

Decision No. R23-0581

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22G-0333TO

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

ERIC HOUSTON DOING BUSINESS AS CODE 3 TOWING,

RESPONDENT.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
AVIV SEGEV
CONSTRUING CORRESPONDENCE AS MOTION TO
POSTPONE, DENYING MOTION TO POSTPONE,
ASSESSING CIVIL PENALTY, ORDERING REFUND,
AND CLOSING PROCEEDING**

Mailed Date: September 1, 2023

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I. STATEMENT

1. This proceeding concerns Civil Penalty Assessment Notice or Notice of Compliant to Appear No. 131017 (CPAN) issued by Trial Staff of the Public Utilities Commission (Staff) on July 20, 2022 to Respondent Eric Houston, d/b/a Code 3 Towing (Respondent, or Mr. Houston, or Code 3). The CPAN assessed Code 3 a total penalty of \$17,0202 for six total violations. The CPAN enumerate four violations of Rules 6005(b), 6007(e)(II), 6508(b)(I), and 6512(c), of the Rules Regulating Transportation by Motor Vehicle 4 *Code of Colorado Regulations* (CCR) 723-6 and two violations of §§ 40-10.1-107(1) and 40-10.2-401(1)(a), C.R.S. The nature of the violations is listed in the CPAN as follows:

Failure to maintain accurate contact information with Commission.

Motor Carrier failed within two days to provide any records related to a complaint or investigation. (None Provided).

Failure to have proper authorization prior to the performance of a nonconsensual tow (Tow Invoice #NONE).

Failure of the towing carrier holding a motor vehicle in storage to make notifications required by statute (§42-4-1804 and/or §42-4-2103, C.R.S.) - (No Record Provided)

Failure to maintain and file evidence of financial responsibility in sums as required by the Public Utilities Commission.

Operating and/or offering to operate as a Towing Carrier in intrastate commerce without first having obtained a permit.¹

2. On November 7, 2022, Staff timely intervened of right.

3. On November 9, 2022, the Commission referred this proceeding to an Administrative Law Judge (ALJ) by minute entry.

¹ CPAN at 1.

4. By Decision No. R23-0062-I, issued January 27, 2023, the undersigned ALJ established procedures and rescheduled² a hearing in this matter for February 20, 2023.

5. By Decision No. R23-0131-I, issued February 23, 2023, the undersigned ALJ rescheduled the evidentiary hearing in this matter for March 7, 2023.

6. On March 3, 2023 and March 5, 2023, the Commission received email correspondence from Respondent's email address³ indicating that Respondent wished to postpone the evidentiary hearing scheduled for March 7, 2023 due to Respondent's medical condition and appointments.⁴

7. By Decision No. R23-0163-I, issued March 6, 2023, the undersigned ALJ rescheduled the evidentiary hearing in this matter for March 23, 2023.

8. On March 7, 16, 17, and 22, 2023, the Commission received seven separate emails from Respondent's email account⁵, generally indicating that Respondent was suffering from a medical condition, Respondent could not attend the hearing scheduled for March 23, 2023 due to

² Due to a clerical error, Decision Nos. R22-0774-I and R22-0788-I, issued December 1, 2022 and December 6, 2023, respectively, which established a procedural schedule in this Proceeding, set a hearing, and rescheduled the evidentiary hearing in this matter, may not have been served on Respondent. To address possible deficiencies related to the service of process of Decision Nos. R22-0774-I and R22-0788-I on Respondent, Decision No. R23-0062-I re-noticed the procedures established in this Proceeding and set a new evidentiary hearing date.

³ The email address in question, completelandscaping1@yahoo.com, is Respondent's email on file with the Commission. *See, e.g.*, Hearing Exhibit 101. However, the sender of this correspondence identified himself as Respondent's brother-in-law.

⁴ *See* Correspondence from Respondent, dated March 3 and 5, 2023, filed March 6, 2023.

⁵ *See supra*, note 3.

a medical appointment⁶ and that Respondent wished to further postpone⁷ the evidentiary hearing in this matter.⁸

9. By Decision No. R23-0194-I, issued March 21, 2023, the undersigned ALJ rescheduled the evidentiary hearing in this matter for April 3, 2023 at 9:00 a.m. Decision No. R23-0194-I contained the following advisement:

If Respondent wishes to further postpone the evidentiary hearing, as ordered below, due to Respondent's medical condition, Respondent shall file an appropriate motion accompanied by a medical certificate issued by a Colorado-licensed physician, healthcare practitioner acting under a physician's authority, or healthcare practitioner licensed to prescribe and treat patients (Colorado healthcare provider). The certificate must evidence the general nature of Respondent's medical condition [specific diagnosis is not required] and express an opinion that the medical condition would prevent Respondent from appearing remotely for hearing by video conference, as ordered below, and representing himself, because of that medical condition. If such an opinion is expressed, then the anticipated length of time required for recovery should also be expressed.

10. On April 1, 2023, the undersigned ALJ the Counsel for Staff, received from Respondent's email account an image attachment indicating that Respondent was hospitalized on March 31, 2023 and discharged no later than on April 1, 2023.⁹

⁶ In his March 3 and 5 communications with Commission Staff and the undersigned, Respondent stated that he had medical appointments scheduled for March 8, 9, and 17. Respondent mentioned nothing about an appointment on March 23. Given that Decision No. R23-0163-I issued on March 6, 2023, it appears likely that Respondent scheduled the March 23, 2023 appointment *after* Decision No. R23-0163-I issued.

⁷ The length of the postponement sought by Respondent was inconsistent. The correspondence, dated March 7, 2023, March 16, 2023, and March 17, 2023, indicated that Respondent was seeking a postponement of the evidentiary hearing until "end of April," of "a couple months," and until Respondent was "feeling better," respectively.

⁸ See Correspondence from Respondent, dated March 7, 16, 17, and 22, 2023, filed March 7, 17, 21, and 23, 2023.

⁹ See Hearing Exhibits 10 and 20. The email attachment depicted in Hearing Exhibits 10 and 20 states that Respondent was admitted to the hospital on March 31, 2023. The line stating that Respondent was discharged is partially covered with what appears to be a pen. Therefore, the date of Respondent's hospital release date is not visible. Based on the facts that Respondent was hospitalized on March 31, 2023, discharged thereafter, and Hearing Exhibits 10 and 20 were emailed to the undersigned ALJ and Staff's counsel on April 1, 2023, the ALJ concludes that Respondent was released from the hospital no later than on April 1, 2023.

11. On April 3, 2023, at 9:00 a.m., the undersigned ALJ called this matter for hearing. Staff appeared represented by counsel. Respondent did not appear at the hearing. During the course of the hearing, Hearing Exhibits 10, 20, 100-101 and 103-108 were identified, offered, and admitted into evidence. In addition, Hearing Exhibit 102 was administratively noticed, and Exhibits 10¹⁰ and 20¹¹ were construed by the ALJ as Respondent's motion to postpone the hearing by an unspecified amount of time (Motion to Postpone). Mr. Joseph Addonizio, an adult Colorado resident, and Jay Estrada, Criminal Investigator for the Colorado Public Utilities Commission (Commission), testified in support of the allegations contained in the CPAN.

12. On March 3, 2023, at approximately 5:25 PM, several hours after the conclusion of the evidentiary hearing, the Commission received two separate emails from Respondent's email account, requesting to postpone the hearing by "at least a month and a half."¹²

13. 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. FINDINGS

14. At no time relevant herein did Respondent comply with the requirements set forth in Decision No. R23-0194-I regarding the postponement of the evidentiary hearing. Therefore, the Motion to Postpone, as construed herein, will be denied as ordered below.

15. Mr. Addonizio is a resident of Grand Junction, Colorado, who, at all times pertinent herein, owned and operated a purple 1996 Toyota Tacoma (Mr. Addonizio's vehicle).

¹⁰ Hearing Exhibit 10 depicts an email from Respondent to the undersigned ALJ, dated April 1, 2023, containing two image attachments. One of the image attachments depicted in Hearing Exhibit 10 is identical to the image attachment depicted in Hearing Exhibit 20.

¹¹ Hearing Exhibit 20 contains an email from Respondent to Staff's counsel, dated April 1, 2023.

¹² Correspondence from Respondent, dated April 3, 2023, filed April 5, 2023, at 1.

16. 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. Investigator Estrada investigated Code 3 Towing leading to the issuance of the CPAN.

17. At all times pertinent herein, Eric Houston owned and operated Code 3 Towing.¹³

18. 1227 North 23rd Street, Grand Junction, Colorado is a commercial property that, at all times relevant to the CPAM, was owned by Mr. Addonizio's acquaintance and friend, Mr. John Pugliese.

19. In or about March 2021, Mr. Addonizio, with Mr. Pugliese's permission, began to regularly park his vehicle at the parking lot of 1227 North 23rd Street, Grand Junction, Colorado, (the 1227 North 23rd parking space).¹⁴

20. Respondent's Towing Permit was summarily suspended by the Commission on March 8, 2022.¹⁵

21. At all times relevant to the CPAM, there were no 'No Parking' signs at, or near, the 1227, North 23rd parking space.

22. On March 14, 2022, Respondent towed Mr. Addonizio's vehicle from the 1227, North 23rd parking space. Respondent notified the Grand Junction Police Department of the towing of Mr. Addonizio's vehicle.¹⁶ Respondent indicated to the Grand Junction Police Department's dispatcher that the tow of Mr. Addonizio's vehicle was requested by the owner of

¹³ See Hearing Exhibit 101 at 3 and 4.

¹⁴ See Hearing Exhibits 100 and 106. The red "X" depicted in the bottom portion of hearing Exhibit 100 denotes the location of the 1227 North 23rd parking space.

¹⁵ See Hearing Exhibit 101 at 6 and Hearing Exhibit 103.

¹⁶ See Hearing 105.

the property from which Mr. Addonizio's vehicle was towed by Respondent.¹⁷ Respondent incorrectly indicated that the Grand Junction Police Department's dispatcher that Complainant's vehicle was towed from 1229 North 23rd Street, Grand Junction, CO, a property immediately adjacent to 1227 North 23rd Street, Grand Junction, Colorado.¹⁸

23. On, or about, April 12, 2022, Mr. Addonizio's discovered that his vehicle was missing from the 1227, North 23rd parking space. Mr. Addonizio testified that initially he believed that his vehicle had been stolen.

24. On April 14, 2022, Mr. Addonizio called the Grand Junction, Colorado, Police Department and was informed that his vehicle had been towed by Respondent.

25. Immediately upon finishing his call to the Grand Junction, Colorado, Police Department, Mr. Addonizio called Respondent in an attempt to regain possession of his vehicle. Mr. Houston confirmed that Respondent had towed Mr. Addonizio's vehicle and indicated to Mr. Addonizio that his vehicle had been auctioned.

26. On April 15, 2022, Mr. Addonizio called Respondent again to try to ascertain when exactly and why Mr. Mr. Addonizio's vehicle was towed. Mr. Addonizio requested from Mr. Houston to provide Mr. Addonizio with documentation showing who requested the tow of Mr. Addonizio's vehicle. Mr. Houston replied that he would provide Mr. Addonizio with the requested documents. However, Mr. Houston never provided any documents to Mr. Addonizio.

27. At no time pertinent to the events giving rise to the CPAN did Respondent have a towing authorization agreement for 1227 North 23rd Street, Grand Junction, Colorado.

¹⁷ See *id.*

¹⁸ See *id.* and Hearing Exhibit 100.

28. In late April 2022, Mr. Addonizio identified his vis vehicle on Facebook Marketplace where it had been posed for sale by someone other than Respondent.¹⁹

29. In late April 2022, Mr. Addonizio filed a complaint with the Commission regarding the Respondent's towing of Mr. Addonizio's vehicle.

30. On April 26, 2022, Respondent's towing permit was revoked by the Commission due to Respondent's failure to maintain on file with the Commission evidence of financial responsibility.²⁰

31. In or about May 2022, Mr. Addonizio filed a lawsuit in small claims court against Respondent and ultimately obtained a \$7,600 judgment against the Respondent. Mr. Addonizio has thus far been unable to collect on this judgment.

32. On, or about, May 22, 2022, Investigator Estrada was assigned to investigate the matter involving Mr. Addonizio's complaint against Respondent.

33. In the course of his investigation into Respondent in this matter, Investigator Estrada: reviewed relevant Commission records; obtained documents and information from, Mr. Addonizio; attempted to obtain documents and information from Respondent by email and phone;²¹ contacted the Grand Junction Police Department to confirm the identity of Respondent as the tower of Mr. Addonizio's vehicle from the 1227 North 23rd parking space;²² and contacted the owner of 1227 North 23rd Street, Grand Junction, Colorado, Mr. Pugliese, as well as the owners

¹⁹ Mr. Addonizio testified that was able to definitively identify his vehicle given its unique color, dents and other unique features and that he later "drove by" the vehicle but did not take additional steps to drive or further inspect it.

²⁰ See Hearing Exhibit 101 at 6 and Hearing Exhibit 103.

²¹ See Hearing Exhibit 104.

²² See Hearing Exhibit 105.

of the three adjacent properties²³ to determine whether any of them requested the tow of Mr. Addonizio's vehicle.

34. In attempting to contact Respondent, Investigator Estrada used Respondent's email address and phone number on file with the Commission. Investigator Estrada had previously used the same email address and phone number to successfully correspond with Respondent.²⁴ Neither Respondent, nor anyone acting on behalf of Respondent, responded to Investigator Estrada's contact attempts.

35. Based on Investigator Estrada's correspondence with Mr. Pugliese and the owners of the three properties adjacent to 1227 North 23rd Street, Grand Junction, Colorado, Investigator Estrada learned that none of the property owners in question requested that Respondent tow Mr. Addonizio's vehicle. It is found and concluded that neither Mr. Pugliese, nor any of the owners of the properties immediately adjacent to 1227 North 23rd Street, Grand Junction, Colorado requested that Mr. Addonizio's vehicle be towed.

36. The Commission keeps the Integrated Filings Management System report depicted in Hearing Exhibit 101 in its ordinary course of business.

37. Respondent's most recent physical and mailing address on file with the Commission is 401 North 19th Street, Grand Junction, CO 81501.²⁵ Investigator Estrada testified that this address has not been Respondent's mailing, or physical, address for "quite some time,"

²³ The adjacent properties in question are 1225 North 23rd Street, Grand Junction, Colorado, 1229 North 23rd Street, Grand Junction, Colorado, and 1231 North 23rd Street, Grand Junction, Colorado. *See* Hearing Exhibit 100.

²⁴ It is noteworthy that Investigator Estrada attempted to contact Respondent via the same email address that Respondent exclusively used to corresponded with the undersigned ALJ and Commission Staff in this Proceeding. *Compare* Respondent's email account in Correspondence from Respondent, dated March 3 and 5, 2023, filed March 6, 2023 *with* the addressee of Investigator's Estrada in Hearing Exhibit 104.

²⁵ *See* Hearing Exhibit 101.

including during the times pertinent to the events giving rise to the CPAN.²⁶ It is found and concluded that 401 North 19th Street, Grand Junction, CO 81501 is not Respondent's current physical and/or mailing address.

38. Investigator Estrada mailed the CPAN, via certified mail, to Respondent's mailing address on file with the Commission. Investigator Estrada testified that this mailing was to Investigator Estrada as undeliverable.

39. Upon Investigator Estrada's request,²⁷ on July 22, 2022, Colorado State Patrol Officer Alex White personally served the CPAN on Mr. Houston.²⁸ Mr. Houston acknowledged in writing his receipt of the CPAN.²⁹

III. DISCUSSION

40. Commission enforcement personnel have authority to issue CPANs under § 40-7-116, C.R.S. This 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.

41. The Administrative Procedure Act imposes the burden of proof in administrative adjudicatory proceedings upon "the proponent of an order."³⁰ 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

²⁶ See also Hearing Exhibit 102 at 7, ¶ 27.

²⁷ See Hearing Exhibit 107.

²⁸ See Hearing Exhibit 108 at 2.

²⁹ See *id.*

³⁰ § 24-4-105(7), C.R.S.

of the evidence.³¹ The preponderance standard requires the finder of fact to determine whether the existence of a contested fact is more probably than its non-existence.³² 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.

42. Section 40-7-116, C.R.S. mandates several procedures for the imposition of civil penalties by the Commission. After listing the types of officials³³ authorized to issue civil penalty assessments for violations of law, § 40-7-116(1)(a), C.R.S., states that “[w]hen 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), C.R.S., further provides:

- (a) The 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, and shall contain:
 - (I) The name and address of the person cited for the violation;
 - (II) A citation to the specific statute or rule alleged to have been violated;
 - (III) 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;
 - (IV) The date of the notice;
 - (V) A place for the person to execute a signed acknowledgment of receipt of the civil penalty assessment notice;
 - (VI) A place for the person to execute a signed acknowledgment of liability for the violation; and
 - (VII) Such 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.³⁴

³¹ See § 13-25-127(1), C.R.S. and 4 CCR 723-1-1500.

³² *Swain v. Colorado Dept. of Revenue*, 717 P.2d 507 (Colo. App. 1985).

³³ The list of officials includes Colorado state patrol officers.

³⁴ Section 40-7-116(1)(b).

43. The evidence establishes that the Commission has jurisdiction over this matter, the CPAN contained each of the elements set forth in § 40-7-116(1)(b) (I)-(VII), C.R.S.,³⁵ and the CPAN was properly served upon Respondent, via personal service, and in accordance with § 40-7-116(1)(b), C.R.S.³⁶

44. Section 40-10.1-106, C.R.S. provides, in part:

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;
 - 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.

45. Pursuant to Rule 6005(b), motor carriers are required to provide their contact information to the Commission and notify the Commission, in writing, of any change of a motor carrier's mailing address, physical address, or telephone number within two days of making such change. Pursuant to Rule 6007(e)(II), for any records related to a complaint or investigation, motor carriers must provide to Commission Staff for inspection the requested records within two days. Pursuant to Rule 6508(b)(I), towing carriers may not perform nonconsensual tows unless: the towing carrier is requested to perform a tow by a law enforcement officer; the towing carrier is requested to perform a tow by the owner, authorized operator, or authorized agent of the owner of the motor vehicle; or the towing carrier is requested to perform a tow upon the authorization of the

³⁵ See CPAN at 1

³⁶ See *id.* at 2.

property owner. Pursuant to Rule 6512(c), towing carriers who cannot demonstrate that they have made a good faith effort to comply with the notification requirements set forth in §§ 42-4-1804, 42-4-2103, and 42-5-109 C.R.S., must release the towed motor vehicle, at no charge, to the motor vehicle owner, authorized operator, or authorized agent of the owner of the motor vehicle. Pursuant to § 40-10.1-107(1), C.R.S., motor carriers must maintain and file with the commission evidence of the motor carrier's financial responsibility. Pursuant to § 40-10.1-401(1)(a), C.R.S., a person may not operate as a towing carrier in Colorado without first having obtained a permit therefor from the Commission.

46. Here, the evidence of record, as supported by Mr. Addonizio's testimony, and based upon Investigator Estrada's investigation, demonstrates that Respondent committed each of the alleged six violations of the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6 and §§ 40-10.1-107(1) and 40-10.2-401(1)(a), C.R.S. Respondent failed to update his mailing address, physical address, and telephone number on file with the Commission in violation of Rule 6005(b). Upon being requested by Investigator Estrada, Respondent failed to provide any records in connection with the tow of Mr. Addonizio's vehicle in violation of Rule 6007(e)(II). Respondent towed Mr. Addonizio's vehicle without appropriate authorization in violation of Rule 6508(b)(I). Respondent failed to provide any records to Commission Staff showing that it made a good faith effort to comply with the notification requirements set forth in §§ 42-4-1804, 42-4-2103, and 42-5-109 C.R.S., nor did, at any relevant time herein, did Respondent release Mr. Addonizio's vehicle to Mr. Addonizio, or an authorized agent of Mr. Addonizio, in violation of Rule 6512(c). Respondent failed to maintain on file with the Commission evidence of Respondent's financial responsibility in violation of § 40-10.1-107(1), C.R.S. And, Respondent operated while

Respondent's permit was suspended when it towed and auctioned Mr. Addonizio's vehicle in violation of § 40-10.1-401(1)(a), C.R.S.

47. 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.

48. 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.³⁷

49. The ALJ notes that: the towing and auction of Mr. Addonizio's vehicle took place while Respondent's towing permit was suspended, and while Respondent knew, or should have

³⁷ Rule 1302(b) of the Rules of Practice and Procedure, 4 CCR 723-1.

known, that the Commission has filed a complaint seeking to revoke Respondent's towing permit;³⁸ Respondent has a significant history of adjudicated violations with the Commission;³⁹ and Respondent stated to the Grand Junction Police Department dispatcher that the tow of Mr. Addonizio's vehicle was requested by the owner of the property from which Mr. Addonizio's vehicle was towed by Respondent, when in fact, this was not the case.

50. Based on the evidence presented and findings of fact, the ALJ finds 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 illegal behavior.

51. A civil penalty of \$258.75, inclusive of any applicable surcharge, will be assessed for the proven violations in Count 1 of the CPAN.

52. A civil penalty of \$1,265.00, inclusive of any applicable surcharge, will be assessed for the proven violations in Counts 2, 3, and 6 of the CPAN, each, for a total civil penalty amount of \$3,795.

53. A civil penalty of \$316.25, inclusive of any applicable surcharge, will be assessed for the proven violations in Count 4 of the CPAN.

54. A civil penalty of \$12,650.00, inclusive of any applicable surcharge, will be assessed for the proven violations in Count 5 of the CPAN.

55. Pursuant to § 40-6-109(2), C.R.S., the Administrative Law Judge recommends that the Commission enter the following order.

³⁸ See Hearing Exhibits 103 and 108.

³⁹ See Hearing Exhibit 101, 102, and 103.

IV. ORDER**A. The Commission Orders That:**

1. Exhibits 10 and 20, filed April 3, 2023, are construed as Respondent's motion to postpone the evidentiary hearing by an unspecified amount of time (Motion to Postpone).
2. The Motion to Postpone is denied.
3. Respondent Eric Houston, d/b/a Code 3 Towing (Respondent) is assessed a civil penalty of \$17,020.00, inclusive of all applicable surcharge, for the violations discussed and found above.
4. 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. 3.
5. Proceeding No. 22G-0333TO is closed.
6. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.
7. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.
 - a. If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.
 - b. If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

8. If exceptions to this 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)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

AVIV SEGEV

Administrative Law Judge

ATTEST: A TRUE COPY

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

Rebecca E. White,
Director