

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14C-0208-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: March 26, 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 March 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, March 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). No 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(a)(I) 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. Towing carriers must maintain several specific types of financial responsibility coverage. In particular, towing carriers providing storage must obtain and keep in force at all times garage keeper's liability insurance coverage. Rule 6007(a)(IV), 4 CCR 723-6. Towing carriers must also obtain and keep in force at all times cargo liability insurance, and workers' compensation coverage in accordance with the "Workers' Compensation Act of Colorado" found in Articles 40 to 47 of Title 8, C.R.S. Rule 6007(a)(III), (IV) and (V), 4 CCR 723-6.

6. In addition to general liability coverage, movers must also obtain and keep in force at all times cargo liability insurance coverage. Rule 6007(a)(III) and (VI), 4 CCR 723-6.

7. Moreover, motor carriers with a Commission permit to transport hazardous materials must obtain and keep in force at all times liability insurance and file proof of this insurance with the Commission. § 42-20-202(2)(a), C.R.S. Under that statute, at any time said insurance lapses, the Commission "shall" revoke the motor carrier's permit. *Id.*

8. The carriers are responsible for filing proof of the required financial responsibility with the Commission. § 40-10.1-107, C.R.S., and Rule 6007, 4 CCR723-1. Failure to have proof of these financial responsibility requirements on file with the Commission creates a

rebuttable presumption that the carrier is in violation of the financial responsibility requirements. Rule 6007(e), 4 CCR 723-6.

9. The required certificates of insurance cannot be terminated or cancelled unless and until the insurance carrier provides 30-days written notice of the same. Rule 6007(i), 4 CCR 723-6. Consequently, the Commission regularly receives notice from insurance carriers that they have cancelled the insurance of motor carriers who are licensed by the Commission.

10. 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 2.¹

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

12. Staff established at hearing that the Commission received notice from the insurance providers for the carriers identified in Appendix A that their insurance has been cancelled or terminated. This creates the rebuttable presumption that the carriers are in violation of their respective financial responsibility requirements. Rule 6007(e), 4 CCR 723-6. No Respondent appeared to rebut this presumption.

¹ The ALJ notes that in Hearing Exhibit 2, at unnumbered pages 30 and 31, there are two copies of the same complaint against Tow Joe Towing, Inc. (Tow Joe). One of these is a duplicate. There is only one complaint against Tow Joe in this proceeding. Hearing Exhibit 1.

13. The ALJ finds that 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 motor vehicle liability insurance, garage keeper's liability insurance, cargo liability insurance, hazardous materials transportation carriers' liability insurance, and worker's compensation insurance, in such form and in such manner as required for the Respondents as stated in Appendix A. § 40-10.1-107, C.R.S. and Rule 6007, 4 CCR 723-6.

14. The Commission's only means of performing the important health and safety function of guaranteeing that persons who hold an authority or permit from the Commission have current, effective insurance as required by law, 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, 4 CCR 723-6.

15. With the exception of Four Aces Transpo LLC (Four Aces), Staff recommended and requested that the authorities and permits of the Respondents listed in Appendix A be revoked. As to Four Aces, Staff witness Ms. Condra testified that the company has filed an application seeking to suspend its authority, which has been assigned Proceeding No. 14A-0229CP-SUSP. On behalf of Staff, Ms. Condra recommended and requested that the Complaint against Four Aces be dismissed without prejudice, pending the outcome of that suspension proceeding. The ALJ construes this as a request to dismiss without prejudice, to allow Staff to re-file the complaint against Four Aces in the event that its suspension application is not granted. The ALJ finds this to be a reasonable and just result, and will grant Staff's request.

16. Except for Four Aces, 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 motor vehicle liability insurance, garage keeper's liability insurance, cargo liability insurance, hazardous materials transportation carriers' liability insurance, and worker's compensation insurance, and, except for Four Aces, none have shown good cause for such failure, the authorities and permits listed in Appendix A should be revoked.

17. 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, except for the permit or authority owned by Four Aces Transpo LLC (Four Aces), the Respondents' authorities or permits listed in Appendix A attached hereto are revoked as of the effective date of this Decision.

2. The Complaint in this proceeding against Four Aces is dismissed without prejudice.

3. 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.

4. 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.

5. 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.

6. 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

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

Doug Dean,
Director