

Decision No. R25-0198

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24G-0546TO

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

v.

ROBERT YOUNG DOING BUSINESS AS TOW2GO LLC,

RESPONDENT.

**RECOMMENDED DECISION
DISMISSING CIVIL PENALTY ASSESSMENT NOTICE**

Issued Date: March 19, 2025

TABLE OF CONTENTS

I. STATEMENT AND SUMMARY	2
II. FINDINGS OF FACT	3
III. ISSUES	5
IV. APPLICABLE LAW	6
V. FINDINGS, ANALYSIS, AND CONCLUSIONS	7
A. Jurisdictional Findings.....	7
B. Alleged § 40-10.1-401(1)(a), C.R.S., violation.....	8
C. Alleged violation of Rule 6005(c), 4 CCR 723-6.....	9
D. Alleged violation of Rule 6508(b)(I), 1 CCR 723-6.	10
E. Alleged violation of Rule 6509(c), 4 CCR 723-6.....	10
F. Alleged violation of Rule 6512(a), 4 CCR 723-6.....	11
G. Alleged § 40-10.1-107(1), C.R.S., violation.	12
H. Alleged violation of § 40-10.1-405(1)(c)(1), C.R.S.....	13
I. Conclusion.....	13
VI. ORDER.....	13

A. The Commission Orders That:13

I. STATEMENT AND SUMMARY

1. Proceeding No. 24G-0546TO concerns Civil Penalty Assessment Notice (“CPAN”) No. 139174 issued by Commission Staff (“Staff”) on December 13, 2024, to Respondent Robert Young, doing business as Tow2Go, LLC (“Respondent” or “Tow2Go”).¹ The CPAN assessed a total penalty of \$16,387.50 for four alleged violations of the Rules Regarding Transportation by Motor Vehicle, 2 *Code of Colorado Regulations* (“CCR”) 723-6, and three alleged violations of Article 10.1 of Title 40, C.R.S. The alleged violations are more specifically described in the CPAN and are alleged to have occurred on January 31, 2024, in Northglenn, Colorado (“Northglenn”).

2. For the reasons discussed below, this Decision finds that Trial Staff did not meet its burden of proof as to the CPAN’s allegations of violations.

3. As noted on the CPAN and as testified to by Criminal Investigator Jay Estrada (“CI Estrada”), Staff served the CPAN on Respondent on December 13, 2024, by certified mail.

4. On January 8, 2025, the Public Utilities Commission (“Commission”) referred this matter by minute entry to an administrative law judge (“ALJ”) for disposition.

5. On January 15, 2025, Commission Trial Staff (“Trial Staff”) filed its Notice of Intervention as of Right and Entry of Appearance.

6. Staff and Tow2Go are the only parties to this proceeding.

7. By Decision No. R25-0062-I, issued February 5, 2025, this matter was set for a hearing on March 6, 2025.

¹ Although Staff is technically the captioned Complainant, for purposes of readability of this Recommended Decision, Staff will not be referred to as Complainant; rather Complainant will be defined below.

8. On March 6, 2025, at the scheduled time and place, the ALJ called this proceeding. Counsel for Staff entered their appearance. Robert Young appeared on behalf of Tow2Go, LLC

9. Staff offered the testimony of CI Estrada.

10. Staff offered, and the ALJ admitted, Hearing Exhibits 100 (including the confidential version of 100, or 100C), 101, 102, 103 (including the confidential version of 103, or 103C), 104, 105, and 106.

11. CI Estrada requested that the Commission require Respondent to refund the Complainant for the price she paid for the tow as issue and described below.

12. At the conclusion of the evidence, the ALJ closed the record and took the matter under advisement.

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 proceeding and a written recommended decision in this matter.

II. FINDINGS OF FACT

15. CI Jay Estrada has been employed by the Commission for approximately six years.

16. Respondent received the CPAN by certified mail.

17. At some point after January 31, 2024, someone (“Complainant”) lodged a complaint against Respondent regarding Tow2Go’s alleged nonconsensual tow of Complainant’s vehicle on January 31, 2024, from a repair shop to a residential area.²

18. Complainant, who did not testify at hearing, alleged to CI Estrada that she picked up her car from Respondent at 7810 Pontiac Street, Commerce City, Colorado (“Commerce City”). Hearing Exhibit 103.

19. Complainant told CI Estrada that she would have local law enforcement accompany her while she retrieved her car.

20. CI Estrada could not locate any record of local law enforcement (sheriff or police) assisting Complainant with retrieving her car on January 31, 2024.

21. Tow2Go, LLC, did not have an active permit on January 31, 2024. Hearing Exhibit 101.

22. On January 31, 2024, Tow2Go, LLC, did not have proof of insurance on file with the Commission that is required for a towing carrier. Hearing Exhibit 101 at 5.

23. Tow2Go has not been in business, nor had an active permit, since November 2021.

24. At no time relevant to this proceeding did Tow2Go have an address on file with the Commission for storage of towed cars.

25. Tow2Go did not perform the tow alleged in the CPAN.

26. Tow2Go did not store the motor vehicle as alleged in the CPAN.

² The ALJ finds CI Estrada to be credible. However, the ALJ is not able to determine the credibility of Complainant as all Staff’s testimony related to her was hearsay.

27. At the time of hearing, Robert Young operates under the business name 2Chain Towing LLC. 2Chain Towing LLC operates under towing carrier permit T-05532. Hearing Exhibit 101.

28. 2Chain Towing LLC had an active towing carrier permit on January 31, 2024. Hearing Exhibit 101.

III. ISSUES

29. Did Respondent violate Rule 6005(c), 4 CCR 723-6, on January 31, 2024, storing a motor vehicle towed from Northglenn without first filing with the Commission the storage facility's address and, if one exists, a telephone number?

30. Did Respondent fail to have proper authorization as required under Rule 6508, 4 CCR 723-6, prior to performing a nonconsensual tow of Complainant's motor vehicle on January 31, 2024, in Northglenn?

31. Did Respondent violate Rule 6512(1), 4 CCR 723-6, by demanding cash only for release of a towed motor vehicle?

32. Did the Respondent fail to maintain and file evidence of financial responsibility in sums as required by the Commission on January 31, 2024, as required under § 40-10.1-107(1), C.R.S.?

33. Did the Respondent operate and/or offer to operate as a towing carrier in intrastate commerce without first having obtained a permit as required under § 40-10.1-401(1)(a) by performing a nonconsensual tow on January 31, 2024, in Northglenn?

34. Did the Respondent violate § 40-10.1-405(1)(c)(1), C.R.S., by charging for the storage of Complainant's motor vehicle in Northglenn for 24 hours on January 31, 2024, instead of prorating the charge?

35. Should the Commission require Respondent to refund the Complainant for the cost of the Tow?

IV. APPLICABLE LAW

36. 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 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.

37. 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.

38. 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 approximate location of the alleged violation.⁵

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.

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.

39. 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

40. 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

41. 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 1500, 4 CCR 723-1, “[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 of the evidence.¹⁰

42. 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**

43. The evidence establishes the Commission’s jurisdiction in this proceeding. Staff served the CPAN upon Respondent via certified mail, in accordance with § 40-7-116, C.R.S., and the Commission has authority to issue the CPAN against Respondent.¹³

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), C.R.S.

⁹ § 24-5-105(7), C.R.S.

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.*

44. The ALJ finds that the CPAN provides proper notice of six of the seven 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

45. The ALJ finds that Count 3 in the CPAN does not provide proper notice to Respondent of the alleged violation. The CPAN incorrectly lists Rule 6509(c), 4 CCR 723-6, as the rule Respondent was alleged to have violated, but then lists the requirements of Rule 6509(d), 4 CCR 723-6 (as it existed on January 31, 2024). Accordingly, that charge will be dismissed for lack of proper notice.

B. Alleged § 40-10.1-401(1)(a), C.R.S., violation.

46. Under § 40-10.1-401(1)(a), C.R.S., a person must first obtain a permit from the Commission before operating or offering to operate as a towing carrier.

47. The CPAN alleges that Tow2Go operated as a towing carrier without a permit on January 31, 2024.

48. Staff did not demonstrate that it was more likely than not that Tow2Go performed the January 31, 2024, tow. Robert Young denies operating Tow2Go since November 2021. Robert Young's business, 2Chain Towing LLC ("2Chain Towing"), possessed an active towing permit in January 2024.¹⁵ The ALJ makes no findings on the issue of whether 2Chain Towing

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

¹⁵ CI Estrada testified that 2Chain Towing was not listed as active with the Colorado Secretary of State until June 2024, although 2Chain Towing did have an active permit as of October 31, 2023. Hearing Exhibits 101 and 102.

performed the January 31, 2024, tow. However, the undersigned finds the fact that Robert Young operated a fully permitted towing business at the time of the tow makes it less likely that Tow2Go performed the tow as alleged.¹⁶

C. Alleged violation of Rule 6005(c), 4 CCR 723-6.

49. Under Rule 6005(c), 4 CCR 723-6, a towing carrier that wishes to begin providing storage for towed motor vehicles at a new storage facility shall first file with the Commission the storage facility's address.

50. The CPAN alleges that Respondent failed to maintain a storage facility address with the Commission and alleges that this violation occurred in Northglenn. Staff's only evidence that the violations occurred in Northglenn is in the CPAN where it notes "Place of Violation" as Northglenn; all Staff's testimonial and documentary evidence suggests the violations occurred in Commerce City.

51. Assuming for the sake of argument that the tow originated in Northglenn and the CPAN provided proper notice, the evidence at hearing established that the Complainant alleged that she retrieved her motor vehicle following a nonconsensual tow from a storage location in Commerce City. The address of the storage facility in Commerce City was not on file with the Commission. *See, e.g.*, Hearing Exhibit 101.

52. However, the ALJ finds and concludes that Staff failed to meet its burden of proof to show it was more likely than not that Tow2Go performed the January 31, 2024. Similarly, the

¹⁶ Staff presented evidence to establish that Robert Young operates Tow2Go, 2Chain Towing LLC, and Tow2Go Enterprise LLC. *See* Hearing Exhibits 101, 102, and 105. However, the only entity alleged to have committed the CPAN violations is Tow2Go and Tow2Go is the only business entity Respondent in this proceeding. If Staff sought to establish that either 2Chain Towing or Tow2Go Enterprise LLC committed the violations, Staff could have amended the CPAN by motion prior to the hearing under § 40-7-116, C.R.S.

ALJ finds and concludes that it is less likely that Tow2Go stored the Complainant's motor vehicle. Accordingly, the ALJ finds that Staff did not meet its burden of proof as to this violation.

D. Alleged violation of Rule 6508(b)(I), 1 CCR 723-6.

53. Under Rule 6508(b)(I), 1 CCR 723-6, a towing carrier is prohibited from towing a motor vehicle unless: (1) the towing carrier is directed to perform a tow by a law enforcement officer; (2) the towing carrier is requested to perform a tow by an authorized or interested person of the motor vehicle; or (3) the towing carrier is requested to perform a tow upon the authorization of the property owner.

54. The CPAN alleges that Tow2Go failed to have proper authorization prior to performing the January 31, 2024, tow.

55. CI Estrada testified that Robert Young did not provide him with a copy of Respondent's authorization to perform the January 31, 2024, tow and that he similarly did not provide evidence of the authorization to the Complainant.¹⁷ Given this, the ALJ finds it is more likely than not that Tow2Go was not authorized to perform the tow in question. However, the ALJ does not find that Tow2Go performed the tow, so the ALJ finds that Staff did not meet its burden of proof as to this violation.

E. Alleged violation of Rule 6509(c), 4 CCR 723-6.

56. The CPAN alleges that Rule 6509(c), 4 CCR 723-6, required Respondent to "deliver a complete copy of the tow record/invoice per 6509(a) at the time of release." However, Rule 6509(d), 4 CCR 723-6, and not Rule 6509(c), places the invoice delivery requirement on a tow truck driver. Specifically, Rule 6509(d), 4 CCR 723-6, as it existed on January 31, 2024, said,

¹⁷ Staff did not provide any evidence related to the property owner from where Complainant's car was towed.

“The towing carrier shall deliver a copy of the tow record/invoice...at the time of the release of the towed motor vehicle....”

57. Because the CPAN did not provide proper notice to Respondent as to the alleged violation, this charge will be dismissed.

58. Even if Staff’s allegation cited the correct rule, the ALJ could not find that Staff met its burden considering the unanswered questions regarding the receipt Staff presented at hearing (Hearing Exhibit 104) and the lack of any corroborating evidence. While the receipt does not comport with requirements of Rule 6509, Robert Young denied that it was his company’s receipt, and Staff did not provide sufficient corroborating evidence to demonstrate that Respondent issued the receipt.¹⁸ It is also notable that the undersigned is unable to replicate the calculation of an unexplained tax appearing on the receipt.

59. Moreover, Hearing Exhibit 104 states that it contains three pages (in the bottom right corner), but only pages two and three are included.

60. The ALJ finds that Staff did not meet its burden of proof as to this violation.

F. Alleged violation of Rule 6512(a), 4 CCR 723-6.

61. Under Rule 6512(a), 4 CCR 723-6, a towing carrier shall immediately accept payment in cash or by valid major credit card.

62. The CPAN alleges that Respondent demanded cash only for the January 31, 2024, tow.

¹⁸ CI Estrada testified that Respondent emailed the receipt to Complainant, but Staff did not provide any documentary evidence to support Complainant’s assertion.

63. CI Estrada testified that Complainant alleged that an unidentified individual called her and said he only accepted cash for the tow in question. Staff, however, did not offer any evidence that Complainant attempted to pay by valid credit card.

64. Further, while the receipt Staff presented reflects that payment was made in cash (Hearing Exhibit 104), Staff offered no evidence that Complainant possessed a valid credit card on January 31, 2024.

65. In addition, Staff did not establish that it was more likely than not that Tow2Go performed the January 31, 2024, tow, so it did not meet its burden as to this violation.

G. Alleged § 40-10.1-107(1), C.R.S., violation.

66. 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.

67. Under Rule 6001(uuu), 4 CCR 723-6, a towing carrier is defined as a motor carrier that provides towing of motor vehicles.

68. It is undisputed that Tow2Go has not maintained and filed with the Commission evidence of financial responsibility in required sums since November 16, 2021. Hearing Exhibit 101. However, Staff did not establish that it is more likely than not that Tow2Go towed or stored a motor vehicle pursuant to the Commission's jurisdiction. Robert Young denies operating Tow2Go since November 2021. He has instead been operating under his permitted business, 2Chain Towing, which does maintain, and has filed, appropriate insurance with the Commission. The ALJ makes no findings regarding whether 2Chain Towing performed the January 31, 2024, tow in question, but the undersigned finds the fact that Robert Young operated a fully permitted towing business on January 31, 2024, makes it less likely that Tow2Go performed the tow in violation of Commission rules and Colorado law.

H. Alleged violation of § 40-10.1-405(1)(c)(1), C.R.S.

69. Under § 40-10.1-405(1)(c)(1), C.R.S., a towing carrier may only charge a prorated fee for any part of a 24-hour period the towing carrier stored a motor vehicle.

70. The CPAN alleges that Respondent charged storage fees for a 24-hour period without using prorated storage fees.

71. Staff relied on Hearing Exhibit 104 to support its allegation that Respondent charged for a full 24 hours of storage. Specifically, CI Estrada testified that because the receipt contained a storage charge on the same day the car was towed and released, then Respondent did not prorate the storage charge. However, Staff did not provide any evidence, nor elicit any testimony from Respondent, related to Respondent's 24-hour storage rate. Consequently, the ALJ cannot find that Tow2Go charged for a 24-hour period of storage.

72. Moreover, the ALJ does not find that Tow2Go stored the motor vehicle as alleged, and Staff did not meet its burden as to this violation.

I. Conclusion

73. Because the ALJ found and concluded that Staff failed to meet its burden of proof to show, more likely than not, that Tow2Go committed the violations alleged in the CPAN, the ALJ will dismiss the remaining alleged violations in the CPAN and declines to issue an order requiring Respondent to reimburse Complainant for the January 31, 2024, tow.

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

1. The alleged violations in in CPAN No. 139174 are dismissed.
2. Proceeding No. 24G-0546TO 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