

Decision No. R20-0055

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

PROCEEDING NO. 19F-0631TO

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VALEDA SCRIBNER,

COMPLAINANT,

V.

ETR, LLC DOING BUSINESS AS ELITE TOWING & RECOVERY &/OR ELITE TOWING,

RESPONDENT.

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**RECOMMENDED DECISION OF  
ADMINISTRATIVE LAW JUDGE  
G. HARRIS ADAMS  
VACATING HEARING AND GRANTING COMPLAINT**

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Mailed Date: January 24, 2020

**I. STATEMENT**

1. This proceeding was initiated on November 12, 2019, when the Complainant, Valeda Scribner (Scribner), filed a formal complaint (Complaint) with the Colorado Public Utilities Commission (Commission) against Respondent, ETR, LLC, doing business as Elite Towing & Recovery &/or Elite Towing (Elite).

2. On November 13, 2019, the Commission entered its Order to Satisfy or Answer and issued an Order Setting Hearing and Notice of Hearing scheduling a hearing in this matter to be held on January 27, 2020, in Denver, Colorado. *See* Notice of Hearing, Order to Satisfy or Answer (issued November 13, 2019), and Errata to Order to Satisfy or Answer (issued November 14, 2019).

3. Elite was served the Order to Satisfy or Answer (including a copy of the Complaint as well as the subsequent Errata) and Order Setting Hearing and Notice of Hearing by the Commission. Elite was ordered to satisfy the matters in the Complaint or to answer the complaint in writing within 20 days from service of the order and Complaint. *See* Order to Satisfy or Answer and Errata.

4. The Commission ordered that if Elite failed to satisfy, 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 is within its power and jurisdiction or may set the Complaint for Hearing. *See* Order to Satisfy or Answer.

5. Pursuant to § 40-6-109, C.R.S., the Administrative Law Judge (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. FINDINGS AND CONCLUSIONS**

6. The Commission has jurisdiction over this Complaint and over Complainant, pursuant to § 40-6-108, C.R.S.

7. Respondent is a regulated towing carrier, as defined by Rule 6501(r) the *Rules Regulating Transportation by Motor Vehicle, 4 Code of Colorado Regulations (CCR) 723-6* and is subject to this Commission's jurisdiction.

8. Respondent failed to respond to the Order to Satisfy or Answer in any manner whatsoever. Therefore, the allegations of the Complaint will be deemed admitted.

9. At 5:45 on August 12, 2019, Complainant arrived at the Willows at Tamarack, located at 8525 E. Hampden Avenue, Denver, Colorado, to visit a friend. Complainant parked in

a parking spot adjacent to other spots posted with notification that specific spaces were reserved. However, there was no sign posted that the space utilized by Complainant was reserved.

10. At 8:15, Complainant returned to the spot where her car was parked and found that the car was not there. She called the telephone phone number appearing on posted signage and confirmed that her car was with Elite.

11. A friend of Complainant's drove her to Respondent's lot where she paid \$321 in order to retrieve her car. On the following day, Complainant's friend returned to the parking lot where the tow occurred and took photos and videos of the parking lot and confirmed that posted signage failed to comply with Commission rules.

12. Complainant states the signage requirements of Rule 6508(b), 4 CCR 723-6 and that the signage at the parking lot fails to comply with the rule. Based upon the violation of the Commission rule, appropriate relief is requested.

13. Elite's towing permit issued by the Commission authorizes performance of nonconsensual tows in accordance with Commission rules and Colorado law. As a regulated towing carrier, Elite has an obligation to ensure that it performs a nonconsensual tow in compliance with the Commission's rules.

14. Commission rules define a non-consensual tow as "the transportation of a motor vehicle by tow truck if such transportation is performed without the prior consent or authorization of the owner or operator of the motor vehicle." Rule 6501(i) of the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6.

15. Rule 6508(b)(III), 4 CCR 723-6, prescribes when a towing carrier may perform nonconsensual tows of motor vehicles from parking lots:

- (III) A towing carrier may not perform a nonconsensual tow of a motor vehicle, other than an abandoned motor vehicle, from a parking lot unless:
  - (A) notice of parking limitations, regulations, restrictions or prohibitions was provided at the time the vehicle was parked; and
  - (B) notice is provided that anyone parking in violation of limitations, regulations, restrictions or prohibitions is subject to being towed at the vehicle owner's expense.

16. Notice requirements are presumed to be met if:

- (IV) Notice required by this rule is presumed to be met if:
  - (A) a permanent sign is conspicuously posted near each entrance to the parking lot; and
  - (B) if the parking lot is not provided for residential parking and has more than ten free-standing lampposts on the property, a number of signs equal to the number of lampposts must be posted. Such signs must be posted on each lamppost or posted upright in conspicuous locations which are evenly distributed across the parking lot.

Rule 6508(b)(IV), 4 CCR 723-6.

17. The remedy for noncompliance with Commission rules is specified as follows:

Noncompliance. If a tow is performed in violation of state statute or Commission rules, the towing carrier shall not charge or retain any fees or charges for the services it performs. Any motor vehicle that is held in storage and that was towed without proper authorization shall be released to the owner, lienholder, or agent of the owner or lienholder without charge. Any money collected must be returned to the owner, authorized operator, or authorized agent of the owner of a motor vehicle.

Rule 6511(g), 4 CCR 723-6

18. The evidence of record establishes by a preponderance of the evidence that on August 12, 2019, any signage posted at the Willows at Tamarack, located at 8525 E. Hampden Avenue, Denver, Colorado, failed to provide notice meeting the requirements of Rule 6508, 4 CCR 723-6 at the location where Complainant parked her car.

19. Complainant proved by a preponderance of the evidence that her vehicle was towed by Respondent, without adequate notice, contrary to the requirements of Rule 6508, 4 CCR 723-6.

20. The Complaint will be granted.

21. Because the nonconsensual tow of Scribner's vehicle from private property was in violation of a Commission rule, Rule 6511, 4 CCR 723-6, the rule requires that Elite return the money collected from Scribner for the tow and storage charges, in the amount of \$321.00.

22. In accordance with § 40-6-109, C.R.S., the ALJ recommends that the Commission enter the following Order.

**III. ORDER**

**A. The Commission Orders That:**

1. The Complaint filed by Complainant Valeda Scribner (Scribner), against ETR, LLC, doing business as Elite Towing & Recovery &/OR Elite Towing (Elite), filed November 12, 2019, is granted. Elite shall not charge for the improper tow of Scribner's vehicle.

2. Elite shall refund to Scribner the amount of \$321.00 within seven calendar days of the effective date of this Decision.

3. The hearing scheduled to commence in this matter on January 27, 2020, in Denver, Colorado is vacated.

4. Failure of Elite to make the refund to Complainant, as ordered, shall constitute a violation of this Decision.

5. Proceeding No. 19F-0631TO is closed.

6. 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.

7. 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.

8. 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)



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