-4-104(10), C.R.S.; Rule 1205(a) and (d), 4 CCR 723-1. Service on a motor carrier's designated agent on file with

the Commission is service upon the carrier and is “prima facie evidence” that the carrier received notice. Rule 6006(c) and (d), 4 CCR 723-6. A certificate of service issued by the Commission’s Director is *prima facie* evidence that service has been obtained. § 40-6-108(3), C.R.S.

11. 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.” Rule 6006(a), 4 CCR 723-6. That person is the motor carrier’s designated agent upon whom the Commission may serve complaints and other notices. *Id.*; Rule 1205(a) and (d), 4 CCR 723-1.

3. Burden of Proof.

12. Staff carries the burden of proof by a preponderance of the evidence to demonstrate that the Complaints’ allegations are true and that the Complaints were properly served on each of the Respondents. § 24-4-105(7), C.R.S.; Rule 1500, 4 CCR 723-1. The preponderance standard requires the fact finder to determine whether the existence of a contested fact is more probable than its non-existence. *Swain v. Colorado Dep’t of Revenue*, 717 p.2d 507, 508 (Colo. App. 1985). A party has met this burden of proof when the evidence, on the whole, tips in favor of that party. *Schocke v. State, Dep’t of Revenue*, 719 P.2d 361, 363 (Colo. App. 1986).

B. Analysis and Conclusions.

13. The evidence was undisputed. The ALJ finds that the Complaints were served on the Respondents by United States mail at the most recent addresses and upon the designated agents on file with the Commission. As a result, the ALJ finds that Staff demonstrated by a preponderance of the evidence that it properly served the Complaints upon each of the Respondents listed in Hearing Exhibits 1 and 4. §§ 40-6-108(3) and 24-4-104(10), C.R.S.;

Rule 1205(a) and (d), and Rule 1302(g)(II)(e), 4 CCR 723-1; and Rule 6006(a) and (c), 4 CCR 723-6.

14. The ALJ finds that the Complaints comply with the relevant notice requirements because they: (a) inform Respondents that the Commission has received an insurance or surety cancellation notice 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 location of the hearing on the Complaints at which Respondents will have an opportunity to present data, views, and arguments; and (f) advise Respondents of the legal authority for the Complaints and relief sought. Hearing Exhibit 2. Rule 6009(e), 4 CCR 723-6; see §§ 40-6-108 and 24-4-105(2), C.R.S.

15. The ALJ concludes 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 4 that the Respondents' insurance or surety coverage was cancelled or terminated on or before July 10, 2019. This creates the rebuttable presumption that the relevant Respondent carriers are in violation of their respective financial responsibility requirements. Rule 6008(e), 4 CCR 723-6. The record contains no evidence rebutting this presumption.

16. Staff established by a preponderance of the evidence that the Commission's records do not show a currently effective level of financial responsibility, including but not

limited to motor vehicle liability, general liability, and cargo liability coverage in such form and in such manner as required by § 40-10.1-107, C.R.S., and Rule 6008, 4 CCR 723-6, for the Respondents identified in Hearing Exhibit 4. Thus, Staff met its burden of proof to show by a preponderance of the evidence that the allegations in the Complaints are true as to the Respondents listed in Hearing Exhibit 4. Hearing Exhibit 4 is attached to this Decision as Appendix A.

17. The Commission must fulfill its important duty to the public to guarantee that those persons who hold an authority or permit from the Commission have current, effective insurance or surety, as required by law. The Commission's only means of performing this important health and safety function is to have documentation of that fact furnished in a uniform format to the Commission. The holder of the authority is responsible for ensuring that document 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 4 have failed to do so.

18. Because all Respondents listed in Hearing Exhibit 4 have failed to keep currently effective proof of financial responsibility on file with the Commission, their authorities and permits should be revoked.

19. 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.

C. Conclusions.

20. The evidence was undisputed.

21. The ALJ finds and concludes that service of the Complaints upon each of the Respondents was proper because they were served by United States mail at the most recent

addresses on file with the Commission. *See* Hearing Exhibits 1 through 4. The ALJ further finds that the Complaints are in compliance with Commission Rule 6008(a) because they provide: (a) notice of the nature of the allegations and the relief sought against the Respondents; (b) the opportunity for each of the Respondents to respond to the allegations; and (c) notice of the hearing on the Complaints. Hearing Exhibit 2.

22. 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 Appendix A that their insurance or surety was cancelled or terminated as of the date of the hearing. This creates the rebuttable presumption that the Respondent carriers are in violation of their respective financial responsibility requirements. Rule 6008(e), 4 CCR 723-6. The record in this proceeding contains no evidence rebutting this presumption.

23. 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, including, but not limited to, motor vehicle liability insurance, cargo liability coverage, garage keeper's liability coverage, and worker's compensation coverage in such form and in such manner as required for the Respondents identified in Appendix A. Staff thus met its burden of proof as to the Respondents listed in Appendix A.

24. The Commission must fulfill its important duty to the public to guarantee that those persons who hold an authority or permit from the Commission have current, effective insurance or surety, as required by law. The Commission's only means of performing this important health and safety function is to have documentation of that fact furnished in a uniform format to the Commission. The holder of the authority is responsible for providing that documentation to the Commission. § 40-10.1-107, C.R.S., and Rule 6008, 4 CCR 723-6.

25. Because the Respondents listed in Appendix A have failed to keep currently effective proof of financial responsibility on file with the Commission, including motor vehicle liability insurance, cargo liability coverage, garage keeper's liability coverage, and worker's compensation coverage their authorities and permits should be revoked.

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

II. ORDER

A. The Commission Orders That:

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

2. Ordering Paragraph No. 1 will be void and the case dismissed as to any Respondent who files the required Certificate of Insurance or surety with the Commission before the effective date of this Recommended Decision.

3. Proceeding No. 19C-0375-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, the 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 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

G. HARRIS ADAMS

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director