

Decision No. R25-0353

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24F-0430CP

ROMAN LYSENKO,

COMPLAINANT,

V.

303 PARTY BUS LLC AND 303 CONCERT RIDES LLC,

RESPONDENTS.

**RECOMMENDED DECISION
GRANTING MOTION FOR SUMMARY JUDGMENT**

Issued Date: May 7, 2025

I. STATEMENT

1. On October 2, 2024, Roman Lysenko (“Complainant”) filed a Complaint against 303 Party Bus LLC, and 303 Concert Rides (collectively, “Respondents”). That filing commenced this proceeding.

2. On October 9, 2024, Rebecca White, Director, served a copy of the Complaint together with an order requiring the Respondents to satisfy or answer said complaint within 20 days, in accordance with § 40-6-108, C.R.S. An evidentiary hearing was scheduled for December 16, 2024.

3. On October 23, 2024, the above captioned proceeding was referred by minute entry to an Administrative Law Judge (“ALJ”).

4. On October 29, 2024, Respondents filed their Motion to Dismiss Complaint (“Motion to Dismiss”)

5. On October 30, 2024, Mr. Lysenko filed his Response to Motion to Dismiss.

6. On November 8, 2024, Respondents filed their Motion for Leave to Reply and Reply to Response of Roman Lysenko.

7. On November 20, 2024, by Decision No. R24-0848-I, the evidentiary hearing was vacated pending a decision on the Motion to Dismiss.

8. On January 15, 2025, by Decision No. R25-0029-I, the Motion to Dismiss was denied and a prehearing conference was scheduled for February 13, 2024.

9. On February 7, 2025, Respondents filed their Answer to Complaint.

10. On February 19, 2025, by Decision R25-0118-I, a briefing schedule was adopted.

11. On March 18, 2025, the Complainant filed his Motion for Summary Judgment.

12. On April 18, 2025, the Respondents filed their Response to the Motion for Summary Judgment (“Response”).

II. MOTION FOR SUMMARY JUDGMENT

A. Argument of Complainant

13. The Complainant argues the Respondents admit to the violations alleged by the Complainant in their Answer.

14. The Complainant argues that there are no disputed facts and summary judgment should be granted.

15. The Complainant requests the following relief:
- a) Cease and Desist Order: The Commission should order Respondents to immediately cease and desist offering transportation services from Recess Beer Garden to Red Rocks Amphitheater and Fiddler's Green Amphitheater.
 - b) Revocation of CPCN and LL Permits for willful and reckless disregard of regulatory requirements: The Commission should revoke CPCN No. 55846 and LL-04224 due to Respondents continued and knowing violations.
 - c) Civil Penalties: The Commission should impose civil penalties in accordance with Rule 4 CCR 723-6-6011 for willful and reckless disregard of regulatory requirements.
 - d) Customer Refunds: Respondents should be ordered to refund all fares collected from unauthorized operations¹.

B. Argument of Respondents

16. Respondent admits to the allegation of providing common carrier service beyond its Commission authority.

17. Respondent argues that the Motion for Summary Judgment should be denied in whole or in part since of the four requested forms of relief “two should be denied as a matter of law, one is drastic and not proportional to the alleged offense and mitigating factors, and the remaining claim is within the discretion of the Commission.”²

III. FINDING OF FACTS

18. The Parties have stipulated that 303 Party Bus LLC provided common carrier service beyond its authority.

¹ Motion for Summary Judgment, p. 3.

² Response, p. 6.

19. A finding was made in proceeding issued in Recommended Decision No. R24-0599, on August 20, 2024, in Proceeding No. 23A-0552CP-EXT that 303 Party Bus LLC provided common carrier service beyond the limits of its authority.

20. Neither party disputes the findings in Proceeding No. 23A-0552CP-EXT concerning 303 Party Bus LLC providing common carrier service beyond the limits of its authority.

21. Between August 20, 2024 (the issuance date of Recommended Decision No. R24- 0599) and September 28, 2024, Respondents provided four (4) transportation rides from Recess Beer Garden to Red Rocks Amphitheater for no compensation to Respondents. All passengers received a full reimbursement/refund for such rides.

22. After September 28, 2024, and to the present, Respondents have not provided any common carrier transportation service from Recess Beer Garden until the final resolution of any applicable Commission proceedings.

23. Respondents have filed a new application for an extension of their Commission authority.

IV. APPLICABLE LAW

24. Rule 1400(f) of the Commission’s Rules of Practice and Procedure, 4 CCR 723-1, permits summary judgment motions filed in accordance with Rule 56 of the C.R.C.P.

25. Summary judgment is proper when the moving party can demonstrate that “there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.”³

³ Rule 56(c), C.R.C.P.

26. The principles applicable to ruling on a motion for summary judgment are well-established and have been summarized by the Colorado Supreme Court as follows:

Summary judgment is a drastic remedy and should only be granted if there is a clear showing that no genuine issue as to any material fact exists and the moving party is entitled to judgment as a matter of law. See C.R.C.P. 56; *Greenwood Trust Co. v. Conley*, 938 P.2d 1141, 1149 (Colo.1997). The moving party has the initial burden to show that there is no genuine issue of material fact. See *Greenwood Trust*, 938 P.2d at 1149. Once the moving party has met its initial burden, the burden shifts to the nonmoving party to establish that there is a triable issue of fact. See *id.* The nonmoving party is entitled to all favorable inferences that may be drawn from the undisputed facts, and all doubts as to whether a triable issue of fact exists must be resolved against the moving party. See *Bayou Land Co. v. Talley*, 924 P.2d 136, 151 (Colo. 1996).⁴

27. Colorado courts, in construing and further defining the summary judgment standards set forth in Rule 56, typically recognize that the purpose of summary judgment is "to permit the parties to pierce the formal allegations of the pleadings and save the time and expense connected with a trial when, as a matter of law, based on undisputed facts, one party could not prevail."⁵ "Thus, a [decision maker] may enter summary judgment on behalf of a moving or nonmoving party if, in addition to the absence of any genuine factual issues, the law entitles one party or the other to a judgment in its favor."⁶ "By its very terms, this standard provides that the mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact."⁷ "If the evidence opposing summary judgment is merely colorable or is not significantly probative, summary judgment may be granted."⁸

⁴ *Avi Comm, Inc. v. Colorado Public Utilities Comm'n.*, 955 P.2d 1023, 1029 (Colo. 1998) (affirming the Commission's decision granting a motion for summary judgment). (emphasis in original)

⁵ *Mt. Emmons Mining Co. v. Crested Butte*, 690 P.2d 231, 238 (Colo. 1984) (quoting *Ginter v. Palmer & Co.*, 585 P.2d 583, 584 (Colo. 1978)) (emphasis added).

⁶ *Id.* at 239.

⁷ *Anderson v. Lindenbaum*, 160 P.3d 237, 239 (Colo. 2007) (emphasis in original) (citations omitted).

⁸ *Id.* (citations omitted).

28. A "material fact" is "a fact the resolution of which will affect the outcome of the case."⁹ If a trier of fact could draw different inferences from the application of the legal criteria to the facts, a motion for summary judgment should be denied.¹⁰ "The determination of whether a genuine issue regarding a material fact exists is itself a question of law."¹¹ The moving party has the initial burden to show that no genuine issue of material fact exists.¹²

29. Once the moving party meets this initial burden, "the burden shifts to the nonmoving party to establish that there is a triable issue of fact."¹³ The nonmoving party, however, "may not rest on mere allegations or demands in its pleadings but must provide specific facts demonstrating a genuine issue for trial."¹⁴

30. Therefore, "[s]ummary judgment is appropriate when the pleadings and supporting documents demonstrate that no genuine issue as to any material fact exists and that the moving party is entitled to summary judgment as a matter of law."¹⁵

V. DISCUSSION

A. Motion for Summary Judgment

31. There is no factual dispute in the instant case. Respondent admits to having provided common carrier service beyond the restrictions contained in its Commission Authority.

32. With no genuine issue as to any material fact the moving party is entitled to summary judgment as a matter of law.

33. The only question remaining is what if any penalty should be imposed.

⁹ *Mt. Emmons*, 690 P.2d at 239.

¹⁰ *Id.*

¹¹ *Sender v. Powell*, 902 P.2d 947, 950 (Colo. App. 1995).

¹² *AviComm*, 955 P.2d at 1029.

¹³ *Id.* (citations omitted).

¹⁴ *Hardegger v. Clark*, 403 P.3d 176, 180 (Colo. 2017).

¹⁵ *Martini v. Smith*, 42 P.3d 629, 632 (Colo. 2002).

B. Penalties

34. The Complainant has requested that four penalties be assessed against the Respondent. Each of the penalties shall be examined to determine if they are appropriate in the instant case.

35. Mr. Lysenko has requested that civil penalties be assessed against the Respondents.¹⁶

36. 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.

37. In assessing any penalties these factors shall be taken into consideration.

¹⁶ See Motion for Summary Judgment, p. 3 and Complaint, p.4-5.

1. Civil Penalties

38. Mr. Lysenko requests that the Commission assess civil penalties against the Respondents “in accordance with Rule 4 CCR 723-6-6011 for willful and reckless disregard of regulatory requirements.”¹⁷ Mr. Lysenko does not state the amount of the penalty assessment he believes is appropriate or what section of the Commission’s rules that the Respondents actions violated.

39. The Respondent’s argue that Mr. Lysenko has requested civil penalties pursuant to Commission Rule 6011 and “the imposition of civil penalties and fines is expressly reserved for “Civil Penalty Assessment” (“CPAN”) proceedings initiated by the Commission through Commission Staff.”¹⁸

40. The Respondents are correct that this rule is not appropriate to assess a civil penalty in the instant proceeding. Commission Rule 6011¹⁹ concerns the summary suspension or revocation of an authority due to a carrier endangering the public. There is no evidence that the public was in danger by the actions of the Respondents.

41. The undersigned believes that the mention of this rule in the Motion for Summary Judgment was in error. While the Respondents are correct that Rule 6011 does not provide for the imposition of civil penalty assessments in a complaint proceeding by a member of the public, the Respondents are not correct in its belief that civil penalties may only be assessed by Commission Enforcement Staff.

¹⁷ Motion for Summary Judgment, p. 3.

¹⁸ Respondent’s Response, p. 7.

¹⁹ The Commission may summarily suspend a Motor Carrier’s Certificate or Permit in accordance with § 24-4-104(4), C.R.S., and pursuant to the following process. (I) When Commission staff has objective and reasonable grounds to believe that a Motor Carrier has willfully and deliberately violated Commission rules or applicable statutes, based on a reasonable ascertainment of the underlying facts on which this action is based, or that the public health, safety, or welfare imperatively requires emergency action, the Director of the Commission may issue a letter incorporating such findings that summarily suspends the Motor Carrier's Certificate or Permit. 4 CCR 723-1-6011(a)(I).

42. The instant proceeding survived a motion to dismiss based upon § 40-10.1-112(2)

C.R.S. which states the following:

Any person may file a complaint against a motor carrier for a violation of this article or a rule adopted under this article. **The complainant may request any relief that the commission, in its authority, may grant, including an order to cease and desist, suspension or revocation of the motor carrier's certificate or permit, or assessment of civil penalties** (*emphasis added*). Upon proof of violation, the commission may issue an order to cease and desist, suspend or revoke the motor carrier's certificate or permit, assess civil penalties as provided in article 7 of this title, or take any other action within the commission's authority. In assessing civil penalties under this subsection (2), the commission is not constrained by the procedural requirements of section 40-7-116

43. Mr. Lysenko may have cited an incorrect Commission rule for the imposition of a civil penalty in a complaint proceeding, but under § 40-10.1-112(2) CRS a penalty may be assessed.

44. Mr. Lysenko did not specify any amount for a civil penalty but based upon the facts of this proceeding it is assumed the civil penalty Mr. Lysenko is seeking would be for a violation of Rule 6202 (b)(II)²⁰.

45. A violation of Rule 6202 calls for a maximum penalty of \$1,100.²¹

46. Mr. Lysenko does not provide any aggravation concerning the actions of the Respondent and does not allege that the unauthorized activity by the Respondents is a continuing issue.

47. The Respondents, while exceeding their Commission authority, provided a transportation service that did not endanger the public. No evidence has been provided that the

²⁰ Without specific approval by the Commission, no Fully Regulated Intrastate Carrier shall: (II) extend, enlarge, diminish, change, alter, or vary the territory, route, or service authorized by its Authority. 4 CCR 723-1-6202(b)(I).

²¹ See Commission Rule 6018.

instances the Respondents exceeded their Commission authority that any member of the public has contacted the Commission concerning any issues involving the Respondents.

48. The Respondents have ceased providing service beyond their authority.

49. The Respondents have admitted they exceeded their authority and on at least two occasions have filed applications with the Commission to extend their authority.

50. The Respondents state that no compensation was received on two of the occasions that they exceeded their authority.²²

51. There is no evidence of prior violations of any Commission rule or statute.

52. While the Respondents may have exceeded their Commission authority, there is extensive evidence that they have stopped and are attempting to abide by Commission rules.

53. The undersigned believes that the goal of the Commission in most cases is compliance not punishment. Here Respondents are working to comply with Commission regulations. Equity and fairness require that no civil penalty be assessed for exceeding Commission authority.

2. Revocation of CPCN and LL Permits

54. Mr. Lysenko requests that the Respondent's Certificate of Public Convenience and Necessity and Luxury Limousine permits be revoked for exceeding the limitations on their Commission authority.

55. Respondents argue that this would be a drastic remedy based on the alleged offenses and this penalty would result in significant financial hardship.

²² Response to Motion for Summary Judgment, p.3-4.

56. The undersigned ALJ agrees with the Respondents. The public was never in danger from the actions of the Respondents. To revoke the Respondents Commission authorities is totally out of proportion to the offense and the actions of the Respondent

57. The proper remedy for the alleged offense is for the Respondents to file for an extension of their Commission authorities, which they have done.

58. The imposition of this penalty would have a direct effect on the ability of the Respondents to continue in business and therefore shall not be imposed.

3. Customer Refunds

59. Mr. Lysenko also requests that the Respondents be required to issue a refund to all customers the Respondents transported beyond their Commission authority.

60. There is no evidence that these customers were in any danger or did not receive the transportation service they requested.

61. The Respondents have made efforts to comply with Commission rules. They have refunded customers and provided free transportation to customers.

62. They have also filed two separate applications to extend their authority.

63. The good faith efforts of the Respondents to comply with Commission regulations convince the undersigned ALJ that equity and fairness make it inappropriate to order additional refunds.

4. Cease and Desist

64. Finally, Mr. Lysenko requests a cease-and-desist order be issued against the Respondents. Mr. Lysenko requests that the Respondents cease and desist operations from the Recess Beer Garden.

65. The Respondents currently have an application to extend their authority. The undersigned ALJ does not know what the new authority, if granted, will entail. It would make logical sense that the Respondents may be seeking to extend their authority to encompass the Recess Beer Garden. This proceeding should not create a potential conflict with any other Commission proceeding.

66. There is undisputed evidence the Respondents have exceeded their Commission authority on at least four occasions. It is commendable that they have taken steps to extend their authority, yet a reminder can also be helpful.

67. The only appropriate relief in the instant case is for the Respondents to be issued a cease-and-desist order against providing common carrier service beyond the limits of their Commission authority.

VI. CONCLUSION

68. The Motion for Summary Judgment is granted. The Respondents are ordered to cease-and-desist providing common carrier service beyond the limits of their Commission Authority. No other penalty shall be assessed.

VII. ORDER

A. It is Ordered That:

1. The Motion for Summary Judgment filed by Roman Lysenko on March 18, 2025, is granted.

2. 303 Party Bus LLC and 303 Concert Rides are ordered to cease-and-desist from providing common carrier service beyond the limits of their Commission authority.

3. All other requests for relief in Mr. Lysenko's complaint are denied.

4. Proceeding 24F-0430CP is now closed.

5. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

6. As provided by § 40-6-106, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

7. Responses to exceptions shall be due within seven calendar days from the filing of exceptions.

- 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.

8. If exceptions to this Recommended 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

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

Rebecca E. White,
Director