

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14C-0518-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 6008,
4 CCR 723-6, OF THE RULES REGULATING TRANSPORTATION BY MOTOR VEHICLES.

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

Mailed Date: June 12, 2014

I. STATEMENT, FINDINGS OF FACT, 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 May 21, 2014 (Hearing Exhibit 2) by United States mail, at the most recent addresses on file with the Commission for the Respondents.

2. The Complaint provides notice of the nature of the allegations against the Respondents. Hearing Exhibit 2. In particular, the Complaint against each of the Respondents listed on Appendix A alleges that the Public Utilities Commission (Commission) has received notices from the Respondents’ insurance or surety companies to cancel the Respondents’ insurance or surety coverage as specifically identified in each Complaint.¹ *Id.* The Complaint further notifies the Respondents that their authorities or permits have been summarily suspended

¹ Reference herein to the Respondents is a reference to each of the Respondents listed in Appendix A to this Decision.

and that at the date, time, and location noticed in the Complaint, a hearing will be held regarding whether their authorities or permits should be permanently revoked, based upon the Respondents' failure to maintain proper evidence of insurance or surety coverage on file with the Commission. *Id.*

3. At the designated date, time, and location, June 10, 2014 at 12:00 p.m. in a Commission Hearing Room, at 1560 Broadway, Suite 250, Denver, Colorado, the undersigned Administrative Law Judge (ALJ) called the cases for hearing.

4. Commission Staff member Vanessa Condra appeared through counsel and testified on behalf of the Staff of the Commission (Staff). Mr. Abdiaziz Husein, owner of Banaadir Transportation Company (Banaadir), appeared on the company's behalf. No other Respondent appeared.

5. Hearing Exhibits 1 and 2 were admitted into evidence during the hearing.

A. The Commission's Requirements Relating to Financial Responsibility

6. 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.

7. In addition to motor vehicle liability insurance, towing carriers must maintain several specific types of financial responsibility coverage. In particular, towing carriers must

maintain cargo liability insurance, and the carriers providing storage must maintain garage keeper's liability insurance coverage.² Rules 6007(a)(III), (IV), and (V), 4 CCR 723-6.

8. The motor carriers are responsible for filing proof of the required financial responsibility coverage with the Commission. § 40-10.1-107, C.R.S., and Rule 6007, 4 CCR 723-6. Failure to have proof of having met 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 when they have cancelled the insurance of motor carriers who are licensed by the Commission. Because those notices indicate that the carriers no longer have proof of financial responsibility on file with the Commission, the notices create a rebuttable presumption that the carrier is in violation of the financial responsibility requirements. Rule 6007(e), 4 CCR 723-6.

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.

² Towing carriers must also maintain workers' compensation coverage in accordance with the "Workers' Compensation Act of Colorado" found in Articles 40 to 47 of Title 8, C.R.S. However, no Respondent is charged with failing to maintain worker's compensation coverage.

11. Staff carries the burden of proof by a preponderance of the evidence to demonstrate that the allegations of the Complaint are true. 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 Department of Revenue*, 717 P.2d 507, 508 (Colo. App. 1985). A party has met this burden of proof when the evidence, on the whole, slightly tips in favor of that party.

B. Witness Testimony

12. Ms. Condra testified that the Complaints were served upon the Respondents listed on Appendix A by United States mail on May 21, 2014, at the most recent addresses on file with the Commission. Hearing Exhibit 2. The addresses on file were provided by the Respondents.

13. The ALJ finds and concludes that the Complaints are in compliance with Rule 6008(a), 4 CCR 723-6 because the Complaints provide notice of the nature of the allegations and relief sought against the Respondents, provide opportunities for Respondents to respond to the allegations, and were served upon the Respondents by United States mail, at the most recent addresses on file with the Commission. Hearing Exhibit 2. The ALJ further finds that service upon each of the Respondents is proper.

14. Ms. Condra further testified that the Respondents were identified as being in violation of the financial responsibility requirements because the Commission received notice from each of the Respondents' insurance or surety carriers that their insurance or surety is being cancelled. As of the date of the hearing, none of the Respondents had come into compliance with the Commission's financial responsibility requirements as noted in the Complaints.

15. Except for Banaadir, Staff recommended and requested that the authorities and permits of the Respondents listed in Appendix A be revoked.

16. As to Banaadir, Ms. Condra testified that Banaadir has filed a request to suspend both of the authorities which are at issue in this proceeding, PUC Nos. B-10003 and B-10016. That proceeding has been assigned Proceeding No. 14A-0604BP-SUSP. Staff recommended and requested that the Complaints against both of Banaadir's authorities be dismissed without prejudice, pending a decision in 14A-0604BP-SUSP.

17. Mr. Husein offered no comments or testimony during the hearing. He did not object to the relief Staff seeks against Banaadir, that is dismissal without prejudice.

18. The ALJ finds that Staff established by a preponderance of the evidence that the Commission received notice from the insurance or surety providers for the motor carriers identified in Appendix A that their insurance or surety 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.

19. No Respondent rebutted this presumption.

20. 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, and cargo liability 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. The ALJ finds that Staff met its burden of proof as to the Respondents listed in Appendix A.

21. The Commission must fulfill its important duty to the public to guarantee that those persons who hold an authority or permit from the Commission have current, effective insurance as required by law. The Commission's only means of performing this important health and safety function 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, C.R.S.; Rule 6007, 4 CCR 723-6.

22. 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, and cargo liability insurance, except for Banaadir, the authorities and permits listed in Appendix A should be revoked.

23. The ALJ finds that good cause has been shown to dismiss without prejudice the Complaints involving both of Banaadir's permits, PUC Nos. B-10003 and B-10016. Banaadir is on notice that if its request to suspend both permits is denied and it continues to lack evidence of financial responsibility on file with the Commission, that Commission Staff may re-file the Complaints against it.

24. Pursuant to § 40-6-109, C.R.S., the ALJ 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 two authorities owned by Banaadir Transportation Company (as referenced in Appendix A), the Respondents' authorities or permits listed in Appendix A attached hereto are revoked as of the effective date of this Decision.

2. The Complaints against Banaadir Transportation Company involving PUC Nos. B-10003 and B-10016 (as referenced in Appendix A), are dismissed without prejudice.

3. Ordering Paragraph No. 1 shall be void and the case dismissed as to any affected Respondent who files the required Certificate of Insurance with the Commission before the effective date of this Recommended Decision.

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)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MELODY MIRBABA

Administrative Law Judge