

Decision No. R23-0132

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22F-0381TO

KEVIN MCCLUSKY,

COMPLAINANT,

V.

TOWING DONE RIGHT LLC,

RESPONDENT.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
AVIV SEGEV
GRANTING COMPLAINT, ORDERING REFUND,
AND CLOSING PROCEEDING**

Mailed Date: February 24, 2023

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I. STATAMENT**A. Procedural History**

1. On September 1, 2022, Complainant Kevin McClusky (Complainant or Mr. McClusky) filed a Complaint against Respondent Towing Done Right, LLC, formerly, Towing Done Right, Inc. (Respondent or Towing Done Right). Mr. McClusky alleges that Towing Done Right wrongfully towed his vehicle and demands payment for inaccurate charges.¹

2. On September 6, 2022, the Commission issued an Order to Satisfy or Answer which was served on Towing Done Right along with a copy of the Complaint. The Order to Satisfy or Answer requires Towing Done Right to either satisfy the matters in the Complaint or answer the Complaint within writing within 20 days of the date the Order is served.² Also on September 6, 2022, the Commission issued Order Setting Hearing and Notice of Hearing (Order and Notice) setting this matter for a hearing before an Administrative Law Judge (ALJ).³

3. By Decision No. R22-0519-I, issued September 7, 2022, Towing Done Right was prohibited from attempting to collect amounts claimed to be owed while this Proceeding is pending.⁴

4. On September 14, 2022, the Commission referred this Proceeding to an ALJ for disposition by minute entry.

5. On September 15, 2022, counsel entered an appearance on behalf of Towing Done Right.

¹ Complaint at 1-2.

² Order to Satisfy or Answer at 1.

³ Order and Notice at 1.

⁴ Decision No. R22-0519-I at 2 (issued September 7, 2022).

6. On September 19, 2022, Towing Done Right filed its Response to Complaint (Response). The Response denies the Complaint's allegations.⁵

7. By Decision Nos. R22-0585-I, R22-0614-I, and R22-0707-I, an evidentiary hearing was scheduled for December 6, 2023, at 9:00 am.

8. On December 6, 2022, at 9:00 a.m., the ALJ called the evidentiary hearing to order. Mr. McClusky appeared unrepresented by counsel. Towing Done Right appeared represented by legal counsel. Mr. McClusky testified on his own behalf. Messrs. Joel Perry and Noah Montoya testified on behalf of Towing Done Right.

9. By Decision No. R23-0024-I, issued January 10, 2023, the ALJ reopened the evidentiary record and took administrative notice of the state of Respondent's Commission-issued booting and towing permits during the times relevant herein. Decision No. R23-0024-I advised each of the parties that they may, each, address the administratively-noticed evidence by making an appropriate filing.

B. Applicable Law

10. According to § 10-10.1-401(1)(a), C.R.S. and Rule 6005(a) of the Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* (CCR) 723-6, towing carriers operating within Colorado may not provide towing services without first having obtained an appropriate permit from the Commission.

11. Section 10-10.1-406(1), C.R.S. provides:

(1) No fees.

(a) If a towing carrier fails to comply with this article 10.1... or any rule promulgated under this article 10.1..., the towing carrier:

⁵ Response at 1.

(I) Shall not charge or retain any fees or charges for the services performed with respect to the vehicle; and

(II) Shall return to the authorized or interested person any fees it collected with respect to the vehicle.

12. According to Rule 6508(a)(I)(B), 4 CCR 723-6, a towing agreement between a towing carrier acting as an authorized agent for a property owner for nonconsensual tows must contain the email address, if applicable, and the phone number of the property owner.

13. According to Rule 6508(b), 4 CCR 723-6, a towing carrier may not tow a motor vehicle unless the towing carrier is requested to perform a tow upon the authorization of the property owner.

14. Rule 6508(b)(III), 4 CCR 723-6, provides:

Property owner authorization. The authorization from the property owner, or authorized agent for the property owner, shall be in writing; shall identify by make, license plate number (if available), and VIN (if available), the motor vehicle to be towed; and shall include the date, time, and place of removal.

15. According to Rule 6509(a)(II), (IV), and (IX), 4 CCR 723-6, a towing invoice must include the towing carrier's permit number, the date and time of completion of the tow, the date and time notice was given to the appropriate law enforcement agency, and the printed name of the tow truck driver.

16. Rule 6511(g), 4 CCR 723-6 provides:

Noncompliance. If a tow is performed, or storage is provided, in violation of state statute or Commission rule, the towing carrier may 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 may be released without charge to the persons authorized in paragraph 6512(a). Any money collected must be returned to the owner, authorized operator, or authorized agent of the owner of the motor vehicle.

17. According to §10-10.1-801, C.R.S. and Rule 6810(c), 4 CCR 723-6, a booting company may not engage in booting operations without first having obtained a booting permit from the Commission.

18. According to Rule 6811, 4 CCR 723-6, the term boot means to “to place a wheel immobilization device upon a motor vehicle for the purpose of prohibiting the operation of the motor vehicle.

19. According to Rule 6818(a), 4 CCR 723-6, a “...vehicle booting company shall immediately accept payment if payment is offered in cash...”

II. FINDINGS OF FACT

20. At all relevant times herein, Respondent did not hold a Commission-issued booting permit.⁶

21. Respondent’s Commission-issued towing permit (PUC No. T-40859) was effective until March 8, 2022, when it was summarily suspended.⁷ Respondent’s PUC No. T-40859 was cancelled on September 26, 2022.⁸

22. On September 10, 2020, Respondent, Park it Right, Inc. (Park It Right)⁹, and First Parkview Townhomes HOA (First Parkview HOA) entered into a Parking Enforcement Agreement that was in effect during all times relevant to this Proceeding (Parking Agreement).¹⁰

⁶ See Attachment A to Decision No. R23-0024-I.

⁷ See Attachment B to Decision No. R23-0024-I.

⁸ See *id.*

⁹ According to the testimony given at the evidentiary hearing on December 6, 2022, Respondent and Park It Right are related, commonly-controlled, companies.

¹⁰ See Hearing Exhibit Nos. 205 and 206.

The Parking Agreement authorizes Respondent to place a wheel-boot immobilizing device (boot) on the vehicles parked in violation of the First Parkview HOA's Parking Rules (First Parkview Parking Rules) and impound vehicles whose boot was impermissibly removed.¹¹ The Parking Agreement incorporates the First Parkview Townhomes Parking Rules into the Parking Agreement.¹² The Parking Agreement does not contain the property owner's email address or phone number. The Parking Agreement provides that: "All tagging, ticketing, booting, until tow arrival, and general monitoring will be provided by Park It Right -CO PUC BT-0003"¹³ and that "Removal and Impound will be provided by Towing Done Right-CO PUC T-04884."¹⁴

23. On February 5, 2022, the Complainant's vehicle, a 2008 BMW X5, bearing VIN # 5UXFE83578L163481 (Complainant's vehicle)¹⁵ was parked at the parking lot of the First Parkview Townhomes complex, located at 11602 Community Center Dr., Thornton, CO 80229 (First Parkview parking lot). While parked at the First Parkview parking lot, the Complainant's parking permit for Complainant's paid parking space at the First Parkview parking lot was not outwardly displayed, after it had fallen from the Complainant's vehicle's rear-view mirror.

24. Later on February 5, 2022, Respondent placed a boot on the wheel of Complainant's vehicle. The boot was placed to immobilize Complainant's vehicle and prohibit its operation.

¹¹ Hearing Exhibit No. 205 at 1, 2, and 4.

¹² *Id.* at 2.

¹³ Despite this statement, booting permit PUC No. BT-0003 was never owned by Park It Right. Rather, Respondent was the sole owner of PUC No. BT-0003. See Attachment A to Decision No. R23-0024-I.

¹⁴ Parking Agreement at 4.

¹⁵ During the time of the events pertinent to this Proceeding, due to an apparent technical mishap that Complainant was attempting to resolve, Complainant's vehicle was not titled to the Complainant. Despite this, based on the record, the ALJ finds that the Complainant is the lawful owner and operator Complainant's vehicle.

25. On February 6, 2022, Complainant noticed that a boot was placed on his vehicle, hung its parking permit on the rear-view mirror of Complainant's vehicle, and contacted Respondent to inquire about removing the boot from Complainant's vehicle. Respondent informed Complainant that Complainant had to pay \$350, and that Respondent would only accept a credit card as a form of payment. Complainant informed Respondent that he could only make a cash payment.

26. Later on February 6, 2022, Complainant removed the boot from Complainant's vehicle by removing the bolt¹⁶ that held the boot in place. Complainant then placed Respondent's removed boot in Complainant's vehicle.

27. On February 6, 2022, within approximately 4 hours of the Complainant's removal of the boot, Respondent towed Complainant's vehicle to Respondent's impound lot.

28. In the presence of a police officer and Complainant, Respondent later retrieved Respondent's boot that was placed by Complainant in Complainant's vehicle.

29. Later in February 2022, while the Complainant's vehicle was in the Respondent's possession, Complainant parked Complainant's wife's vehicle at the same parking space from which Complainant's vehicle was towed by Respondent on February 6, 2022. Before leaving Complainant's wife's vehicle, Complainant left a note on the dashboard of Complainant's wife's vehicle stating that Respondent had possession of Complainant's parking permit and requesting that Complainant's wife's vehicle not be booted. Shortly thereafter, Respondent booted Complainant's wife's vehicle. The boot was placed on Complainant's wife's vehicle to immobilize Complainant's vehicle and prohibit its operation. When the Complainant and his

¹⁶ The ALJ is not addressing the question of whether, or to what extent, Complainant may have damaged Respondent's boot by removing it, if at all.

wife called Respondent, they were informed by Respondent that Complainant's wife's vehicle was towed because Complainant's wife was related to the Complainant, and the Complainant owed money to the Respondent for Complainant's illegal removal of the Respondent's boot. Respondent also informed the Complainant and his wife that it would cost \$350.00 to remove Respondent's boot and that Respondent would not accept a cash payment. Within a week following Respondent's placing of a boot on Complainant's wife's vehicle, Complainant paid Respondent for the removal of, and Respondent removed, the boot from Complainant's wife's vehicle. When Complainant regained control over Complainant's wife's vehicle, the note that Complainant left in Complainant's wife's vehicle regarding Complainant's parking permit was still in Complainant's wife's vehicle. Respondent never returned to Complainant, or Complainant's wife, any portion of the \$350.00 that Complainant paid Respondent for the removal of the boot from Complainant's wife's vehicle.

30. Within approximately a week of February 6, 2022, when Complainant's vehicle was towed by Respondent, Respondent released Complainant's vehicle to Complainant after Complainant paid Respondent approximately \$850.00.¹⁷ Complainant did not pay Respondent the charges Respondent demanded from Complainant for Complainant's removal of Respondent's boot from Complainant's vehicle in February 2022.

31. Between February and August 2022, Respondent received from Complainant multiple notices of Complainant's past due invoice in connection with Complainant's removal of Respondent's boot from Complainant's vehicle in February 2022.

¹⁷ Complainant testified that he paid Respondent "eight hundred and fifty something dollars." The record is otherwise silent on the exact amount Complainant paid Respondent.

32. Complainant did not pay Respondent in connection with the removal of Respondent's boot from Complainant's vehicle in February 2022.

33. On August 5, 2022, Complainant parked Complainant's vehicle in his private parking space at the First Parkview parking lot.

34. Later August 5, 2022, Respondent towed Complainant's vehicle from Complainant's private parking space at the First Parkview parking lot.

35. At the time of the Respondent's tow of Complainant's vehicle in August 2022, the First Parkview Parking Rules authorized Respondent to only tow vehicles that were improperly parked in a "reserved/private space."¹⁸

36. On August 7, 2022, after noticing the Complainant's vehicle was missing from the First Parkview parking lot, Complainant called the Police. The Police informed Complainant that Complainant's vehicle was towed by Respondent. Complainant then contacted Respondent and was advised that Complainant's vehicle was impounded by Respondent due to Complainant's past due invoice in connection with Complainant's removal of Respondent's boot from Complainant's vehicle in February 2022.

37. On August 15, 2022, in response to the Commission Staff's (Staff) inquiry, Respondent stated: "On Aug 5, 2022, at 02:23 AM, the vehicle, a BMW... VIN# 5UXFE83578L163481 was observed and documented parked in violation; Unauthorized Vehicle,

¹⁸ See Hearing Exhibit 100. Hearing Exhibit 100 was submitted into evidence by Complainant. Hearing Exhibit 100 is signed by a representative of the First Parkview HOA but not by Respondent (or its representative). This does not change the ALJ's finding as to the First Parkview HOA Parking Rules that were in effect on August 5, 2022. Notably, the First Parkview HOA's Parking Rules (which are referenced in, and incorporated into, the Parking Agreement, Hearing Exhibit 205, were not attached to Hearing Exhibit 205, nor otherwise presented by Respondent in this Proceeding.

and was subsequently impounded per the pre-established parking rules of First Parkview Townhomes...”¹⁹

38. According to Respondent’s invoice dated August 15, 2022,²⁰ as of August 15, 2022, Complainant owed Respondent \$864.36 in connection with Respondent’s towing of Complainant’s vehicle on August 5, 2022. This invoice does not include Respondent’s permit number, the date and time of completion of the tow, the date and time notice was given to the appropriate law enforcement agency, and the printed name of the tow truck driver.

39. As of December 6, 2022, Respondent has not released Complainant’s vehicle to Complainant.

III. DISCUSSION AND CONCLUSIONS

40. During the hearing, Respondent argued that Complainant’s vehicle was not titled to Complainant and as such, Complainant lacked standing to pursue this matter. The ALJ rejects the arguments as it is clear, even from Respondent’s own undisputed actions,²¹ that Complainant’s was the authorized user of Complainant’s vehicle. Respondent also objected to the introduction of Hearing Exhibit 100 on the grounds that it was not signed. Respondent did not otherwise refute Complainant’s allegations, testimony, or evidence referenced herein regarding the booting, or towing of Complainant’s vehicle and Complainant’s wife’s vehicle by Respondent at the First Parkview parking lot in February and August 2022.

¹⁹ Hearing Exhibit 200 at 1.

²⁰ Hearing Exhibit 201.

²¹ These actions include Respondent’s release of Complainant’s vehicle to Complainant in February 2022 and sending Respondent multiple invoices between February 2022 and August 2022.

41. Commission records show that during all relevant times, Respondent did not hold a Commission-issued booting permit. As such, Respondent's booting of Complainant's vehicle and Complainant's wife's vehicle in February 2022 violated § 10-10.1-801 C.R.S. and Rule 6810(c), 4 CCR 723-6.

42. By failing to accept cash payment for the release of the boots that Respondent placed on Complainant's vehicle and Complainant's wife's vehicle in February 2022, Respondent also violated Rule 6818(a), 4 CCR 723-6.

43. Commission records also show Respondent's Commission-issued towing permit (PUC No. T-40859) was suspended in August 2022. As such, Respondent's towing of Complainant's vehicle in August 2022 violated § 10-10.1-401(1)(a), C.R.S. and Rule 6005(a), 4 CCR 723-6.

44. There is a discrepancy between Respondent's given reason for towing Complainant's vehicle in August 2022 as testified to by Complainant (i.e., Complainant's past due invoice), as compared to the reason Respondent identified to Staff in its reply email dated August 15, 2022²² (Complainant's parking violation). Notwithstanding this discrepancy, the record shows that Respondent was not authorized by the First Parkview HOA to tow Complainant's vehicle on August 5, 2022. The First Parkview HOA Parking Rules that were in place at the time Complainant's vehicle was towed on August 5, 2022²³ by Respondent state that the only parking violation for which impound (as opposed to an immediate boot) may²⁴ have

²² See Hearing Exhibit 200 at 1.

²³ See Hearing Exhibit 100.

²⁴ Hearing Exhibit 100 appears to reference conflicting consequences for parking in a reserved/private parking space (compare bullet no. 6 with bullet no. 11 on p.1 of Hearing Exhibit 100).

been appropriate is unauthorized parking in a “reserved/private space.”²⁵ Because Complainant’s vehicle was towed by Respondent from Complainant’s paid parking space, Respondent’s towing of Complainant’s vehicle was not authorized by the First Parkview HOA.

45. Because the Parking Agreement²⁶ did not contain the email address or phone number of the property owner (or its representative), Respondent violated Rule 6508(a)(I)(B), 4 CCR 723-6.

46. Because Respondent’s invoice dated August 15, 2022²⁷ did not contain Respondent’s towing permit number, the date and time of completion of the tow, the date and time notice was given to the appropriate law enforcement agency, and the printed name of the tow truck driver, Respondent also violated Rule 6509(a)(II), (IV), and (IX), 4 CCR 723-6.

47. Having failed to comply with § 40-10.1-406, C.R.S., Respondent will be ordered to:

- a) not charge or retain any fees or charges for the services performed with respect to the vehicle; and
- b) return to the authorized or interested person any fees it collected with respect to the vehicle.

48. Having failed to comply with § 40-10.1-801, C.R.S., Respondent cannot lawfully operate as a vehicle booting company in intrastate commerce and thus cannot be compensated therefor.

49. Based upon the entirety of the record, Respondent will be ordered to refund all amounts paid in connection with the unlawful towing and booting found herein.

²⁵ See Exhibit 100 at 1.

²⁶ Hearing Exhibit 205.

²⁷ Hearing Exhibit 201.

50. Being that this tribunal is not a court of general jurisdictions, the undersigned ALJ may not award damages in favor of the Complainant. Complainant may pursue damages for Respondent's violations in civil court of appropriate jurisdiction.

IV. ORDER

A. It Is Ordered That:

1. The Complaint filed by Complainant Kevin McClusky (Complainant) against Respondent Towing Done Right, LLC, formerly, Towing Done Right, Inc. (Respondent) is granted, consistent with the discussion above.

2. Within ten days following this Recommended Decision becoming a decision of the Commission, unless Respondent has already done so, Respondent shall:

a. Release, without a charge, Complainant Vehicle, 2008 BMW X5, bearing VIN # 5UXFE83578L163481 (Complainant's vehicle), to Complainant;

b. Refund Complainant or Complainant's wife all funds paid by Complainant and/or Complainant's wife to Respondent in connection with Respondent's booting of Complainant's and Complainant's wife's vehicles in February 2022, including any interest and late fee charges; and

c. Refund Complainant all funds paid by Complainant to Respondent in connection with Respondent's towing of Complainant's vehicle in August 2022, including any interest, late fees, impound, and storage charges.

3. Proceeding No. 22G-0269TO 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 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.

6. If exceptions to this Recommended 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

G. Harris Adams,
Interim Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

AVIV SEGEV

Administrative Law Judge