Decision No. R24-0926

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24G-0297TO

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

SHEENA FERNANDEZ DOING BUSINESS AS HOOKED & BOOKED TOWING,

RESPONDENT.

RECOMMENDED DECISION
IMPOSING CIVIL PENALTIES

Issued Date: December 23,2024

TABLE OF CONTENTS

I. STATEMENT

1. This proceeding concerns Civil Penalty Assessment Notice ("CPAN") No. 140630 issued by Commission Staff ("Staff") on June 24, 2024, against Respondent Sheena Fernandez doing business as Hooked & Booked Towing ("Respondent" or "Hooked & Booked"). The CPAN assessed Hooked & Booked a total penalty of $17,652.50 for 14 violations of rules contained in 4 *Code of Colorado Regulations* ("CCR") 723-6, and Colorado Revised Statutes. The violations are specifically listed in the CPAN.

2. The CPAN indicates that it was personally served on June 24, 2024, and a representative of Hooked & Booked, upon service, refused to sign the CPAN.

3. On July 30, 2024, Trial Staff of the Commission ("Staff") filed its Notice of Intervention as of Right and Entry of Appearance in this proceeding.

4. On August 7, 2024, the Commission referred this proceeding to an Administrative Law Judge ("ALJ") by minute entry.

5. On August 19, 2024, by Decision No. R24-0598-I, an evidentiary hearing was scheduled for October 10, 2024.

6. On September 26, 2024, Staff filed its Motion to Amend CPAN, Consolidate Violation 5 into Violation 4, Dismiss Violation 5 and Shorten Response Time ("Motion to Amend CPAN").

7. On October 10, 2024, the above captioned proceeding was called. Counsel for Staff entered her appearance. Ms. Sheena Fernandez appeared for the Respondent.

8. The undersigned ALJ explained the hearing procedures to the Respondent and then allowed the Respondent to represent herself pro se. Ther ALJ addressed preliminary matters including granting the Motion to Amend CPAN. With the granting of the Motion to Amend violation five was dismissed.

9. Staff offered the testimony of Criminal Investigator Joe Potts. Ms. Fernendez did not testify or provide any evidence on behalf of the Respondent. Hearing Exhibits 100 through 108 were offered and admitted. At the conclusion of the evidence the record was closed and the matter was then taken under advisement.

10. The undersigned ALJ allowed for the issue of the incorrect address on the CPAN to be briefed by the Parties. The Parties were given until October 25, 2024 to file any briefs.

11. On October 25, 2024, Staff filed its Brief in Opposition to Respondent's Motion to Dismiss ("Brief").

12. The Respondent failed to file a brief in support of the Motion.

13. 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.

14. 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

15. Joeseph Potts is a Criminal Investigator ("CI") for the Commission. CI Potts has been employed by the Commission for approximately three years. Hr. Tr. October 10, 2024, p. 15:11–17.

16. A complaint had been filed against Hooked and Booked by Javier Esparaza. Mr. Esparaza stated in his complaint that his vehicle had been towed from 6603 N. Federal Blvd. on May 24, 2024. Mr. Esparaza discovered that the tow company that towed his vehicle, Hooked and Booked, did not have an active Commission permit. *Id.* at p. 16:11-22 and Hr. Ex. 5.

17. CI Potts investigated the complaint filed by Mr. Esparaza. CI Potts spoke with Mr. Esparaza and performed a search of Hooked and Booked's permit authority within the Commission's computer system. *Id.* at p. 18:21-23.

18. CI Potts discovered that Hooked and Booked's designated agent is Sheena Fernandez and Hooked and Booked's tow permit was revoked on May 28, 2024. *Id.* at p. 20:12-20, p. 30:18-20 and Hr. Ex. 101, p.4.

19. CI Potts also found that the Commission's computer system did not list a storage facility for Hooked and Booked.

20. Towing carriers are required to file and maintain both Form E and Form H insurance[1]. Hooked and Booked's Form H Insurance was canceled on April 17, 2024. *Id.* at p. 22:12-20 and Hr. Ex. 101.

[1] Form E insurance is Bodily Injury and Property Damage Insurance and Form H is Cargo Insurance, *See Hr. Ex. 104*.

21. The business name Hooked and Booked Towing was licensed in Colorado with Sheena Fernandez as the registered agent. Hooked and Booked's business license expired on May 1, 2024. Hr. Ex. 103.

22. Mr. Esparaza provided CI Potts with the invoice he was given after his vehicle had been towed on May 24, 2024. Hr. Tr. October 10, 2024, p. 31:11–15 and Hr. Ex. 103.

23. The invoices used by towing entities are required to have a unique serial number. The invoice provided by Mr. Esparaza did not have a unique serial number. *Id.* at p. 32:13-22.

24. The invoice also did not contain the address of the storage facility, the date and time of completion of the tow, or the date and time the vehicle was released from storage. *Id.* at p. 33:1-23.

25. The invoice also failed to include the date and time notice was given to the police department. *Id.* at p. 35:10-16 and p. 38 6:18.

26. The VIN number for the vehicle as listed on the invoice contained a dollar sign as a character although VIN numbers do not contain symbols. *Id.* at p. 36:15-22.

27. CI Potts also found that the invoice failed to contain the license plate number of the tow truck that towed Mr. Esparaza's vehicle. *Id.* at p. 37-38:22-5. CI Potts also found that Mr. Esparaza had been charged for "labor" and a "surcharge". *Id.* at p. 38-39: 19-6.

28. CI Potts prepared CPAN No.140630. The CPAN listed 12 violations occurring on May 25, 2024, at 6303 N. Federal Blvd. Denver Colorado. Hr. Ex. 100.

29. On June 26, 2024, Deputies from the Adams County Sheriff's Office served CPAN No. 140630 on Juan Fernandez and Sheena Fernandez. Hr. Ex. 107.

III. ISSUES

30. Was the incorrect address on the CPAN a fatal error that requires that the CPAN to be dismissed.

31. Did Staff prove by a preponderance of the evidence that the Respondent committed the violations alleged in CPAN No. 140630.

IV. APPLICABLE LAW

32. As the proponent of a Commission order, Complainant has the burden of persuasion in this proceeding pursuant to 4 CCR 723-1-1500 of the Rules of Practice and Procedure.

33. 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, § 116 states that, "When a person is cited for such violation, the person operating the motor vehicle involved shall be given notice of such violation in the form of a civil penalty assessment notice." Section 116 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." § 40-7-116, C.R.S.

34. 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." § 24-4-105(7), C.R.S. As provided in Commission Rule 4 CCR 723-1-1500, "[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. Complainant bears the burden of proof by a preponderance of the evidence. *See*, § 13-25-127(1),C.R.S.; 4 CCR 723-1-1500. The preponderance standard requires the finder of fact to determine whether the existence of a

contested fact is more probable than its non-existence. *Swain v. Colorado Dept. of Revenue*, 717 P.2d 507 ("Colo. App.1985"). 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.

35. Proper service of the CPAN is vital. "The mandatory requirements for valid service of process are fundamental because of the due process requirements of notice. *Bush v. Winker*, 892 P.2d 328, 332 ("Colo. App. 1994").

V. DISCUSSION

A. Incorrect Address on CPAN.

36. At the start of the hearing and after the testimony of CI Potts, Respondent argued that the CPAN should be dismissed due to an incorrect address listed for all of the alleged violations on CPAN No. 140630.

37. The invoice states that the tow in question occurred at 6603 N. Federal Blvd.[2] Hr. Ex. 105. The CPAN states that all violations occurred at 6303 N. Federal Blvd. Denver, CO. Hr. Ex.100.

38. On cross-examination CI Potts admitted that he "may have transposed one number." Hr. Tr. October 10, 2024, p. 54:6–12.

39. Staff argues that under C.R.S. 40-7-116(1)(b) the CPAN is only required to provide the approximate location, and the Respondent had sufficient notice of the violation and suffered no prejudice by this error.

40. The Respondent did not file a brief in support of the proposition that the wrong address was a fatal flaw in the CPAN.

[2] The invoice does not list a city or state.

41. Staff is correct that the proper place to determine if the error creates a fatal flaw is C.R.S. 40-7-116. Under C.R.S. 40-7-116(1)(b) the CPAN must contain the following:

(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.

42. As noted by Staff, the CPAN need only provide an **approximate location** (*emphasis added*) of the alleged violation.

43. There is no argument that the address stated in the CPAN for the location of the violation is incorrect.

44. Had Staff requested to amend the CPAN before the hearing the wrong address would not be an issue.[3]

45. The undersigned ALJ believes that the requirement for approximate location has more to do with situations where a person is towed from an area without an exact address ("*i.e.,* side of an interstate highway") as opposed to a permission to list an incorrect address. Yet the ambiguity in the law allows for the requirements of C.R.S. 40-7-116(1)(b) to be met with an incorrect address as long as it is approximately the proper location.

[3] Had Staff moved to amend the CPAN during the hearing, the motion would have been granted unless Respondent was able to show that a substantial right was prejudiced.

46. The argument of the Respondent, made only during the hearing, was that the CPAN did not list the exact address, not that the address provided in the CPAN was not the approximate location.

47. The CPAN does list the correct street, only the number is incorrect. There was no evidence that the city was incorrect or any other aspect of the address listed on the CPAN was incorrect.

48. It appears that the address is incorrect by only three blocks. The CPAN contained the correct date and identification of the vehicle towed on that day. Respondent had proper notice based upon the information provided on the CPAN as to the tow that was the subject of the CPAN. It does not appear that the Respondent suffered any prejudice, and Respondent did not argue any prejudice.

49. While the CPAN did not contain the exact address, the undersigned ALJ finds that it did contain sufficient information to constitute the approximate address. Since the requirements of C.R.S. 40-7-116(1)(b) are met, the argument of the Respondent fails.

B. Count 1 Failure to Maintain or Update Address

50. Count one alleges a violation of Rule 6005(c), 4 CCR 723-6, which states the following:

> If a Towing Carrier wishes to begin providing storage for towed Motor Vehicles at a new or additional storage facility, the Towing Carrier shall, prior to using the new or additional storage facility, file with the Commission the storage facility's address and, if one exists, telephone number.

51. CI Potts testified that the Commission's computer system does not list a storage facility for vehicles. Hr. Tr. p. 21:12–17. This testimony was supported by Hearing Exhibit 101 which did not list a storage facility.

52. CI Potts testified that Mr. Esparaza's stated to him that his vehicle had been towed to a tow yard. Hr. Tr. p. 31:2–6. The tow invoice also states that Mr. Esparaza's vehicle was towed to 6265W. 52nd Ave. Hr. Ex. 105.

53. The Commission's computer system does not list the address of 6265W. 52nd Ave. as a tow yard for the Respondent. Hr. Ex. 101.

54. The Respondent provided no evidence to contest this allegation.

55. Staff has shown by preponderance of evidence a violation of Rule 6005(c), 4 CCR 723-1.

C. Count 2 – Invoice Missing Unique Serial Number on Invoice.

56. Count two alleges a violation of Rule 6509(a)(I), 4 CCR 723-6, which states the following:

> (a) A towing carrier shall use and complete all applicable portions of a tow record/invoice form for all nonconsensual tows, whether the motor vehicle is removed from private property or retrieved before removal (commonly known as a drop), and law enforcement-ordered tows. The tow record/invoice form shall contain the following information:
>
> (I)the unique serial number of the tow record/invoice;

57. CI Potts testified that the invoice given to Mr. Esparaza did not contain a unique serial number. Hr. Tr. p. 32:13–22. This testimony is supported by Hearing Exhibit 105.

58. The Respondent provided no evidence to contest this allegation.

59. Staff has shown by preponderance of evidence a violation of Rule 6009(a)(I), 4 CCR 723-1.

D. Count 3 – Invoice Missing Address Used to Store Vehicle

60. Count three alleges a violation of Rule 6509(a)(III), 4 CCR 723-6 which states the following:

> (a) A towing carrier shall use and complete all applicable portions of a tow record/invoice form for all nonconsensual tows, whether the motor vehicle is removed from private property or retrieved before removal (commonly known as a drop), and law enforcement-ordered tows. The tow record/invoice form shall contain the following information:
>
> (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;

61. Staff argues that the invoice does not meet the requirements of Rule 6509(a)(III), 4 CCR 723-6 because the address on the invoice does not match the address of a storage facility on file with the Commission since Respondent does not have the address of a storage facility on file with the Commission. Hr. Tr. p. 33:1–15.

62. The evidence presented in the hearing showed that Mr. Esparaza's vehicle was towed to 6265W. 52nd Ave. which Staff has determined is a storage facility.[4]Hr. Ex. 105. Based on the argument of Staff the location of the storage facility was provided on the invoice.

63. The undersigned ALJ views the requirements under of Rule 6509, 4 CCR 723-6 as requirements that must be met on the invoice. Without a storage facility on file with the Commission, the Respondent can never meet this requirement.

64. It would be more beneficial to the Respondent to have not provided the information as to where the vehicle had been towed. By providing this accurate information to Mr. Esparaza

[4] This conclusion is based only on testimony that Mr. Esparaza told CI Potts he recovered his vehicle from "Respondent's tow yard." Hr. Tr. p. 31:2–9. And p.59 13-22. Had Respondent testified that the vehicle had been towed to a residence or a location other than a "storage facility" or "tow yard" the only evidence to establish that 6265W. 52nd Ave. was in fact a storage facility was the hearsay statement of CI Potts. It is noted that the tow invoice contain a charge for storage of the vehicle.

on the invoice, the Respondent became liable for a violation of not having an address for the storage facility on file under two separate rules according to Staff[5].

65. By a strict reading of the rule, Staff has shown by a preponderance of evidence a violation of Rule 6009(a)(III), 4 CCR 723-1.

E. Count 4 – Invoice Missing Date and Time of Completion

66. Count four alleges a violation of Rule 6509(a)(IV), 4 CCR 723-6 which states the following:

> (a) A towing carrier shall use and complete all applicable portions of a tow record/invoice form for all nonconsensual tows, whether the motor vehicle is removed from private property or retrieved before removal (commonly known as a drop), and law enforcement-ordered tows. The tow record/invoice form shall contain the following information:
>
> (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;

67. CI Potts testified that the invoice given to Mr. Esparaza did not state the time of completion of the tow, time notification was made to law enforcement or when the vehicle was released from storage. Hr. Tr. p. 33-34:16–5. This testimony is supported by Hearing Exhibit 105.

68. The Respondent provided no evidence to contest this allegation.

69. Staff has shown by a preponderance of evidence a violation of Rule 6509(a)(IV), 4 CCR 723-1.

[5] This violation would not have been charged if the Respondent had failed to provide the location of the storage facility Mr. Esparaza's vehicle had been towed to on the invoice. The Respondent had numerous deficiencies on his invoice, providing this information on the invoice is one of the things that was correct on the invoice. The undersigned ALJ believes that this situation is not the intent of this rule. The Commission should not be penalizing carriers for providing accurate information on the invoice let alone penalizing them twice for providing this information.

F. Count 6 – Incorrect VIN number

70. Count six alleges a violation of Rule 6509(a)(V), 4 CCR 723-6 which states the following:

> (a) A towing carrier shall use and complete all applicable portions of a tow record/invoice form for all nonconsensual tows, whether the motor vehicle is removed from private property or retrieved before removal (commonly known as a drop), and law enforcement-ordered tows. The tow record/invoice form shall contain the following information:
>
> (V) the make, model, year, complete VIN (if available), and license plate number (if available) of the towed motor vehicle

71. CI Potts testified that the VIN number on the invoice contained a dollar sign and dollar signs are not valid characters for a VIN number. Hr. Tr. p. 36:18–24. CI Potts then testified that the carrier is required to provide the VIN number to the Department of Revenue ("DOR") "as part of the statutory service notification" and with the wrong number DOR would be unable to notify the owner of the vehicle, and Respondent would take ownership of the vehicle after 30 days, re-title and sell the vehicle. CI Potts testified that the $ that was put down was "purposely done in order to enter false information to the Department of Revenue." *Id.* at 37:1-18.

72. At no time was it stated that the invoice which was given to Mr. Esparaza is the document that would be given to the DOR. Nor was there any evidence that this incorrect VIN number had been presented to the DOR. At no time was it explained why the DOR would simply accept the VIN number that has an obviously incorrect number and not inquire as to the correct VIN number[6]. No evidence was presented as to how long it took for Mr. Esparaza retrieve his vehicle or when CI Potts began the investigation.

73. While creating a nefarious plot for the Respondent there was not a scintilla of evidence provided that the Respondent did anything to further this plot. There was no evidence he

[6] CI Potts did not testify to the actual VIN Number. If the $ was in the place of where an 8 was supposed to be it could have just been a typo. As this proceeding has shown typos occur on occasion.

provided the incorrect VIN number to DOR, that he kept the vehicle for 30 days, that the vehicle became his property, that he had the vehicle re-titled or tried to sell it.

74. Finally, CI Potts did not testify to the actual VIN Number. If the $ was in the place of where an 8 was supposed to be, it could have just been a typo. As this proceeding has shown, typos do occur on occasion.

75. Staff has failed to show by a preponderance of evidence a violation of Rule 6009(a)(V), 4 CCR 723-1.

G. Count 7 – Invoice Missing Unit Number or Tow Truck License Plate Number

76. Count seven alleges a violation of Rule 6509(a)(VIII), 4 CCR 723-6 which states the following:

> (a) A towing carrier shall use and complete all applicable portions of a tow record/invoice form for all nonconsensual tows, whether the motor vehicle is removed from private property or retrieved before removal (commonly known as a drop), and law enforcement-ordered tows. The tow record/invoice form shall contain the following information:
>
> (VIII) the unit number or license number of the tow truck

77. CI Potts testified that the invoice given to Mr. Esparaza did not state a unit number or license plate for the tow truck that performed the tow on Mr. Esparaza's vehicle. Hr. Tr. p. 37-38:22-4. This testimony is supported by Hearing Exhibit 105.

78. The Respondent provided no evidence to contest this allegation.

79. Staff has shown by a preponderance of evidence a violation of Rule 6509(a)(VIII), 4 CCR 723-1.

H. Count 8 – Invoice Missing Law Enforcement Notification

80. Count eight alleges a violation of Rule 6509(a)(XIII), 4 CCR 723-6 which states the following:

> (a) A towing carrier shall use and complete all applicable portions of a tow record/invoice form for all nonconsensual tows, whether the motor vehicle is removed from private property or retrieved before removal (commonly known as a drop), and law enforcement-ordered tows. The tow record/invoice form shall contain the following information:
>
> (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).

81. CI Potts testified that the invoice given to Mr. Esparaza did not state a case number or the date and time law enforcement was notified of the tow. Hr. Tr. p. 38:6-12. This testimony is supported by Hearing Exhibit 105.

82. The Respondent provided no evidence to contest this allegation.

83. Staff has shown by a preponderance of evidence a violation of Rule 6509(a)(XIII), 4 CCR 723-1.

I. Count 9 – Improper Charge- Surcharge

84. Count nine alleges a violation of Rule 6511(b)(V), 4 CCR 723-6 which states the following:

> (V) A towing carrier shall not charge or retain any additional fees not identified in state statute or Commission rule for the nonconsensual tow of a motor vehicle from private property.

85. CI Potts testified that the invoice given to Mr. Esparaza contained a charge for a surcharge which is an unauthorized fee. Hr. Tr. p. 38-39:19-6. This testimony is supported by Hearing Exhibit 105.

86. The Respondent provided no evidence to contest this allegation.

87. Towing rates may include the following elements: base rate for the tow; a mileage charge, including any applicable fuel surcharge; a charge for motor vehicle storage; a charge for

release from storage pursuant to paragraph 6511(e), if applicable; and any other charges allowed by state statute or Commission rule.[7]

88. Commission rules do allow a surcharge for fuel. In the instant case the charge at issue is listed only as "surcharge" not fuel surcharge. No evidence was presented at the hearing to show that this charge was not in fact a fuel surcharge. While the rule appears to contemplate the surcharge being a part of the milage charge it is not clear that they could not be stated separately.

89. Commission rules state that the following:

> An additional fuel surcharge may be assessed when the price per gallon of diesel fuel exceeds a base rate of $2.60. The Commission shall, each month, adjust the maximum mileage charge when the price per gallon of diesel fuel exceeds the base rate. The surcharge shall be based on the United States Department of Energy "weekly retail on- highway diesel prices" for the Rocky Mountain region (DOE's Weekly Diesel Price). The fuel surcharge adjustment shall provide a one-percent increase in the mileage rate for every ten-cent increase in the DOE's Weekly Diesel Price, or a one-percent decrease in the mileage rate for every ten-cent decrease in the DOE's Weekly Diesel Price, but in no event decreasing below the base rate.

Rule 6511(b)(IV), 4 CCR 723-6

90. The only evidence presented at the hearing was the testimony that a "surcharge" is unauthorized and the invoice listing a $100.00 surcharge.

91. It is obvious from the other charges in this CPAN that the invoice used by the Respondent is deficient in many ways. There was no evidence presented to show that the charge of "surcharge" was not yet another deficiency in the invoice rather than an illegal charge. No evidence was presented that the surcharge amount was not consistent with a fuel surcharge or with what the fuel surcharge should have been on that day.

92. The evidence presented in the hearing was only the following statement by CI Potts "[T]here's always certain fees that can be charged in a nonconsensual tow from private property,

[7] Rule 6511(b), 4 CCR 723-1

and in this case, labor charges of $75 and a surcharge of $100 are added to inflate this bill. Those are nonauthorized fees that tow carrier cannot charge somebody when they non-consensually tow a vehicle." *Id.*

93. If this was a fuel surcharge that contained an incorrect amount that would implicate a separate rule[8] and there was no notice of this potential violation.

94. Staff has failed to show by a preponderance of evidence a violation of Rule 6511(b)(V), 4 CCR 723-1.

J. Count 10 – Improper Charge- Labor

95. Count ten alleges a violation of Rule 6511(b)(V), 4 CCR 723-6 which states the following:

> (V) A towing carrier shall not charge or retain any additional fees not identified in state statute or Commission rule for the nonconsensual tow of a motor vehicle from private property.

96. CI Potts testified that the invoice given to Mr. Esparaza contained a charge for labor which is an unauthorized fee. Hr. Tr. p. 38-39:19-6. This testimony is supported by Hearing Exhibit 105.

97. The Respondent provided no evidence to contest this allegation.

98. Towing rates may include the following elements: base rate for the tow; a mileage charge, including any applicable fuel surcharge; a charge for motor vehicle storage; a charge for release from storage pursuant to paragraph 6511(e), if applicable; and any other charges allowed by state statute or Commission rule.[9]

99. Commission rules do not allow for a "labor" charge to be included in a towing rate.

[8] Rule 6511(b)(IV), 4 CCR 723-6
[9] Rule 6511(b), 4 CCR 723-1

100. Staff has shown by preponderance of evidence a violation of Rule 6511(b)(V), 4 CCR 723-1.

K. Count 11 – Failure to Maintain Evidence of Financial Responsibility

101. Count eleven alleges a violation of C.R.S. § 40-10.1-107(1) which states the following:

> Each motor carrier shall maintain and file with the commission evidence of financial responsibility in such sum, for such protection, and in such form as the commission may by rule require as the commission deems necessary to adequately safeguard the public interest.

102. CI Potts testified that in his investigation he examined the Commissions computer database and discovered that the Respondent's Form H insurance had been cancelled on April 17, 2024, and did not have the proper insurance on May 25, 2024. Hr. Tr. p. 22:19-6.

103. This testimony is supported by Hearing Exhibit 101 which shows that Respondent's Form H insurance was canceled on April 17, 2024[10].

104. 100. Staff has shown by preponderance of evidence a violation of Rule 6511(b)(V), 4 CCR 723-1.

L. Count 12 – Operating as Tow Carrier while Permit was Suspended

105. Count twelve alleges a violation of C.R.S. § 40-10.1-401(1)(a) which states the following:

> A person shall not operate or offer to operate as a towing carrier in intrastate commerce without first having obtained a permit therefor from the commission in accordance with this article.

106. The CPAN alleges that the Respondent was operating or offering to operate as a tow carrier during a time in which the permit was suspended. Hr. Ex. 100.

[10] The Respondent's Form E insurance was cancelled on May 27, 2024.

107. CI Potts testified that he investigated the Respondent in the Commission's computer system[11]. Hr. Tr. p. 18:18-23. From his investigation in the Commission's IFMS computer system CI Potts testified that he learned "their towing permit was revoked." *Id.* p.20:12-13. CI Potts also testified that on May 24, 2024, the Respondent's permit was revoked. *Id.* p.30:18-20.

108. Hearing Exhibit 101 is a printout of the Commission's IFMS which CI Potts testified that he learned that the Respondent's permit was revoked. *Id.* p20:12-13. An examination of Hearing Exhibit 101 shows that the Respondent's towing permit was revoked on May 28, 2024, four days after the tow in question.

109. At no time did CI Potts testify that the permit of the Respondent was under suspension on May 24, 2024. His only statement concerning the status of the Respondent's permit on May 24, 2024, was that it was revoked. That statement is directly contradicted by Hearing Exhibit 101, p.4, which states that Respondent's permit was not revoked until May 28, 2024.

110. CI Potts was asked if the Respondents are given an opportunity to correct their insurance issue before the Commission takes final action and responded, "they do." *Id.* p 24:19-23

111. The CPAN issued by CI Potts gave Respondent notice of a violation concerning a tow on May 24, 2024, when its permit was alleged to be suspended, not revoked. In his testimony, CI Potts did not allege that the Respondent's permit was suspended on May 24, 2024[12]. Hearing

[11] There was no evidence presented by Staff concerning the date the investigation started or the date the computer search occurred.

[12] A search of the transcript of the hearing finds the words suspended or suspension were never uttered by any party during the hearing.

Exhibit 101(IFIMs printout) contains no information of the status of the Respondent's permit on May 24, 2024, the day the tow in question occurred.

112. Hearing Exhibit 101 only shows that a permit was issued to the Respondent on January 31, 2024. The next action taken on the Respondent's permit, according to Hearing Exhibit 101, is the revocation, which occurs on May 28, 2024 or four days after the tow in question.

113. There is no evidence to show the status of the Respondent's permit on May 24, 2024, and no evidence was presented to show the Respondent's permit was suspended on May 24, 2024.

114. Staff has failed to show by a preponderance of evidence a violation of C.R.S. § 40-10.1-401(1)(a).

VI. CONCLUSION

115. Staff has met its burden of proof on the following alleged violations:

a. One count of 4 CCR 723-6-6005(c)
b. One count of 4 CCR 723-6-6009(a)(I)
c. One count of 4 CCR 723-6-6009(a)(III)
d. One count of 4 CCR 723-6-6509(a)(IV)
e. One count of 4 CCR 723-6-6009(a)(VIII)
f. One count of 4 CCR 723-6-6009(a)(XIII)
g. One count of 4 CCR 723-6-6511(b)(V)
h. One count of C.R.S. 40-10.1-401(1)(a)

116. Staff has not met its burden of proof on the following alleged violations:

a. One count of 4 CCR 723-6-6509(a)(V)
b. One count of 4 CCR 723-6-6511(b)(V)
c. One count of C.R.S. 40-10.1-401(1)(a)

117. Staff requests that the full penalty for each proven violation be assessed against the Respondent, Mr. Esparaza be refunded $444.00,[13] the Respondent remove all signage throughout the city and a cease-and-desist order be issued against the Respondent.

118. Pursuant to commission rules 4 CCR 723-1-1302(b):

> The Commission may impose a civil penalty after considering any evidence concerning some or all of the following factors:
>
> a. The nature, circumstances, and gravity of the violation;
>
> b. The degree of the respondent's culpability;
>
> c. The respondent's history of prior offenses;
>
> d. The respondent's ability to pay;
>
> e. Any good faith efforts by the respondent in attempting to achieve compliance and to prevent future similar violations;
>
> f. The effect on the respondent's ability to continue in business;
>
> g. The size of the business of the respondent; and
>
> h. Such other factors as equity and fairness may require.

119. In assessing the proper penalty, it is noted that the Respondent failed to provide any mitigating evidence and did not dispute the allegations.

120. From the hearing it appears that the business is small, only consisting of Ms. Fernendez and her husband.

121. CI Potts testified that the Respondent has applied for a towing permit since the filing of the CPAN in the instant case. Hr. Tr. p. 42-43:23-10.

122. Hearing Exhibit 101 shows that the Respondent has been issued a permit on three occasions, the first time in 2021. This is the first CPAN that has been issued to the Respondent.

123. While there was testimony of other investigations there was no evidence presented that these investigations have led to the issuance of a CPAN.

[13] CI Potts requested a refund of $440.00. The invoice shows a charge of $444.00.

124. There was no evidence presented of any other tows which occurred when the Respondent's insurance had lapsed.

125. It is also evident from Hearing Exhibit 101 that only the Form H insurance was not active on the date of the tow. The Form E insurance was in effect on the day of the tow in question.

126. There is only one tow that is alleged to have occurred when the Respondent's Form H insurance was lapsed. Almost all other violations relate to the inadequacy of the tow invoice. There is no evidence that the Respondent had been warned about the inadequacy of the invoice in the past and continued to use the invoice with knowledge that it was defective.

127. Finally, it is also noted that the Respondent was aggressive with Deputies when served with the CPAN. Hr. Ex. 109.

128. Based on consideration of aggravating and mitigating factors, the Respondent shall be assessed a civil penalty, including any appropriate surcharge, in the amount of $11,000.00 and provide a refund to Mr. Esparaza in the amount of $444.00.

129. The undersigned ALJ finds the civil penalty amount of $11,000.00 and refund to Mr. Esparaza in the amount of $444.00 is sufficient to motivate the Respondent to avoid any further violations of Commission regulations.

VII. ORDER

A. It is Ordered That:

1. Sheena Fernandez doing business as Hooked & Booked Towing ("Respondent") violated one count of 4 CCR 723-6-6005(c), one count of 4 CCR 723-6-6009(a)(I),one count of 4 CCR 723-6-6009(a)(III), one count of 4 CCR 723-6-6509(a)(IV), one count of 4 CCR 723-6-6009(a)(VIII), one count of 4 CCR 723-6-6009(a)(XIII), one count of 4 CCR 723-6-6511(b)(V), one count of C.R.S. 40-10.1-401(1)(a)

2. Respondent is ordered to pay to the Commission, within 30 days of the date that this Recommended Decision becomes the decision of the Commission, the sum of $11,000.00. This amount represents the total of the civil penalty assessed for the violations found in Ordering Paragraph No. 1 plus the mandatory surcharge imposed by § 24-34-108, C.R.S.

3. Consistent with the discussion above, counts 6, 9 and 12 are dismissed with prejudice.

4. Consistent with the discussion above, Respondent shall refund the vehicle owner $444.00 received for the tow conducted on May 25, 2024.

5. The reimbursement ordered in Ordering Paragraph No. 4 is due and payable not later than 30 days following the date of the final Commission decision issued in this Consolidated Proceeding. Respondent may work with Transportation Staff of the Commission to facilitate the reimbursement.

6. The request for a cease-and-desist order is denied.

7. Proceeding 24G-0297TO is now closed.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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

ROBERT I. GARVEY

Administrative Law Judge

ATTEST: A TRUE COPY

Rebecca E. White,
Director