

Decision No. R22-0594

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

PROCEEDING NO. 22G-0269TO

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COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

MR. ANDREW GARNER DOING BUSINESS AS THREE RIVERS TOWING AND RECOVERY LLC,

RESPONDENT.

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**RECOMMENDED DECISION OF  
ADMINISTRATIVE LAW JUDGE  
AVIV SEGEV  
ASSESSING CIVIL PENALTY, ORDERING REFUND,  
AND CLOSING PROCEEDING**

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Mailed Date: October 4, 2022

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**I. STATEMENT**

1. This proceeding concerns Civil Penalty Assessment Notice (CPAN) or Notice of Compliance to No. 130702 issued by Trial Staff of the Public Utilities Commission (Staff) on June

14, 2022 to Respondent Andrew Garner, d/b/a Three Rivers Towing and Recovery LLC (Three Rivers Towing or Respondent). The CPAN assessed Three Rivers a total penalty of \$6,325.00 for 15 violations of 6007(k), 6508(a)(I)(B), 6508(a)(I)(C), 6508(a)(I)(F), 6508(a)(I)(I), 6509(a)(IV), 6509(a)(IX), 6509(a)(V), 6509(a)(VI), 6509(a)(VII), 6509(a)(X), 6509(a)(XII), 6509(a)(XIII) 6511(b)(V), and 6513(a) of the Rules Regulating Transportation by Motor Vehicle 4 *Code of Colorado Regulations* (CCR) 723-6. The nature of the violations is listed in the CPAN as follows:

Motor Carrier or Person knowingly falsified, destroyed, mutilated, changed, or caused falsification, destruction, mutilation, or change of records subject to inspection by the Commission. (the “Date Out” and “Requested By” were added after the invoice was given to the consumer)

Towing agreement/contract missing required information per rule: the name, address, email address (if applicable), and telephone number of the property owner; (Invoice #2229).

Towing agreement/contract missing required information per rule: the address of the property from which the tows will originate; (Invoice #2229).

Towing agreement/contract missing required information per rule; the beginning date and ending date of the contract; (Invoice #2229).

Towing agreement/contract missing required information per rule: the date the contract is signed; (Invoice #2229).

Tow Record/Invoice missing required information per rule: no time the vehicle was placed in storage, no time the vehicle was released from storage, and no date/time law enforcement was notified (Invoice #2229).

Tow Record/Invoice missing required information per rule: no printed name for the tow truck driver (Invoice #2229).

Tow Record/Invoice missing required information per rule: no year of the vehicle listed (Invoice #2229).

Tow Record/Invoice missing required information per rule: no origin or destination addresses for the tow and no one-way mileage listed (Invoice #2229).

Tow Record/Invoice missing required information per rule: incomplete authorization (Invoice #2229).

Tow Record/Invoice missing required information per rule: mileage not itemized, only a charge total (Invoice #2229).

Tow Record/Invoice missing required information per rule – Missing required PUC notice language on at least the customer’s copy of the tow record/invoice was the following notice in a font size of at least ten: “Report problems to the Public Utilities Commission at (303) 894-2070” (Invoice #2229).

Tow Record/Invoice missing required information per rule – Missing case number or other identifiable entry provided by law enforcement (Invoice #2229)

Towing carrier assessed an improper fee/charge related to a private property impound: a “processing fee” was applied in addition to allowed fees (Identifier/ > \$25.00 but </= \$150.00)

Failure to provide notice of parking limitations, regulations, restrictions, or prohibitions at the time the vehicle was parked. (Signage).

2. On July 18, 2022, Staff timely intervened of right.

3. On July 20, 2022, the Commission referred this proceeding to an Administrative

Law Judge (ALJ) by minute entry.

4. By Decision No. R22-0464-I, issued August 4, 2022, the undersigned ALJ adopted procedures and scheduled this matter for a hearing to occur on September 16, 2022, at 9:00 a.m.

5. Staff and Respondent are the only parties to this proceeding.

6. At the scheduled time and place, the undersigned ALJ called the matter for hearing.

Staff appeared through counsel and participated in the hearing. Respondent did not appear at the hearing. During the course of the hearing, Hearing Exhibits 101 through 112<sup>1</sup> were identified, offered, and admitted into evidence. Ms. Claire Breitschopf (Ms. Breitschopf), an adult Colorado resident, and Jay Estrada, Criminal Investigator, testified in support of the allegations contained in the CPAN at issue herein.

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<sup>1</sup> With respect to Hearing Exhibit 108, only its non-confidential version was admitted into evidence. Hearing Exhibit 108C was not admitted into evidence.

7. In reaching this Recommended Decision, the undersigned ALJ has considered all arguments and evidence presented, even if such arguments and/or evidence are not specifically addressed herein.

8. 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

9. Ms. Breitschopf is a resident of Fort Collins, Colorado, who, at all times pertinent herein, owned and operated a silver/gray Jeep Liberty vehicle, bearing the Colorado license plate ADT-P29 (Ms. Breitschopf's vehicle).

10. Investigator Estrada is an Investigator with the Staff. As part of his duties, Investigator Estrada investigates complaints filed with the Commission. He is familiar with Commission statutes and Commission rules that govern towing operators.

11. Investigator Estrada investigated Three Rivers Towing leading to the issuance of CPAN No. 130702.

12. At all times pertinent herein, Andrew Garner owned and operated Three Rivers Towing. Hearing Exhibit 106 at 2-3, Hearing Exhibit 107 at 2, and Hearing Exhibit 111 at 2.

13. In the course of his investigation into Three Rivers Towing, Investigator Estrada spoke to, and obtained documents and information from, Ms. Breitschopf and Respondent.

14. At all times pertinent herein, Three Rivers Towing held PUC Permit No. T-04860.<sup>2</sup> Hearing Exhibit 104 at 1 and Hearing Exhibit 107 at 2.

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<sup>2</sup> On July 21, 2022, pursuant to Recommended Decision R22-0385 in Proceeding No. 22C-0248-INS, Three Rivers Towing's PUC Permit No. T-04860 was revoked. The events giving rise to Decision R22-0385 occurred after the events giving rise to CPAN No. 130702. As such, events giving rise to Decision R22-0385 were not given consideration by the undersigned ALJ in reaching this Recommended Decision.

15. On January 28, 2022, at approximately 4:00 PM, Ms. Breitschopf parked her vehicle at the back of a dirt lot located behind the United States Postal Office (Post Office) at 4128 Main Street, Timnath, Colorado 80547 (Post Office lot). *See* Hearing Exhibit 100.

16. On January 28, 2022, when Ms. Breitschopf parked her vehicle at the Post Office lot, there was no visible parking- or tow-related signs at the entrance to the lot, nor near the parking space where Ms. Breitschopf parked her vehicle. While there were “NO PARKING” signs posted at the Post Office lot (*see* Hearing Exhibit 101), none identified the name, or included the telephone number, of Three Rivers Towing.

17. On January 28, 2022, after parking her vehicle at the Post Office lot and spending approximately forty-five minutes to an hour at a nearby business establishment, Ms. Breitschopf realized that her vehicle was missing from the Post Office lot.

18. Upon realizing that her vehicle was missing, Ms. Breitschopf called the towing company whose name and telephone number appeared on signs at the front of the Post Office and was advised that it was not towed by that company.

19. After searching for additional clues as to whether and by whom her vehicle might have been towed, Ms. Breitschopf found a piece of paper posted on the back door of the Post Office that stated: “IF YOUR CAR IS TOWED [*sic*] PLEASE CONTACT THREE RIVERS TOWING 970 666-1600.” Hearing Exhibit 101 at 9.

20. When Ms. Breitschopf called the Respondent, Mr. Garner answered. He said that Three Rivers Towing had indeed towed Ms. Breitschopf’s vehicle from the Post Office lot. In a subsequent telephone call, Mr. Garner told her she must pay \$426.21 to obtain the release of her vehicle.

21. On the evening of January 28, 2022, upon arriving at Three Rivers Towing's storage lot, Ms. Breitschopf asked Mr. Garner whether Three Rivers Towing had a photo showing Ms. Breitschopf's parking violation. Mr. Garner told Ms. Breitschopf that Three Rivers Towing had a photo showing Ms. Breitschopf's parking violation, but he could not provide it to her.

22. On the evening of January 28, 2022, after paying \$426.21 to Three Rivers to obtain the release of her vehicle, Ms. Breitschopf was given an invoice (Ms. Breitschopf's invoice). *See* Hearing Exhibit 110. Ms. Breitschopf's invoice did not include: the date and time that Ms. Breitschopf's vehicle was placed in or released from storage; the date and time law enforcement was notified of the tow; the printed name of the tow truck driver; the year of Ms. Breitschopf's vehicle; the origin and destination address of the tow; the one-way mileage for the tow; the name of the person authorizing the tow; itemization of mileage charges; required PUC notice language of certain substance and size; and the case report number or other identifiable entry provided by the law enforcement agency to which the tow was reported. *Id.* The invoice further indicated that Ms. Breitschopf was assessed a \$85.24 "Processing Fee." *Id.*

23. On the evening of January 28, 2022, Ms. Breitschopf noticed a discrepancy between the start time of the tow indicated on the Ms. Breitschopf's invoice (4:05 PM) and the start time verbally indicated by Mr. Garner to Ms. Breitschopf (approximately 4:30 PM to 4:45 PM). Ms. Breitschopf asked Mr. Garner whether he could ask the tow truck driver when exactly the tow was conducted. *See* Hearing Exhibit 103. Mr. Garner responded that she would have to subpoena Respondent to see the photo showing Ms. Breitschopf's parking violation or to know the exact time of the tow.

24. Ms. Breitschopf also requested Mr. Garner to provide her with, and Mr. Garner refused to provide to Ms. Breitschopf, the tow contract between Three Rivers Towing and the Post Office (Tow Contract).

25. Based upon investigation, Investigator Estrada attempted to facilitate the refund of Ms. Breitschopf's tow fee payment to Respondent in exchange for a warning letter from the Staff to the Respondent. *See* Exhibit 111. Mr. Garner indicated to Investigator Estrada, by telephone and email, that the payment would be refunded. *Id.*

26. Ms. Breitschopf was never refunded any portion of the \$426.21 payment to Three Rivers Towing.

27. Despite Investigator Estrada's contact attempts, on or about May 4, 2022, Mr. Garner ceased corresponding with Investigator Estrada. *Id.*

28. In the course of his investigation, Investigator Estrada obtained a copy of the Tow Contract. The Tow Contract: included an incomplete address of the property owner; included an incomplete address of the property from which the tows would originate; did not include the term; did not include the date the Tow Contract was signed; and indicated that the name of the person authorizing the Tow Contract on behalf of the Post Office was "Wonder Woman." Hearing Exhibit 109.

29. Investigator Estrada obtained a copy of Ms. Breitschopf's tow invoice from Three Rivers Towing during his investigation. He also obtained a copy of the tow invoice from Ms. Breitschopf that Three Rivers Towing provided her at the time her vehicle was released (Ms. Breitschopf's invoice). In comparing to the two, he found significant differences. The copy of the document provided by Three Rivers included entries in the fields "Date Out," and "Requested By" as well as language stating: "Report Problems to the Public Utilities Commission at: (303) 894-

2070.” Hearing Exhibit 112. As found above, these three items were omitted on Ms. Breitschopf’s invoice.

30. On or about June 6, 2022, at the conclusion of his investigation, Investigator Estrada issued CPAN No. 130702. *See* Hearing Exhibit 104.

31. Investigator Estrada mailed CPAN No. 130702, via certified mail, to Respondent’s physical and mailing addresses on file with the Commission, as well as a Respondent’s registered agent’s address on file with the Colorado Secretary of State.

32. Mr. Garner received, and accepted delivery of, CPAN No. 130702.

33. Staff is seeking a full pursuit of CPAN No. 130702, as well as a refund of Ms. Breitschopf’s \$426.21 tow fee.

### **III. DISCUSSION**

34. 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. The Commission only has penalty assessment authority to the extent provided by statute and the Commission must follow the provisions of those statutes when it imposes such penalties against towing carriers.

35. Except as otherwise provided by statute, the Administrative Procedure Act imposes the burden of proof in administrative adjudicatory proceedings upon “the proponent of an order.”<sup>3</sup> As provided in Commission Rule 4 CCR 723-1-1500 of the Commission’s Rules of Practice and Procedure, “[t]he proponent of the order is that party commencing a proceeding.” Here, Staff is the proponent since it commenced the proceeding through issuance of the CPAN. Staff bears the

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<sup>3</sup> § 24-4-105(7), C.R.S.

burden of proof by a preponderance of the evidence.<sup>4</sup> The preponderance standard requires the finder of fact to determine whether the existence of a contested fact is more probably than its non-existence.<sup>5</sup> While the quantum of evidence that constitutes a preponderance cannot be reduced to a simple formula, a party has met this burden of proof when the evidence, on the whole and however slightly, tips in favor of that party.

36. Section 40-7-116, C.R.S. mandates a number of procedures for the imposition of civil penalties by the Commission. After specifying that the listed officials are the ones authorized to issue civil penalty assessments for violations of law, § 40-7-116(1)(a), C.R.S., states that, “When a person is cited for the violation, the person operating the motor vehicle involved shall be given notice of the violation in the form of a civil penalty assessment notice.” Section 40-7-116(1)(b), C.R.S., further directs that the civil penalty assessment notice “shall be tendered by the enforcement official, either in person or by certified mail, or by personal service by a person authorized to serve process under rule 4(d) of the Colorado rules of civil procedure.”<sup>6</sup> Section 40-7-116(1)(b) (I)-(VII), C.R.S., further directs that the civil penalty assessment notice “...shall be tendered by the enforcement official;” and that it shall contain “[t]he name and address of the person cited for the violation; [a] citation to the specific statute or rule alleged to have been violated; [a] brief description of the alleged violation, the date and approximate location of the alleged violation; and the maximum penalty amounts prescribed for the violation; [t]he date of the notice; [a] place for the person to execute a signed acknowledgment of receipt of the civil penalty assessment notice; [a] place for the person to execute a signed acknowledgement of liability for

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<sup>4</sup> See § 13-25-127(1), C.R.S. and 4 CCR 723-1-1500.

<sup>5</sup> *Swain v. Colorado Dept. of Revenue*, 717 P.2d 507 (Colo. App. 1985).

<sup>6</sup> § 40-7-116, C.R.S.

the violation; and [s]uch other information as may be required by law to constitute notice of a complaint to appear for hearing if the prescribed penalty is not paid within ten days.”<sup>7</sup>

37. The evidence establishes the Commission’s jurisdiction in this proceeding. The CPAN No. 130702 was served upon Respondent in via certified mail and in accordance with § 40-7-116(1)(b), C.R.S.

38. Commission Staff met its burden of proof when the evidence, on the whole, tipped in its favor and was not rebutted by Respondent.

39. Pursuant to 40-10.1-106, C.R.S.:

(1) The commission has the authority and duty to prescribe such reasonable rules covering the operations of motor carriers as may be necessary for the effective administration of this article, including rules on the following subjects:

(a) Ensuring public safety, financial responsibility, consumer protection, service quality, and the provision of services to the public;

(b) The circumstances under which a towing carrier may perform a nonconsensual tow of a motor vehicle, the responsibilities and facilities of the towing carrier for the care or storage of the motor vehicle and its contents, and the minimum and maximum rates and charges to be collected by the towing carrier for the nonconsensual towing and storage of the motor vehicle.

40. A towing carrier may not perform a nonconsensual tow of a motor vehicle, other than an abandoned motor vehicle, from private property unless notice is provided in accordance with Rule 6513. A towing carrier shall not charge or retain any fees other than in accordance with

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<sup>7</sup> § 40-7-116, C.R.S.

Rule 6511 for the nonconsensual tow of a motor vehicle from private property. Towing carriers performing nonconsensual tows are required to use and complete all applicable portions of a tow invoice form that complies with Rule 6509. Towing carriers are required to maintain an accurate copy of all records required by Commission rules and to make them available for inspection in accordance with Rule 6007. According to Rule 6007(k), 4 CCR 723-6: “No Person shall knowingly falsify, destroy, mutilate, change, or cause falsification, destruction, mutilation, or change to any record subject to inspection by the Commission.”

41. Here, the evidence of record based upon Investigator Estrada’s investigation demonstrates that Respondent committed each of the alleged 15 violations of the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6. Respondent failed to post notice in compliance with Rule 6513. Respondent charged a processing fee not permitted for in Rule 6511. Respondent failed to complete and maintain an accurate copy of a tow invoice that complies with Rule 6509. And Respondent knowingly changed or caused change to the tow invoice before making it available for inspection by Investigator’s Estrada in accordance with Rule 6007.

42. Having found the above violations of the cited regulations, it is necessary to determine the amount of the civil penalty to be assessed for these violations. Section 40-7-112, 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.

43. In accordance with Rule 1302(b), Rules of Practice and Procedure:

[T]he Commission may impose a civil penalty, when provided by law, after considering evidence...the following factors:

(I) [T]he nature, circumstances, and gravity of the violation;

- (II) [T]he degree of the respondent's culpability;
- (III) [T]he respondent's history of prior offenses;
- (IV) [T]he respondent's ability to pay;
- (V) [A]ny good faith efforts by the respondent in attempting to achieve compliance and to prevent future similar violations;
- (VI) [T]he effect on the respondent's ability to continue in business;
- (VII) [T]he size of the business of the respondent; and
- (VIII) [S]uch other factors as equity and fairness may require.

Rule 1302(b) of the Rules of Practice and Procedure, 4 CCR 723-1.

44. The ALJ notes that Respondent: ceased corresponding with investigator Estrada despite Investigator's Estrada's attempts to correspond with Respondent; reneged on its promise to refund and never refunded any portion of Ms. Breitschopf payment; operated pursuant to a tow contract not in compliance with Commission rules (e.g., the authorizing person was indicated on the contract as "Wonder Woman"); and did not refute any of the evidence presented by Staff. Respondent's conduct underscores a lack of respect towards the Commission's rules.

45. Based on the evidence presented and findings of fact, the ALJ find that the following civil penalty achieves the following purposes underlying civil penalty assessments to the maximum extent possible within the Commission's jurisdiction: (a) deterring future violations, whether by other similarly situated carriers and by Respondent; and (b) punishing Respondent for its past illegal behavior.

46. A civil penalty of \$1,265.00, which includes a 15 percent surcharge, will be assessed for the proven violation in Count 1 of CPAN No. 130702.

47. Civil penalties, each in the amount of 316.25, each of which includes a 15 percent surcharge, for a total of \$3,795.00, will be assessed for the proven violations in Counts 2-13 of CPAN No. 130702.

48. Civil penalties, each in the amount of 632.50, each of which includes a 15 percent surcharge, for a total of \$1,265.00, will be assessed for the proven violations in Counts 14-15 of CPAN No. 130702.

49. Staff further requests that the Commission order Respondent to refund the Ms. Breitschopf's tow charge payment of \$426.21. Such relief is consistent with Rule 6511(g) and will be ordered below.

50. Pursuant to § 40-6-109(2), C.R.S., the Administrative Law Judge recommends that the Commission enter the following order.

#### IV. **ORDER**

##### **A. The Commission Orders That:**

1. Andrew Garner, d/b/a Three Rivers Towing and Recovery LLC (Respondent) is assessed a civil penalty of \$5,500.00, plus an additional 15 percent surcharge in the amount of \$825.00, for a total of \$6,325.00, for the violations discussed and found above.

2. No later than 30 days following the date of the final Commission decision issued in this Proceeding, Respondent shall pay to the Commission the civil penalties and the surcharge assessed in Ordering Paragraph No. 1.

3. In accordance with Rule 6511(g) of the Rules Regulating Transportation by Motor Vehicle 4 *Code of Colorado Regulations* 723-6, Respondent shall refund \$426.21 to Ms. Claire Breitschopf no later than 30 days following the date of the final Commission decision issued in this Proceeding.

4. Proceeding No. 22G-0269TO is 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 § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

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.

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.

7. 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

AVIV SEGEV

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Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads 'Doug Dean'.

Doug Dean, Director