

Decision No. R04-1395

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04G-439CP

PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO,

COMPLAINANT,

V.

JOSEPH L. PAPINEAU, DOING BUSINESS AS PAPINEAU MOVING AND STORAGE,
INC.,

RESPONDENT.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
DALE E. ISLEY
ASSESSING CIVIL PENALTY**

Mailed Date: November 26, 2004

I. STATEMENT

1. This is a civil penalty assessment proceeding brought by the Staff of the Colorado Public Utilities Commission (Staff) against the Respondent, Joseph L. Papineau, doing business as Papineau Moving and Storage, Inc. (Papineau).

2. In Civil Penalty Assessment Notice (CPAN) No. 70020, Staff alleges that on February 2, 2004, Papineau violated § 40-14-103(1), C.R.S. (operating, offering, or advertising services as a mover without being registered with the Commission) (Count 1), § 40-14-104(1), C.R.S. (providing moving services without the proper motor vehicle liability or general liability insurance) (Counts 2 and 3); § 40-14-104(2), C.R.S. (providing moving services without the proper cargo insurance) (Count 4); and § 40-14-107(1), C.R.S. (failing to properly advertise

moving services) (Count 5). CPAN No. 70020 seeks imposition of a civil penalty in the total amount of \$13,750.00 for these alleged violations.

3. On September 8, 2004, the Commission issued an Order setting this matter for hearing on October 1, 2004, in Denver, Colorado.

4. The undersigned Administrative Law Judge (ALJ) called the matter for hearing at the assigned time and place. Staff appeared through its legal counsel. Papineau did not appear.

5. During the course of the hearing testimony was received in support of Staff's case from Mr. Tony Munoz, a Commission Compliance Investigator, and Mr. Lawrence Levin.¹ Exhibits 1 through 5 were identified, offered, and admitted into evidence. At the conclusion of the hearing the ALJ took the matter under advisement.

6. In accordance with § 40-6-109, C.R.S., the ALJ now transmits to the Commission the record and exhibits in this proceeding along with a written recommended decision.

II. FINDINGS OF FACT

7. In February of this year Mr. Levin retained Papineau to transport his household goods from 930 Acoma Street to 142 Dexter Street in Denver, Colorado. Papineau commenced the move on February 2, 2004 and completed it on February 7, 2004. Mr. Levin paid Papineau \$3,400.00 for this service. This price included the cost of "insuring" the goods for their full replacement value in the event they were damaged or lost. *See*, Exhibit 1.

8. Shortly after the goods were delivered, Mr. Levin discovered that one of his original oil paintings had been damaged. He attempted on numerous occasions to resolve this

¹ Mr. Levin appeared pursuant to a Subpoena to Testify issued on September 10, 2004.

problem with Papineau but was unable to do so. Therefore, on June 2, 2004, he lodged a written complaint with the Commission. *See*, Exhibit 1.

9. Mr. Levin's complaint was assigned to Mr. Munoz for investigation. Initially, he reviewed the Commission's records and determined that Papineau was not registered as a mover on February 2, 2004. He also determined that the Commission's records were devoid of any indication that Papineau maintained motor vehicle liability insurance, general liability insurance, or cargo insurance on that date. Accordingly, Mr. Munoz concluded that Papineau was not registered with the Commission on the date in question as required by § 40-14-103(1), C.R.S.² Nor did he have the required evidence of insurance on file with the Commission on that date as required by §§ 40-14-104(1) and (2), C.R.S. Mr. Munoz also reviewed various Yellow Page listings and determined that Papineau was actively advertising his moving services within these publications. *See*, Exhibits 3, 4, and 5.

10. Mr. Munoz attempted to contact Papineau on a number of occasions for the purpose of discussing the allegations contained in Mr. Levin's complaint. However, he did not respond to these attempts. Finally, on August 12, 2004, Mr. Munoz arranged to meet Papineau for the purpose of securing a bid for a fictitious shipment of household goods. He was then able to personally serve Papineau with a copy of CPAN No. 70020. Papineau acknowledged receipt of CPAN No. 70020 by signing the same. *See*, Exhibit 2.

11. Papineau had not paid any of the \$13,750.00 penalty referred to in CPAN No. 70020 as of the date of the hearing.

² *See also*, Sections 6616(a)(I) and 6608(a)(I), (II), and (III) of the Commission's Rules Regulating Household Goods Movers, 4 *Code of Colorado Regulations* 723-35. Emergency Household Goods Carrier Rules were in effect at the time the violations were documented in CPAN No. 70020. *See*, Decision No. C03-0890.

III. DISCUSSION

12. Section 40-14-103(1), C.R.S., provides that no person shall operate, offer, or advertise services as a mover upon the public highways of this state in intrastate commerce without first being registered with the Commission. As part of the registration process, the mover must, among other things, submit proof that it has in place the insurance coverage required by §§ 40-14-104(1) and (2), C.R.S. That statute requires that movers maintain motor vehicle liability, general liability, and cargo insurance policies in certain specified minimum amounts and to maintain adequate written documentation with the Commission that such insurance is in place. See, §§ 40-14-104(1), (2), and (3), C.R.S.

13. A mover's failure to comply with the registration requirement imposed by § 40-14-103(1), C.R.S., subjects it to a civil penalty of not more than \$1,100.00 for each day's violation. See, §§ 40-7-113 (1)(f.5) and 40-7-115, C.R.S. A mover's failure to comply with the motor vehicle liability insurance requirement imposed by § 40-14-104(1), C.R.S., subjects it to a civil penalty of not more than \$11,000.00 for each day's violation. See, §§ 40-7-113 (1)(a) and 40-7-115, C.R.S. A mover's failure to comply with the general liability and cargo insurance requirements imposed by §§ 40-14-104(1) and (2), C.R.S., subjects it to a civil penalty of not more than \$550.00 for each day's violation. See, §§ 40-7-113(2), C.R.S. and 4 *Code of Colorado Regulations* (CCR) 723-35-6624(c). Finally, a mover's failure to comply with the advertising requirements imposed by § 40-14-107(1), C.R.S., subjects it to a civil penalty of not more than \$550.00 for each day's violation. See, § 40-7-113(2), C.R.S., and 4 CCR 723-35-6624(c).

14. A "mover" is defined by § 40-14-102(9), C.R.S. as any person who engages in the transportation or shipment of household goods in intrastate commerce for compensation upon the public highways of this state by use of a motor vehicle. Household good are defined by § 40-14-

101(7), C.R.S., as, among other things, the personal effects and property used or to be used in a dwelling.

15. The evidence establishes that Papineau provided moving services on the date encompassed by CPAN No. 70020 within the meaning of the statutes referred to above. Therefore, Papineau was, on the date in question, subject to the registration, insurance, and advertising requirements set forth in §§ 40-14-103(1), 40-14-104(1) and (2), and 40-14-107(1), C.R.S.

16. Commission enforcement personnel have authority to issue CPANs under § 40-7-116, C.R.S. That statute provides that the Commission has the burden of demonstrating a violation by a preponderance of the evidence.

17. The testimony and exhibits admitted into evidence at the hearing conclusively establish that Papineau provided moving services on February 2, 2004, when he transported Mr. Levin's household goods from 930 Acoma Street to 142 Dexter Street in Denver, Colorado, over the public highways of this state for compensation. Mr. Munoz's undisputed testimony establishes that Papineau was not registered with the Commission as a mover on that date. Nor did he have the necessary proof of insurance on file with the Commission. Therefore, Papineau violated §§ 40-14-103(1) and 40-14-104(1) and (2), C.R.S., as alleged in Counts 1 through 4 of CPAN No. 70020.

18. The testimony and exhibits admitted into evidence at the hearing also establish that Papineau was advertising his moving service in the Yellow Pages as "Papineau Moving and Storage" during a time he was not registered as a mover with the Commission. Section 40-14-107(1), C.R.S., prohibits a mover from advertising a transportation service in a name other than that in which the mover's registration is held. Therefore, this statute effectively requires that a

mover be registered with the Commission before it can advertise its moving services. Since Papineau was not so registered, he violated § 40-14-107(1), C.R.S., as alleged in Count 5 of CPAN No. 70020.

19. Section 40-7-113, C.R.S., authorizes the Commission to consider aggravating or mitigating circumstances surrounding particular violations in order to fashion a penalty assessment that promotes the underlying purpose of such assessments. These include, among others, deterring future violations, motivating a carrier to come into compliance with the law, and punishing a carrier for prior, illegal behavior.

20. Based on the findings of fact and discussion above, the ALJ finds that the maximum civil penalty should be assessed in this case. Papineau did not appear at the hearing to defend the subject charges or to present any mitigating evidence. Therefore, the evidence presented by Staff is undisputed. The evidence also establishes that Papineau has been uncooperative in connection with efforts by Mr. Levin or Staff to resolve the problem that led to the issuance of CPAN No. 70020. These aggravating circumstances warrant imposition of the maximum penalty allowed by law.

IV. CONCLUSIONS

21. Staff has sustained its burden of proving the allegations contained in Counts 1 through 5 of CPAN No. 70020 by a preponderance of the evidence as required by § 40-7-116, C.R.S.

22. Papineau should be assessed the maximum civil penalty for the above-described violations due to the aggravating factors discussed above.

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

1. Respondent, Joseph L. Papineau, doing business as Papineau Moving and Storage, Inc., is assessed a civil penalty in the amount of \$1,100.00 in connection with Count 1 of Civil Penalty Assessment Notice No. 70020; \$11,000.00 in connection with Count 2 of Civil Penalty Assessment Notice No. 70020; and \$550.00 each in connection with Counts 3 through 5 of CPAN No. 70020. He shall pay the total assessed penalty of \$13,750.00 within ten days of the effective date of this Order.

2. 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.

3. 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.

4. 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.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge