

Decision No. R24-0075

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23G-0227TO

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

MELVIN TOLIVER/RAPID RESPONSE TOWING AND TRANSPORT, INC, DOING
BUSINESS AS FINAL NOTICE TOWING AND RECOVERY,

RESPONDENT.

**RECOMMENDED DECISION
OF ADMINISTRATIVE LAW JUDGE
ALENKA HAN
ASSESSING CIVIL PENALTY, ORDERING REFUND,
ORDERING RESPONDENT TO CEASE AND DESIST AND
CLOSING PROCEEDING**

Mailed Date: February 7, 2024

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I. STATEMENT**A. Summary**

1. This Recommended Decision assesses a civil penalty against Respondent, Melvin Toliver/Rapid Response Towing and Transport, Inc., doing business as Final Notice Towing and Recovery (Respondent or Final Notice Towing), orders Respondent to cease and desist operating as a towing carrier, orders Respondent to issue a refund to U-Haul, and closes this Proceeding.

B. Procedural Background

2. On May 4, 2023, the Colorado Public Utilities Commission (Commission) filed Civil Penalty Assessment or Notice of Complaint to Appear No. 134998 (CPAN), against Melvin Toliver/Rapid Response Towing and Transport, Inc., doing business as Final Notice Towing and Recovery. The CPAN asserted nine statutory violations allegedly committed by Respondent on February 24, March 6, March 15, and March 20, 2023, and assessed a total penalty amount of \$28,462.50, if paid within ten days of service of the CPAN. The CPAN also specified that the penalty would be increased to \$56,925.00 if not paid within ten calendar days.

3. The CPAN was signed by Respondent and dated May 12, 2023, acknowledging receipt of it.

4. CPAN No. 134998 asserted that Respondent had committed several acts violating §§ 40-10.1-107, C.R.S., and 40-10.1-401, C.R.S. Specifically, the CPAN alleged and assessed penalties for the following violations:

- **Violation 1:** Violation of § 40-10.1-107(1), alleging Respondent failed to maintain and file evidence of financial responsibility after Respondent's insurer canceled Respondent's policy on April 29, 2022. Despite being uninsured, on February 24, 2023, Respondent towed a 2021 Ford U-Haul cargo van (AZ registration AL06402) from Woodstream Falls Condominium, located at 9700 E. Iliff, Denver, Colorado, 80231, for which Respondent was penalized \$11,000, plus a 15 percent surcharge of \$1,650, for a total of \$12,650.
- **Violation 2:** Violation of § 40-10.1-107(1), alleging Respondent failed to maintain and file evidence of financial responsibility after Respondent's insurer canceled Respondent's policy on April 29, 2022. Despite being uninsured, on March 6, 2023, Respondent towed a 2020 U-Haul 10-foot truck (AZ registration AK00721) from I-70 in Denver, Colorado, 80216, for which Respondent was penalized \$11,000, plus a 15 percent surcharge of \$1,650, for a total of \$12,650.
- **Violation 3:** Violation of § 40-10.1-107(1), alleging Respondent failed to maintain and file evidence of financial responsibility after Respondent's insurer canceled Respondent's policy on April 29, 2022. Despite being uninsured, on March 15, 2023, Respondent towed a 2022 Ford U-Haul transit cargo van (AZ registration AL67267), possibly from Hwy 85 and 120th Avenue in Commerce City, Colorado, 80640, for which Respondent was penalized \$11,000, plus a 15 percent surcharge of \$1,650, for a total of \$12,650.
- **Violation 4:** Violation of § 40-10.1-107(1), alleging Respondent failed to maintain and file evidence of financial responsibility after Respondent's insurer canceled Respondent's policy on April 29, 2022. Despite being uninsured, on March 20, 2023, Respondent towed a 2022 Chevrolet Silverado 2500 U-Haul vehicle (AZ registration AL73060) from Woodstream Falls Condominium, located at 9700 E. Iliff, Denver, Colorado, 80231, for which Respondent was penalized \$11,000, plus a 15 percent surcharge of \$1,650, for a total of \$12,650.
- **Violation 5:** Violation of § 40-10.1-401(1)(a), alleging Respondent was operating or offering to operate as a towing carrier in intrastate commerce without first obtaining a permit. Respondent's permit was revoked on June 28, 2022, by Decision No. R22-0335. Despite the revocation of its permit, on February 24, 2023, Respondent towed a 2021 Ford U-Haul cargo van (AZ registration AL06402) from Woodstream Falls Condominium, located at 9700 E. Iliff, Denver, Colorado, 80231, for which Respondent was penalized \$1,100, plus a 15 percent surcharge of \$165, for a total of \$1,265.
- **Violation 6:** Violation of § 40-10.1-401(1)(a), alleging Respondent was operating or offering to operate as a towing carrier in intrastate commerce without first obtaining a permit. Respondent's permit was revoked on June 28, 2022, by Decision No. R22-0335. Despite the revocation of its

permit, Respondent admitted towing a 2014 Ford F3500 U-Haul 15-foot truck (AZ registration AG29379) on March 6, 2023, for which Respondent was penalized \$1,100, plus a 15 percent surcharge of \$165, for a total of \$1,265.

- **Violation 7:** Violation of § 40-10.1-401(1)(a), alleging Respondent was operating or offering to operate as a towing carrier in intrastate commerce without first obtaining a permit. Respondent's permit was revoked on June 28, 2022, by Decision No. R22-0335. Despite the revocation of its permit, on March 6, 2023, Respondent towed a 2020 U-Haul 10-foot truck (AZ registration AK00721) from I-70 in Denver, Colorado, 80216, for which Respondent was penalized \$1,100, plus a 15 percent surcharge of \$165, for a total of \$1,265.
- **Violation 8:** Violation of § 40-10.1-401(1)(a), alleging Respondent was operating or offering to operate as a towing carrier in intrastate commerce without first obtaining a permit. Respondent's permit was revoked on June 28, 2022, by Decision No. R22-0335. Despite the revocation of its permit, on March 15, 2023, Respondent towed a 2022 Ford U-Haul transit cargo van (AZ registration AL67267), possibly from Hwy 85 and 120th Avenue in Commerce City, Colorado, 80640, for which Respondent was penalized \$1,100, plus a 15 percent surcharge of \$165, for a total of \$1,265.
- **Violation 9:** Violation of § 40-10.1-401(1)(a), alleging Respondent was operating or offering to operate as a towing carrier in intrastate commerce without first obtaining a permit. Respondent's permit was revoked on June 28, 2022, by Decision No. R22-0335. Despite the revocation of its permit, on March 20, 2023, Respondent towed a 2022 Chevrolet Silverado 2500 U-Haul vehicle (AZ registration AL73060) from Woodstream Falls Condominium, located at 9700 E. Iliff, Denver, Colorado, 80231, for which Respondent was penalized \$1,100, plus a 15 percent surcharge of \$165, for a total of \$1,265.

5. The Commission designated CPAN No. 134998 as Proceeding No. 23G-0227TO.

6. Commission Trial Staff (Staff) entered its appearance and filed its Notice of Intervention as of Right in Proceeding No. 23G-0227TO on May 30, 2023.

7. On June 7, 2023, the Commission referred the Proceeding to an ALJ by minute entry for disposition. Thereafter, the Proceeding was assigned to the undersigned ALJ.

8. On July 10, 2023, the ALJ issued Interim Decision No. R23-0436-I, giving Staff and Respondent until July 24, 2023, to advise the ALJ of their preferred hearing format.

A certificate of service filed July 10, 2023, confirms that Decision R23-0436-I was emailed to Respondent at an email address provided for Final Notice Towing and mailed via U.S. Mail to an address for Final Notice Towing on file with the Commission.

9. On July 17, 2023, Staff submitted a statement indicating its preference for a remote hearing. Respondent never responded to the request.

10. By Decision No. R23-0503-I, issued August 2, 2023, the ALJ scheduled a fully-remote evidentiary hearing to be held on October 5, 2023, at 9:00 a.m.

11. Decision No. R23-0503-I was likewise served on Respondent by U.S. Mail sent to Respondent's physical address on file with the PUC, and by email to the email address associated with Respondent found in Commission records.¹

12. Staff and Respondent are the only parties to this proceeding.

13. At the scheduled time and place, the undersigned ALJ called the matter for hearing. Staff appeared through counsel and participated in the hearing. Heather Whitman and Jeremy Johnston, Assistant Attorneys General, appeared on behalf of the Commission.

14. Respondent did not appear at the hearing and no representative appeared on Respondent's behalf. The Certificate of Service corresponding to Decision No. R23-0503-I confirms that it was sent to Respondent at the mailing address and at the email address on file for Respondent.

15. During the hearing, Hearing Exhibits 100 through 120 were identified, offered, and admitted into evidence without objection. In addition, because Hearing Exhibits 102, 103, 104, 106, 107, 108, 109, 111, 113, 114, 116, 117, and 120 contained confidential information, both

¹See Certificate of Service, Aug. 2, 2023.

confidential and publicly-accessible redacted versions of those 12 exhibits were offered and admitted.

16. Two individuals testified at the evidentiary hearing on behalf of Staff: (1) Jennifer Reed (Reed), a Traffic Control Manager for the regional U-Haul office and 30-year U-Haul employee; and, (2) PUC Criminal Investigator Erin Haislett (Haislett), who testified in support of the allegations contained in the CPAN at issue herein.

17. In reaching this Recommended Decision, the undersigned ALJ has considered all arguments and evidence presented, even if such arguments and/or evidence are not specifically addressed herein.

18. 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. FACTUAL FINDINGS

19. Reed is a Traffic Control Manager for U-Haul (U-Haul or Company) in its regional office in the Denver area. She has worked for U-Haul for 30 years. Her duties include distribution of equipment, recovery of stolen equipment, and return of stolen equipment to the Company. Her duties bring her into frequent contact with towing carriers.

20. Haislett is a Criminal Investigator with the Transportation Section of the Commission. As part of her duties, Haislett investigates public complaints filed with the Commission. She is familiar with Commission statutes and Commission rules that govern towing operators.

21. Haislett investigated Final Notice Towing leading to the issuance of CPAN No. 134998. To investigate the allegations, she reached out to both Reed and Respondent, Melvin Toliver.

22. Melvin Toliver/Rapid Response Towing and Transport, Inc., doing business as Final Notice Towing and Recovery, held PUC Permit No. T-05306, which was issued February 7, 2022.²

23. Reed testified that, in the course of her duties for U-Haul, she has interacted with Toliver/Final Notice Towing and Recovery, on several occasions. However, she made clear that U-Haul had no contract or business agreement with Final Notice Towing or Rapid Response Towing.

24. During the evidentiary hearing, Reed first described an incident that occurred on February 24, 2023. On that date, Reed was traveling “down Havana” in Aurora, Colorado, on her way to work when she passed a tow truck towing a U-Haul vehicle on Havana Street. A decal on the side of the tow truck identified it as being associated with Colorado Roadside Posse, an entity with which U-Haul likewise had no contract nor business relationship.³ The truck was driven by Melvin Toliver.

25. Upon seeing the tow truck towing the U-Haul vehicle, Reed turned around and followed the tow truck to a U-Haul store at 615 S. Havana Street, Aurora, Colorado, 80012, where the tow truck was parked. She asked the driver, who identified himself as “Melvin,” who had authorized the towing of the U-Haul vehicle. He responded that he had been instructed by U-Haul to tow the vehicle, and was at the U-Haul location on S. Havana St. to “get paid.” Reed informed him that it was her responsibility to authorize tows of U-Haul vehicles and that she had not authorized any tows on that date. He then stated that he had towed the U-Haul vehicle from private

²Hearing Exhibit 112.

³ Hearing Exhibit 101 (photo of Respondent’s tow truck with towed U-Haul vehicle taken by Reed); and Hearing Exhibit 119 (photos of Respondent’s tow truck taken by Commission Staff).

property, and suggested that he “felt” the U-Haul vehicle should be towed because it was “on a bad contract.”

26. Further investigation by Reed confirmed that Respondent had not contacted anyone at U-Haul about towing the vehicle.

27. During their encounter on February 24, 2023, Toliver provided Reed with an invoice which indicated it was generated by Final Notice Towing and charged U-Haul \$301 for the tow to the U-Haul location.⁴ He told Reed it was “in her best interest” to pay the invoice immediately “on scene” because the charges would increase “substantially” if he towed the vehicle to his yard. Reed testified that the \$301 tow charge seemed “high” because the tow was less than one mile and did not involve storage of the vehicle. Nevertheless, Reed paid Final Notice Towing \$301 via Square — on online payment platform — on February 25, 2023.⁵

28. Reed discovered that the receipt she received from Respondent identified the location from which the U-Haul vehicle had been towed – a condominium complex located near the intersection of Parker Road and Havana in Aurora. She went to the property and discovered that Max Towing was identified on signs posted on the property as the towing carrier responsible for towing vehicles from the property. She stated that U-Haul has no contract nor business relationship with Max Towing.

29. Reed stated she found the tow “suspicious” from the outset, because, she indicated, she is very familiar with the towing carriers operating in Denver and Aurora, had never heard of Final Notice Towing, and was surprised that, if the tow had actually been precipitated by an illegal parking situation, that Respondent had not towed the U-Haul vehicle directly to its towing yard.

⁴ Hearing Exhibit 102 (Final Notice Towing and Recovery invoice dated 2-24-23 for \$301).

⁵Hearing Exhibit 108 (Square receipt for \$301, dated Feb. 25, 2023).

30. Reed then reached out to the Commission to report the questionable tow. Reed corresponded with Haislett about the tow. She provided Haislett with copies of invoices from Respondent; copies of checks paid to Respondent; a copy of the payment confirmation from Square; copies of text messages between her and Toliver; and photographs of the vehicles in question.⁶ Reed noted that the invoices, documentation, and text messages did not “match” and had differing addresses, phone numbers and contact information.

31. She also contacted Colorado Roadside Posse — the towing carrier identified on the side of the tow truck — and was told that “Melvin” does not work for Colorado Roadside Posse. Rather, Melvin Toliver had purchased the truck used from Colorado Roadside Posse with the understanding that Toliver would remove the decal identifying the tow truck as affiliated with Colorado Roadside Posse.

32. Haislett also contacted Ben Pearson of Colorado Roadside Posse in her investigation. Haislett learned from Pearson that Respondent did not work for Colorado Roadside Posse; that Pearson had instructed Toliver to remove Colorado Roadside Posse’s markings from the side of the truck; and that Toliver did not have permission to drive a vehicle with Colorado Roadside Posse’s identifying markings on it.

33. Reed later learned that she and U-Haul had one interaction with Final Notice Towing prior to the February 24, 2023, incident. She indicated that U-Haul had received an invoice from Final Notice Towing for \$100 before February 24, 2023. In the prior incident, Toliver had contacted U-Haul seeking permission to tow a U-Haul vehicle from a homeless encampment. Reed had granted the requested permission and paid the invoice.

⁶ Hearing Exhibit 100 (copy of email exchange between Reed and Haislett).

34. According to Reed, U-Haul had several other encounters with Final Notice Towing after the February 24, 2023 incident. Reed described three or four tows of U-Haul vehicles by Respondent that occurred in March 2023.

35. “Melvin” provided Reed three invoices on March 6, 2023, charging U-Haul for three separate tows: the towing of two trucks and a car dolly. The first invoice, dated March 6, 2023, charged U-Haul \$350 for towing a 2020 GMC vehicle from I-70.⁷ The second, undated invoice, charged U-Haul an additional \$350 for towing a 2019 Ford F3500 from CO BV (perhaps Colorado Boulevard) and Hwy 52.⁸ The third invoice, also undated, charged U-Haul \$200, identified the equipment towed by its equipment number, and listed the driver as “Mel.”⁹ Toliver represented to Reed that the tows had previously been completed, but none of the invoices listed the dates on which the tows occurred. Haislett concluded that the undated invoices had been generated and provided to U-Haul through Reed on March 6, 2023, and pertained to tows completed that day.

36. Reed found the invoices unusual, because a towing invoice generally covers a single tow, so that the charges can be accurately broken down and accounted. Reed testified that, when she met him on March 6, 2023, Toliver repeated his warning that the invoice should be immediately paid to avoid additional charges that would be incurred if Toliver towed the vehicle to his yard. However, Reed never retrieved a vehicle from Respondent’s tow yard and found it odd that Respondent did not automatically tow vehicles to the tow yard.

37. Although the vehicles had been towed by Respondent and retrieved by U-Haul before March 6, 2023, U-Haul was not billed until March 6, 2023. Although Reed offered

⁷ Hearing Exhibit 103 (Final Notice Towing and Recovery invoice dated 3-6-23 for \$350).

⁸ Hearing Exhibit 104 (Final Notice Towing and Recovery invoice, undated, for \$350).

⁹ Hearing Exhibit 105 (Final Notice Towing and Recovery invoice, undated, for \$200)

to bring payment to Respondent's location, Toliver declined and again cautioned Reed that proceeding to Respondent's tow yard would result in additional charges. Reed therefore met Toliver on March 6, 2023, at the U-Haul location at 615 S. Havana — not at the regional office — and paid Respondent \$900 by U-Haul check for the three invoices she had been given that day.¹⁰ She stated that she paid the invoices to avoid an altercation with Toliver and/or Respondent.

38. On March 15, 2023, Reed had another interaction with Toliver/Respondent about the towing of a U-Haul van. As with the previous encounters, Toliver met Reed at the U-Haul location at 615 S. Havana Street, provided an invoice, and demanded immediate payment, which Reed provided. This invoice, dated March 15, 2023, charged U-Haul \$350 for towing a 2022 Ford Transit 250.¹¹ It, too, listed the driver as "Mel."¹²

39. Similarly, on March 20, 2023, Final Notice Towing billed U-Haul \$300 for towing a 2022 Chevrolet Silverado 2500 pickup truck.¹³ Reed again met Toliver at the S. Havana Street location and paid the invoice for the tow. She wrote Final Notice a check that day from U-Haul's account in the amount of \$600 to cover the March 15 and March 20, 2023, invoices.¹⁴

40. In total, U-Haul paid Respondent \$1,801 for tows, and would like to be refunded this amount.

41. Reed characterized the descriptions of the towing locations on the invoices as "very vague." Reed testified that, when asked, Toliver would describe the area from which the vehicles were towed as "a bad area" or "a homeless camp," but all the locations appeared to be in Colorado.

¹⁰ Hearing Exhibit 109, p. 1 (Copy of U-Haul check #D862-12653 for \$900 payable to Final Notice, dated Mar. 6, 2023).

¹¹ Hearing Exhibit 106 (Final Notice Towing and Recovery invoice, undated, for \$350).

¹² *Id.*

¹³ Hearing Exhibit 107 (Final Notice Towing and Recovery invoice, dated March 20, 2023, for \$300).

¹⁴ Hearing Exhibit 109, p. 2 (Copy of U-Haul check # D862-126664 for \$600 payable to Final Notice, dated Mar. 20, 2023).

The terminus points for all the tows were one of two U-Haul locations, at 2322 S. Federal Boulevard, Denver, or 615 S. Havana Street, Aurora.

42. Reed testified that after Haislett reached out to Toliver to investigate U-Haul's complaints, Respondent stopped targeting U-Haul vehicles for towing and stopped contacting Reed.

43. Haislett testified that Respondent's tows followed a general pattern: Toliver would contact Reed indicating he had "found" a U-Haul vehicle; ask if it was on a "hit list"; tow it to Reed; and demand payment, which Reed provided.

44. Haislett obtained the corporate registration certificate for Rapid Response Towing and Transport, Inc., from the Colorado Secretary of State. The certificate lists Melvin Toliver as the registered agent and identifies the corporation's trade name as Final Notice Towing and Recovery.¹⁵ Haislett concluded that Rapid Response Towing and Transport and Final Notice Towing and Recovery were the same entity.

45. Haislett next reviewed the Commission's Integrated Filing Management System (IFMS) entry for Respondent. Respondent's IFMS record showed that its permit (Permit No. T-05306) had been issued on February 7, 2022, and revoked June 28, 2022.¹⁶ Based on her review of the IFMS entry, Haislett concluded that Respondent did not have a valid permit — the status remained revoked — when he towed the U-Haul vehicles in February and March 2023.

46. IFMS indicated that Respondent's insurance coverages had been cancelled effective April 29, 2022.¹⁷ Haislett also obtained a letter Respondent's insurer sent to the Commission on

¹⁵ Hearing Exhibit 110 (Colo. Sec'y of State, Certificate of Documents Filed for Rapid Response Towing and Transport, Inc. Entity #20221118190).

¹⁶ Hearing Exhibit 111 (Copy of Commission IFMS entry for Rapid Response Towing and Transport, Inc. Commission Permit No. T-05306).

¹⁷ *Id.*

March 30, 2022, advising the Commission that Respondent's insurance policies would be cancelled effective April 29, 2022.¹⁸ The Commission advised Respondent of the impending cancellation and revocation by letter dated May 9, 2022.¹⁹

47. Subsequently, by Decision No. R22-0335, issued June 6, 2022, in Proceeding No. 22C-0194-INS²⁰. Final Notice Towing's permit was revoked effective June 27, 2022, for Respondent's failure to maintain and file proof of financial responsibility. Specifically, Decision No. R22-0335 found Respondent lacked proof of the requisite cargo and liability insurance coverages, and revoked Respondent's permit, effective twenty days after the Decision's issuance.²¹ Hearing Exhibit 111 — a copy of the Commission's electronically maintained information pertaining to Final Notice Towing — establishes that Respondent's permit remained revoked as of the date the information page was printed (September 21, 2023) and had not been reinstated at any point since being revoked in late June 2022.²²

48. Haislett traveled to the address listed in IFMS as Respondent's physical and storage location but found that the site had no signage and did not appear to be a storage lot.

49. Haislett spoke with Toliver twice on the telephone, on March 24 and 28, 2023. Haislett advised Toliver that Respondent's permit had been revoked because of the insurance cancellation. Toliver responded that he knew the insurance had been cancelled but expressed surprise that the permit had been revoked because, he claimed, he had obtained new insurance

¹⁸ Hearing Exhibit 113 (Commission Form K, Notice of Cancellation of Insurance Policies issued to Rapid Response Towing and Transport, Inc., dated Mar. 30, 2023).

¹⁹ Hearing Exhibit 114 (Order of Summary Suspension and Complaint and Notice of Hearing sent to Melvin Toliver, May 9, 2022).

²⁰ Hearing Exhibit 115 (Copy of Dec. No. No. R22-0335, issued June 6, 2022, in Proceeding No. 22C-0194-INS).

²¹ See Decision No. R22-0335, issued June 6, 2022, in Proceeding No. 22C-0194-INS, Appendix A.

²² Hearing Exhibit 111, pp. 1-3.

through Mayflower. However, Haislett's investigation found no indication that any insurer had filed proof of financial responsibility.

50. Haislett further testified that Toliver told her he had paid \$150 for three "stamps" with the Commission but could not identify an individual at the Commission who had accepted the alleged payment, although he claimed he had purchased them from a female Commission employee. Haislett investigated this claim, too, but found no evidence that Toliver had purchased any "stamps" from the Commission. Further, the Commission's male administrative assistant told Haislett that no one had come to the Commission's offices to purchase "stamps" during the week in question, and that no females would have assisted any visitors to the Commission during that time

51. Toliver also told Haislett that he found the U-Haul vehicles while "patrolling around" Denver but was vague about the precise locations. He told her that he contacted Reed to determine whether the vehicles were on a "hit list," claiming he was a vehicle reposessor. However, Reed explicitly told Haislett that she had not given Toliver and/or Respondent permission to search for, collect, or tow vehicles for U-Haul. The State's repossession list for February and March 2023 did not include Toliver and/or Respondent, refuting Toliver's claim.²³

52. Haislett questioned Toliver about the markings on the towing vehicle, the invoices, and the locations from which the tows originated. Toliver claimed that his briefcase containing the invoices had been stolen, and that he intended to sell the tow truck back to Ben Pearson at Colorado Roadside Posse. Haislett could not confirm the first claim, and learned from Pearson that the latter had no intention of purchasing the vehicle from Toliver.

²³ Hearing Exhibit 118 (copy of February and March 2023 Registered Reposessor Bond List).

53. Haislett also discovered that Toliver once owned a towing carrier known as Knight's Towing. Knight's Towing's permit was issued January 7, 2014, but revoked January 8, 2020, for cancellation of insurance. Toliver was listed as the designated agent for Knight's Towing.²⁴

54. Similarly, Haislett found a Commission IFMS record for Tow-Tal Towing. Like Knight's Towing, Toliver was identified as the designated agent for Tow-Tal Towing. Tow-Tal was issued a Commission permit to operate as a towing carrier in 2003, but, like Knight's Towing, the permit for Tow-Tal Towing was revoked on October 14, 2003, after its insurance was cancelled on September 25, 2003, and canceled again on September 2, 2021.²⁵

55. Haislett is familiar with the statutes and regulations governing towing carriers. She noted that § 40-10.1-401(1)(a), C.R.S., prohibits towing carriers from operating in intrastate commerce — i.e. performing any tows — without a valid permit. Likewise, she explained that § 40-10.1-107(1), C.R.S., requires towing carriers to maintain and file with the Commission evidence of financial responsibility, which the statute defines as “a liability insurance policy.”²⁶ Haislett concluded that Respondent had violated both statutes.

56. Haislett issued a CPAN against Respondent, alleging nine violations against Respondent.²⁷ Violations 1 through 4 contend Respondent failed to maintain and file proof of financial responsibility. Violations 5 through 9 assert that Respondent improperly operated as a towing carrier in intrastate commerce without a valid permit.²⁸ On May 4, 2023, Haislett served the CPAN on Toliver and obtained his signature on the CPAN by having another Commission

²⁴ Hearing Exhibit 116 (IFMS page for Knight's Towing).

²⁵ Hearing Exhibit 117 (IFMS page for Tow-Tal Towing).

²⁶ § 40-10.1-107(2), C.R.S.

²⁷ Hearing Exhibit 120 (copy of CPAN No. 134998).

²⁸ *Id.*

Criminal Investigator, Joseph Potts, call Toliver and request a tow. Toliver arrived at the location ostensibly to tow a broken-down vehicle, but instead was greeted by Haislett, Reed, and Potts. Reed identified Toliver. Haislett then served the CPAN and, after some coaxing, convinced Toliver to sign the CPAN acknowledging receipt in her presence.²⁹ Hearing Exhibit 119 is a photograph of the vehicle which Toliver drove to the meeting location, and establishes that more than one month after conversing with Haislett on the telephone, Toliver was still operating a tow truck bearing the insignia of Colorado Roadside Posse.³⁰ Haislett believes the vehicle shown in Hearing Exhibit 119 is the same vehicle as depicted in Hearing Exhibit 101, the vehicle photographed by Reed on February 24, 2023.

57. Haislett noted that there were “many other” violations of the towing statutes and regulations, but she concentrated on the violations for operating without a permit and failure to maintain and file evidence of financial responsibility.

58. Haislett opined that Respondent and/or Toliver has exhibited a pattern of operating without a valid permit and/or without proof of financial responsibility, which are aggravating factors warranting a penalty.

59. In contrast, Haislett noted that she found no mitigating factors justifying a reduction in the penalty.

60. The ALJ finds both Haislett and Reed credible and persuasive witnesses.

61. Staff is seeking a full pursuit of CPAN No. 134998 which imposed a total penalty of \$56,925 (inclusive of all surcharges), a full refund of the \$1,801 U-Haul paid to Respondent, and an order requiring Respondent to cease and desist operating without a permit or proper, valid insurance.

²⁹ *Id.*

³⁰ Hearing Exhibit 119.

III. DISCUSSION

62. 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 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.

63. 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.”³¹ As provided in Commission Rule 1500 of the Commission’s Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1, “[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.³² The preponderance standard requires the finder of fact to determine whether the existence of a contested fact is more probably true than its non-existence.³³ While the quantum of evidence that constitutes a preponderance cannot be 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.

64. Section 40-7-116, C.R.S. mandates a number of procedures for the imposition of civil penalties by the Commission. After specifying that the listed officials are the ones authorized to issue civil penalty assessments for violations of law, § 40-7-116(1)(a), C.R.S., states that, “When a person is cited for the violation, the person operating the motor vehicle involved shall be given

³¹ § 24-4-105(7), C.R.S.

³² See § 13-25-127(1), C.R.S. and 4 CCR 723-1-1500.

³³ *Swain v. Colorado Dept. of Revenue*, 717 P.2d 507 (Colo. App. 1985).

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.”³⁴ 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.”³⁵

65. The evidence establishes the Commission’s jurisdiction in this proceeding. CPAN No. 134998 was personally served upon Respondent in accordance with § 40-7-116(1)(b), C.R.S.

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

³⁴ § 40-7-116, C.R.S.

³⁵ § 40-7-116, C.R.S.

67. Pursuant to 40-10.1-106, C.R.S.:

(1) The commission has the authority and duty to prescribe such reasonable rules covering the operations of motor carriers as may be necessary for the effective administration of this article, including rules on the following subjects:

(a) Ensuring public safety, financial responsibility, consumer protection, service quality, and the provision of services to the public; [and]

(b) The circumstances under which a towing carrier may perform a nonconsensual tow of a motor vehicle, the responsibilities and facilities of the towing carrier for the care or storage of the motor vehicle and its contents, and the minimum and maximum rates and charges to be collected by the towing carrier for the nonconsensual towing and storage of the motor vehicle.

68. To lawfully operate as a towing carrier in the State of Colorado, a towing carrier must have in effect a valid permit issued by the Commission. The applicable statute is unambiguous:

A person shall not operate or offer to operate as a towing carrier in intrastate commerce without first having obtained a permit therefor from the [C]ommission in accordance with this article.³⁶

69. A towing carrier is also statutorily required to maintain financial responsibility — i.e. liability insurance — and have on file with the Commission proof of valid financial responsibility. That statute, too, is clear and unequivocal:

Each motor carrier shall maintain and file with the [C]ommission evidence of financial responsibility in such sum, for such protection, and in such form as the [C]ommission may by rule require as the commission deems necessary to adequately safeguard the public interest.³⁷

The financial responsibility required by subsection (1) of this section must be in the form of a liability insurance policy issued by an insurance carrier or insurer authorized to do business in this state³⁸

³⁶ § 40-10.1-401(1)(a), C.R.S.

³⁷ § 40-10.1-107(1), C.R.S.

³⁸ §40-10.1-107(2), C.R.S.

Further, towing carriers fall within the definition of “motor carriers” to whom § 40-10.1-107(1), C.R.S., applies. The statute broadly defines a “motor carrier” to include “any person owning, controlling, operating, or managing a motor vehicle that provides transportation in intrastate commerce pursuant to this article.”³⁹

70. Here, the evidence of record based upon Haislett’s investigation demonstrates that Respondent committed each of the alleged nine statutory violations. Respondent’s permit to operate as a towing carrier had been revoked as of June 28, 2022, and has not been reissued since. Respondent’s insurance had been cancelled by its insurer on April 29, 2022, and no evidence of new insurance coverage, and hence no proof of financial responsibility, has been filed with the Commission. Commission records establish that Respondent has operated without proper insurance since April 29, 2022.

71. Further, the evidence establishes that Respondent towed the U-Haul vehicles described on CPAN No. 134998 on the following dates and charged the following sums as shown by the invoices admitted as Hearing Exhibits 102, 103, 104, 105, 106, 107, and 108:

- February 24, 2023: \$301⁴⁰
- March 6, 2023: \$350⁴¹
- Undated, but found to be March 6, 2023: \$350⁴²
- Undated, but found to be March 6, 2023: \$300⁴³
- March 15, 2023: \$350⁴⁴

³⁹ § 40-10.1-101(11), C.R.S.

⁴⁰ Hearing Exhibits 102 and 108.

⁴¹ Hearing Exhibit 103.

⁴² Hearing Exhibit 104.

⁴³ Hearing Exhibit 105.

⁴⁴ Hearing Exhibit 106.

- March 20, 2023: \$300⁴⁵

72. The evidence establishes that, through its Traffic Control Manager, Jennifer Reed, U-Haul paid Respondent \$301 by credit card via Square⁴⁶; and issued two checks from U-Haul accounts — one for \$900 on March 6, 2023⁴⁷, and another for \$600 on March 20, 2023⁴⁸— for a total sum of \$1,801 U-Haul paid to Respondent.

73. At the time of the tows, Respondent possessed neither the requisite permit nor proof of financial responsibility. The ALJ therefore finds and concludes that Respondent performed the above tows illegally and in violation of §§ 40-10.1-401(1)(a) and 40-10.1-107(1), C.R.S.

74. 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.

75. 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;

⁴⁵ Hearing Exhibit 107.

⁴⁶ Hearing Exhibit 108.

⁴⁷ Hearing Exhibit 109.

⁴⁸ *Id.*

- (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.

76. The ALJ notes that Respondent: knowingly operated as a towing carrier without possessing proper liability insurance (financial responsibility) or having proof of financial responsibility on file with the Commission; operated as a towing carrier despite the permit's revocation; sought out and towed U-Haul vehicles on at least six occasions; demanded immediate payment for the tows and threatened to increase the amount charged if not paid immediately or if the vehicle were to be towed to Respondent's purported storage facility; operated a vehicle bearing the identifying decal of another towing carrier (Colorado Roadside Posse), despite not being affiliated or working for the latter; continued to drive the tow truck bearing Colorado Roadside Posse's moniker despite being asked by both Colorado Roadside Posse and the Haislett to remove the decal; exhibited a pattern of operating as a towing carrier under prior business names despite the revocation of those other entities' permits; and is believed to continue to be operating without either a permit or valid insurance.

77. Based on the evidence presented and findings of fact, the ALJ find 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; and (b) punishing Respondent for its past illegal behavior.

78. Civil penalties, each in the amount of \$12,650.00, each of which is inclusive of all surcharges, for the proven violations in Counts 1-4 of CPAN No. 134998, for a total of \$50,600.00, will be assessed for the proven violations in Counts 1-4 of CPAN No. 134998.

79. Civil penalties, each in the amount of \$1,265.00, each of which is inclusive of all surcharges, for the proven violations in Counts 5-9 of CPAN No. 134998, for a total of \$6,325.00, will be assessed for the proven violations in Counts 5-9 of CPAN No. 134998.

80. The total of the assessed civil penalties is \$56,925.00.

81. Staff further requests that the Commission order Respondent to refund U-Haul's tow charge payments to Final Notice Towing, totaling \$1,801.00. Such relief is consistent with Rule 6511(g) and will be ordered below.

82. Finally, Respondent/Toliver will be ordered to cease and desist operating as a towing carrier unless and until it/he obtains a valid Commission permit and obtains and maintains valid insurance coverages and files proof of said financial responsibility. As well, Respondent will be ordered not to engage in any activity in violation of Colorado statutory or regulatory law.

83. 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. Respondent, Melvin Toliver/Rapid Response Towing and Transport, Inc., doing business as Final Notice Towing and Recovery (Respondent or Final Notice Towing) is assessed a civil penalty of \$56,925.00, which is inclusive of all surcharges, for the violations discussed and found above.

2. No later than 30 days following the date of the final Commission decision issued in this Proceeding, Respondent shall pay to the Commission the civil penalties and the surcharge assessed in Ordering Paragraph No. 1.

3. In accordance with Rule 6511(g) of the Rules Regulating Transportation by Motor Vehicle 4 *Code of Colorado Regulations* 723-6, Respondent shall refund \$1,801.00 to U-Haul no later than 30 days following the date of the final Commission decision issued in this Proceeding.

4. Respondent shall cease and desist operating as a towing carrier in intrastate commerce in the State of Colorado unless and until such time as Respondent: (1) secures a valid Commission permit to operate as a towing carrier; and (2) obtains and maintains all of the requisite insurance coverages and files proof of such financial responsibility with the Commission. Further, Respondent shall cease and desist from engaging in the statutory and Rule violations discussed above, or committing any act in violation of the statutes and regulations applicable to towing carriers.

5. Proceeding No. 23G-0227TO 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 twenty (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

ALENKA HAN

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Rebecca E. White".

Rebecca E. White,
Director