

Decision No. R25-0164

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24G-0395TO

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

v.

COURNELL FANNINGS DOING BUSINESS AS DEBONAIR LIMITED OR DEBONAIR LIMITED TOWING & RECOVERY,

RESPONDENT.

**RECOMMENDED DECISION
ISSUING CEASE AND DESIST**

Issued Date: March 13, 2025

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I. STATEMENT AND SUMMARY

1. Proceeding No. 24G-0395TO concerns Civil Penalty Assessment Notice (“CPAN”) No. 140499 issued by Commission Staff (“Staff”) on September 17, 2024, to Respondent Cournell Fannings doing business as Debonair Limited or Debonair Limited Towing & Recovery (“Respondent” or “Debonair”). The CPAN assessed a total penalty of \$13,915.00 for one alleged violation of § 40-10.1-107(1), C.R.S., and one alleged violation of § 40-10.1-401(1)(a), C.R.S., including applicable statutory surcharges. The alleged violations are more specifically described in the CPAN and are alleged to have occurred on June 18, 2024.

2. For the reasons discussed below, this Decision finds that: (a) Trial Staff did not meet its burden of proof as the CPAN’s allegation of violation of § 40-10.1-107(1), C.R.S.; (b) Trial Staff did not meet its burden of proof as to the CPAN’s alleged violation of § 40-10.1-401(1)(a), C.R.S; and issues a cease and desist order against Respondent.¹

3. As noted on the CPAN, Staff personally served the CPAN on Respondent on September 17, 2024. Cournell Fannings acknowledged service of the CPAN.

4. On October 22, 2024, Commission Trial Staff (“Trial Staff”) filed its Notice of Intervention as of Right and Entry of Appearance.

5. On October 30, 2024, the Public Utilities Commission (“Commission”) referred this matter by minute entry to an administrative law judge (“ALJ”) for disposition.

6. Staff and Debonair are the only parties to this proceeding.

7. By Decision No. R24-0823-I, issued November 13, 2024, this matter was set for a hearing on February 12, 2025.

¹ In reaching this Decision, the Administrative Law Judge (“ALJ”) has considered and weighed all evidence and arguments presented, including those discussed briefly or not at all.

8. On February 12, 2025, at the scheduled time and place, the ALJ called this proceeding. Counsel for Staff entered his appearance. Respondent failed to appear.

9. Staff appeared through counsel and offered the testimony of Criminal Investigator (“CI”) Erin Haislett. Staff offered, and the ALJ admitted, Hearing Exhibits 100 (including the confidential version of 100, or 100C), 101, 102, 106, 107, and 108.

10. Staff requested, and the ALJ took, administrative notice of Decision No. R24-0667.

11. At the conclusion of the evidence, the ALJ closed the record and took the matter 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 proceeding and a written recommended decision in this matter.

II. FINDINGS OF FACT

14. CI Haislett has been employed by the Commission for more than three years.

15. At some point prior to June 18, 2024, the Commission received an anonymous complaint by fax. In response to the anonymous complaint, CI Haislett investigated Respondent. CI Haislett reviewed the status of Debonair’s permit in the Commission’s records. She found that Debonair was inactive as a carrier because it did not have an active permit. Hearing Exhibit 100.

16. CI Haislett testified regarding Debonair’s application for a towing permit. On February 5, 2024, Debonair filed Towing Permit Application No. 1021161; however, that application was denied. *See* Decision No. R24-0667. Cournell Fannings petitioned to overturn the

denial, stating he had learned from his mistake and needed to make money for his family.² Decision No. R24-0667 denied Debonair's petition.

17. The Commission has no record of insurance coverage for Debonair after February 15, 2024. Hearing Exhibit 100.

18. CI Haislett testified that she performed an online search of Debonair as part of her investigation. She found a Debonair page on Yelp.com claimed by the business, including reviews. Hearing Exhibit 106. The Yelp page included photographs of a tow truck that said, "Debonair Limited Towing & Recovery" and included the same phone number that Debonair used on its towing permit application. Hearing Exhibits 100 and 106.

19. The photographs on the Yelp.com page state that Debonair placed the tow truck photograph onto the website page on March 20, 2024. *Id.*

20. CI Haislett testified that she had two phone calls with Cournell Fannings. One was recorded and one was not. The recorded call occurred on June 16, 2024. The unrecorded call occurred prior to the recorded call. CI Haislett testified that during the first call, Cournell Fannings offered to tow her motor vehicle from a fire station to Caliber Collision in Westminster for approximately \$200.

21. CI Haislett testified that the second call occurred on June 16, 2024, rather than June 18, 2024, as alleged in the CPAN. CI Haislett recorded the second call to Cournell Fannings using an alias to arrange a tow. During the conversation, Cournell Fannings stated that he did "all things related to tows." Hearing Exhibit 107. CI Haislett explained that she had received a less expensive

² The administratively noticed Decision No. R24-0667 was the Recommended Decision that ultimately kept Respondent from obtaining a towing permit. In that decision, the ALJ noted she was "sympathetic" to Respondent's plight and encouraged Respondent to re-apply for a towing permit after July 1, 2025. *See* Decision No. R24-0667, pg. 11.

quote and Cournell Fannings offered to tow her car for \$150. *Id.* The phone call did not include any reference to the date for the tow. *Id.*

22. CI Haislett stated that she reviewed Debonair's permit status in Commission records several times throughout her investigation. At all times relevant to this proceeding Debonair did not have an active permit and did not have proof of insurance coverage on file.

23. CI Haislett requested that the Commission issue a cease and desist to Respondent until Respondent receives a towing permit.

III. ISSUES

24. Did the Respondent operate and/or offer to operate as a towing carrier in intrastate commerce without first having obtained a permit by offering for a private tow to Caliber Collision in Westminster for \$150 via phone on June 18, 2024, as required under § 40-10.0-401(1)(a)?

25. Did the Respondent fail to maintain and file evidence of financial responsibility in sums as required by the Commission on June 18, 2024, as required under § 40-10.0-107(1)?

26. Should the Commission issue a cease and desist to Respondent until Respondent receives a towing permit?

IV. APPLICABLE LAW

27. Commission enforcement personnel have authority to issue CPANs under § 40-7-116, C.R.S., for alleged violations of provisions in article 10.1 of title 40 and §§ 40-7-112 and 113, C.R.S.³ That statute provides that the Commission has the burden of demonstrating a violation by a preponderance of the evidence. The Commission only has penalty assessment

³ See §§ 40-7-113(1) and 116, C.R.S.; Rule 6018(a), of the Commission's Rules Regulation Transportation by Motor vehicle, 4 *Code of Colorado Regulations* ("CCR") 723-6.

authority to the extent provided by statute, and the Commission must follow the provisions of those statutes when it imposes such penalties against common carriers.

28. Section 40-7-116, C.R.S., mandates a number of procedures for the Commission to impose civil penalties: 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.

29. The CPAN’s content must provide adequate notice of the alleged violations.⁴ Among other items, and relevant here, a CPAN must include a brief description of the alleged violation, including the date of the alleged violation.⁵

30. A respondent in an adjudicatory proceeding is entitled to notice of the matters of fact asserted against it.⁶ Procedural due process requires fundamental fairness.⁷

31. If a civil penalty assessment includes a defect, Staff can correct the defect by filing a motion to amend the assessment prior to the hearing on the merits.⁸

32. The Administrative Procedure Act imposes the burden of proof in administrative adjudicatory proceedings upon “the proponent of an order.”⁹ As provided in Commission Rule 4 CCR 723-1-1500, “[t]he proponent of the order is that party commencing a proceeding.”

⁴ § 40-7-116(1), C.R.S. *See* § 24-4-105(2)(a), C.R.S.

⁵ § 40-7-116(1)(b), C.R.S. *See* Rule 6018(b), 4 CCR 723-6.

⁶ § 24-4-105(2)(a), C.R.S.

⁷ *Mtn. States Tel. & Tel. Co. v. Dept. of Labor & Emp.*, 520 P.2d 586 (Colo. 1974).

⁸ § 40-7-116(2).

⁹ § 24-5-105(7), C.R.S.

Here, Staff is the proponent since it commenced the proceeding through issuance of the CPAN. Staff bears the burden of proof by a preponderance of the evidence.¹⁰

33. This preponderance of the evidence standard requires the fact finder to determine whether the existence of a contested fact is more probable than its non-existence.¹¹ The standard requires substantial evidence, “which must do more than create a suspicion of the fact to be established.”¹²

V. FINDINGS, ANALYSIS, AND CONCLUSIONS

A. Jurisdictional Findings

34. The evidence establishes the Commission’s jurisdiction in this proceeding. The CPAN was served upon Respondent in person, in accordance with § 40-7-116, C.R.S., and the Commission has authority to issue the CPAN against Debonair.¹³

35. The ALJ finds that the CPAN provides proper notice of the alleged violations because it includes Respondent’s name and address; cites the specific statutes alleged to have been violated; includes a brief description of the alleged violations, including the date and approximate location of the alleged violation; identifies the maximum penalty for the alleged violations, including the surcharge imposed per § 24-34-108(2), C.R.S.; includes the date of the notice; and a provides place for Respondent to sign to acknowledge receipt and liability for the CPAN and violations alleged therein.¹⁴

¹⁰ § 40-7-116(1)(d)(II); § 24-4-105(7), C.R.S.; Rule 6018(c), 4 CCR 723-6; Rule 1500, 4 CCR 723-1.

¹¹ *Swain v. Colorado Dept. of Revenue*, 717 P.2d 507 (Colo. App. 1985).

¹² *See, e.g., City of Boulder v. Pub. Utilis. Comm’n.*, 996 P.2d 1270, 1278 (Colo. 2000) quoting *CF&I Steel, L.P. v. Pub. Utilis. Comm’n.*, 949 P.2d 577, 585 (Colo. 1997).

¹³ *Id.*

¹⁴ Hearing Exhibit 108; § 40-7-116(1)(b), C.R.S.; Rule 6018(b), 4 CCR 723-6.

B. Section 40-10.1-401(1)(a), C.R.S., violation charge

36. Under § 40-10.1-401(1)(a), C.R.S., an individual or company is prohibited from operating and/or offering to operate as a towing carrier in intrastate commerce without first having obtained a permit from the Commission.

37. CPAN No. 140499 provides notice to Debonair of Staff's allegations that on June 18, 2024, Cournell Fannings offered to provide a private tow of a motor vehicle to Caliber Collision in Westminster for \$150.

38. It is undisputed that Cournell Fannings held himself out as a towing carrier while he did not have an active permit in effect. However, there is no evidence in the record to support that Cournell Fannings held himself out on June 18, 2024, as alleged in the CPAN.¹⁵

39. Although Staff demonstrated that Respondent committed a violation of § 40-10.1-401(1)(a), C.R.S., the notice of the civil penalty assessment must include the date of the alleged violation. Without curing the error in advance of hearing, and in compliance with § 40-7-116, C.R.S., a civil penalty cannot be assessed in this proceeding as to a proven violation occurring on June 16, 2024.

40. Staff did not meet its burden of proof that Debonair violated § 40-10.1-401(1)(a), C.R.S., on June 18, 2024, as alleged in CPAN No. 140499.

C. Section 40-10.1-107(1), C.R.S., violation charge

41. Under § 40-10.1-107(1), C.R.S., motor carriers shall maintain and file with the Commission evidence of financial responsibility in sums as required by the Commission.

¹⁵ It is possible that CI Haislett misspoke when she testified that the phone call was on June 16, 2024. However, Staff did not take the opportunity to redirect CI Haislett, despite the ALJ providing that opportunity, so the undisputed evidence is that the call was on June 16.

42. Debonair has not filed with the Commission evidence of the financial responsibility in effect after February 15, 2024. However, there is no evidence in the record that Debonair offered to operate as a tow carrier on June 18, 2024, as alleged in the CPAN.¹⁶ Consequently, the ALJ cannot find that Debonair was subject to the insurance requirements on June 18, 2024.

43. Although Staff demonstrated that Respondent committed a violation of § 40-10.1-107(1), C.R.S., the notice of the civil penalty assessment must include the date of the alleged violation. Without curing the error in advance of hearing, and in compliance with § 40-7-116, C.R.S., a civil penalty cannot be assessed in this proceeding as to a proven violation occurring on June 16, 2024.

44. Staff has not met its burden of proof on the alleged violation of § 40-10.1-107(1), C.R.S., in CPAN No. 140499.

D. Cease and Desist

45. The CPAN states that, “Upon proof of any violation alleged on the preceding page(s), the PUC may order you to cease and desist activities in violation of statutes and Commission rules.”¹⁷

46. Staff established that Respondent committed two violations on June 16, 2024. Accordingly, the ALJ finds that Staff’s request for a cease and desist order is appropriate, and issues one against Respondent until he obtains a valid towing permit.

¹⁶ Of note, Staff did not establish the date of the alleged violations in its case-in-chief. The ALJ asked CI Haislett when the phone call occurred, and CI Haislett said June 16, 2024. The ALJ offered Trial Staff the opportunity to conduct redirect examination of CI Haislett, but Trial Staff opted to forego that opportunity. As a result, the undisputed evidence is that the call in question occurred on June 16, 2024, and not on June 18, 2024, as alleged in the CPAN.

¹⁷ CPAN, pg. 3.

E. Conclusion

47. Because Staff did not establish that Debonair committed the violations as alleged in the CPAN on June 18, 2024, as alleged in the CPAN, the ALJ does not assess a penalty against Debonair.

48. Because Staff established that Respondent committed two statutory violations on June 16, 2024, the ALJ issues a cease and desist against Respondent until Respondent obtains a towing permit.

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

1. Respondent Cournell Fannings doing business as Debonair Limited or Debonair Limited Towing & Recovery must cease and desist activities in violation of statutes and Commission rules.

2. Proceeding No. 24G-0395TO is closed.

3. The 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.

4. As provided by § 40-6-106, 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 recommended 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 a basic finding 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.

5. 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. Responses to exceptions are due within seven days of the date exceptions are served.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

KELLY A. ROSENBERG

Administrative Law Judge

ATTEST: A TRUE COPY

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

Rebecca E. White,
Director