

Decision No. C14-0116

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 13G-0913TO

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

COLLINS TOWING INC.,

RESPONDENT.

**DECISION DENYING APPLICATION FOR REHEARING,
REARGUMENT, OR RECONSIDERATION**

Mailed Date: January 31, 2014
Adopted Date: January 29, 2014

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of a pleading filed by Collins Towing, Inc. (Collins Towing or Respondent) on January 3, 2014. Being fully advised in the matter and consistent with the discussion below, we construe this pleading as an application for rehearing, reargument, or reconsideration (RRR) to Decision No. C14-0014 and deny the RRR.

B. Background

2. On March 8, 2013, Collins Towing towed a vehicle owned by a Mr. Joel McVay in Colorado Springs, Colorado. Mr. McVay paid Collins Towing \$370 to retrieve his car.

Mr. McVay filed a complaint with the Commission because he believed Collins Towing towed his vehicle without a proper authorization.¹

3. Staff investigator Mr. Michael Gullatte obtained a copy of the contract between Paramount Group, LLC (Paramount), the property management company for the lot where the vehicle was towed.² Mr. Gullatte concluded that the contract did not comply with applicable Commission rules because it was not signed and dated by a representative of Collins Towing and did not include an effective timeframe for the contract.³ Mr. Gullatte then served a Civil Penalty Assessment Notice (CPAN) on Collins Towing. Staff of the Commission (Staff) served a CPAN to Collins Towing for towing a vehicle without authorization and retaining fees for that tow in violation of Rules 4 *Code of Colorado Regulations* (CCR) 723-6-6508(b)(I) and 4 CCR 723-6-6508(c) of the Commission's Rules Regulating Transportation by Motor Vehicle. Prior to serving the CPAN, Mr. Gullatte gave Collins Towing an opportunity to refund \$370 to Mr. McVay and receive a warning.⁴

4. During the hearing, both Mr. David Collins⁵ and Mr. Kyle Doughty⁶ admitted that the contract between Collins Towing and Paramount does not authorize Collins Towing to tow vehicles for failing to display a parking permit, despite the fact that Mr. McVay's vehicle was towed for that very reason. Mr. Collins and Mr. Doughty also acknowledged that the contract

¹ *Id.*, ¶¶ 12-14.

² Hearing Exhibit 5.

³ *Id.*, ¶ 19.

⁴ *Id.*, ¶ 20-25.

⁵ Mr. Collins is the owner of Collins Towing.

⁶ Mr. Doughty works for Collins Towing as a tow truck driver. He towed Mr. McVay's vehicle on March 8, 2013.

did not include an effective timeframe for the contract.⁷ Mr. Collins indicated that this is an error that will be corrected.⁸

5. The Administrative Law Judge (ALJ) noted that Rule 6508(b)(I) requires towing carriers to have authorization before towing a motor vehicle. One of the ways to obtain that authorization is by request of the owner of the real property from which the vehicle is towed. The agreement between the towing carrier and the property owner must be in writing. Rules 6508(a) and (b)(II). In addition, Rule 6508(a)(I) requires that the written agreement include the effective timeframe for the agreement, and signatures of the property owner and the towing carrier. Rules 6508(a)(I)(F) and (H).⁹

6. The ALJ noted that Messrs. Collins and Doughty admitted that the Paramount contract does not identify an effective timeframe for the agreement. The ALJ found that the Paramount contract did not comply with the Commission Rules. The ALJ also found that, even if that contract did have an effective timeframe, it was ineffective for purposes of the McVay tow because it does not authorize Collins Towing to tow vehicles for failing to display a parking permit.

7. The ALJ imposed a civil penalty of \$1,100 out of a maximum of \$2,420. The ALJ noted that Collins Towing had a good faith belief that the Paramount contract was valid, but also that the carrier had a history of performing tows without authorization.¹⁰ The ALJ also

⁷ Recommended Decision, ¶¶ 31, 38.

⁸ *Id.*

⁹ *Id.*, ¶¶ 43-45.

¹⁰ *Id.*, ¶¶ 59-60.

ordered Collins Towing to refund \$370 to the customer.¹¹ Finally, the ALJ ordered Respondent to cease and desist from performing tows in the State of Colorado without authorization.¹²

8. Collins Towing filed exceptions to the Recommended Decision. By Decision No. C14-0014 issued January 7, 2014, the Commission denied these exceptions because Collins Towing only stated that it “would like to request a review and/or appeal of Docket No. 13G-0913[T]O,” without providing any argument for modifying the Recommended Decision.

9. In its RRR, Respondent lists three arguments why the Recommended Decision is in error. First, Respondent argues that the contract for the tow was valid and had an effective timeframe because it stated that “[t]his contract will remain in effect until cancellation of written notice by either of the principle parties.” (emphasis in original) Further, Respondent argues that it properly completed the tow ticket for the towed vehicle. Finally, Respondent states that Mr. McVay was not the legal owner of the vehicle at the time.

C. Discussion

10. As an initial matter, the legal ownership of the towed vehicle and whether or not the tow ticket for that vehicle was properly completed are irrelevant to the bases upon which the ALJ imposed the civil penalty. These bases are: (1) the contract between the real property owner and the towing carrier did not have an effective timeframe, in violation of Commission rules; and (2) even if the contract was valid, it did not allow towing for failure to display a parking permit.

11. Further, Collins Towing did not file a transcript in order to amend, modify, annul, or reverse the basic findings of fact set forth in the Recommended Decision. Therefore, under

¹¹ *Id.*, ordering ¶¶ 1 and 2.

¹² *Id.*, ordering ¶ 5.

§ 40-6-114(4), C.R.S., the Commission must conclusively presume that the basic findings of fact set forth in the Recommended Decision are complete and accurate. These basic findings of fact include admissions by Messrs. Collins and Doughty that the Paramount contract did not identify an effective timeframe for the agreement.

12. Even if Collins Towing could properly challenge whether the Paramount contract had an effective timeframe, there is an independent reason for the CPAN: the contract did not authorize Collins Towing to tow vehicles for failure to display a parking permit. Mr. Collins and Mr. Doughty admitted this during the hearing *and* that the McVay vehicle was towed for that very reason.¹³ The RRR fails to even mention this basis for the CPAN.

13. Finally, our review of the Recommended Decision indicates the ALJ balanced all mitigating and aggravating factors in this case. We find that the Recommended Decision is just and reasonable and supported by the record. We therefore deny the RRR.

II. ORDER

A. The Commission Orders That:

1. The filing submitted by Collins Towing, Inc., on January 3, 2014 is construed as an application for rehearing, reargument, or reconsideration (RRR) to Decision No. C14-0014.

2. The RRR to Decision No. C14-0014 filed by Collins Towing, Inc., on January 3, 2014 is denied.

3. This Decision is effective on its Mailed Date.

¹³ *Id.*, ¶¶ 31, 38.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
January 29, 2014.**

(S E A L)



ATTEST: A TRUE COPY

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

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JOSHUA B. EPEL

PAMELA J. PATTON

GLENN A. VAAD

Commissioners