

Decision No. C23-0831

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23F-0372TO

RASHAINA MAKER,

COMPLAINANT,

V.

BUGS TOWING, LLC,

RESPONDENT.

COMMISSION DECISION ADDRESSING EXCEPTIONS

Mailed Date: December 13, 2023
Adopted Date: November 1, 2023

I. BY THE COMMISSION

A. Statement

1. On July 18, 2023, Ms. Rashaina Maker (Complainant or Ms. Maker) filed a Complaint against Bugs Towing, LLC (Respondent or Bugs Towing) alleging a wrongful tow and she had been unable to retrieve her vehicle or personal property in violation of Commission rules. Bugs Towing was provided with the Complaint and Decision No. R23-0554-I issued on August 23, 2023, which required the Respondent to satisfy or answer the complaint within 20 days and stated that failure to do so may result in the allegations of the Complaint being deemed admitted. No response or answer was received from Respondent. Recommended Decision No. R23-0620, issued on September 14, 2023, by Administrative Law Judge (ALJ) Melody Mirbaba (Recommended Decision), accepted the Complaint's factual allegations as true and found multiple

violations of Commission rules and statutes. Bugs Towing filed exceptions to the Recommended Decision on October 4, 2023, arguing against the ALJ's decision to accept the factual allegations as true, and proposing the Commission vacate the Recommended Decision.

2. As discussed below, the Commission rejects Respondent's exceptions. The Commission upholds the Recommended Decision in its entirety, while repeating the Recommended Decision's acknowledgment that findings of statutory and rule violations in this Proceeding are based only on facts presented in the Complaint as is within the Commission's discretion and authority. Additionally, the Commission rejects related requests from Complainant and Respondent made in Respondent's exceptions filings and in Complainant's response filed October 5, 2023.

B. Recommended Decision

3. The Complainant filed a Complaint against Respondent Bugs Towing, alleging that Bugs Towing wrongfully towed her vehicle, that she had been denied access to property in her vehicle, and that she had been unable to retrieve her vehicle from Bugs Towing. Through Decision No. R23-0554-I, the ALJ scheduled a hearing and Bugs Towing was informed that failure to satisfy or answer the Complaint may result in the Complaint's allegations being deemed admitted, and that the Commission may grant relief sought in the Complaint that is within the Commission's power and jurisdiction.

4. No response or answer was received by the deadline set in Decision No. R23-0554-I. Therefore, the Recommended Decision vacated the scheduled hearing and accepted the Complaint's factual allegations as true. Within her findings, the ALJ included without limitation the following pertinent facts admitted from the Complaint:¹

¹ Recommended Decision at ¶¶ 9-24.

- a. On June 17, 2023, Ms. Maker was parked at Homewood Park apartments (Homewood apartments), and when she returned to her car, it would not start because her key fob was not working. While Ms. Maker worked to get her car started, she explained the situation to an apartment maintenance worker and a person Ms. Maker believed to be the property manager, and stated that a locksmith could come to the property on June 19, 2023. Ms. Maker was told she could remain on the property until the locksmith arrived.
- b. In the early morning of June 19, 2023, Ms. Maker was at her vehicle and was approached by a police officer. Ms. Maker explained the situation to the officer, and the officer told Ms. Maker she could remain at the apartment complex.
- c. Ms. Maker returned to her vehicle around 7:00 pm on June 19, 2023 to meet the locksmith, and her vehicle had been towed. She contacted Bugs Towing, which informed her that her vehicle had been towed at the property manager's request, and that the vehicle was deemed inoperable, abandoned, and had been "tagged" for three days. Ms. Maker told Bugs Towing she had permission for her vehicle to be in the parking lot and that no notice had been placed on her car.
- d. On June 23, 2023, Ms. Maker went to Bugs Towing to retrieve items from her vehicle, and was denied access based on Bugs Towing's assertion that she did not have the proper proof of ownership. Separately, Ms. Maker states she was denied access to her vehicle when Bugs Towing's employee learned Ms. Maker wished to retrieve a firearm from her car and stated a police officer would have to be present.
- e. Ms. Maker contacted the Commission and was directed to complete a form and set up a payment plan, and was informed that she would only have to put \$60 down to have her car released. She then contacted Bugs Towing, and was told she would need to complete the form; provide a notarized statement that Bugs can tow her vehicle again if she fails to pay the remaining tow balance within 24 hours; three months of bank statements; proof of ownership; a copy of her ID and social security card; and a debit or credit card that would be saved to charge the remaining balance. When Ms. Maker asked if a locksmith could accompany her so that she could drive the vehicle off the lot, she was told the vehicle would have to be towed off the lot for a locksmith to have access.
- f. On July 14, 2023, Ms. Maker went to Bugs Towing and presented the documents Bugs Towing stated it required. Bugs Towing's representative accused Ms. Maker of providing fake bank statements and stating that Ms. Maker needed to provide six months of bank statements and a check from her bank for the full amount owed. After Ms. Maker explained she had been told different requirements, Bugs Towing's representative asked if she wanted to retrieve her property from her vehicle, and Ms. Maker said she did. Ms. Maker states she was made to wait for several hours, and then a police officer arrived and asked if she was trying to exchange narcotics for a gun, as Bugs Towing

had reported. Ms. Maker then asked if she could retrieve her belongings from the vehicle, now that an officer was present. Bugs Towing's representative refused and Ms. Maker was told by the officer that she was banned from returning to the property.

- g. As of the time she filed the Complaint, Ms. Maker had been unable to retrieve her vehicle or belongings.

5. Through the Recommended Decision, the ALJ found the nonconsensual tow was unlawful under § 40-10.1-405(3)(b)(I), C.R.S., due to Respondent's failure to provide written notice 24 hours before the tow occurred,² and under Rule 6508(b)(I), 4 *Colorado Code of Regulations* (CCR) 723-6, because the vehicle was towed without the property owner's authorization.³ Further, the Recommended Decision found Respondent violated § 40-10.1-405(5)(b), C.R.S., and Rule 6512(b) when it refused to provide Ms. Maker access to retrieve vehicle contents,⁴ and § 40-10.1-405(5)(c), C.R.S., by requiring additional documentation and agreements regarding collateral to release Ms. Maker's vehicle, beyond what is required by statute.⁵ The ALJ ordered that Ms. Maker be allowed to immediately access and retrieve her vehicle, including allowing a locksmith to accompany her to create a new key fob. The ALJ ordered that Respondent may not collect or retain any fees whatsoever arising from the unlawful tow or require Ms. Maker to sign any form affirming that she owes payment. The Recommended Decision also orders Bugs Towing to immediately cease and desist from violating statute and Commission rules, specifically pointing to Bugs Towing's requirements for releasing Ms. Maker's vehicle of additional documentation, proof of sufficient funds, and a credit or debit card to pay the remaining balance, and Bugs Towing's assertion that a payment plan option is not available, and that Complainant must pay the remaining balance within 24 hours of retrieving her vehicle.⁶

² Recommended Decision at ¶ 31.

³ Recommended Decision at ¶ 32.

⁴ Recommended Decision at ¶ 34.

⁵ Recommended Decision at ¶ 33.

⁶ Recommended Decision at ¶ 36, Ordering ¶ 9.

C. Exceptions

6. In its exceptions filed October 4, 2023, Bugs Towing states it did not respond to the Complaint because it did not have an attorney and did not understand the importance of appearing at the hearing. Bugs Towing also states that it understood the tow had already been reviewed by PUC Enforcement Staff, and that it didn't understand why the Commission was considering the Complaint when no enforcement action was taken. Respondent argues that the Recommended Decision is the equivalent of a default judgment, and that these are disfavored by Colorado courts. Respondent argues that under criteria laid out in *Buckmiller v. Safeway Stores*, 727 P.2d 1112, (Colo. 1986) the Commission should vacate the Recommended Decision.

7. As to the Recommended Decision's conclusions and findings, Respondent states many of the factual findings are false. It asserts the tow complied with Commission rules. Bugs Towing asserts that conversations between Ms. Marker and the apartment staff served as the notice required under § 40-10.1-405(b)(I)(A), C.R.S., and argues that "the totality of the circumstances on balance should lead to the conclusion that the tow was proper and with adequate notice."⁷ Further, Respondent states that it allowed Ms. Marker access to her vehicle in compliance with the Commission's rules. Respondent states that when it became apparent Ms. Marker had a gun in the car, it was within its rights to require the presence of a police officer.

8. Bugs Towing states it would now participate in a hearing, but it also proposes that the Commission vacate the Recommended Decision but still order Respondent to allow the vehicle to be retrieved at no charge. It also states that the vehicle has been available for retrieval at no charge, pursuant to the Recommended Decision, but Ms. Marker has not come to get her car.

⁷ Exceptions at p. 5.

Respondent also requests that the Commission require Bugs Towing to retain the vehicle for another 60 days, after which it may be disposed of as an abandoned vehicle.

9. In her response, filed on October 5, 2023, Complainant states she called Respondent after the Recommended Decision was issued, and was told her vehicle was no longer on the lot. Ms. Maker states she opposes Respondent's request that the Commission deem her vehicle abandoned after a certain period of time, because she was trying to get her key fob fixed and her car was not abandoned. Ms. Maker also asked that Bugs Towing be required to pay for the cost to fix her car key-fob.

D. Findings and Conclusions

10. Rule 1308(f) provides that if a party fails to file timely a responsive pleading, to admit or deny an allegation in a complaint, or to raise an affirmative defense, the Commission may deem the party to have admitted such allegation or to have waived such affirmative defense and may grant any or all of the relief requested. Respondent received the Complaint and Decision No. R23-0554-I stating that failure to respond may result in the Complaint's factual allegations being admitted and the Commission granting requested relief. The ALJ's decision to admit the facts presented in the Complaint was within her discretion and authority. We are not persuaded by Respondent's claimed misunderstanding of Commission processes, and Respondent's misunderstanding of the importance of responding to the Complaint, to reverse the ALJ's decision on this point. We decline to re-open the record here, and to potentially hold a hearing in this matter, leading to additional delay and inefficiencies. We also decline to vacate the Recommended Decision's findings and conclusions but still ultimately direct Respondent to comply with the Recommended Decision's order to allow the vehicle to be retrieved at no cost. This would leave the Commission's ordered relief unsupported.

11. Further, we highlight that any *one* of the statutory or rule violations set forth in the Recommended Decision provides sufficient grounds to require release of the vehicle at no charge. While Respondent asserts that conversations between Ms. Maker and apartment staff and law enforcement satisfied the notice requirements in § 40-10.1-405(3)(b)(I), C.R.S., we disagree. Respondent states “the vehicle owner received multiple warnings under § 40-10.1-405[3](b)(I)(A), C.R.S., and was eligible to be towed without further notice.”⁸ The statute provides that a towing carrier shall not nonconsensually tow a vehicle from a parking space or common parking area without the towing carrier or property owner giving the vehicle owner 24 hours’ written notice, unless an exception applies. Respondent cites § 40-10.1-405(3)(b)(I)(A), C.R.S., which provides an exception from the requirement to give 24 hours’ written notice if “the vehicle owner has received two previous notices for parking inappropriately in the same manner.” Agreeing with Respondent’s argument would require a determination that the “two previous notices for parking inappropriately” can be verbal rather than written, and that previous notices do not have to provide the specific information required by § 40-10.1-405(3)(b)(III), C.R.S., including that the notice must clearly state that the vehicle will be towed if not moved, a description of the inappropriate parking, and the time the vehicle will be towed if it is not moved. This reading would be contrary to the statute’s plain language and intent. We uphold the Recommended Decision in its entirety, including its finding of a violation of § 40-10.1-405(3)(b)(I), C.R.S.

12. However, as stated in the Recommended Decision, we do acknowledge that the record in this Proceeding, and findings of statute and rule violations, are based solely on the Complaint and its attachments. To the extent that factual scenarios surrounding Respondent’s other tows and impounds are different than the facts alleged in the Complaint and deemed admitted in

⁸ Exceptions at p. 4.

this Proceeding, Respondent may not be repeating the statutory and rule violations found in the Recommended Decision.

13. We also note that a rulemaking on towing regulations is ongoing in Proceeding No. 23R-0085TO. The final rules that will be adopted through Proceeding No. 23R-0085TO will of course apply going forward.

14. The Commission rejects Respondent's request that Bugs Towing be required to retain Ms. Maker's vehicle for another 60 days, after which the vehicle may be disposed of as an abandoned vehicle. Instead, we require Bugs Towing to file, no later than 15 days after the issuance of this Decision, a notice into this Proceeding stating whether the vehicle has been retrieved.⁹

15. We also reject Ms. Maker's request that Bugs Towing be required to pay for the cost to fix her key fob. Such relief would more appropriately be requested in another forum.

II. ORDER

A. The Commission Orders That:

1. The exceptions filed by Bugs Towing, LLC (Bugs Towing), on October 4, 2023, are denied, consistent with the discussion above. Bugs Towing's request that it be allowed to dispose of the vehicle as abandoned after 60 days is also denied.

2. Bugs Towing shall file a notice stating whether Ms. Maker's vehicle has been retrieved no later than 15 days after the issuance of this Decision.

⁹ Respondent filed the required notice on November 1, 2023, stating that the vehicle was released on October 24, 2023 at no charge, and attaching an invoice. We appreciate Respondent's timely compliance with this requirement.

3. The request that the Commission require Bugs Towing to pay the cost of fixing her key fob, contained in Ms. Maker's response filed October 4, 2023, is denied.

4. The 20-day time period provided for in § 40-6-114, C.R.S., within which to file applications for rehearing, reargument, or reconsideration, begins on the first day following the effective date of this Decision.

5. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
November 1, 2023.**

(S E A L)



ATTEST: A TRUE COPY

Rebecca E. White

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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MEGAN M. GILMAN

TOM PLANT

Commissioners