

Decision No. R25-0395

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

PROCEEDING NO. 24G-0535TO

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COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

EA TOWING, INC.,

RESPONDENT.

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**RECOMMENDED DECISION  
ASSESSING CIVIL PENALTIES**

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Issued Date: May 27, 2025

**I. STATEMENT**

1. This proceeding concerns Civil Penalty Assessment Notice (“CPAN”) No. 142401 issued by Commission Staff (“Staff”) on December 2, 2024, against Respondent EA Towing Inc. (“Respondent” or “EA Towing”). The CPAN assessed EA Towing a total penalty of \$4,053.00 for 12 violations of rules contained in 4 *Code of Colorado Regulations* (CCR) 723-6, and Colorado Revised Statutes. The violations are specifically listed in the CPAN.

2. The CPAN indicates that it was served by certified mail on December 9, 2024, to the Respondent.

3. On January 8, 2025, the Commission referred this proceeding to an Administrative Law Judge (“ALJ”) by minute entry.

4. On January 15, 2025, Trial Staff of the Commission (“Staff”) filed its Notice of Intervention as of Right and Entry of Appearance in this proceeding.

5. On January 22, 2025, by Decision No. R25-0036-I, a prehearing conference was scheduled for February 13, 2025.

6. On March 17, 2025, by Decision No. R25-0119-I, an evidentiary hearing was scheduled for April 22, 2024.

7. On April 16, 2025, Staff filed its Motion to Amend CPAN and Shorten Response Time (“Motion to Amend CPAN”).

8. On April 22, 2025, the above captioned proceeding was called. Counsel for Staff entered her appearance. Mr. Elias Arana appeared for the Respondent.

9. The undersigned ALJ explained the hearing procedures to the parties and then allowed Mr. Arana to represent the Respondent pro se. The ALJ addressed preliminary matters including granting the Motion to Amend CPAN. With the granting of the Motion to Amend violation number two was amended from Rule 6509(a)(I) to Rule 6509(a)(II).

10. Staff offered the testimony of Criminal Investigator Joseph Potts. Mr. Arana testified on behalf of the Respondent. Hearing Exhibits 100, 100(c) and 104-109 were offered and admitted. At the conclusion of the evidence the record was closed, and the matter was then taken under advisement.

11. In reaching this Recommended Decision the ALJ has considered all the arguments presented, including those arguments not specifically addressed in this Decision. Likewise, the

ALJ has considered all evidence presented at the hearing, even if the evidence is not specifically addressed in this Decision.

12. Pursuant to § 40-6-109, C.R.S., the ALJ now transmits to the Commission the record of the hearing and a written recommended decision in this matter.

**II. FINDINGS OF FACT**

13. Joeseph Potts is a Criminal Investigator (“CI”) for the Commission. CI Potts has been employed by the Commission for approximately three years. Hr. Tr. April 22, 2025, p.11:9–13.

14. A consumer complaint was filed by an employee at U-Haul against EA Towing for a tow that occurred on October 16, 2024. Id. at p12:2-21.

15. The U-Haul employee believed that U-Haul had been charged fees not authorized for a law enforcement tow. Id at p.12: 11-14.

16. The tow occurred at 6630 Onieda Street, Commerce City Colorado. Id. at p.12: 24-25.

17. EA Towing has had an active Commission towing permit since 2012. Id. at 16:20-25.

18. The designated agent for EA towing is Elias Arana. Exhibit 101.

19. The mailing address for EA Towing is 15416 North 83rd Street in Longmont, Colorado. Exhibit 101.

20. On October 16, 2025, EA Towing had 7880 Welby Road in Denver, Colorado listed with the Commission as the location of its storage facility. Exhibit 100.

21. CI Potts spoke to two U-Haul employees about the incident. The U-Haul employees stated that one of their trailers had been abandoned in Commerce City. The Commerce City Police located the trailer and had EA Towing remove the trailer. Hr. Tr. April 22, 2025, p.11:9–13

22. The tow invoice from the tow indicates the trailer was towed to 8280 Welby Rd. Exhibit 104.

23. The invoice used by EA towing has many defects and deficiencies, including no indication of the time the tow was ordered, time and date the trailer is released, names of the person it was released to, name of the tow driver, unit number of the tow truck, time of dispatch, time the trailer was unhooked. Hr. Tr. April 22, 2025, p.37-41:2–24

24. EA Towing charged U-Haul for a winch fee and hook up fee which are not allowed for a law enforcement ordered tow. Id. at p 15:15-21.

25. CI Potts contacted Mr. Arana on the telephone and advised him that the invoice contained fees that were not authorized to be charged for law enforcement-ordered tows and that the invoice was lacking a number of items. Id at p.48: 1.18-24.

26. Mr. Arana stated there is construction near 7880 Welby Road in Denver, Colorado making it impossible to get to EA Towing’s storage facility by motor vehicle. Due to the construction near the storage lot, EA Towing has needed to tow vehicles to Mr. Arana’s residence in Longmont. Id. at 49: 4-8.

27. EA Towing towed the U-Haul trailer to Mr. Arana’s residence on October 16, 2024. Id. at p. 76: 19-23.

28. Mr. Arana’s residence in Longmont was not listed as a storage facility for EA Towing with the Commission on October 16, 2024. Hearing Exhibit 101.

29. CI Potts told Mr. Arana that if he refunded the amount collected from the tow of the U-Haul trailer on October 16, 2024, he would not be issued a CPAN. Hr. Tr. April 22, 2025, p.54:12–16.

30. The CPAN was delivered and received by certified mail to the Respondent. Hearing Ex. 8 & 9.

31. CI Potts is unaware of any aggravating factors against the Respondent. Hr. Tr. April 22, 2025, p.70:8-11.

32. Mr. Arana has updated his storage facility with the Commission and has corrected issues with his tow tickets. Id at pp.77:4-78:14.

33. Mr. Arana admits to mistakes that led to the issuance of the CPAN. Id. at pp.75:18-77:12.

**III. ISSUES**

34. Did Staff prove by a preponderance of the evidence that the Respondent committed the violations alleged in CPAN No. 142401?

35. If the Respondent committed the violations in CPAN No. 142401 - what, if any, penalties should be assessed?

**IV. APPLICABLE LAW**

36. As the proponent of a Commission order, Complainant has the burden of persuasion in this proceeding pursuant to 4 CCR 723-1-1500 of the Rules of Practice and Procedure.

37. 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, § 116 states that, "When a person is cited for such violation, the person operating the motor vehicle involved shall be given notice of such

violation in the form of a civil penalty assessment notice." Section 116 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." § 40-7-116, C.R.S.

38. 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." § 24-4-105(7), C.R.S. As provided in Commission Rule 4 CCR 723-1-1500, "[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. The Complainant bears the burden of proof by a preponderance of the evidence. See, § 13-25-127(1), C.R.S.; 4 CCR 723-1-1500.

39. The preponderance standard requires the finder of fact to determine whether the existence of a contested fact is more probable than its non-existence. *Swain v. Colorado Dept. of Revenue*, 717 P.2d 507 ("Colo. App.1985"). 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.

40. Proper service of the CPAN is vital. "The mandatory requirements for valid service of process are fundamental because of the due process requirements of notice. *Bush v. Winker*, 892 P.2d 328, 332 ("Colo. App. 1994").

## V. DISCUSSION

41. Based upon the testimony of the witnesses there is no question that the wrong address for EA Towing's storage facility was filed with the Commission on October 16, 2024 and the tow ticket used by EA Towing on October 16, 2024, did not have the proper information.

42. There is also no question that there were two charges on the tow ticket that are prohibited under Commission rules.

43. Service of the CPAN was done properly through certified mail.

44. Staff has met its burden of proof on all the alleged violations contained in CPAN No. 142401.

45. The only question to decide is what if any penalties should be assessed against the Respondent.

46. Staff requested that the full penalty for each proven violation be assessed against the Respondent (\$4,053.75) and that U-Haul be refunded \$1,617.17.

47. Pursuant to commission rules 4 CCR 723-1-1302(b):

The Commission may impose a civil penalty after considering any evidence concerning some or all of the following factors:

- a. The nature, circumstances, and gravity of the violation;
- b. The degree of the respondent's culpability;
- c. The respondent's history of prior offenses;
- d. The respondent's ability to pay;
- e. Any good faith efforts by the respondent in attempting to achieve compliance and to prevent future similar violations;
- f. The effect on the respondent's ability to continue in business;
- g. The size of the business of the respondent; and
- h. Such other factors as equity and fairness may require

48. The ALJ finds there is substantial mitigation in this proceeding.

49. The tow conducted was a legal law enforcement-ordered tow. This is not a case of predatory towing.

50. The Respondent readily admitted to the violations.

51. The Respondent has never been issued a CPAN in the past.

52. The Respondent was told that if it refunded the amount charged for the tow on October 16, 2024, it would not have been issued a CPAN in the instant proceeding.

53. The Respondent responded quickly to inquiries about the tow and provided requested documentation in a prompt manner.

54. The Respondent has rectified the issues with the storage lot and the tow ticket.

55. The Respondent charged a lower hourly rate for the tow than allowed by law.

56. It is the belief of the undersigned ALJ that in most cases, the efforts of the Commission should be aimed at compliance rather than punishment. The Respondent is now in compliance with Commission rules.

57. Equity and fairness require that the civil penalty be reduced based upon the mitigation. The Respondent is assessed a civil penalty of \$1,450 and is ordered to return \$125.00<sup>1</sup> to U-Haul as a partial refund.

## VI. ORDER

### A. It is Ordered That:

1. EA Towing Inc. ("Respondent") violated one count of:
  - 4 CCR 723-6005(c)
  - 4 CCR 723-6-6509 (a)(II)
  - 4 CCR 723-6-6509(a)(III)
  - 4 CCR 723-6509 (a)(IV)
  - 4 CCR 723-6-6509 (a)(IX)
  - 4 CCR 723-6-6509 (a)(VIII)
  - 4 CCR 723-6-6509(a)(XI)
  - 4 CCR 723-6-6509(a)(XII)
  - 4 CCR 723-6511(c)
  - 4 CCR 723-6-6511(c)(IV)(A)
  - 4 CCR 723-6-6511(c)(IV)(B); and

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<sup>1</sup> The amount that EA Towing was prohibited from charging for law enforcement ordered tow.



- 4 CCR 723-6-6512(c)
2. Respondent is ordered to pay to the Commission, within 30 days of the date that this Recommended Decision becomes the decision of the Commission, the sum of \$1,450.00. This amount represents the total of the civil penalty assessed for the violations found in Ordering Paragraph No. 1 plus the mandatory surcharge imposed by § 24-34-108, C.R.S.
  3. Consistent with the discussion above, Respondent shall refund the trailer owner \$125.00 received for the tow conducted on October 16, 2024.
  4. The reimbursement ordered in Ordering Paragraph No. 3 is due and payable not later than 30 days following the date of the final Commission decision issued in this Proceeding. The Respondent may work with Transportation Staff of the Commission to facilitate the reimbursement.
  5. Proceeding 24G-0535TO is now closed.
  6. 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.
  7. 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.

8. 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

ROBERT I. GARVEY

Administrative Law Judge

ATTEST: A TRUE COPY

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

Rebecca E. White,  
Director