

Decision No. R25-0686

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 25F-0104TO

JOHNNIE WILLIAMS,

COMPLAINANT,

V.

AMERI TOWING,

RESPONDENT.

**RECOMMENDED DECISION
SUSTAINING COMPLAINT AND REQUIRING REFUND**

Issued Date: September 24, 2025

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I. STATEMENT AND SUMMARY

1. For the reasons discussed, this Decision sustains the above-captioned Complaint (“Complaint”); orders Ameri Towing (“Respondent”) to refund the full amount that Complainant Johnnie Williams (“Complainant”) paid Respondent to release the vehicle that is the subject of the Complaint; orders Respondent to cease and desist statutory and Rule violations discussed herein; and closes this Proceeding.

II. PROCEDURAL HISTORY¹

2. On March 5, 2025, Complainant initiated this matter by filing the Complaint against Respondent. The Complaint concerns a tow that Respondent performed on August 8, 2024.

3. On March 13, 2025, the Public Utilities Commission (“Commission”) Director served the Complaint and attachments on Respondent and scheduled an evidentiary hearing on the Complaint for May 27, 2025, among other things.²

4. During its weekly meeting held March 26, 2025, the Commission referred this matter by minute entry for disposition to an administrative law judge (“ALJ”).

5. Also on March 26, 2025, Respondent made a filing disputing the Complaint’s allegations.

6. On April 9, 2025, the ALJ continued the May 27, 2025 hearing to June 3, 2025; ordered that the hearing will be fully remote; and established procedures relating to the hearing, among other matters.³

7. The ALJ held the June 3, 2025 hearing as noticed. Complainant, Respondent, and Respondent’s counsel appeared. During the hearing, the following hearing exhibits were admitted

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

² See Correspondence from PUC filed March 13, 2025; Notice of Hearing and Order to Satisfy filed March 13, 2025.

³ Decision No. R25-0249-I at 8-9 (issued April 9, 2025)

into evidence: 100 to 104; 106 to 111; 114 to 118; 121; and 200 to 204.⁴ The following witnesses testified on Complainant's behalf: Mses. Taneda Gregg and Tracie Philips and Messrs. Lawrence Williams,⁵ Johnnie Williams (Complainant), Rodney Long, and Jerry Morgan. Messrs. Berhan Gebre and Tyrese Smith testified on Respondent's behalf.⁶

8. After Complainant rested his direct case, Respondent moved to dismiss the Complaint, arguing that Complainant lacks standing because he failed to establish that he owns the vehicle at issue in the Complaint. The ALJ rejected the verbal motion, explaining that Complainant is not required to establish that he owns the vehicle at issue in the Complaint.⁷ At the close of evidence, the ALJ found that Statements of Position ("SOPs") may be helpful and directed the parties to file their SOPs by June 24, 2025.

9. On June 24, 2025, both parties filed their SOPs.

III. FINDINGS AND CONCLUSIONS

A. Evidence and Factual Findings

10. On August 8, 2024, Respondent towed a 2006 Ford E350, Vehicle Identification Number ("VIN") 1FDWE35P46DA40176 ("Box Truck" or "the vehicle") from the parking lot at 2323 S. Troy Street in Aurora, Colorado ("Troy Street property").⁸ This Proceeding involves disputes surrounding that tow.

⁴ These exhibits were admitted and electronically received into evidence during the hearing through the parties' box.com folders. Commission administrative staff added these exhibits to the administrative record on June 10, 2025.

⁵ Given that there were two witnesses with the last name Williams, to avoid confusion, all references to Mr. Williams are to Mr. Lawrence Williams and Mr. Johnnie Williams is only referred to as the Complainant.

⁶ During the hearing, Respondent's counsel stated that Respondent's full legal name is Ameri Towing LLC. Relying on this, the ALJ ordered (in rescinded Recommended Decision No. R25-0673), that the caption be amended to reflect this. The caption will not be amended and Ameri Towing remains the Respondent in this Proceeding.

⁷ See Rule 6512(f) of the Commission's Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* ("CCR") 723-6. In addition, under the plain language of § 40-6-108(1)(a), C.R.S., any person may bring a complaint. The statute does not identify standing requirements. In any event, as explained later, Complainant established that he is entitled to seek relief here.

⁸ Hearing Exhibit 101 at 2-3; Hearing Exhibit 204.

11. Mr. Berhane Gebere (also known as “BG”) owns and operates Respondent. Mr. Gebere also owns Ameri Auto Repair and Colfax Motors, a car dealership that he has operated since 2009. Mr. Gebere explained that Respondent has a contract with the Troy Street property’s owner to tow vehicles when requested. He testified that the property owner asked Respondent to tow the vehicle as an abandoned vehicle and that the property owner told him that notices to move the vehicle were placed on the vehicle. On August 8, 2024, Respondent dispatched Mr. Tyrese Smith to the Troy Street property to tow the Box Truck.

12. Mr. Smith is Respondent’s general manager. In that role, he tows vehicles, operates the impound, releases towed vehicles, manages the tow trucks, and works the “door” or “gate.” He has worked for Respondent for approximately eight years. Mr. Smith testified that the Troy Street property owner asked for the Box Truck to be towed because the parking lot in which it was located needed to be repaved. He testified that the property owner told him that they tried to reach the vehicle’s owner but could not determine whose vehicle it was. Consistent with Respondent’s practice, Mr. Smith took a photo of the Box Truck before towing it.⁹ That photo includes a notation that it was taken on August 8, 2024 at 4:23 p.m. at the Troy Street property.¹⁰ The photo shows the tow truck in the background, with the vehicle still parked (not hooked up to the tow truck), and at least two pieces of paper placed under the vehicle’s windshield wipers.¹¹ Mr. Smith testified that Mr. Ben Getzel (a property manager for the Troy Street property) met him at the parking lot and authorized the tow. Mr. Gebere provided similar testimony, stating that Mr. Getzel authorized the tow by signing the relevant form before the vehicle was towed.

⁹ Hearing Exhibit 116 at 1.

¹⁰ *Id.* Mr. Smith explained that he used a time-stamp application on his phone to insert the date and time the photo was taken, so that the time stamp cannot be modified. *See id.*

¹¹ *Id.*

13. Mr. Smith testified that upon towing the vehicle, he took it to Respondent's storage location at 1149 Yosemite Street, Denver, Colorado ("Yosemite address"). Mr. Gebere also testified that Respondent uses the Yosemite address to store towed vehicles and that the Box Truck was stored at the Yosemite address the entire time that it was in Respondent's possession.

14. Mr. Gebere explained that after towing the vehicle, Respondent searched Colorado Department of Motor Vehicle ("DMV") records for the Box Truck's registered owner, using its VIN, but found nothing. Respondent then did a National Database Search (through the Colorado DMV) using the Box Truck's VIN. On August 13, 2024, the DMV's National Database Search revealed that the vehicle was registered to Hill Children Center, Inc., (the "Children Center") in New York.¹² That same day, Respondent mailed the Children Center notice by certified mail, return receipt requested, that the vehicle was towed.¹³ Mr. Gebere testified that at some point after sending this letter, someone from the Children Center called him and told him that the vehicle was sold some time ago. Respondent acknowledged that the Box Truck had dealer license plates ("dealer plates") on it when it was towed. Mr. Gebere explained that when Respondent tows a vehicle, Respondent searches for the vehicle's owner using the vehicle's VIN number, not a license plate number, as license plates can be stolen. In this case, Respondent did not search for the vehicle's owner using the dealer license plates that were on the Box Truck.

15. Complainant works as a driver-manager for Rod's Cars, (a car dealership). His responsibilities with Rod's Cars include managing dealer plates and vehicle storage.¹⁴ Complainant is also a business partner in RMT Carpet & Upholstery Cleaning ("RMT") with Ms. Taneda Gregg, who is also a salesperson for Rod's Cars. On May 25, 2025, Ms. Gregg purchased the Box Truck

¹² See Hearing Exhibit 202.

¹³ Hearing Exhibit 203 at 1-2.

¹⁴ Complainant testified that when the Box Truck was towed, he co-owned it with Rod's Cars.

from 2010 Auto Sales LLC at 343 2nd Avenue in Troy, New York in her role as a salesperson for Rod's Cars.¹⁵ After buying the vehicle, Ms. Gregg placed Rod's Cars dealer plates¹⁶ on the vehicle, which remained on the Box Truck until it was retrieved months later.¹⁷ Mr. Rodney Long ("Rod" of "Rod's Cars") explained that the Box Truck was never registered with the State of Colorado, because as a car dealership, Rod's Cars is permitted to put "full use" dealer plates on any vehicle that Rod's Cars sells, as was the case with the Box Truck. Mr. Long confirmed that Ms. Gregg purchased the Box Truck at an auction in New York for Rod's Cars (under his dealer license).

16. Once the vehicle arrived in Colorado, Ms. Gregg parked it at the Troy Street property.¹⁸ Ms. Gregg explained that Rod's Cars authorizes her to park its vehicles at locations other than Rod's Cars' primary location. She parked the vehicle at the Troy Street property because, (in part), RMT rents office space there and is authorized to park vehicles at the Troy Street property's parking lot.¹⁹ The Troy Street property is an office building that provides office space for businesses.²⁰ Complainant explained that tenants at the Troy Street property are not required to register their vehicles and do not receive parking tags or stickers to park in the lot. He also explained that in the past when there was an issue with vehicles in the lot, the Troy Street property manager sent a text to all the tenants in the building to identify whose vehicle was at issue, but no such text was received in relation to the Box Truck.

¹⁵ Hearing Exhibit 101 at 2-3.

¹⁶ *See id.* at 1.

¹⁷ Those dealer plates were only used on the Box Truck (leading up to the tow at issue). Complainant explained that the Colorado DMV does not associate dealer plates with a specific vehicle because dealer plates may be used on any vehicle that a dealer is selling.

¹⁸ *See* Hearing Exhibit 101 at 1.

¹⁹ *See* Hearing Exhibit 100 at 2 (¶ 13). Ms. Gregg testified that she used the office RMT leased at the Troy Street property to conduct some business for Rod's Cars. Complainant explained that Ms. Gregg later decided she wanted to purchase the Box Truck for RMT, and that Complainant and Ms. Gregg purchased it from Rod's Cars, though the timing of this is unclear.

²⁰ *See generally*, Hearing Exhibit 100 ("Office Lease").

17. Ms. Gregg explained that after parking the Box Truck, she did not go back to the Troy Street property for an indeterminate amount of time. When she returned, she noticed that the Box Truck was no longer at the Troy Street property. On September 6, 2024, Ms. Gregg contacted Complainant to let him know that the Box Truck was missing. They contacted the Aurora Police Department (“police”) and filed a stolen vehicle report. The police informed them that Respondent towed the Box Truck. After learning this, Ms. Gregg made efforts to speak with the Troy Street property’s landlord or manager about the tow and was eventually able to speak with, Mr. Getzel.²¹ She testified that Mr. Getzel said that he was not aware that the Box Truck was hers.

18. On September 6, 2024, Complainant contacted Respondent about retrieving the Box Truck. He spoke with Mr. Gebere, who directed Complainant to speak with Mr. Smith since he towed the Box Truck on Respondent’s behalf, and provided Complainant Mr. Smith’s phone number.²²

19. Complainant spoke with Mr. Smith the evening of September 6, 2024. During this initial call, Mr. Smith told Complainant that the Box Truck had been sold as it had been in Respondent’s possession for over 30 days; Complainant would not be able to get the Box Truck back; this is how Respondent conducts business; and Respondent’s records are correct. He then hung up on Complainant. Ms. Gregg was present during this call; her memory of this conversation is consistent with Complainant’s. Complainant later realized that Mr. Smith is a long-time family friend who he views as family. Indeed, Mr. Smith refers to Complainant as “unc” (for uncle), and

²¹ See Hearing Exhibit 103.

²² See Hearing Exhibit 104. In the text message exchange shown in Hearing Exhibit 104, the phone number from which the first message was received, (720) 404-5561, is Mr. Gebere’s phone number. *See id.* The exhibit demonstrates that Mr. Gebere texted Complainant Mr. Smith’s number, which the evidence established is (470) 920-2449. *See id.*

Complainant refers to Mr. Smith as “nephew.”²³ Complainant believes that Mr. Smith was not aware of his personal connection to Complainant during this initial call. Mr. Smith confirmed this, testifying that he did not realize that Complainant was his uncle/family friend until they met in person (on September 7, 2024, as explained below).

20. After speaking with Mr. Smith, Complainant contacted the police again, who told him that the Box Truck was towed on August 8, 2024 and was stored at 8100 East Colfax Avenue, Denver, Colorado (“Respondent’s Colfax address” or “Colfax address”). Complainant then texted Mr. Smith and Mr. Gebere that the police said the vehicle was towed less than 30 days earlier. Late on September 6, 2024, Complainant reached out to his brother, Mr. Lawrence Williams, for help locating the Box Truck at Respondent’s Colfax address. Mr. Williams recognized that address as a car dealership and indicated that he knew the dealership’s owner from his work in the car dealership business. Since they knew each other, Mr. Williams thought it would be helpful for him to speak with Mr. Gebere to see if they could reach an agreement for the Box Truck’s release.

21. The following day, (September 7, 2024, a Saturday), Mr. Williams went to Respondent’s Colfax address. When he arrived, he did not see any signs indicating that Ameri Towing operated out of that location but did see a car dealership sign for Colfax Motors.²⁴ Mr. Williams saw an Ameri Towing tow truck at the Colfax address and assumed that Ameri Towing is part of the car dealership that operates out of the same location. Mr. Williams looked around the parking lot for the Box Truck and did not see it or any other Box Truck. He testified that he went to Respondent’s office at the Colfax address with Mr. Gebere so that Mr. Gebere could pull up the

²³ See e.g., Hearing Exhibit 110 at 1. The evidence established that Hearing Exhibit 110 is a series of text messages between Complainant and Mr. Smith. Hearing Exhibit 110 includes duplicate copies of certain text exchanges, with Complainant’s notes explaining the context of the messages. Specifically, page one duplicates page two (but adds comments); page five duplicates page four (but adds comments); page nine duplicates page eight (but adds comments); and page 12 duplicates page eight (but adds comments).

²⁴ See Hearing Exhibit 107 at 1.

details on the Box Truck on Respondent's computer. He testified that upon looking at Respondent's information on the vehicle, Mr. Gebere told him that Respondent has the vehicle, but since it has been 30 days since it was towed, the vehicle was no longer available for release and that Respondent is legally authorized to sell the vehicle. Mr. Williams explained it had not been 30 days since the vehicle was towed; told Mr. Gebere that he considered them friends; and asked if there was anything that could be done. Mr. Gebere agreed and then looked up the cost to release the vehicle (on Respondent's computer) and shared that information with Mr. Williams.

22. Mr. Williams felt that costs for the vehicle's release were too high and asked if there was something that could be done to reduce the cost. Mr. Gebere said he would work with him on the cost and explained that the truck is not at Respondent's Colfax address. Mr. Gebere then contacted Mr. Smith and asked him to come to Respondent's Colfax address to meet with Mr. Williams about the Box Truck's release. At this point, Mr. Williams realized that Mr. Smith was a long-time family friend. He contacted Complainant and asked him to come to Respondent's Colfax address. Complainant then contacted Mr. Long and asked him to meet them at the Colfax address.

23. When Complainant and Mr. Long arrived at Respondent's Colfax address on September 7, 2024, Mr. Smith had not yet arrived. While waiting for Mr. Smith to arrive, Complainant, and Messrs. Long and Williams met with Mr. Gebere. During this meeting, Mr. Gebere told them that the Box Truck was not there, and that it was towed because it was supposed to be moved so the parking lot could be repaved. Mr. Gebere told them that he could not do anything about the vehicle until Mr. Smith arrived, since Mr. Smith towed it.

24. When Mr. Smith arrived several hours later (on September 7, 2024), he realized the family connection with Complainant and Mr. Williams and apologized for his conduct during the

initial call with Complainant. Mr. Smith promised to do what he could to lower the price for the vehicles' release. To this end, Complainant and Messrs. Long, Williams, and Smith went into Respondent's office at Respondent's Colfax address, so that Mr. Smith could use Respondent's computer to locate information on the Box Truck. Mr. Smith pulled up Respondent's records on the Box Truck and showed the three of them Respondent's computer screen indicating that the vehicle had been with them for over 30 days. When he noticed the specific tow date, Mr. Smith agreed it had not been over 30 days. Mr. Smith also showed them the computer screen with a photo of the Box Truck; noted that Respondent still has the vehicle (at an undisclosed address); and explained the current charges for release are \$2,100. Complainant asked Mr. Smith why he said that the Box Truck was sold during their initial conversation when it was not. Mr. Smith explained that on occasion, Respondent's computer system incorrectly rounds up the number of days a vehicle has been stored (as was the case here), thereby providing incorrect information.

25. Mr. Gebere was present during this meeting, so Mr. Smith asked him if they could go any lower than \$2,100.²⁵ Messrs. Smith and Gebere spoke privately, then offered to release the vehicle for \$1,800. Complainant offered to pay that amount immediately by credit card, but Mr. Smith said he had to pay with cash, and pointed to a posted sign that says "CASH ONLY."²⁶ Complainant took a photo of that sign while sitting in a chair in front of Respondent's desk.²⁷ Because Complainant did not have \$1,800 cash with him, they agreed that he would return the next day, September 8, 2024, (a Sunday), with cash to have the vehicle released. Mr. Smith agreed and noted that it would take approximately two hours to bring the Box Truck to the Colfax address. Complainant testified that Mr. Smith also said that it would be a good idea to reach out to the

²⁵ Mr. Gebere testified that Complainant arrived with five or six people for this first meeting, and implied that they attempted to intimidate him into releasing the vehicle.

²⁶ Hearing Exhibit 108.

²⁷ *Id.*

parking lot's owner, because it seemed that the vehicle should not have been towed since Complainant had permission to park there.

26. Between September 8, 2024 and November 3, 2024, Complainant and Mr. Smith exchanged numerous text messages about retrieving the vehicle. During those exchanges, Complainant requested that the vehicle be released several times, and even went to the Colfax address on September 22, 2024 to retrieve the vehicle.²⁸ Complainant explained that Mr. Smith agreed to meet him at Respondent's Colfax location on Sunday, September 22, 2024 to release the vehicle and that Mr. Smith told him that they would then go together to the storage location so that Complainant could drive the vehicle off the lot (rather than having it towed back to the Colfax address).

27. As noted, Complainant went to Respondent's Colfax address on September 22, 2024 as agreed. Complainant waited several hours for Mr. Smith to appear. Between 2:41 p.m. and 6:46 p.m. that day, Complainant sent Mr. Smith four text messages in an attempt to reach Mr. Smith (and also called him), so that he could retrieve the vehicle.²⁹ Mr. Smith responded to Complainant's 6:46 p.m. message saying "[h]old on unc."³⁰ From 8:16 p.m. to 10:06 p.m., Complainant sent Mr. Smith at least three more messages, one of which asked whether his number was being rejected (as he had just tried calling), and noting "I got the keys and I'm ready to

²⁸ Hearing Exhibit 110 at 1 (9/8/24 text from Complainant to Mr. Smith saying he wants to retrieve the vehicle the following day, September 9, 2024); 3 (9/11/24 text from Complainant to Mr. Smith saying that they will come up with the money "today" to retrieve the vehicle); 8 (9/20/24 text from Complainant to Mr. Smith stating that he wants to get the truck back the following day at whatever cost); 8 and 10 (numerous texts on 9/22/24 from Complainant to Mr. Smith trying to reach Mr. Smith "so we can get the truck," asking if Respondent has anyone working at the lot, noting attempted and failed calls to Mr. Smith, and stating "I got the keys and I'm ready to move.") *See also, id.* at 4 (9/13/24 text from Complainant to Mr. Smith saying "I'm just circling back with you to see when you're ready to get the truck situated. Just let me know so I can get the payment information together"); and at 6 (9/17/24 text from Complainant to Mr. Smith noting that he had not heard from anyone and stating "[w]e're ready to move forward."). *See generally id.*, at 1-13.

²⁹ *See id.* at 10.

³⁰ *Id.*

move.”³¹ Sometime after Complainant’s last text at 10:06 p.m., Mr. Smith responded, “[h]is better saying we should wait till bg gets back and he don’t know the guy to get the car out???”³² Complainant explained that this was in reference to Mr. Gebere’s brother, who had been put in charge of Respondent when Mr. Gebere had to leave the country. He elaborated that Mr. Smith told him that Mr. Gebere’s brother was not comfortable going to the lot where the vehicle was stored because he did not know the lot’s owner well, and that it would be better to wait for Mr. Gebere to return to release the vehicle. When questioned about what he meant in the above text message, Mr. Smith testified that he told Complainant that he was not on the clock, that he did not know the lot’s owner well enough to get the vehicle released, and that Mr. Gebere’s brother did not want to get involved given all that was going on.

28. After these interactions, Complainant contacted the police again to see if they could do anything to help him get the vehicle released. The police referred him to the Commission. On or around September 27, 2024, Complainant submitted an informal Complaint (“Informal Complaint”).³³

29. Commission Compliance Specialist Tameka Johnson (“Compliance Specialist Johnson” or “Ms. Johnson”) looked into the Informal Complaint. Specifically, on September 27, 2024, Compliance Specialist Johnson asked Respondent to provide a copy of the towing invoice for the subject tow showing a detailed breakdown of all charges; the name and phone number of the person who authorized the tow and their role or title to establish that they are an appropriate authorizing party; a copy of any contract in place for the location from which the vehicle was

³¹ *Id.* at 10-11.

³² *Id.* at 11, 13.

³³ See Hearing Exhibit 121 at 2-3. It is not entirely clear when Complainant submitted the Informal Complaint, but Commission records show that Complainant provided information and documents relating to the Informal Complaint on September 27, 2024. *Id.* at 3.

towed; and Respondent's VIN search and proof that notice was sent to the vehicle's owner by certified mail.³⁴ Ms. Johnson also asked Respondent to address Complainant's assertion that he was initially told that he could not retrieve the vehicle because it had been towed more than 30 days prior.³⁵

30. Mr. Gebere responded by email on September 27, 2024 with the following information: Respondent towed the vehicle from private property; Respondent informed the vehicle's owners that it would cost \$1,800 to release the vehicle (with a discount); the owners did not have the money at the time, so they left; and when the owners reached out again, they offered \$1,000, which Mr. Gebere declined.³⁶ Mr. Gebere's email to Compliance Specialist Johnson also states that he tried to be flexible due to the family connection with Mr. Smith, even though "they didn't have the right paperwork or the keys for the vehicle," and that they are now responsible for the "full auction amount" because they "failed to come up the \$1,800 . . ." ³⁷ In follow up, Compliance Specialist Johnson reminded Mr. Gebere that Respondent still needed to provide copies of the signed tow authorization or contract, the VIN search, and certified letter to the vehicle's owner.³⁸

31. On September 30, 2024, Mr. Smith asked Compliance Specialist Johnson for more time to provide the requested documents because Mr. Gebere was out of the country until early October.³⁹ Mr. Smith added that Respondent attempted to work Complainant since he is a family member "of an employee," but that Complainant did not have the proper documentation for the

³⁴ *Id.* at 2.

³⁵ *Id.* The record includes no evidence indicating that Respondent complied with this request.

³⁶ *Id.* at 4.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.* at 4-5.

vehicle to be released when Complainant came to pick up the vehicle at the storage location.⁴⁰ When Ms. Johnson asked him to identify the documentation that Respondent required to release the vehicle, Mr. Smith said Complainant needs to provide a copy of the vehicle's title.⁴¹ Compliance Specialist Johnson told Mr. Smith that only documents from the Commission's release form are required to retrieve commercial tows, to which Mr. Smith responded that Complainant never came with full payment.⁴²

32. On October 1, 2024, Mr. Gebere emailed Compliance Specialist Johnson a tow authorization form for the subject tow ("First Tow Authorization").⁴³

33. On October 2, 2024, Compliance Specialist Johnson referred the matter for an investigation, noting that Respondent did not provide documentation showing that the notification process was completed properly and that the First Tow Authorization appears to be incomplete, as it is missing names and contact information.⁴⁴ Commission Investigator Stephen Seeger ("Investigator Seeger") was then assigned to investigate the Informal Complaint.⁴⁵

34. Investigator Seeger determined that Commission records show Mr. Gebere as Respondent's designated agent, and that Respondent had an active Commission towing permit when the vehicle was towed.⁴⁶ Investigator Seeger reviewed the documents that Respondent provided in response to Ms. Johnson's requests, including an invoice showing the charges as of that time.⁴⁷ Investigator Seeger noted that the invoice showed that Respondent overcharged for the tow, but also undercharged for fuel (\$3.80 instead of the allowable \$4.24 per mile) and storage

⁴⁰ *Id.* at 5.

⁴¹ *Id.*

⁴² *Id.*

⁴³ Hearing Exhibit 102 at 2. *See* Hearing Exhibit 121 at 5.

⁴⁴ *See* Hearing Exhibit 121 at 5.

⁴⁵ *See id.* at 6.

⁴⁶ *Id.* at 7.

⁴⁷ This invoice is not in the record.

(\$48.32 instead of \$56.84 per day), and provided a discount, which ultimately favored Complainant.⁴⁸

35. On October 3, 2024, Investigator Seeger sent Mr. Gebere an email seeking to gather more information about the First Tow Authorization form; determine whether Respondent did a vehicle record search (to justify its administrative fee); and find out if the vehicle was still in Respondent's possession.⁴⁹

36. Having not received a reply, on October 8, 2024, Investigator Seeger called Respondent and spoke with a person who self-identified as Mr. Gebere's brother.⁵⁰ Mr. Gebere's brother told Investigator Seeger to direct his inquiries at Mr. Gebere, who would return on October 14, 2024.⁵¹ Investigator Seeger told him not to sell the Box Truck until the investigation is complete.⁵²

37. On October 17, 2024, Investigator Seeger spoke with Mr. Smith and reiterated his prior requests for more information; Mr. Smith stated that he would take care of it the following morning.⁵³ He did not.

38. On October 21, 2024, Mr. Gebere called Investigator Seeger in response to his earlier email.⁵⁴ Mr. Gebere said that the primary issue with the tow is that Complainant could not come up with the money for the vehicle's release.⁵⁵ Mr. Gebere stated that he emailed the tow authorization form ("Second Tow Authorization") just before calling Investigator Seeger, which

⁴⁸ Hearing Exhibit 102 at 2.

⁴⁹ *Id.* at 1. *See* Hearing Exhibit 121 at 8.

⁵⁰ Hearing Exhibit 121 at 9.

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

Investigator Seeger confirmed.⁵⁶ The Second Tow Authorization has several notable differences from the first one. Specifically, the two forms have the following differences:

Form Item	First Tow Authorization	Second Tow Authorization
Time of Tow on August 8, 2024	4:22 p.m.	5:01 p.m.
Property Address of Tow	2323 S. Troy St Aurora CO 80014	2323 Troy St Aurora CO 80014
Vehicle Information	<u>Make</u> : 2006 <u>Model</u> : Ford <u>License Plate/State</u> : DLDM20/Colorado DLR	<u>Make</u> : Ford <u>Model</u> : E-Series Chassis <u>License Plate/State</u> : DLDM20
Property Owner Information	<u>Name</u> : none provided <u>Email</u> : none provided <u>Phone</u> : none provided <u>Box checked</u> to certify that authorizing person meets the definition of property owner for purposes of tow authorization	<u>Name</u> : Ben Getzel <u>Email</u> : [illegible]@comcast.net <u>Phone</u> : 720-327-1770 <u>Box not checked</u> to certify that authorizing person meets the definition of property owner for purposes of tow authorization
Storage Facility Address	8100 E. Colfax Ave Denver CO 80220 ⁵⁷	1149 Yosemite St Denver CO 80220 ⁵⁸

39. In addition, the signatures on the two forms are drastically different, with one signature appearing to be a single letter while the other includes two words (presumably, a first and last name).⁵⁹

40. Through a Colorado Open Records request, Complainant obtained Commission records relating to his Informal Complaint and the resulting inquiries and investigations, including the First and Second Tow Authorizations that Respondent provided the Commission.⁶⁰ After seeing Mr. Getzel's name on the Second Tow Authorization, Complainant contacted Mr. Getzel to ask him about the tow. Complainant testified that Mr. Getzel said he did not recall asking for

⁵⁶ *Id.*

⁵⁷ Hearing Exhibit 102 at 2.

⁵⁸ *Id.* at 3.

⁵⁹ *See id.* at 2-3.

⁶⁰ *See* Hearing Exhibit 111 at 3.

the Box Truck to be towed, but implied that a maintenance person for the property may have. Complainant also testified that Mr. Getzel told him he had no recollection of signing the Second Tow Authorization and that he was not at the property on the day the Box Truck was towed.⁶¹

41. After noticing that the First and Second Tow Authorizations identify different storage addresses, on or about October 5, 2024, Complainant went to the Yosemite address to determine if the Box Truck was there. He did not see the Box Truck at that lot or any signs indicating that the lot is an Ameri Towing lot. He took photos of the lot, vehicles, and signs at that address.⁶²

42. On October 23, 2024, Investigator Seeger emailed Respondent to verify the Box Truck's weight, and again to determine whether a vehicle record search and impound notice was done.⁶³ In response, Respondent provided him a copy of the VIN search, certified mailing with return receipt for the same, and confirmation that the Box Truck weight rating is 11,500 pounds.⁶⁴ Investigator Seeger also searched DMV records using the Box Truck's VIN and found no evidence of registration or registration in progress.⁶⁵

43. Ultimately, Investigator Seeger concluded that Respondent provided the requested information (though it took some effort to get it); the tow received proper written authorization for a commercial tow; the invoice issues were in Complainant's favor; the administrative fee was

⁶¹ See Hearing Exhibit 102 at 3.

⁶² See Hearing Exhibit 109. The building at the parking lot's address has a large sign stating that it is 3YS Auto Repair. *Id.* at 3. Mr. Gebere disputed Complainant's testimony that the photos in Hearing Exhibit 109 were taken on October 5, 2024, noting that it depicts vehicles that he did not own or possess at that time, and that it appears to be images that Google produces when the address is searched. However, he also testified that he caught Complainant at the Yosemite address on May 30, 2025 taking the photo depicted on page one of Hearing Exhibit 109. He also testified that 3YS Auto Repair is located next to Respondent's storage lot at the Yosemite address and is not connected to any of Mr. Gebere's businesses.

⁶³ See Hearing Exhibit 121 at 9.

⁶⁴ See *id.*

⁶⁵ See *id.* at 11.

proper; and the notice of impound was timely.⁶⁶ He found that the fundamental issues involved the vehicle's release and the relationship between Mr. Smith and Complainant and that negotiations on the vehicle's release are a civil matter outside the Commission's jurisdiction.⁶⁷ Investigator Seeger did not sustain any violations against Respondent, but reminded Mr. Gebere that even when he is away, Respondent continues to be responsible for timely responding to Commission inquiries about complaints.⁶⁸

44. On October 28, 2024, Investigator Seeger shared the results of his investigation with Respondent and Complainant.⁶⁹

45. On October 31, 2024, Investigator Seeger spoke with Complainant about the investigation's results.⁷⁰ Investigator Seeger encouraged Complainant to contact Respondent right away to get the vehicle released, and to let him know what happens.⁷¹

46. The next day, on November 1, 2024, Complainant informed Investigator Seeger that Respondent is asking for more than \$4,000 to release the vehicle and is planning to sell it.⁷² He sent Investigator Seeger text strings between him and Mr. Smith about meeting at the lot on September 22, 2024 to release the vehicle.⁷³ Complainant explained that Mr. Smith did not show up and Respondent refused to release the vehicle because Mr. Gebere was out of the country and Mr. Gebere's brother was not comfortable releasing it until he came back.⁷⁴ Investigator Seeger noted that if this is correct, September 22, 2024 could be considered a required release date.⁷⁵ That

⁶⁶ *Id.* at 10.

⁶⁷ *Id.*

⁶⁸ *See id.*

⁶⁹ *See id.* at 11; Hearing Exhibit 114 at 1.

⁷⁰ Hearing Exhibit 121 at 11.

⁷¹ *See id.*

⁷² *See id.*

⁷³ *See id.*

⁷⁴ *See id.*

⁷⁵ *See id.*

same day, Investigator Seeger spoke with Mr. Smith, who denied Complainant's assertions.⁷⁶ Investigator Seeger noted that Mr. Smith did send Complainant a text message about Mr. Gebere's brother.⁷⁷ At the same time, Investigator Seeger concluded that because the facts could not be determined, the dispute remained a civil matter.⁷⁸ Investigator Seeger emailed Mr. Gebere and Complainant that the case was still closed without any violations sustained, and summarized his relevant conclusions and findings.⁷⁹ He also suggested to Mr. Gebere that he may want to consider reducing the release fees given the confusion associated with the vehicle's release, but that this was entirely his decision to make.⁸⁰

47. After this communication, Complainant followed up with Mr. Gebere to get the Box Truck released. Mr. Gebere told Complainant that it would cost \$4,000 to release the vehicle, only cash would be accepted, and to come to Respondent's Colfax address. Complainant elaborated that Mr. Gebere told him that if he did not come with that amount in cash, the Box Truck would not be released to him. Mr. Gebere explained that he told Complainant that he has to provide his driver's license and proof that he owns the vehicle before Respondent will release it, such as a bill of sale or title to the vehicle. Mr. Gebere testified that this is what he tells anyone who wants towed vehicles released.

48. Consistent with this direction, on November 5, 2024, Complainant went to the Colfax address. Respondent had the vehicle brought there. Complainant never learned where the Box Truck had been stored and repeatedly raised this as a concern during the hearing. Complainant provided Mr. Gebere a copy of the bill of sale for the Box Truck.⁸¹ Mr. Gebere confirmed that

⁷⁶ *See id.*

⁷⁷ *See id.*

⁷⁸ *See id.*

⁷⁹ Hearing Exhibit 114 at 2.

⁸⁰ *Id.*

⁸¹ *See* Hearing Exhibit 101.

Complainant paid cash for the vehicle's release, noting that Complainant counted the money in front of him several times. Complainant testified that he paid \$4,000 in cash for the vehicle's release, but an impound invoice ("Second Invoice") date stamped November 5, 2024 at 6:05 p.m. indicates he paid \$3,900.⁸² Mr. Gebere also testified that Complainant paid \$3,900 for the vehicle's release.

49. The record includes another impound invoice ("First Invoice") date stamped November 5, 2024 at 6:01 p.m. that Respondent provided Complainant on November 5, 2024 when Complainant retrieved the vehicle. The First Invoice states that the total charges are \$5,259.23 for the vehicle's release, with the following charges: \$26.60 for mileage for 7 miles (\$3.80 per mile) \$275.88 private property tow fee; \$75 administrative fee; and \$5,115.60 (\$56.84 per day) for 90 days of storage.⁸³ It also indicates that Respondent gave a "towing" discount of \$233.85.⁸⁴ The Second Invoice outlines the same charges (above), but includes a \$1,215.60 discount, (instead of \$233.85), resulting in \$3,900 in total charges.⁸⁵ Only the Second Invoice is fully signed.⁸⁶ Both Invoices state, in the "Bill To" row, "Cash/Private Retail Customer."⁸⁷ Both Invoices indicate that the Box Truck was stored at Respondent's Colfax address; that the tow was requested on August 8, 2024 at 4:43 p.m. as an abandoned vehicle; and that Respondent towed the vehicle at 5:26 p.m. that same day.⁸⁸

50. Mr. Gebere explained that the First Invoice indicates the total due for the vehicle's release before he agreed to provide a larger discount and that Complainant signed the First Invoice

⁸² Hearing Exhibit 204.

⁸³ Hearing Exhibit 116 at 2.

⁸⁴ *Id.*

⁸⁵ Hearing Exhibit 204.

⁸⁶ Hearing Exhibit 116 at 2; Hearing Exhibit 204.

⁸⁷ Hearing Exhibit 116 at 2; Hearing Exhibit 204.

⁸⁸ Hearing Exhibit 116 at 2; Hearing Exhibit 204.

before they reached an agreement for a larger discount.⁸⁹ He explained that the Second Invoice reflects the full discount he provided once they reached an agreement, and that Complainant paid \$3,900, not \$4,000 as Complainant claims.⁹⁰ He highlighted that it makes no sense for Complainant to have signed the Second Invoice showing the release price as \$3,900 if he actually paid \$4,000.

51. As noted, Investigator Seeger reviewed an invoice that Respondent provided during his investigation, which is different from the two Invoices discussed above (as it was generated much earlier).⁹¹ Investigator Seeger's analysis indicates that the Invoice he reviewed includes a mileage fee for 29 miles.⁹² Both the First and Second Invoices include a mileage fee for 7 miles.⁹³

B. Relevant Law

1. Commission Jurisdiction and Burden of Proof

52. The Commission has jurisdiction to hear and decide complaints against motor carriers subject to its authority under § 40-6-108(1)(a), C.R.S.⁹⁴ Any person may file a complaint with the Commission about a motor carrier.⁹⁵

53. The proponent of an order bears the burden of proof by a preponderance of the evidence.⁹⁶ This standard requires the fact finder to determine whether the existence of a contested fact is more probable than its non-existence.⁹⁷ The preponderance of the evidence standard requires

⁸⁹ See Hearing Exhibit 116 at 1.

⁹⁰ See Hearing Exhibit 204. Mr. Gebere acknowledged that his signature appears next to the first line that says "Driver Signature" on Hearing Exhibit 204 and that Mr. Smith's signature appears next to the second line that says "Driver Signature" in Hearing Exhibit 204.

⁹¹ See Hearing Exhibit 121 at 8; Hearing Exhibit 116 at 2; Hearing Exhibit 204.

⁹² Hearing Exhibit 121 at 8.

⁹³ Hearing Exhibit 121 at 8, Hearing Exhibit 116 at 2; Hearing Exhibit 204.

⁹⁴ See §§ 40-10.1-103(2), C.R.S. (as used in articles 6 and 7 of title 40, C.R.S., the term "public utility" includes all motor carriers); 40-10.1-101(10), C.R.S. (defining motor carrier); 40-10.1-101(20) (defining towing carriers as a motor carrier who tows vehicles as one of its primary functions and may also store towed vehicles). See also, § 40-10.1-102, C.R.S.

⁹⁵ § 40-6-108(1)(a), C.R.S.

⁹⁶ Rule 1500 of the Commission's Rules of Practice and Procedure, 4 CCR 723-1.

⁹⁷ *Swain v. Colorado Dept. of Revenue*, 717 P.2d 507 (Colo. App. 1985).

“substantial evidence,” which is defined as such relevant evidence as a reasonable person’s mind might accept as adequate to support a conclusion, and enough to justify, if the trial were to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury.⁹⁸

2. Relevant Statutes and Commission Rules

54. As relevant here, Rule 6508(b)(I)(C) prohibits towing carriers from towing a motor vehicle unless the property owner on which the vehicle is located authorizes the tow.⁹⁹ Rule 6501(u)(II) defines “property owner” as a person authorized to act as an authorized agent for the property owner or lessee of the private or public property. Rule 6508(b)(III) requires the property owner to provide written authorization for the tow on a Commission-prescribed form.¹⁰⁰ Under Rule 6508(b)(III)(A), the form must be “. . . filled out in full, signed by the property owner, and given to the towing carrier before the motor vehicle is removed from the property . . .” Towing carriers may not have “. . . in their possession, accept, or use blank authorizations pre-signed by the property owner or authorizations that have been automatically generated,” under Rule 6508(b)(III)(B), 4 CCR 723-6.

55. Commission rules impose additional requirements for tows from residential private property that do not apply to vehicles towed from commercial private property.¹⁰¹ A nonconsensual

⁹⁸ 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).

⁹⁹ Rule 6508(b)(III), 4 CCR 723-6. For ease of reference, this Decision’s references to Commission Rules in the 6000 range are to 4 CCR 723-6.

¹⁰⁰ See e.g., Hearing Exhibits 116 at 2-3.

¹⁰¹ See e.g., Rule 6508(d) (notice prior to towing vehicles from residential property) and Rule 6512(l) (carriers must release vehicle towed from residential property under certain conditions, including payment of 15 percent or no more than \$60 of total amount owed to the operator), 4 CCR 723-6.

tow falls into this latter category when the vehicle is towed from commercial private property that is not in a common parking area.¹⁰²

56. Rule 6508(b)(IV) provides that except for law enforcement-ordered tows, towing carriers who tow a vehicle at the request of a property owner must “. . . immediately deliver the towed motor vehicle . . . to a storage facility location on file with the Commission without delay. No motor vehicle may be relocated off of the private property from which it is towed to a location other than to such a storage facility.”

57. Rule 6509(a) requires towing carriers to use and complete a “tow record/invoice form” for all nonconsensual tows, with certain minimum information related to the tow. As relevant here, among those requirements, the invoice must include the address of the storage facility where the vehicle is stored, which must be a storage facility on file with the Commission, and the storage facility’s telephone number if different from the towing carrier’s.¹⁰³

58. Rule 6511(g)(I) requires towing carriers to follow the notification requirements for abandoned vehicles that they tow, as set forth in Parts 18 and 21 of Article 4, Title 42, Colorado Revised Statutes. Similarly, Rule 6507(b) requires towing carriers who store an abandoned vehicle to disclose the vehicle’s storage location by complying with the procedure for abandoned vehicles in Parts 18 and 21 of Article 4 of Title 42, Colorado Revised Statutes.

59. As relevant here, § 42-4-2103(3)(c)(I)(A), C.R.S., requires that within ten days of towing an abandoned vehicle from private property, the towing carrier must determine who owns the vehicle, and whether there is a lienholder and notify both the owner and lienholder by certified mail, return receipt requested, of the tow. Towing carriers have additional time to provide this

¹⁰² Rule 6501(t)(I), 4 CCR 723-6.

¹⁰³ Rule 6509(a)(I) to (XII), 4 CCR 723-6.

notice when they have to perform a national database search.¹⁰⁴ The notice must: describe the vehicle (including the make, model, color, year, number issuing state, and license plate expiration date); state that it has been reported abandoned; identify the vehicle's storage location, address from which it was towed, and the law enforcement agency determining that the vehicle was not reported stolen; disclose the towing carrier's business address, telephone number, and Commission permit number; and state that unless claimed within thirty calendar days of the date the notice was sent (as determined by the postmark) that the vehicle will be subject to sale.¹⁰⁵

60. Except for the first 24 hours of storage, towing carriers may not charge for storage from the day the vehicle is stored until the day the carrier sends notice to the owner and lienholder, per the above requirement.¹⁰⁶ Towing carriers may not charge for those days retroactively after notice is sent.¹⁰⁷

61. In addition, Rule 6507(c) requires towing carriers who place a towed vehicle in a storage facility to disclose the location of the storage facility, the total amount of the charges, and accepted forms of payment consistent with Rule 6512, upon request of an authorized or interested person.

62. Rule 6512(a) requires towing carriers to "immediately accept payment" for a vehicle's release if an authorized or interested person offers payment, and that towing carriers "must accept payments in cash or by valid major credit card."¹⁰⁸ As noted, towing carriers are required to release towed vehicles to an "authorized or interested person,"¹⁰⁹ who are defined as

¹⁰⁴ § 42-4-2103(4), C.R.S.

¹⁰⁵ § 42-4-2103(3)(b), (c)(I)(A) and (C), and (4), C.R.S.

¹⁰⁶ § 42-4-2103(3)(c)(II), C.R.S.; Rule 6511(d)(I)(D), 4 CCR 723-6.

¹⁰⁷ Rule 6511(d)(I)(D), 4 CCR 723-6.

¹⁰⁸ Rule 6512(a), 4 CCR 723-6.

¹⁰⁹ *Id.*

the vehicle owner, authorized operator, the owner's authorized agent, a lienholder of the motor vehicle, or an insurance company (as defined in § 40-10.1-101(1.5), C.R.S.).¹¹⁰

63. Rule 6512(f) requires towing carriers to release a towed vehicle to a person who attests to being the authorized operator of the vehicle, provides a current driver's license, and who produces two of the following: keys to the vehicle; proof of insurance; vehicle registration; VIN; and knowledge of the location from where the motor vehicle was towed.¹¹¹ Such attestation must be provided on the "Vehicle Release Form" available on the Commission's website, which the towing carrier must provide to the authorized operator upon request.¹¹² As explained above, the Commission's definition of "authorized or interested person" includes the vehicle's authorized operator.¹¹³ An "authorized operator of a motor vehicle" and "authorized operator" means a person who has been given written or oral permission to drive a motor vehicle by the owner or lessee of said motor vehicle.¹¹⁴

64. Towing carriers must release a towed vehicle upon demand during business hours and with one hour's notice during all other times, except for the first 24 hours the vehicle is stored.¹¹⁵

65. When a towing carrier performs a tow or stores a towed vehicle in violation of state statute or a Commission rule, the towing carrier may not charge or retain any fees or charges for the services performed.¹¹⁶

¹¹⁰ Rule 6501(f), 4 CCR 723-6.

¹¹¹ Rule 6512(f), 4 CCR 723-6.

¹¹² *Id.*

¹¹³ Rule 6501(f), 4 CCR 723-6.

¹¹⁴ Rule 6501(e), 4 CCR 723-6.

¹¹⁵ Rule 6512(b), 4 CCR 723-6.

¹¹⁶ Rule 6511(f), 4 CCR 723-6.

C. Findings, Analysis, and Conclusions

66. As an initial matter, the ALJ finds that the Commission has specific jurisdiction over this matter per § 40-6-108(1)(a), C.R.S. As § 40-6-108(1)(a), C.R.S., allows anyone to file a complaint, and Commission Rules specifically contemplate that authorized or interested persons, (including authorized operators) may retrieve a towed vehicle (as was the case here), whether Complainant owned the Box Truck when it was towed does not impact the Commission's jurisdiction, or whether Complainant is entitled to relief. The ALJ finds that the preponderance of the evidence establishes that, at minimum, Complainant was an authorized operator of the vehicle, and therefore, an authorized or interested person, as contemplated by Commission Rules.¹¹⁷ The evidence establishes that Complainant paid for and retrieved the Box Truck as an authorized or interested person. For the reasons and authorities discussed, the ALJ finds that Complainant is entitled to seek relief from the Commission based on the subject tow.

67. The ALJ finds that the preponderance of the evidence establishes that Respondent towed the vehicle from commercial private property that is not in a common parking area. Indeed, Respondent towed the vehicle from the parking lot for the office building, and not a common area unrelated to the office building (such as a street). As such, Commission rules specific to tows from residential private property do not apply here.

68. For the reasons discussed below, the ALJ finds that Respondent performed the subject tow on August 8, 2024 without first having obtained proper written authorization to perform the tow as required by Commission rules. Specifically, on October 1, 2024, in response to Compliance Specialist Johnson asking Respondent for a copy of the tow authorization,

¹¹⁷ See Rule 6501(e) and (f), 4 CCR 723-6.

Respondent provided the Commission the First Tow Authorization.¹¹⁸ Only after Investigator Seeger twice asked for more information about the tow authorization did Respondent provide the Second Tow Authorization.¹¹⁹ Several weeks passed from the time that Investigator Seeger first raised this request (on October 3, 2024) before Respondent provided the Second Tow Authorization (on October 21, 2024).¹²⁰ If the Second Tow Authorization existed before the tow was completed, as Rule 6508(b)(III)(A) requires, it would have taken very little time and effort to provide it to the Commission. Indeed, Mr. Gebere provided the First Tow Authorization within days of it being requested, while he was apparently out of the country.¹²¹ Respondent offered no explanation for why it had two different Tow Authorizations for the same tow.¹²² Nor did Respondent explain the inconsistencies between the two Tow Authorizations, or why it provided the First Tow Authorization if the second one was completed before performing the tow. The First Tow Authorization plainly violates Rule 6508(b)(III) because it is not filled out in full. It is missing the most critical information about the authorization, that is, the identity of the person who authorized the tow (and their contact information).¹²³ The First Tow Authorization is more akin to a pre-signed blank authorization, contrary to Rule 6508(b)(III)(B).¹²⁴ The Second Tow Authorization, while complete, includes a different storage address for the vehicle; different tow time; different vehicle description; different and incorrect tow address (Troy St. instead of S. Troy St.); and a different signature for the property owner or agent.¹²⁵ Given all of this evidence, the

¹¹⁸ See Hearing Exhibit 121 at 2, 4-5; Hearing Exhibit 102 at 2.

¹¹⁹ See Hearing Exhibit 121 at 8-9; Hearing Exhibit 102 at 3.

¹²⁰ See Hearing Exhibit 121 at 8-9.

¹²¹ See Hearing Exhibit 121 at 4-5 (indicating that Mr. Gebere is out of the country until early October, and that Mr. Gebere emailed the First Tow Authorization on October 1, 2024) and 9 (noting that Mr. Gebere will be back on October 14, 2024).

¹²² See Hearing Exhibit 121 at 8-9; Hearing Exhibit 102 at 3.

¹²³ Hearing Exhibit 102 at 2.

¹²⁴ The evidence is insufficient to find that Respondent's First Tow Authorization violates Rule 6508(b)(III)(B), 4 CCR 723-6.

¹²⁵ See Hearing Exhibit 102 at 2-3.

ALJ finds that it is more likely than not that Respondent generated the Second Tow Authorization to cure the defects in the first one, *after* the vehicle was towed, and *after* Commission personnel highlighted the need for more information about the tow's authorization.

69. Because Rule 6508(b)(III)(A) requires carriers to have a proper and complete tow authorization form “before the motor vehicle is removed from the property,” the Rule contemplates that towing carriers may not correct deficiencies in a tow authorization or obtain a tow authorization after performing the tow. Thus, Respondent's attempts to cure the defects in the First Tow Authorization do not alleviate it from the requirements in Rule 6508(b)(III)(A) to have a proper and complete tow authorization *before* towing the vehicle at issue here. For the reasons and authorities discussed, the ALJ finds that the preponderance of the evidence establishes that Respondent lacked proper authorization for the subject tow before completing the tow, in violation of Rule 6508(b)(III)(A), 4 CCR 723-6. And, to the extent that Respondent relies on the First Tow Authorization, the ALJ concludes that the First Tow Authorization violates Rule 6508(b)(III)(A) because it is not filled out completely.

70. Complainant presented evidence, through exhibits and testimony, that Respondent required Complainant to pay cash to release the vehicle and refused to accept payment by credit card.¹²⁶ Respondent did not refute, deny, or rebut this evidence. To the contrary, Respondent's evidence tends to support Complainant's assertion that Respondent required payment in cash and refused to accept a credit card.¹²⁷ As such, the ALJ finds that it is undisputed that Respondent required Complainant to pay cash to release the vehicle and refused to accept payment by credit card. Assuming *arguendo* that Respondent disputes this, the ALJ finds that the preponderance of

¹²⁶ *Supra* ¶¶ 25, 47, 48; Hearing Exhibit 108; Hearing Exhibit 116 at 2 (indicating “Cash/Private retail Customer”).

¹²⁷ *Supra* ¶¶ 30, 38, 48; Hearing Exhibit 121 at 4 and 9; Hearing Exhibit 204 (indicating “Cash/Private retail Customer” in the impound invoice). *See also*, Hearing Exhibit 116 at 2.

the evidence establishes that Respondent required Complainant to pay cash to release the vehicle and refused to accept payment by credit card.¹²⁸ For the foregoing reasons and authorities, the ALJ finds that Respondent violated Rule 6512(a) by refusing to immediately accept payment by valid major credit card for the vehicle's release, when Complainant offered to pay by credit card on September 7, 2024.¹²⁹ Respondent's refusal to accept payment by credit card when Complainant offered to do so on September 7, 2024 likely resulted in an increase in storage fees because the vehicle was stored longer to allow Complainant time to gather cash for the vehicle's release.¹³⁰ The preponderance of the evidence establishes that Respondent again required that Complainant pay cash for the much higher release fees on November 5, 2024, when Respondent ultimately released the vehicle, thereby again violating Rule 6512(a), 4 CCR 723-6.¹³¹ Whether Respondent refused payment by credit card to intentionally increase storage fees against Complainant or not, the result is the same: Complainant faced higher storage fees, making it even more difficult to gather the increased amount of cash that Respondent required to retrieve the vehicle. Indeed, Mr. Gebere told Investigator Seeger that the primary issue with releasing the vehicle was that Complainant "has been unable to come up with the funds" for the vehicle's release.¹³² Respondent's refusal to accept a credit card payment must be strongly discouraged, not only because it violates Commission Rules, but also because it speaks to predatory behavior that cannot be repeated. These violations alone warrant sustaining the Complainant and requiring Respondent to refund the full amount that Complainant paid.

¹²⁸ *Supra* ¶¶ 25, 30, 38, 47, 48; Hearing Exhibits 108; Hearing Exhibit 121 at 4, 9; Hearing Exhibit 116 at 2; Hearing Exhibit 204.

¹²⁹ Although Investigator Seeger did not sustain any violations against Respondent, nothing in the Informal Complaint and Investigator Seeger's investigatory notes include an allegation that Respondent demanded cash and refused credit card payment. Hearing Exhibit 121 at 1-13.

¹³⁰ *See e.g.*, Hearing Exhibit 116 at 2 and Hearing Exhibit 204.

¹³¹ *Supra*, ¶¶ 47-48. *See* Hearing Exhibit 204 and Hearing Exhibit 116 at 2.

¹³² *See* Hearing Exhibit 121 at 9.

71. The preponderance of the evidence also establishes that Respondent violated Rule 6512(f) by requiring Complainant to provide a bill of sale or title to the vehicle prior to releasing it. Under Rule 6512(f), Respondent could only require Complainant to present a current driver's license, attest that he is an authorized vehicle operator, and provide two of the following: keys to the vehicle; proof of insurance; vehicle registration; VIN; and knowledge of the location from where the vehicle was towed.¹³³ The evidence establishes that Complainant told Respondent that he has the keys to the vehicle, and had knowledge of the location from which the vehicle was towed. Respondent should have allowed Complainant to attest to being an authorized operator and to his knowledge of the tow location.¹³⁴ Coupled with a valid driver's license and the Box Truck's keys, this was enough for Respondent to release the vehicle to Complainant, consistent with Rule 6512(f), 4 CCR 723-6 (fees notwithstanding). Respondent's failure to follow Rule 6512(f)'s requirements, designed to avoid situations just like the one at hand, raises concerns that Respondent is engaging in behavior that makes it unnecessarily difficult for an authorized or interested person to retrieve a towed vehicle.

72. The preponderance of the evidence establishes that on September 21, 2024, Complainant notified Respondent that he wished to retrieve the vehicle the following day at any cost, and that Respondent failed to allow Complainant to retrieve the vehicle on September 22, 2024.¹³⁵ Complainant waited many hours at Respondent's Colfax address on September 22, 2024 for Respondent to release the vehicle, but Respondent's representative, Mr. Smith, did not show up and Respondent did not otherwise permit Complainant to retrieve the vehicle.¹³⁶ Mr. Smith's

¹³³ Rule 6512(f), 4 CCR 723-6.

¹³⁴ *See id.*

¹³⁵ *Supra*, ¶¶ 26-27.

¹³⁶ *Supra*, ¶¶ 26-27. *See* Hearing Exhibit 110 at 11, 13.

testimony confirmed this.¹³⁷ For the foregoing reasons and authorities, the ALJ finds that Respondent violated Rule 6512(b), 4 CCR 723-6, by failing to allow Complainant to retrieve the vehicle on September 22, 2024, despite having more than one hour's notice that Complainant wished to retrieve the vehicle. This failure to allow Complainant to retrieve the vehicle also resulted in much higher storage fees.

73. Although the reasons for Respondent's failure to allow Complainant to retrieve the vehicle on September 22, 2024 do not impact whether Respondent violated Rule 6512(b) (above), they do highlight issues with Respondent's vehicle storage practices. The ALJ finds Complainant's testimony credible that Respondent did not release the vehicle on September 22, 2024 because Mr. Gebere's brother was not comfortable retrieving the vehicle from the lot where it was stored, since he did not know the lot's owner well, and wanted to wait for Mr. Gebere to return to the country. Mr. Smith's text message about this supports Complainant's testimony, although he testified that he (not Mr. Gebere's brother) did not know the lot's owner well.¹³⁸ It is difficult to imagine that Respondent stored the vehicle at an address registered with the Commission, and for which Respondent had proof of insurance, if Respondent's access to the location is limited to Mr. Gebere's presence. That said, the evidence is insufficient to determine if this was the case. Complainant repeatedly raised concerns that it was never clear where the Box Truck was being stored. Those concerns are more than justified given the evidence on the vehicle's storage location and access to the same. Indeed, the ALJ shares those concerns.

74. The evidence establishes that Respondent provided different and inconsistent information on the vehicle's storage location. The First Tow Authorization and the First and

¹³⁷ *Supra*, ¶ 27.

¹³⁸ *Supra*, ¶ 27; Hearing Exhibit 110 at 11, 13.

Second Invoices indicate that the vehicle was stored at Respondent's Colfax address.¹³⁹ The police informed Complainant that the vehicle was stored at Respondent's Colfax address (prompting Complainant to go to that address to see if the vehicle was there). Complainant never saw the Box Truck stored at the Colfax address, despite looking for it. The Second Tow Authorization states that the vehicle was stored at the Yosemite address,¹⁴⁰ and Mr. Gebere testified that it was stored there the entire time. In analyzing charges from yet another invoice that Respondent provided, Investigator Seeger noted a mileage fee for 29 miles, while the First and Second Invoices include a mileage fee for 7 miles.¹⁴¹ Given that a tow invoice must include the one-way mileage between the towed location to the storage location,¹⁴² this mileage difference raises further questions about where the vehicle was actually stored.

75. Taking Mr. Gebere's testimony at face value that the vehicle was stored at the Yosemite address the entire time, the ALJ finds that Respondent violated Rule 6509(a)(III) because the Second Invoice does not disclose the Yosemite address as the vehicle's storage location.¹⁴³ This is not an insignificant violation given that towing carriers may only store a towed vehicle at locations registered with the Commission and with active proof of insurance on file with the Commission; may not charge to store vehicles at locations for which the carrier does not have active insurance; and must provide the Commission the address and telephone number of any new or different storage locations they wish to use before storing vehicles there.¹⁴⁴

¹³⁹ Hearing Exhibit 102 at 2; Hearing Exhibit 116 at 2; Hearing Exhibit 204.

¹⁴⁰ Hearing Exhibit 102 at 3.

¹⁴¹ Hearing Exhibit 121 at 8. *See* Hearing Exhibit 116 at 2; Hearing Exhibit 204.

¹⁴² Rule 6509(a)(VI), 4 CCR 723-6.

¹⁴³ Hearing Exhibit 204. The ALJ's conclusion that Respondent violated Rule 6509(a)(III), 4 CCR 723-6, is focused on the Second Invoice (Hearing Exhibit 204) because Respondent offered the exhibit, and Mr. Gebere testified that it is the correct Invoice. In any event, the First Invoice also does not disclose the Yosemite address as the vehicle's storage location, in violation of Rule 6509(a)(III), 4 CCR 723-6. Hearing Exhibit 116 at 2.

¹⁴⁴ *See* Rules 6005(c), 6008(a)(IV), 6508(b)(IV), 6511(d)(III), 4 CCR 723-6. *See also* Rules 6509(a)(III), 6507(f), 4 CCR 723-6. The evidence does not reveal Respondent's storage address on file with the Commission, and as such, the ALJ makes no findings about this.

76. Along these lines, Respondent's notice to the vehicle's registered owner provides no storage address at all.¹⁴⁵ As such, the ALJ finds that the preponderance of the evidence establishes that Respondent's notice to the vehicle's registered owner fails to comply with § 42-4-2103, C.R.S., because it does not provide the location where the Box Truck was stored.¹⁴⁶

77. Respondent's storage charges also violate statute and Commission Rules. To start, Respondent charged for 90 days of storage, from August 8, 2024 to November 5, 2024, even though only 89 days passed in that timeframe (including both the start and end dates).¹⁴⁷ Respondent towed the vehicle on August 8, 2024 and sent notice to the registered owner on August 13, 2024.¹⁴⁸ The preponderance of the evidence establishes that Respondent charged for storage for the entire time between when the vehicle was towed and when the notice was mailed.¹⁴⁹ For the reasons discussed, the ALJ finds that Respondent's storage charges violate § 42-4-2103(3)(c)(II), C.R.S., and Rule 6511(d)(I)(D), which explicitly prohibit Respondent from charging for storage between the time the vehicle is towed to the postmarked date for the notice (except for the first 24 hours). In total, these two storage overcharges cover an additional six days of storage.¹⁵⁰ These violations are not cured simply because Respondent ultimately "discounted"

¹⁴⁵ Hearing Exhibit 203.

¹⁴⁶ Hearing Exhibit 203 at 2; §§ 42-4-2103(3)(b), (c)(I)(C), and (4), C.R.S.

¹⁴⁷ Hearing Exhibit 204.

¹⁴⁸ Hearing Exhibit 203 at 1-2.

¹⁴⁹ See Hearing Exhibit 204. See also, Hearing Exhibit 203 (notice to owner indicating storage charges through August 13, 2024 for five days).

¹⁵⁰ This is calculated by adding the number of days between when the vehicle was towed and when Respondent sent the notice to the registered owner (five days), and the additional day that Respondent charged (90 days instead of 89, as explained above).

the release fees. Indeed, Respondent can hardly be applauded for discounting storage charges given that Respondent's actions likely resulted in significantly higher storage charges in the first place.¹⁵¹

78. Although Respondent did not ultimately sell the Box Truck, the preponderance of the evidence establishes that Respondent may misunderstand the timeline within which Colorado law allows a towing carrier to sell an abandoned motor vehicle. It is in the public interest to clarify this to avoid Respondent selling, attempting to sell, or incorrectly informing members of the public that it will sell a towed vehicle in a manner inconsistent with the law. Under § 42-4-2104(1)(a), C.R.S., a towing carrier may not sell a vehicle abandoned on private property in less than 30 days *after the postmarked date* for the certified letter providing notice under § 42-4-2103, C.R.S., to the vehicle's owner and lienholder. Here, the notice letter is postmarked August 13, 2024, and the vehicle was towed on August 8, 2024.¹⁵² Testimony indicated that Respondent may be under the mistaken impression that the 30-day clock to sell the vehicle began to run on August 8, 2024, instead of August 13, 2024, (the postmarked date for the notice to the vehicle's registered owner).¹⁵³ This is incorrect. The 30-day clock does not begin to run until the postmarked date for the notice to the vehicle's registered owner.¹⁵⁴ In this case, the earliest date that Respondent could have sold the vehicle was September 12, 2024.

79. For the foregoing reasons and authorities, the ALJ sustains the Complaint. As noted, when a towing carrier performs a tow or stores a towed vehicle in violation of state statute

¹⁵¹ See *supra*, ¶¶ 25, 25, 30, 38, 47, 48, 70; Hearing Exhibits 108; Hearing Exhibit 121 at 4, 9; Hearing Exhibit 116 at 2; Hearing Exhibit 204. The notice to the registered owner lists the mileage fee as \$5 per mile. Hearing Exhibit 203. The authorized mileage rate at the time was \$4.24. See Hearing Exhibit 121 at 8. While Respondent did not ultimately charge this amount, it is worth noting so that Respondent takes better care to ensure that it does not provide incorrect information on the accumulated charges to registered owners of towed vehicles. Doing so may discourage vehicle owners from attempting to retrieve their vehicle, which raises additional concerns.

¹⁵² Hearing Exhibit 203 at 1; Hearing Exhibit 204.

¹⁵³ *Supra*, ¶¶ 19, 20, 21, 24.

¹⁵⁴ § 42-4-2104(1)(a), C.R.S.

or a Commission rule, the carrier may not charge or retain any fees or charges for the services performed.¹⁵⁵ Given this, the numerous Rule and statutory violations discussed above, the seriousness and implications of those violations (particularly as to requiring cash payment), Respondent is required to refund Complainant the entire amount paid for the Box Truck's release. The parties dispute that amount. Complainant repeatedly testified that he paid \$4,000; Mr. Gebere testified that he paid \$3,900; and the Second Invoice states that he paid \$3,900.¹⁵⁶ The ALJ finds that the weight of evidence indicates that Complainant paid \$3,900 for the vehicle's release. As such, Respondent will be required to refund \$3,900 to Complainant, as set forth below. For the same reasons, the ALJ will order Respondent to cease and desist the violations noted above.

80. 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.

IV. ORDER

A. The Commission Orders That:

1. The above-captioned Complaint is sustained, consistent with the above discussion.
2. Ameri Towing ("Respondent") is ordered to cease and desist committing the violations discussed above.
3. Respondent must refund \$3,900 to Complainant Johnnie Williams within 15 days of this Decision's effective date.
4. 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.

¹⁵⁵ Rule 6511(f), 4 CCR 723-6.

¹⁵⁶ Hearing Exhibit 204.

5. 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.

- a. 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.
- b. 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.

6. 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

MELODY MIRBABA

Administrative Law Judge

ATTEST: A TRUE COPY

Rebecca E. White,
Director