

Decision No. R23-0569

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23G-0034TO

Civil Penalty Assessment Notice: 133264-CPAN

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

SUE STEINBERGER, DOING BUSINESS AS GARY’S COLLISION & ALIGNMENT INC.,

RESPONDENT.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
ALENK HAN
ASSESSING CIVIL PENALTY, ORDERING REFUND,
AND CLOSING PROCEEDING**

Mailed Date: August 29, 2023

TABLE OF CONTENTS

I. STATEMENT	2
A. Summary.....	2
B. Procedural Background	2
II. FACTUAL FINDINGS.....	5
III. DISCUSSION.....	13
IV. ORDER.....	20
A. The Commission Orders That:	20

I. STATEMENT**A. Summary**

1. This Recommended Decision assesses a civil penalty against Respondent, Sue Steinberger, doing business as Gary's Collision & Alignment Inc. (Respondent or Gary's Collision), orders Respondent to issue a refund to Steven Schlafke, and closes this Proceeding.

B. Procedural Background

2. On January 13, 2023, the Public Utilities Commission (PUC or Commission) issued Civil Penalty Assessment Notice (CPAN) No. 133264 against Sue Steinberger, doing business as Gary's Collision and Alignment Inc. (Gary's Collision or Respondent). The CPAN asserted eight violations of Commission rules allegedly committed by Respondent on September 6, 2022, and assessed a total penalty amount of \$2,846.25.

3. CPAN No. 133264 asserted that Respondent had violated Rules 6509 and 6511 of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-6 by failing to include certain required information in a tow record/invoice on Invoice No. 10703. Specifically, the CPAN alleged the following violations:

- Violation 1: Violation of Rule 6509(a)(IV), 4 CCR 723-6, alleging invoice missing date for the completion of the tow, when the vehicle was placed in storage, or when the vehicle was released;
- Violation 2: Violation of Rule 6509(a)(IX), 4 CCR 723-6, alleging invoice missing signature of tow truck driver;
- Violation 3: Violation of Rule 6509(a)(VI), 4 CCR 723-6, alleging invoice missing complete address of the origin of the tow (*i.e.* no city, state, or zip code) and no one-way mileage between the origination and destination of the tow;
- Violation 4: Violation of Rule 6509(a)(VIII), 4 CCR 723-6, alleging invoice missing unit number and license number of the tow truck;

- Violation 5: Violation of Rule 6509(a)(XII), 4 CCR 723-6, alleging invoice missing required PUC notice language on at least the customer's copy stating "Report problems to the Public Utilities Commission at (303) 894-2070";
- Violation 6: Violation of Rule 6511(c)(IV)(A), 4 CCR 723-6, alleging (1) invoice missing additional information for a law enforcement-ordered tow, recorded at the time of occurrence. (Any towing carrier billing greater than one hour for an tow truck and driver for a given tow shall include, in addition to requirements of Rule 6509, the following information on the tow record/invoice, recorded at the time of occurrence: the time of dispatch; the time the tow truck leaves the yard or other staging location; the time the tow truck arrives on scene; the time the tow truck leaves the scene, and the time the towed motor vehicle is unhooked from the tow truck); and (2) the carrier charged two hours for the tow but only a start time is documented;
- Violation 7: Violation of Rule 6511(c)(IV)(B), 4 CCR 723-6, alleging invoice missing an advisement that documentation of costs billed in excess of one hour for any tow truck and drive for such tow (a law enforcement-ordered tow) are available upon request; and,
- Violation 8: Violation of Rule 6511(c)(IV)(D), 4 CCR 723-6, alleging towing carrier assessed an improper fee/charge related to a law enforcement-ordered tow by charging \$120 for extra employee to tow a motorcycle.

4. United States Postal Service (USPS) tracking information indicates that a copy of the CPAN was delivered to Respondent's last known address and left with an individual, but the CPAN is not signed by Respondent.

5. The Commission designated CPAN No. 133264 as Proceeding No. 23G-0034TO.

6. Commission Staff entered its appearance and filed its Notice of Intervention as of Right in Proceeding No. 23G-0034TO on February 17, 2023.

7. On March 1, 2023, the Commission referred the Proceeding to an ALJ by minute order for disposition. Thereafter, the Proceeding was assigned to the undersigned ALJ.

8. On May 2, 2023, the ALJ issued Interim Decision No. R23-0288-I establishing a hearing schedule and setting this Proceeding for a hybrid evidentiary hearing to be held on Thursday, June 22, 2023.

9. The ALJ subsequently learned that due to a clerical error, Decision No. R23-0288-I may not have been served on Respondent.

10. By Decision No. R23-0377-I, issued June 6, 2023, the ALJ vacated the June 22, 2023, evidentiary hearing, and rescheduled a hybrid evidentiary hearing to be held on Friday, July 14, 2023, at 9:00 a.m.

11. Decision No. R23-0377-I was served on Respondent by U.S. Mail sent to Respondent's physical address on file with the PUC, and by email to two email addresses 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. Commission Staff appeared through counsel, Jeremy Johnston, Assistant Attorney General, and participated in the hearing.

14. Respondent did not appear at the hearing and no representative appeared on Respondent's behalf. The Certificate of Service corresponding to Decision No. R23-0377-I confirms that it was sent to Respondent at the mailing address and at the email addresses on file for Respondent. In addition, at the commencement of the hearing, Mr. Johnston informed the undersigned ALJ that prior to the hearing, he had been in communication with Respondent about potential resolutions of this Proceeding. Notably, Mr. Johnston indicated that he had a

¹ See Certificate of Service, June 7, 2023.

conversation with Respondent just one hour before the scheduled commencement of the hearing during which they discussed the impending hearing but were unable to resolve the matter. Therefore, Respondent knew of the July 14, 2023, hearing but chose not to appear.

15. During the hearing, Hearing Exhibits 100 through 106 were identified, offered, and admitted into evidence without objection. In addition, because Hearing Exhibits 100, 102, 103, and 104 contained confidential information, both confidential and publicly-accessible redacted versions of those four exhibits were offered and admitted.

16. Mr. Steven Schlafke (Mr. Schlafke), an adult Colorado resident; Jay Estrada, Criminal Investigator with the PUC; and Lloyd Swint, Criminal Investigator with the PUC, 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(2), 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. Mr. Schlafke is a resident of Colorado Springs, Colorado, who, at all times pertinent herein, owned and operated a 2021 Kawasaki motorcycle, bearing Colorado license plate DCC P59 (Ms. Schlafke's motorcycle).²

² Hearing Exhibit 103.

20. Mr. Schlafke is a disabled Army veteran who served from 2002-2005 and was involved in the invasion of Iraq. He is the father of three children. Being completely disabled, Mr. Schlafke's sole source of income is government assistance disability income.

21. Investigator Estrada is an Investigator with the Staff. As part of his duties, Investigator Estrada investigates complaints filed with the Commission. He is familiar with Commission statutes and Commission rules that govern towing operators.

22. Investigator Swint is also an Investigator with the Staff. As part of his duties, Investigator Swint investigates complaints filed with the Commission. He is likewise familiar with Commission statutes and Commission rules that govern towing operators.

23. Investigator Estrada investigated Gary's Collision leading to the issuance of CPAN No. 133264.

24. At all times pertinent herein, Sue Steinberger owned and operated Gary's Collision. Ms. Steinberger is also the designated agent for Gary's Collision listed in the Commission's records.³

25. In the course of his investigation into Gary's Collision, Investigator Estrada spoke to, and obtained documents and information from, Mr. Schlafke and Respondent.

26. At all times pertinent herein, Gary's Collision held PUC Permit No. T-23.⁴

27. On September 6, 2022, at approximately 10:30 p.m., Mr. Schlafke and his household were awakened by police knocking on the door. Colorado State Patrol (CSP) officers

³ Hearing Exhibit 102.

⁴ Hearing Exhibit 102, p. 4.

served Mr. Schlafke with a search warrant for Mr. Schlafke’s motorcycle. During the one and half hour-long search, Mr. Schlafke remained on the couch in his living room.

28. Colorado State Patrol contacted Gary’s Collision to tow Mr. Schlafke’s motorcycle. Because he remained on the sofa, Mr. Schlafke did not observe employees of Gary’s Collision load or remove his motorcycle.

29. Mr. Schlafke testified that he was not given paperwork by the tow carrier or the police at the time of the tow. Although CSP officers gave Mr. Schlafke a handwritten piece of paper indicating that his motorcycle had been towed, Mr. Schlafke testified that the paper did not state by whom the motorcycle had been towed or the location to which it had been towed.

30. Mr. Schlafke testified that he did not know where his motorcycle was stored.

31. Hearing Exhibit 103 is a CSP Case Report dated September 6, 2022, at 22:32 (10:32 p.m.), and describing Mr. Schlafke’s motorcycle. The completed form identifies “Gary’s Towing” as the “tow company name” and bears what appears to be the signature of “SK Steinberger” in the space for “signature of tow operator.”

32. Hearing Exhibit 100 is an invoice from Gary’s Collision a & Alignment, Inc., also dated September 6, 2022, noting a time of 10:12 p.m., and indicating that a tow was requested by CSP. The total amount due on the invoice is \$2,387.03 and itemizes the charges as follows:

- 2 hours for towing: \$481.75
- Extra Man: \$120.00
- Storage (46 days at \$40.56/day): \$1,865.76
- 3 percent portal fee: \$69.52
- <invoice deduction>: \$<150.00>

- **TOTAL DUE: \$2,387.03⁵**

33. Mr. Schlafke testified that he had to hire an attorney to help him locate his motorcycle because he was not provided with information pinpointing its location.

34. Mr. Schlafke testified that, in his opinion, the invoice was too high and reflected improper charges. In particular, Mr. Schlafke questioned the need for an “Extra Man” to complete the tow and challenged the two-hour towing charge. Mr. Schlafke testified that his motorcycle — a 2021 Kawasaki Ninja — is one of the lightest motorcycles on the market, weighing 450 pounds. He stated that even with his disabilities, it takes him only about one minute to load the motorcycle by himself onto a pickup truck by walking it up a ramp.

35. In addition, he testified that he drove the distance from his home to the location where Gary’s Collision stored the motorcycle in twenty-one or twenty-two minutes. Hearing Exhibit 101 is a Google map showing the distance from Mr. Schlafke’s house to the motorcycle’s storage location to be 14.9 miles with an estimated drive time of 24 minutes.⁶

36. Based on these factors, Mr. Schlafke questioned why he was charged for two men and two hours of towing work.

37. Mr. Schlafke also testified that it took approximately two months for him to recover his motorcycle after it was towed. He testified that he had trouble locating it on his own and retained the services of an attorney to assist him. The attorney “tracked down” the motorcycle about two months after it had been towed and conveyed its location to Mr. Schlafke. He learned it was stored in a gravel lot occupied by Gary’s Collision.

⁵ Hearing Exhibit 100.

⁶ Hearing Exhibit 101.

38. Mr. Schlafke stated that when he went to the Gary's Collision's storage location to retrieve his motorcycle, he was informed that the motorcycle could not be released to him.

39. He then obtained a court order for its release, but, he testified, Gary's Collision "refused to abide" by the order. Rather, he was told, Gary's Collision would not agree to release the motorcycle until told to do so by the trooper who had ordered it impounded because, he said he was told, "only the person who put [the] hold on it can release the vehicle." Mr. Schlafke's attorney contacted the trooper involved, who then instructed Gary's Collision to release the motorcycle to Mr. Schlafke.

40. However, Mr. Schlafke was not permitted to take the motorcycle until he paid the amount due of \$2,387.03. Because Mr. Schlafke did not have sufficient funds to pay that amount, he borrowed \$2,100 from his brother-in-law to cover the towing and storage costs. The loan from his brother-in-law put him "in the hole." He testified that towing and storage costs depleted his gas funds making it impossible for him to "afford gas" to drive to Denver for his class. He joined the local VFW because it offered \$300 gas cards to new members.

41. Mr. Schlafke contacted the Commission to complain about his experience with Gary's Collision as well as the towing and storage bill it charged him. He requested a full refund of the \$2,387.03 he had paid to Gary's Collision.

42. Investigator Estrada, the criminal investigator with the PUC communicated with Ms. Steinberger, owner of Gary's Collision, to resolve the situation, via email at the email address on file with the PUC for Gary's Collision.⁷ Mr. Estrada testified that Ms. Steinberger explained that the motorcycle was ordered towed by law enforcement, and that an extra person was required

⁷ See Hearing Exhibit 104.

because the motorcycle was “heavy and new.” She also advised Investigator Estrada that Gary’s Collision sent an extra person to ensure the motorcycle was not damaged during the tow.

43. On December 20, 2022, Investigator Estrada informed Ms. Steinberger via email of several violations of PUC towing rules he discovered during his investigation of the matter. Mr. Estrada conveyed that “the following violations were found from looking at your invoice:”

- 723-6-6509(a)(IV) – No date and time for the completion of the tow, when the vehicle was placed in storage, or when it was released,
- 723-6-6509(a)(VI) – No complete address for the origination of the tow (*i.e.*, no city, state, or zip code) and no one-way mileage between the origination and destination of the tow,
- 723-6-6509(a)(VIII) – No unit number of license number of the tow truck,
- 723-6-6509(a)(IX) – No signature of the tow truck driver (just two names are present),
- 723-6-6509(a)(XII) – on at least the customer’s copy is the statement, “Report problems to the Public Utilities Commission at (303) 894-2070”,
- 723-6-6511(c)(IV)(A) – Any towing carrier billing greater than one hour for any tow truck and driver for a given tow shall include, in addition to requirements of rule 6509, the following information on the tow record/invoice, recorded at the time of occurrence; the time of dispatch; the time the tow truck leaves the yard or other staging location; the time the tow truck arrives on scene; the time the tow truck leaves the scene, and the time the towed vehicle is unhooked from the tow truck (only a start time is documented),
- 723-6-6511(c)(IV)(B) – Any towing carrier billing greater than one hour for any tow truck and driver for a given tow shall include an advisement on the tow record/invoice that documentation of costs billed in excess of one hour for any tow truck and driver for such tow are available upon request from the towing carrier (no advisement visible) and,
- 723-6-6511(c)(IV)(D) – not bill more than the reasonable time necessary to perform the tow at hourly rates for one tow truck and driver, plus the towing carrier’s actual and reasonable cost of recovery equipment and labor in excess of one tow truck and driver, plus an additional twenty-five percent of those actual and reasonable costs (charge for extra employee not warranted).⁸

⁸ Hearing Exhibit 104, p. 4.

44. On December 22, 2022, Mr. Estrada again emailed Ms. Steinberger because he had not “heard back” from her. In the email, Mr. Estrada provided Ms. Steinberger with Mr. Schlafke’s contact information so that she could reimburse him for the towing expenses.

45. In the course of his investigation, Mr. Estrada obtained a copy of Mr. Schlafke’s tow invoice from Gary’s Collision. The tow invoice was admitted into evidence as Hearing Exhibit 100. Violations 1 through 8 asserted on the CPAN correspond to the violations Mr. Estrada noted in his email to Ms. Steinberger. As Mr. Estrada explained, Violations 1 through 7 pertain to information that should have been included on the towing invoice but was not. A review of Hearing Exhibit 100 confirms that it omits:

- complete information about the tow, including the date and time of the tow and the location to which the motorcycle was towed (Violation 1);
- the signature and identification of the tow truck driver (Violation 2);
- the complete address from which the tow originated and terminated (Violation 3);
- the unit number of the license for the tow truck (Violation 4);
- information advising the consumer how to contact the PUC (Violation 5);
- additional information required for a law enforcement-ordered tow recording, as Mr. Estrada explained, “all the times,” including the time of dispatch, departure from yard, arrival on scene, departure from scene, and unhooking of the towed vehicle (Violation 6); and
- an advisement that documentation about costs billed in excess of one hour are available upon request (Violation 7).

As found above, these seven items were omitted on Mr. Schlafke’s invoice from Gary’s Collision.

46. Last, Hearing Exhibit 100 confirms that Respondent charged for two individuals to tow the motorcycle, for two hours of work, and imposed a “3% portal fee.” Violation 8 asserts that the invoice exceeded the amount permitted as these charges were not the “reasonable and actual” cost of the tow.

47. Mr. Swint, who has served as a criminal investigator with the PUC since 2016 testified that such law enforcement-ordered tows have to be based on an hourly rate and cannot charge fees “beyond” that amount.

48. Investigator Estrada reiterated that because Respondent charged in excess of the permitted amount and issued Mr. Schlafke a non-compliant invoice lacking required information, Mr. Schlafke should be issued a full refund for the tow.

49. Mr. Schlafke was never refunded any portion of the \$2,387.03 payment he made to Gary’s Collision & Alignment, Inc.

50. On or about January 9, 2022, at the conclusion of his investigation, Investigator Estrada issued CPAN No. 133264.⁹

51. Investigator Estrada mailed CPAN No. 133264, via certified mail, to Respondent’s physical and mailing addresses on file with the Commission, as well as a Respondent’s registered agent’s address on file with the Colorado Secretary of State.¹⁰

52. Although the CPAN is unsigned, Ms. Steinberger’s signature on the US Postal Services’s certified mail receipt shows that Ms. Steinberger received, and accepted delivery of, CPAN No. 133264.¹¹

53. Staff is seeking a full pursuit of CPAN No. 133264, as well as a refund of Mr. Schlafke’s \$2,382.03 tow fee.

⁹ See Hearing Exhibit 105.

¹⁰ Hearing Exhibit 106.

¹¹ *Id.*, p. 11.

III. DISCUSSION

54. 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.

55. 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.”¹² As provided in Commission Rule 4 CCR 723-1-1500 of the Commission’s Rules of Practice and Procedure, “[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.¹³ 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.¹⁴ 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.

56. 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 notice of the violation in the form of a civil penalty assessment notice.” Section 40-7-116(1)(b),

¹² § 24-4-105(7), C.R.S.

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

¹⁴ *Swain v. Colorado Dept. of Revenue*, 717 P.2d 507 (Colo. App. 1985).

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.”¹⁵ 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.”¹⁶

57. The evidence establishes the Commission’s jurisdiction in this proceeding. CPAN No. 133264 was served upon Respondent via certified mail and in accordance with § 40-7-116(1)(b), C.R.S.

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

59. 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:

¹⁵ § 40-7-116, C.R.S.

¹⁶ § 40-7-116, C.R.S.

(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.

60. A towing carrier may perform a nonconsensual tow of a motor vehicle if ordered to do so by law enforcement.¹⁷

61. A towing carrier issuing an invoice for a tow must ensure the invoice includes all of the following information:

The tow record/invoice form shall contain the following information:

- (I) the unique serial number of the tow record/invoice;
- (II) the name, address, towing carrier permit number, and telephone number of the towing carrier that is on file with the Commission;
- (III) the address of the storage facility used by the towing carrier that is on file with the Commission, including the telephone number for that storage facility if the number is different than the telephone number of the towing carrier;
- (IV) the date and time of the drop, the date and time of commencement of the tow, the date and time of completion of the tow, the date and time notice was given to the appropriate law enforcement agency, the date and time the towed motor vehicle was placed in storage, and the date and time the towed motor vehicle was released from storage, as applicable;
- (V) the make, model, year, complete VIN (if available), and license plate number (if available) of the towed motor vehicle;

¹⁷ Rule 6508(b)(I)(A) of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-6.

- (VI) the origin address of the tow, the destination address of the tow, and the one-way mileage between such addresses;
- (VII) unless incorporated into the authorization in subparagraph 6508(b)(III),
 - (A) the printed name, address, and telephone number of the person authorizing the tow; and
 - (B) the full, legal signature of the property owner authorizing the tow;
- (VIII) the unit number or license number of the tow truck;
- (IX) the printed name and signature of the tow truck driver;
- (X) an itemized invoice of all towing charges assessed;
- (XI) the signature of the owner, authorized operator, or other authorized person to whom the motor vehicle is released. The towing carrier may write “refused to sign” on the tow record/invoice if the person to whom the motor vehicle is released is provided opportunity to sign the tow/record invoice but refuses to do so.
- (XII) on at least the customer’s copy of the tow record/invoice, the following notice in a font size of at least ten: “Report problems to the Public Utilities Commission at (303) 894-2070”; and
- (XIII) for all nonconsensual tows, the case report number or other identifiable entry provided by the law enforcement agency to which the tow was reported, in accordance with the requirements in § 42-4-2103(2) C.R.S., and paragraph 6507(a).¹⁸

62. In addition, an invoice issued for a law enforcement-ordered tow must also:

include, in addition to requirements of rule 6509, the following information on the tow record/invoice, recorded at the time of occurrence: the time of dispatch; the time the tow truck leaves the yard or other staging location; the time the tow truck arrives on scene; the time the tow truck leaves the scene, and the time the towed motor vehicle is unhooked from the tow truck.¹⁹

63. A law enforcement-ordered tow invoice shall also “include an advisement on the tow record/invoice that documentation of costs billed in excess of one hour for any tow truck and driver for such tow are available, upon request, from the towing carrier.”²⁰

¹⁸ Rule 6509(a), 4 CCR 723-6.

¹⁹ Rule 6511(c)(IV)(A), 4 CCR 723-6.

²⁰ Rule 6511(c)(IV)(B), 4 CCR 723-6.

64. Towing carriers performing nonconsensual tows are required to use and complete all applicable portions of a tow invoice form that complies with Rule 6509.

65. The cost of a law enforcement-ordered tow must be “calculated on an hourly basis, per required tow truck, . . . with no additional fees, charges, or surcharges permitted.”²¹ A towing carrier shall not charge or retain any fees other than in accordance with Rule 6511 for the nonconsensual tow of a motor vehicle from private property.

66. Finally, with respect to law enforcement-ordered tows, a towing carrier shall “not bill more than the reasonable time necessary to perform the tow at hourly rates for one tow truck and driver, plus the towing carrier’s actual and reasonable cost of recovery equipment and labor in excess of one tow truck and driver, plus an additional twenty-five percent of those actual and reasonable costs.”²²

67. Here, the evidence of record based upon Investigator Estrada’s investigation demonstrates that Respondent committed each of the alleged 8 violations of the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6. Respondent issued an invoice to Mr. Schlafke that omitted seven items mandated by Rules 6509 and 6511(c)(IC)(B), as detailed in Violations 1 through 7 of the CPAN. The ALJ finds and concludes Staff has established by a preponderance of the evidence that these omissions by Respondent violated Rule 6509(a)(IV), (VI), (VIII), (IX), and (XII), and Rule 6511(c)(IV)(A) and (B).

68. Further, the evidence of record based upon Investigator Estrada’s investigation and the testimony of Mr. Schlafke demonstrates that the towing of his motorcycle did not require two hours of labor or an “extra man.” The motorcycle is lightweight compared to other motorcycles

²¹ Rule 6511(c), 4 CCR 723-6.

²² Rule 6511(c)(IV)(D), 4 CCR 723-6.

and the distance from Mr. Schlafke's residence to the location of Respondent's storage facility can be driven in approximately 20 minutes. Moreover, it is unlikely that the towing carrier operators encountered traffic driving from Mr. Schlafke's home to Respondent's facility given that the tow occurred at approximately 10:30 p.m. The ALJ therefore finds and concludes that Staff has established by a preponderance of the evidence that Respondent also violated Rule 6511(c)(IV)(D), which prohibits charging "more than the reasonable time necessary" to perform the tow.

69. 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.

70. 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;
- (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.²³

²³ Rule 1302(b), 4 CCR 723-1.

71. The ALJ notes that Respondent: refused to release Mr. Schlafke's motorcycle when first contacted; disregarded a court order to release the motor vehicle; necessitated that Mr. Schlafke retain the services of counsel to secure release of the motorcycle; declined to appear for the evidentiary hearing despite conferring with Staff counsel just one hour before the appointed time for the hearing's commencement; and did not refute any of the evidence presented by Staff. Respondent's conduct underscores a lack of respect towards the Commission's rules.

72. 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.

73. Civil penalties, each in the amount of \$316.25, each of which is inclusive of all surcharges, for a total of \$2,213.75, will be assessed for the proven violations in Counts 1 through 7 of CPAN No. 133264.

74. A civil penalty in the amount of \$632.50, which is likewise inclusive of all surcharges, will be assessed for the proven violation in Count 8 of CPAN No. 133264.

75. The total of the assessed civil penalties is \$2,846.25.

76. Staff further requests that the Commission order Respondent to refund Mr. Schlafke's tow charge payment of \$2,387.03. Such relief is consistent with Rule 6511(g) and will be ordered below.

77. 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. Sue Steinberger, d/b/a Gary's Collision & Alignment, Inc., is assessed a civil penalty of \$2,846.25, 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 \$2,387.03 to Mr. Steven Schlafke no later than 30 days following the date of the final Commission decision issued in this Proceeding.

4. Proceeding No. 23G-0034TO is closed.

5. 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.

6. 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.

7. 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