

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14C-0120-INS

IN THE MATTER OF COMMISSION ACTION AGAINST THE CERTIFICATE(S)
AND PERMIT(S) OF MOTOR CARRIERS CONCERNING FINANCIAL
RESPONSIBILITY PURSUANT TO § 40-10.1-112, C.R.S., AND RULE 4 CCR 723-6-6008
OF THE RULES REGULATING TRANSPORTATION BY MOTOR VEHICLES.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
REVOKING AUTHORITIES AND PERMITS
PURSUANT TO COMPLAINT**

Mailed Date: February 27, 2014

I. STATEMENT, FINDINGS, AND CONCLUSIONS

1. The cases listed on the attached Appendix A (Hearing Exhibit 1) were instituted by “Order of Summary Suspension and Complaint and Notice of Hearing,” (Complaint), issued by the Commission Director and served upon the Respondents on February 7, 2014 (Hearing Exhibit 2) by United States mail, at the most recent addresses on file with the Commission for the Respondents. The Complaint provided notice of the date, time, and location of the hearing regarding the Complaint. It also provided notice of the nature of the Complaint against the Respondents. At the designated date, time, and location, February 25, 2014 at 12:00 p.m. in a Commission Hearing Room, at 1560 Broadway, Suite 250, Denver, Colorado, the undersigned Administrative Law Judge called the cases for hearing.

2. Commission Staff member Vanessa Condra appeared through counsel and testified on behalf of the Staff of the Commission (Staff). Respondent Timothy Milliard appeared. No other Respondent appeared.

3. Hearing Exhibits 1 and 2 were identified, offered, and admitted into evidence during the hearing.

4. Pursuant to § 40-10.1-107, C.R.S., and Rule 6007 of the Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* (CCR) 723-6, every motor carrier must keep and maintain evidence of financial responsibility in such sum, for such protection, and in such form as the Commission deems necessary to adequately safeguard the public interest.

5. In addition, § 42-20-202(2)(a), C.R.S., requires that motor carriers with a Commission permit to transport hazardous materials must maintain and file proof of liability insurance. At any time said insurance lapses, the Commission “shall” revoke the permit. *Id.*

6. Moreover, every towing carrier must obtain and keep in force at all times workers’ compensation coverage in accordance with the “Workers’ Compensation Act of Colorado” found in Articles 40 to 47 of Title 8, C.R.S. *See* Rule 6007(a)(V), 4 CCR 723-6. Towing carriers providing storage also must obtain and keep in force at all times garage keeper’s liability insurance coverage. Rule 6007(a)(IV), 4 CCR 723-6.

7. Section 40-10.1-112, C.R.S., and the Commission’s rules implementing that section, provide that, after hearing upon notice to the holder of any certificate or permit, and upon proof of violation, a Commission issued authority or permit may be suspended, revoked, altered, or amended if it is established to the satisfaction of the Commission that the holder of that authority or permit has violated any applicable statute, rule, regulation, or Commission decision. Rule 6008, 4 CCR 723-6; *see* Hearing Exhibit 2.

8. The Complaints are in compliance with Rule 6008(a), 4 CCR 723-6. The Complaints were served upon the Respondents listed on Appendix A, at the most recent addresses onfile with the Commission. Hearing Exhibit 2. Service was proper.

9. Mr. Milliard is an individual doing business as Milliard's Mobile Maintenance and Towing. Mr. Milliard is the sole proprietor and owner of Milliard's Mobile Maintenance and Towing. Mr. Milliard's Commission Permit No. T-04209 is issued in his name, doing business as Milliard's Mobile Maintenance and Towing. Hearing Exhibit 2. As an initial matter, the ALJ finds that Mr. Milliard may represent his own interests in this proceeding pursuant to Rule 1201(b)(I), of the Rules of Practice and Procedure, 4 CCR 723-1.

10. Mr. Milliard testified on his own behalf. He allowed his insurance to lapse because the vehicle he utilizes for his business has been out of service for some time and he is unable to pay for repairs to the vehicle. He testified that he has not operated his business since allowing his insurance to lapse. Mr. Milliard does not know when his vehicle will be working again, and therefore, does not know when he will be in a position to pay for insurance as required.

11. At hearing, Staff established by a preponderance of the evidence that the Commission's records do not show a currently effective level of financial responsibility, including, but not limited to hazardous materials transportation carriers' liability insurance, garage keeper's liability insurance, and worker's compensation coverage, in such form and in such manner as required for the Respondents as stated in Appendix A. §§ 40-10.1-107 and 42-20-202(2)(a), C.R.S.; Articles 40 to 47 of Title 8, C.R.S.; Rule 6007, 4 CCR 723-6.

12. The Commission's only means of performing the important health and safety function of guaranteeing that persons who hold an authority permit from the Commission have current, effective insurance, including but not limited to hazardous materials transportation carriers' liability insurance, garage keeper's liability insurance, and worker's compensation coverage, is to have documentation of that fact furnished in a uniform format to the Commission. The holder of the authority is responsible for providing that documentation to the Commission. §§ 40-10.1-107 and 42-20-202(2)(a), C.R.S.; Articles 40 to 47 of Title 8, C.R.S.; Rule 6007(i), 4 CCR 723-6.

13. Although the ALJ is sympathetic to Mr. Milliard's financial difficulties, under the circumstances, the ALJ does not perceive any benefit to allowing Mr. Milliard additional time to file proof of financial responsibility. Indeed, Mr. Milliard does not know when he will be able to repair his vehicle and pay for the required insurance. Consequently, as with the other Respondents, the ALJ recommends that Mr. Milliard's permit be revoked.

14. Because the Respondents listed in Appendix A have failed to keep currently effective proof of financial responsibility on file with the Commission, including but not limited to hazardous materials transportation carriers' liability insurance, garage keeper's liability insurance, and worker's compensation insurance, and none have shown good cause for such failure, the authorities and permits listed in Appendix A should be revoked.

15. Pursuant to § 40-6-109, C.R.S., the Administrative Law Judge transmits to the Commission the record of this proceeding, this recommended decision containing findings of fact and conclusions thereon, and a recommended order.

II. ORDER

A. The Commission Orders That:

1. Consistent with the discussion above, the Respondents' authorities or permits listed in Appendix A attached hereto are revoked as of the effective date of this Decision.

2. Ordering Paragraph No. 1 shall be void and the case dismissed as to any affected Respondent who:

- (a) files the required Certificate of Insurance with the Commission before the effective date of this Recommended Decision; or
- (b) files a notice with the Commission before the effective date of this Recommended Decision that workers' compensation coverage is no longer required; the notice shall include a factual basis for the conclusion that workers' compensation coverage is not required.

3. 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.

4. 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.

5. 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

Doug Dean,
Director