

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24M-0110TO

IN THE MATTER OF THE PETITION OF GOLDEN EAGLES TOWING LLC TO REVERSE AN INITIAL TOWING PERMIT DENIAL PURSUANT TO 40-10.1-401(2)(A), C.R.S., AND RULE 6504(D).

**RECOMMENDED DECISION
GRANTING STAFF’S MOTION FOR
SUMMARY JUDGMENT, DENYING
PETITION, AND CLOSING PROCEEDING**

Issued Date: July 24, 2024

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I. STATEMENT

A. Procedural History.

1. On March 6, 2024, a letter dated February 28, 2024 (“Petition”) was filed on behalf of Gonzalo Garcia Solis (“Mr. Garcia Solis” or “Petitioner”) in this Proceeding. In the Petition, Mr. Garcia Solis petitions the denial of Golden Eagles Towing LLC’s

(“Golden Eagles”) towing permit by the Colorado Public Utilities Commission (“PUC” or the “Commission”). With the Petition, Petitioner submitted a denial letter, signed by the Commission’s Transportation Chief Section, dated February 7, 2024 (“Denial Letter”), regarding Golden Eagles’ Towing Application Permit 1021076 and 24AP-T-46346 (“Application”), and four letters in support of the Application (“Support Letters”).

2. On March 27, 2024, the Commission referred this Proceeding to an Administrative Law Judge (“ALJ”) by minute entry. The proceeding was subsequently assigned to the undersigned ALJ.

3. On April 10, 2023, Trial Staff of the Commission (“Staff”) noticed its intervention by right in this Proceeding.

4. By Decision No. R24-0307-I, issued May 6, 2024, the ALJ, among other things, scheduled an evidentiary hearing in this Proceeding for June 27, 2024.

5. On May 29, 2024, Staff’s Motion for Summary Judgment (“Motion”) was filed by Staff.

6. By Decision No. R24-0443-I, issued June 24, 2024, the undersigned ALJ vacated the hearing in this matter so that Staff’s Motion can be addressed in advance of an evidentiary hearing.¹

7. The sole Parties to this Proceeding are Petitioner and Staff.

B. Applicable Law

8. Rule 1400 of the Rules of Practice and Procedure, 4 CCR 723-1, permits summary judgment motions filed in accordance with Colorado Rule of Civil Procedure (C.R.C.P.) 56.

¹ See Decision No. R24-0443-I at 2.

9. Summary judgment is appropriate when the pleadings and supporting documents demonstrate that no genuine issue as to any material fact exists and that the moving party is entitled to summary judgment as a matter of law.²

10. Courts have described the burden shifting to the nonmoving party upon a prima facie showing. The nonmoving party must then show sufficient evidence that a reasonable jury could find in his favor in a genuine dispute of a material fact.³ “A dispute over a material fact is genuine if a rational jury could find in favor of the nonmoving party on the evidence presented.”⁴

11. Rule 1400(d) of the Rules of Practice and Procedure, 4 CCR 723-1, provides: 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.

12. Section 40-10.1-401(2)(a), C.R.S., provides: The commission may deny an application or refuse to renew a permit under this part 4 of a person who has, within the immediately preceding five years, been convicted of, or pled guilty or nolo contendere to, a felony or a towing-related offense. The commission may also deny an application under this part 4 or refuse to renew the permit of a towing carrier based upon a determination that the towing carrier or any of its owners, principals, officers, members, partners, or directors has not satisfied a civil penalty arising out of any administrative or enforcement action brought by the commission.

² *Martini v. Smith*, 42 P.3d 629 (Colo. 2002).

³ *City of Aurora v. ACJ P'ship* (In re Application for Water Rights of the City of Aurora), 209 P.3d 1076, 1082 (Colo. 2009); *Bernard v. Grp. Publ'g, Inc.*, 970 F. Supp. 2d 1206, 1210 (D. Colo. 2013).

⁴ *Robertson v. IHC Health Servs.*, No. 22-4046, 2023 U.S. App. LEXIS 18290, at *16-17 (10th Cir. July 19, 2023) citing *Schneider v. City of Grand Junction Police Dep't*, 717 F.3d 760, 767 (10th Cir. 2013).

13. Rule 6504(b)(II)(a) of the Rules Regulating Transportation by Motor Vehicles, 4

Code of Colorado Regulations (“CCR”) 723-6, states:

An application for a towing carrier permit shall be denied, if the applicant has:

(A) a conviction in the state of Colorado, within the five years preceding the date the criminal history record check is completed, of any felony under any Title of C.R.S. or any towing-related offense...

14. Rule 6504(b)(III) of the Rules Regulating Transportation by Motor Vehicles, 4

CCR 723-6, states:

For purposes of this rule, a deferred judgment and sentence pursuant to § 18-1.3-102, C.R.S., shall be deemed to be a conviction during the period of the deferred judgment and sentence.

15. Rule 6504 applies to “principals... of a towing carrier,”⁵ which includes a person who “participates directly or indirectly in... a legal entity,”⁶ or a person which “through his/her conduct or activity, directly or indirectly controls an entity subject to the Commission’s jurisdiction.”⁷

II. THE PARTIES’ POSITIONS

16. In the Denial Letter, the Commission’s Transportation Chief Section indicated that the Application is denied and stated that the reason for the denial of the Application was Petitioner’s felony conviction, which occurred within five years of the Application, consistent with § 40-10.1-401(2)(a), C.R.S., and Rule 6504 of the Rules Regulating Transportation by Motor Vehicle 4 CCR 723-6.⁸

⁵ Rule 6504(a), 4 CCR 723-6.

⁶ Rule 6001(iii)(I), 4 CCR 723-6.

⁷ Rule 6001(iii)(IV), 4 CCR 723-6.

⁸ See Denial Letter at 1.

17. In the Petition, Petitioner states that he is petitioning the denial of the Application due to “[Petitioner’s] felony,”⁹ that Petitioner understood that the felony was a “a mistake” on the part of Petitioner’s,¹⁰ and that Petitioner has been compliant with the terms of his probation.

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18. In the Motion, staff argues that the Petition should be denied and the Motion be granted based on the undisputed facts that Petitioner plead guilty to a class five felony within five years preceding the date the criminal history record check is completed.¹² Staff explains, that because there is no genuine issue of material fact, Staff is entitled to a judgment as a matter of law, based on the undisputed facts.¹³ To the Motion, Staff attached the Commission’s Transportation Chief Section’s affidavit in support of the Motion¹⁴ and a printout from the Colorado State Courts – Data Access website showing the nature, date, and procedural history of Petitioner’s conviction in question.¹⁵ Attachment 1 to the Motion shows that on December 15, 2023, Mr. Garcia Solis plead guilty to Stalking, a violation of § 18-3-602(1)(c), C.R.S.¹⁶

19. The Motion was not replied to, or otherwise contested, by Petitioner.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

20. The Commission has jurisdiction over the subject-matter of this proceeding and over Petitioner.

⁹ Petition at 1.

¹⁰ *Id.*

¹¹ *Id.*

¹² Motion, ¶¶ 11, 15-19.

¹³ *Id.* ¶ 20.

¹⁴ See Attachment 1 to the Motion at 2-5.

¹⁵ *Id.* at 9-19.

¹⁶ *Id.* at 12, 14.

21. Petitioner submitted its Application to the Commission as the “CEO” and “Owner” of Gold Eagles.¹⁷ Therefore, Petitioner is subject to the requirements set forth in Rule 6504 of the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6.

22. The letter dated February 28, 2024 that was filed in this Proceeding on March 6, 2024 is construed as a Petition, requesting that the Commission reverse the denial of the Application.

23. On December 15, 2023, Mr. Garcia Solis plead guilty to Stalking, a violation of § 18-3-602(1)(c), C.R.S. for which Mr. Garcia Solis received a deferred judgment and sentence for a three-year period.¹⁸ Petitioner did not contest this fact and, indeed, admitted as much.¹⁹

24. Mr. Garcia Solis submitted the Application on January 23, 2024.²⁰

25. The ALJ finds and concludes that the Commission’s Criminal Investigations and Compliance Manager appropriately researched the criminal record of Petitioner in connection with the Application no later than January 31, 2034.²¹

26. Therefore, Mr. Garcia Solis’ deferred judgment and sentence occurred within the preceding five years of the Commission’s criminal record search.²²

27. The Commission’s Transportation Chief Section appropriately denied Application pursuant to Rule 6504(b)(II)(a) of the Rules Regulating Transportation by Motor Vehicles, 4 CCR 723-6.

28. Petitioner was appropriately informed of the denial of the Application.²³

¹⁷ See Application, attached as Attachment 1 to the Motion at 7, 8.

¹⁸ See Attachment 1 to the Motion at 12-13.

¹⁹ See Petition at 1.

²⁰ See Attachment 1 to the Motion at 7.

²¹ See Attachment 1 to the Motion at 2.

²² See Rule 6504(b)(III) of the Rules Regulating Transportation by Motor Vehicles, 4 CCR 723-6.

²³ See Denial Letter.

29. Rule 6504(b)(II)(a) of the Rules Regulating Transportation by Motor Vehicles, 4 CCR 723-6 mandatorily requires the denial of a towing carrier permit due to the applicant's Commission's Transportation Chief Section. This Rule does not allow for variance based on remedial factors. Therefore, the Application was appropriately denied by Commission's Transportation Chief Section.

30. For the same reasons, in issuing this Recommended Decision, the undersigned ALJ has not relied on remedial factors or extenuating circumstances that may otherwise favor Petitioner, such as those set forth in the Support Letters.

31. In rendering this Decision, the ALJ has carefully reviewed and considered all the evidence and filings in this Proceeding even if this Decision does not specifically address each such piece of evidence or filing.

32. The ALJ finds and concludes that there is no genuine dispute or issue as to any material fact in this Proceeding.

33. The ALJ finds and concludes that Staff is entitled to summary judgment as a matter of law.

34. The Petition will be denied, as ordered below.

35. In accordance with § 40-6-109, C.R.S., the ALJ transmits to the Commission the record in this proceeding and recommends that the Commission enter the following order.

IV. ORDER

A. The Commission Orders That:

1. The Motion for Summary Judgment filed on May 29, 2024, by the Staff of the Public Utilities Commission of the State of Colorado is granted.

2. The letter dated February 28, 2024 that was filed in this Proceeding on March 6, 2024 by Mr. Gonzalo Garcia Solis (“Petitioner”) is construed as a Petition, requesting that the Commission reverse the denial of the Application.

3. The Petition, filed February 28, 2024, is denied.

4. Proceeding No. 24M-0110TO 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 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, the parties may stipulate to the facts in the record, 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

AVIV SEGEV

Administrative Law Judge

ATTEST: A TRUE COPY

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

Rebecca E. White,
Director