

Decision No. R24-0698

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24G-0134HHG

PUBLIC UTILITIES COMMISSION,
COMPLAINANT,

V.

CARLOS GUTIERREZ IN THEIR CAPACITY AS OWNER AND/OR OPERATOR OF
EXCURSION PROFESSIONAL MOVERS LLC,
RESPONDENT.

**RECOMMENDED DECISION ASSESSING CIVIL
PENALTY, ISSUING CEASE AND DESIST ORDER, AND
CLOSING PROCEEDING**

Issued Date: September 26, 2024

I. STATEMENT

1. On March 21, 2024, the Colorado Public Utilities Commission (“Commission”) filed Civil Penalty Assessment or Notice of Complaint to Appear No. 138839 (“CPAN”) against Carlos Gutierrez in his capacity as owner and/or operator of Excursion Professional Movers LLC (“Excursion Professional Movers” or “Respondent”) alleging one violation of § 40-10.1-107(1), C.R.S. and one violation of § 40-10.1-502(1)(a), C.R.S. The CPAN states that the civil penalty assessed for the alleged violations occurring on February 21, 2024, is \$13,915, but that if Respondent pays the civil penalty within ten calendar days of its receipt of the CPAN, the civil penalty will be reduced to \$6,957. Finally, the CPAN states that, if the Commission does not

receive payment within ten days, the CPAN will convert into a Notice of Complaint to Appear and a hearing will be scheduled at which the Commission Staff will seek the “Total Amount” of \$13,915.¹ The CPAN also states that the Commission may order Respondent to cease and desist from violating statutes and Commission rules.²

2. On June 5, 2024, the Commission referred this proceeding by minute entry to an Administrative Law Judge (“ALJ”) for disposition.

3. On July 26, 2024, by Decision No. R24-0538-I, an evidentiary hearing was scheduled to be held on September 11, 2024.

4. On August 2, 2024, Trial Staff’s Motion to Amend Procedural Schedule and Waive Response Time was filed. Trial Staff requested that the hearing be rescheduled due to the unavailability of their primary witness. Trial Staff proposed three alternative hearing dates and noted that they had conferred with Respondent about this request; Respondent only expressed a preference for one of the alternative hearing dates.

5. By Decision No. R24-0563-I, issued August 7, 2024, the evidentiary hearing was rescheduled to September 12, 2024, as it was the only date of the proposed alternative dates that the ALJ could accommodate.

6. At the scheduled time and place, the hearing was convened. Staff appeared through counsel. Respondent did not appear.

7. Counsel for Staff stated that Respondent emailed the morning of the hearing, at 6:45 a.m., stating that he would not be able attend the hearing that day and was trying to see if “the court date” could be changed as he was not available to attend.

¹ CPAN No. 138839 at 3.

² *Id.*

8. Respondent did not appear for hearing and did not request a continuance. To the extent Staff's conveyance requests a continuance, Staff objected as the hearing had been scheduled for some time and Staff and its witnesses were present and ready to proceed.

9. The ALJ sent an email to Respondent at 9:08 a.m., at the same email address from which the email to Staff was sent, asking Respondent if he was available to speak by telephone or via Zoom. A copy of this email was provided to Staff and included in the record as Hearing Exhibit 1. A recess was then taken to allow Respondent time to respond to the ALJ's email.

10. After approximately ten minutes, the ALJ resumed the proceeding. The Respondent did not respond to the ALJ's email. The ALJ noted that Respondent was aware of the proceeding since March, Respondent had failed to file anything with the Commission or respond in any way in this proceeding (other than emailing Staff the morning of the hearing), and the decision scheduling the evidentiary hearing was mailed to Respondent more than a month before at the same address where Respondent was personally served the CPAN. Therefore, in light of Staff's objection to a continuance and being prepared to proceed, and Respondent's failure to timely participate or respond, the ALJ declined to continue the hearing. The hearing proceeded without the Respondent present.

11. Staff offered the testimony of Criminal Investigator Joseph Potts. Hearing Exhibits 1,101-108, and 105C and 106C were identified, offered, and admitted into evidence. At the conclusion of the evidence, the record was closed. The matter was then taken under advisement.

12. In reaching this Recommended Decision, the ALJ has considered all arguments presented, including those arguments not specifically addressed in this Decision. Likewise, the ALJ has considered all evidence presented at the hearing, even if the evidence is not specifically addressed in this Decision.

13. Pursuant to § 40-6-109, C.R.S., the ALJ now transmits to the Commission the record of the hearing and a written recommended decision in this matter.

II. FINDINGS OF FACT

14. No person shall operate or offer to operate as a mover in intrastate commerce, or advertise services as a mover, without first having obtained a permit from the Commission. § 40-10.1-502, C.R.S. Movers of household goods are required to maintain and file with the Commission evidence of financial responsibility. § 40-10.1-502, C.R.S.

15. Joseph Potts is a Criminal Investigator (“CI”) for the Commission. He investigated a complaint filed by James Lamb, a member of a national trade association. This association had received a complaint that a non-permitted moving company, Excursion Professional Movers LLC, was operating in Colorado and referred the information to the Commission.

16. As part of their referral, the association provided the Commission with the Respondent’s name, address, Department of Transportation (“DOT”) number, and the website Respondent was using for advertising. They also searched for Respondent on the Secretary of State’s website, which CI Potts confirmed in his investigation. Hearing Exhibit 101. CI Potts similarly investigated Respondent’s DOT number, verifying it through the DOT registry through the U.S. Department of Treasury. Hearing Exhibit 102. Through both, CI Potts confirmed the name, address, and phone number for Respondent.

17. CI Potts searched for Respondent on the internet and found both an advertisement for Respondent and Respondent’s website. Hearing Exhibits 103 and 104. Respondent’s website advertised moving services in Colorado, specifically in the Boulder, Colorado, area. Hearing Exhibit 103. CI Potts was able to verify that customers were using Respondent’s services, as

Respondent's website contained testimonials from past customers. Hearing Exhibit 103. Similarly, the advertisement for Respondent offered the moving of household goods in Colorado. Hearing Exhibit 104.

18. As part of his investigation, on February 21, 2024, CI Potts contacted Respondent to set up a move. Using the email provided on Respondent's website and advertisement, CI Potts emailed Respondent seeking a quote for Respondent's services to move from Boulder, Colorado, to Longmont, Colorado. Hearing Exhibit 105. Respondent, specifically Carlos Gutierrez himself, replied they charged an hourly rate of \$165 per hour, with no minimum number of hours and no additional gas or mileage charges. Hearing Exhibit 105. Later via email, CI Potts received a contract for said moving services from Respondent, which both CI Potts and Respondent signed. Hearing Exhibit 106. The move was scheduled for March 21, 2024. Hearing Exhibit 106.

19. CI Potts determined that he would issue a CPAN to Respondent. While researching additional addresses for Respondent and Respondent's criminal history, CI Potts learned that Respondent had a pending warrant for his arrest.

20. On the day of the scheduled move, CI Potts and another criminal investigator from the Commission traveled to the address in Boulder for the move and contacted the Boulder Police Department. CI Potts informed the Boulder Police Department that he was planning to serve a CPAN to Respondent and advised them of Respondent's warrant. The Boulder Police Department sent police officers to the location, and they immediately took Respondent into custody for his warrant upon arrival at the location for CI Pott's scheduled move.

21. While Respondent was in police custody, CI Potts approached him, introduced himself, and informed Respondent he was the person with whom Respondent had been communicating with for the day's scheduled move. CI Potts explained to Respondent that he was

serving him a CPAN, showed Respondent the CPAN and explained it to him, and asked him if he had any questions. CI Potts then placed the CPAN in Respondent's property bag that was with him at the time of the arrest.

22. CPAN No. 138839, served to Respondent on March 21, 2024, alleged one violation of § 40-10.1-107(1), C.R.S., and one violation of § 40-10.1-502(1)(a), C.R.S. Hearing Exhibit 107.

23. Respondent never provided proof of insurance during CI Pott's investigation. As of September 5, 2024, Respondent has never filed proof of insurance with the Commission.

24. Similarly, during CI Pott's investigation and as of September 5, 2024, CI Potts was never able to locate a permit to operate for Respondent, either for his business or in his personal capacity. CI Potts stated that since 2019, Respondent has never applied for a permit to operate as a mover of household goods.

25. CI Potts was able to locate a prior complaint against Respondent from 2019. Hearing Exhibit 108. As a result of that complaint, a warning letter was issued to Respondent on October 1, 2019, for the same violations alleged in the CPAN in this proceeding: one violation of § 40-10.1-107(1), C.R.S., and one violation of § 40-10.1-502(1)(a), C.R.S. The investigator for the prior complaint, CI O'Haver, spoke with Respondent regarding the allegations contained in the warning letter and warned him to cease operating as a household goods mover until he had received a permit. Hearing Exhibit 108 at 2. Respondent admitted then that he did not have a permit, had never applied for a permit, and agreed to wait until he obtained such a permit before continuing to operate. Hearing Exhibit 108 at 2.

26. As stated above, Respondent did not appear at the hearing and did not present any evidence.

III. DISCUSSION

27. The evidence establishes the Commission's jurisdiction in this proceeding. The CPAN was served in accordance with § 40-7-116, C.R.S. The Commission has subject matter jurisdiction over this case and personal jurisdiction over Respondent.

28. 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 preponderance standard required the finder of fact to determine whether the existence of a contested fact is more probably than its non-existence. *Swain v. Colorado Department of Revenue*, 717 P.2d 507 (Colo. App. 1985). A party has met this burden of proof when the evidence, on the whole, slightly tips in favor of that party.

29. CPAN No. 138839 alleges that Respondent operated and/or offered to operate as a mover of household goods in intrastate commerce without first having obtained a permit from the Commission and failing to maintain and file evidence of financial responsibility in sums as required by the Public Utilities Commission. §§ 40-10.1-502(1)(a) and 40-10.1-107(1), C.R.S.

30. The evidence shows that at all times relevant to this proceeding, Respondent offered to and contracted with CI Potts to move household goods in intrastate commerce. At the time of the scheduled move, Respondent neither held an active permit authorizing operations as a household goods mover nor maintained on file evidence of financial responsibility in sums as required by the Commission.

31. Based upon evidence of record, it is found that Respondent violated § 40-10.1-107(1), C.R.S., as alleged in Count 1 of the CPAN and § 40-10.1-502(1)(a), C.R.S., as alleged in Count 2 of the CPAN.

32. Having found violations of the cited statutes, it is necessary to determine the amount of the civil penalty to be assessed for these violations. Section 40-7-113, C.R.S., authorizes the Commission to assess civil penalties. The Commission is authorized to consider aggravating or mitigating circumstances surrounding particular violations in order to fashion a penalty assessment that promotes the underlying purpose of such assessment. § 40-7-113, C.R.S. In accordance with Rule 1302(b) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (“CCR”) 723-1, the Commission may impose a civil penalty, where provided by law, after considering any evidence concerning some or all of the following factors:

- (I) the nature, circumstance, and gravity of the violation;
- (II) the degree of the respondent’s culpability;
- (III) the respondent’s history of prior offenses;
- (IV) the respondent’s ability to pay;
- (V) any good faith efforts by the respondent in attempting to achieve compliance and to prevent future similar violations;
- (VI) the effect on the respondent’s ability to continue in business;
- (VII) the size of the business of the respondent; and
- (VIII) such other factors as equity and fairness may require.

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

33. Respondent had a prior complaint filed against him in 2019, which resulted in a warning letter for the same violations contained in the present CPAN. Additionally, when contacted about the warning letter, Respondent admitted to a Commission Investigator that he did not have a permit to operate as a mover of household goods, had never applied for a permit, and understood that he would have to wait until he obtained such a permit before continuing to operate

as a mover of household goods. However, despite the warning letter and assurances that he understood that he needed a permit, Respondent operated again.

34. Staff demonstrated that Respondent was doing business as Excursion Professional Movers in this proceeding. Respondent offered and contracted with CI Potts to provide household good moving services to CI Potts without a permit and without proof of financial responsibility on file with the Commission.

35. Respondent failed to appear at the hearing and did not participate in his defense. No mitigating factors were presented. There was also no evidence regarding Respondent's ability to pay, his ability to continue in business, or the size of his business. Similarly, Respondent did not present any evidence of good faith efforts he has taken to come into compliance and prevent similar violations in the future. Given the previous warning letter and Respondent's admission that he did not have a permit and Staff's testimony that Respondent has never applied for the appropriate permit from the Commission, the ALJ concludes that there has been no evidence of any good faith efforts of Respondent to achieve compliance and prevent future violations.

36. Considering Respondent's repeated violations, lack of participation in this proceeding, including lack of any mitigating factors or evidence of good efforts to achieve compliance, the assessment necessary in this proceeding to deter future noncompliance and balancing the Commission's interest in encouraging compliance, the undersigned concludes that the full penalty amount asked for in CPAN No. 138839, \$13,915, should be assessed against Respondent.

37. Staff also requests a cease and desist order be issued in this proceeding.

38. Section 40-10.1-112(1), C.R.S., authorizes the Commission to issue a cease and desist order. That statute states, in relevant part:

Except as specified in subsection (3) of this section, the commission, at any time, by order duly entered, *after hearing upon notice to the motor carrier and upon proof of violation, may issue an order to cease and desist ...* for the following reasons:

- (a) A violation of [article 10.1 of title 40, C.R.S.,] or of any term of condition of the motor carrier's certificate or permit;
- (b) Exceeding the authority granted by certificate or permit;
- (c) A violation or refusal to observe any of the proper orders or rules of the commission.

(Emphasis supplied.)

39. The CPAN states: “**Notice: Upon proof of any violation alleged above, the Public Utilities Commission may order you to cease and desist activities in violation of statutes and Commission rules.**” Hearing Exhibit 107 (italics and bolding in original). Thus, Respondent had notice that a cease and desist order could issue in this proceeding.

40. Staff has proven the violations alleged in the CPAN and the ALJ finds that Respondent should be ordered to cease and desist from operating or offering to operate as a household goods mover without a permit. Thus, compliance, along with payment of the civil penalty assessed in this proceeding, provides an opportunity for Respondent to operate his business in his chosen profession. Paying the civil penalty assessed in this proceeding, obtaining a permit to operate as a mover of household goods, and filing proof of financial responsibility will also serve the public interest by ensuring compliance with Commission rules.

41. Respondent is advised and on notice that violation of the cease and desist order contained in this Decision may result in the Commission's taking further action, both administrative and judicial, as permitted by statute.

IV. CONCLUSIONS

42. Staff has sustained its burden of proving the allegations contained in Counts 1 and 2 of CPAN No. 138839 by a preponderance of the evidence as required by § 40-7-116, C.R.S.

43. The total civil penalty for such violations is \$13,915.

44. The Respondent shall be ordered to cease and desist from operating as a mover of household goods until obtaining a Commission permit and obtaining and filing with the Commission proof of financial responsibility.

45. Pursuant to § 40-6-109(2), C.R.S., the ALJ recommends that the Commission enter the following order.

V. ORDER

A. The Commission Orders That:

1. As alleged in Civil Penalty Assessment Notice No. 138839, Respondent Carlos Gutierrez in his capacity as owner and/or operation of Excursion Professional Movers LLC (“Respondent”) violated one count of § 40-10.1-107(1), C.R.S., and one count of § 40-10.1-502(1)(a), C.R.S., on February 21, 2024.

2. A civil penalty in the amount of \$13,915, including applicable surcharges, is assessed.

3. Respondent shall immediately cease and desist further operation as a mover of household goods until such time as he has complied with all Colorado statutes and Commission rules governing such operation.

4. Proceeding No. 24G-0134HHG is now 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, 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

G. HARRIS ADAMS

Administrative Law Judge

ATTEST: A TRUE COPY

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

Rebecca E. White,
Director