

Decision No. R25-0286

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24G-0353EC

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

STYLE CAR SERVICE LLC,

RESPONDENT.

**RECOMMENDED DECISION DISMISSING
CIVIL PENALTY ASSESSMENT NOTICE**

Issued Date: April 16, 2025

I. STATEMENT, SUMMARY AND PROCEDURAL HISTORY

A. Statement and Summary

1. This Decision dismisses Civil Penalty Assessment Notice No. 140765 (“CPAN”) in this Proceeding without prejudice.

B. Procedural History¹

2. On August 20, 2024, Colorado Public Utilities Commission (“Commission”) Trial Staff (“Staff”) initiated this matter by filing the CPAN against Style Car Service LLC (“Style Car” or “Respondent”).

¹ Only the procedural history necessary to understand this Decision is included.

3. The CPAN alleges that on June 18, 2024, Respondent violated §§ 40-10.1-101(1), and 40-10.1-302(1)(a), C.R.S., and that based on these violations, Respondent should be assessed a civil penalty of up to \$13,915.²

4. On October 16, 2024 the Commission referred this matter by minute entry to an administrative law judge (“ALJ”) for disposition.

5. On November 4, 2024, the ALJ acknowledged Staff as a party; required Respondent to have counsel enter an appearance on its behalf or make a filing establishing that it may be represented by a non-attorney; required the parties to confer on a procedural schedule; and directed Staff to file a proposed consensus procedural schedule on or by December 10, 2024.³

6. Respondent failed to have counsel enter an appearance or make a filing establishing that it may be represented by a non-attorney by the established deadline.

7. On December 10, 2024, Staff filed a Conferral Report and Proposed Procedural Schedule proposing a procedural schedule.⁴

8. On December 17, 2024, the ALJ largely approved Staff’s proposed procedural schedule, setting this matter for a fully remote evidentiary hearing on February 11, 2025 and establishing deadlines and procedures relating to that hearing.⁵ The ALJ also gave Respondent another opportunity to make a filing addressing its legal representation.⁶ Specifically, Respondent was ordered to have counsel enter an appearance on its behalf or make a filing establishing that it may be represented by a non-attorney by January 10, 2025.⁷ Respondent failed to make either filing.

² CPAN at 1.

³ Decision No. R24-0800-I at 4-5 (issued November 4, 2024).

⁴ Motion at 2.

⁵ Decision No. R24-0921-I at 6-8 (issued December 17, 2024).

⁶ *Id.*

⁷ *Id.* at 6.

9. On February 11, 2025, the ALJ held the evidentiary hearing as noticed. Staff appeared but Respondent did not. Before starting the evidentiary portion of the hearing, the ALJ took a recess to allow Respondent additional time to appear. Respondent still did not appear, so the hearing proceeded without Respondent. During the hearing, Ms. Erin Haislett testified on behalf of Staff and Hearing Exhibits 100, 100C, and 101 to 108 were admitted into evidence.⁸ At the end of the evidentiary portion of the hearing, the ALJ reminded Staff of the deadline to file an SOP, and directed Staff to provide its position as to how service on Respondent was proper in its SOP.

10. On February 24, 2025, Staff filed a Motion to Dismiss Without Prejudice and Waive Response Time (“Motion to Dismiss”) in lieu of a SOP.

11. Respondent has made no filings in this Proceeding and has not otherwise participated in this Proceeding.

II. FINDINGS AND CONCLUSIONS

12. The Motion to Dismiss states that although Staff does not concede that service was improper, “to ensure the Commission has full confidence in service of process,” Staff requests that the CPAN be dismissed without prejudice.⁹ Given this and that Staff chose to proceed to an evidentiary hearing on the CPAN knowing the manner in which Style Car was served, it is in the public interest to address whether service was proper.¹⁰

13. Valid service of process is mandatory to ensure basic due process (*i.e.*, notice of the claims).¹¹ Notably, valid service is also necessary for a court to have personal jurisdiction over

⁸ Administrative support staff added these exhibits to the record on February 12, 2025.

⁹ Motion to Dismiss at 3.

¹⁰ Indeed, these actions and statements imply that Staff may believe that it properly served Respondent. It did not. As such, it serves the public interest to make it clear to Staff how its attempted service failed; this may help avoid similar issues in the future.

¹¹ See *Bush v. Winker*, 892 P.2d 328, 332 (Colo. App. 1994).

a defendant.¹² Under § 40-7-116(1)(b), C.R.S., a CPAN may be served by certified mail or in person. Under Rule 6006(a), a motor carrier is required to provide the Commission “its designation of name, mailing address, and physical address of a Person upon whom service may be made of any lawful notice, order, process, or demand. The named Person is the Motor Carrier's designated agent for service as provided in these rules and under Colorado statutes.”¹³ Service upon the motor carrier’s designated agent on file with the Commission amounts to service on the motor carrier.¹⁴ And, motor carriers are required to notify the Commission within two days of any changes in the designated agent’s identity, name, mailing and physical addresses, email, or phone number.¹⁵ In addition, Rule 1205(d) provides that “service upon a private corporation, partnership, or unincorporated association may be made by delivering a copy to one or more of the officers, partners, associates, managers or designated agents thereof.”¹⁶ Based on the foregoing authorities, a CPAN must be served by certified mail or in person upon a motor carrier’s designated agent on file with the Commission or on a carrier’s officers, partners, associates, or managers when the carrier is a corporation, partnership, or unincorporated association.¹⁷

¹² See *Burton v. Colorado Access*, 456 P.3d 46, 49 (Colo. App. 2015) (if plaintiff fails to properly serve defendant with a complaint, the court lacks personal jurisdiction over defendant and any judgment entered is void; a default judgment entered against a defendant without proper notice to the defendant may violate the defendant’s due process rights). See also, *United Bank of Boulder v. Buchanan*, 836 P.2d 473, 476 (Colo. App. 1992) (proper service alone does not confer personal jurisdiction, nor does existence of personal jurisdiction obviate the need for proper service of process).

¹³ Rule 6006(a) of the Commission’s Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* (“CCR”) 723-6.

¹⁴ Rule 6006(c), 4 CCR 723-6. In addition, notice sent to a carrier’s designated agent on file with the Commission is *prima facie* evidence that the carrier received the notice.

¹⁵ Rule 6006(b), 4 CCR 723-6.

¹⁶ Rule 1205(d) of the Commission’s Rules of Practice and Procedure, 4 CCR 723-1.

¹⁷ § 40-7-116(1)(b), C.R.S.; Rule 6006(a) and (c), 4 CCR 723-6 and Rule 1205(d), 4 CCR 723-1. Under § 40-7-116(1)(a), C.R.S., “[w]hen a person is cited for the violation, the person operating the motor vehicle involved shall be given notice of the violation in the form of a civil penalty assessment notice.” Because the CPAN does not allege violations involving the operation of a vehicle, the ALJ finds that this statutory provision is inapplicable.

14. Staff bears the burden of proof by a preponderance of the evidence to establish that its requested relief should be granted.¹⁸ Since proper service is mandatory for Staff's requested relief to be granted, this burden includes establishing by a preponderance of the evidence that Staff properly served Respondent.¹⁹

15. Investigator Erin Haislett ("Investigator Haislett") testified that Staff mailed the CPAN to Respondent, but it was returned as undeliverable. Staff provided no additional evidence about this mailing, including whether it was addressed to Respondent's designated agent on file with the Commission; whether it was sent to the address on file for the designated agent; or whether it was sent to Respondent's officers, partners, associates, or managers (and if so, the address used). Investigator Haislett also explained that Staff attempted to personally serve Respondent but was unable to do so. Ultimately, Investigator Haislett personally served the CPAN on a person identified as Nathan Harris. The only information in the record about Mr. Harris' role with Style Car is that he is a driver.²⁰ When served, Mr. Harris never stated that he is authorized to accept service on behalf of Style Car.

16. Given that Staff failed to provide evidence indicating where and to whom it mailed the CPAN, the ALJ concludes that Staff failed to establish by the preponderance of the evidence that it served the CPAN on Respondent by certified mail.²¹ Similarly, since Staff failed to establish that the individual who was personally served with the CPAN is Respondent's designated agent

¹⁸ See §§ 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.

¹⁹ See §§ 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; *supra*, ¶ 13.

²⁰ This Decision makes no factual findings that Mr. Harris is a driver for Style Car. Rather, this Decision merely highlights that this is the only information in the record that relates to the role that Mr. Harris played with Style Car.

²¹ Staff bears the burden of proof by a preponderance of the evidence to establish that its requested relief should be granted. See §§ 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. Since Staff must establish that it provided notice of the CPAN to Respondent, this burden includes establishing by a preponderance of the evidence that it properly served Respondent. See *supra*, ¶¶ 13-15.

on file with the Commission, or Respondent's officer, partner, associate, or manager, the ALJ finds that Staff also failed to establish by a preponderance of the evidence that it personally served the CPAN on Respondent.²² For the foregoing reasons and authorities, the ALJ concludes that Staff failed to establish by a preponderance of the evidence that it properly serve the CPAN on Respondent. For the foregoing reasons and authorities, the ALJ concludes that because the evidence fails to establish that the CPAN was properly served, the CPAN must be dismissed.²³ Indeed, despite having held an evidentiary hearing in this matter, because Staff failed to properly serve Respondent, the Commission lacks personal jurisdiction over Respondent and therefore cannot adjudicate this matter.²⁴

17. The question remains whether the CPAN should be dismissed with or without prejudice. If the CPAN is dismissed without prejudice, Staff may refile it, despite the matter having already proceeded to an evidentiary hearing. As discussed above, when a complaint is not properly served, the trial court lacks personal jurisdiction over the named respondent or defendant.²⁵ As a result, when a court dismisses a complaint because it was not properly served, the dismissal is rooted in the tribunal's lack of jurisdiction.²⁶ Dismissal based on a jurisdictional defect is not an adjudication on the merits of the claims, and a result, cannot be used as a bar to future proceedings.²⁷ As such, it is improper to dismiss a complaint with prejudice based on lack of proper service.²⁸

²² See *supra*, ¶¶ 13-15.

²³ *Id.*

²⁴ See *supra*, ¶ 13.

²⁵ See *Burton*, 456 P.3d at 49.

²⁶ See *Marketing Engineering Corp. v. Monogram Software, Inc.*, 805 P.2d 1185, 1185-86 (Colo. App. 1991).

²⁷ *Id.*; *Woo v. El Paso County Sheriff's Office*, 490 P.3d 884, 890 (Colo. App. 2020). See also *Hillard v. Klein*, 238 P.2d 882, 884 (Colo. 1951) (dismissing a complaint with prejudice for lack of jurisdiction may amount to an abuse of discretion).

²⁸ See *Marketing Engineering Corp.*, 805 P.2d at 1185-86; *Hillard*, 238 P.2d at 884.

18. The ALJ could find no authority addressing whether dismissal based on a service failure should be with or without prejudice *after* an evidentiary hearing on the merits of the claims.²⁹ Staff was well aware of the manner in which it effectuated service before the evidentiary hearing in this case. Staff never sought a continuance to allow it more time to properly serve Respondent. Nor did Staff raise service as an issue before the hearing. Only after the evidentiary hearing, and after the ALJ specifically directed Staff to address service in its SOP did Staff make any suggestion that there could be an issue with service. Staff's knowing choices in this case wasted the Commission's resources, including wasting the time of numerous staff, such as the ALJ, court reporter, legal assistants, administrative support staff, and Staff's own time. Staff's failure to ensure that it properly served Respondent before the evidentiary hearing is inexcusable and warrants dismissal with prejudice. Nonetheless, given the dearth of authority supporting dismissal with prejudice after a hearing on the merits, and the well-established authority that dismissal for failing to serve must be without prejudice, the ALJ dismisses the CPAN without prejudice.³⁰

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

²⁹ This is unsurprising given that court rules require a defendant to be served within 63 days after a complaint is filed. *See* C.R.C.P. 4(m). This helps ensure that by the time a case proceeds to trial, service is no longer an issue. Commission rules do not have similar requirements, or requirements that Staff file proof of service prior to an evidentiary hearing.

³⁰ Staff is in on notice that in future CPAN proceedings, the ALJ may require Staff to establish that it properly served a respondent before allowing a matter to proceed to an evidentiary hearing. For example, Staff may be required to file an affidavit establishing with specificity the manner in which it properly served a respondent, similar to proof of service required in state court cases. The ALJ will decide appropriate requirements on a case by case basis.

III. ORDER

A. Commission Orders That:

1. Consistent with the above discussion, Civil Penalty Assessment Notice No. 140765 (“CPAN”) is dismissed without prejudice.

2. This Proceeding 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.

5. 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.

6. 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.

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. 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

MELODY MIRBABA

Administrative Law Judge

ATTEST: A TRUE COPY

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

Rebecca E. White,
Director