

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14C-0668-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 AND DISMISSING COMPLAINT**

Mailed Date: July 16, 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 June 20, 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.*

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

The Complaint further notifies the Respondents that their authorities or permits have been summarily suspended 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. As noticed in the Complaint, on July 8, 2014, the undersigned Administrative Law Judge (ALJ) called the cases for hearing.²

4. Commission Staff member Vanessa Condra appeared through counsel and testified on behalf of the Staff of the Commission (Staff). No Respondent appeared.

5. Hearing Exhibits 1 through 4 were admitted into evidence during the hearing.³

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. Rules 6007(a)(III), and (IV), 4 CCR 723-6.

² The hearing was scheduled to commence at noon on July 8, 2014. The hearing began approximately 15-20 minutes late because the undersigned ALJ was conducting another hearing that was not complete at noon. However, the ALJ was in the hearing room designated for this proceeding from 10:30 a.m. until calling the case at 12:20 p.m. No Respondent appeared during that time for this proceeding.

³ Hearing Exhibits 3, 4, and 5 were admitted without objection by administrative notice.

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.

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 June 20, 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 the 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. Hearing Exhibit 1, (Appendix A), is a list of carriers for whom the Commission has received notice from their insurance or surety carriers that their insurance or surety has been or will be 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. Staff recommended and requested that the authorities and permits of the Respondents listed in Appendix A be revoked.

15. Mergerssa Adeba, doing business as Shalom Transportation (Adeba), is a Respondent in this proceeding and is charged with failing to have valid and effective proof of liability insurance on file with the Commission for PUC No. B-10012. Appendix A and Hearing Exhibit 2.

16. Ms. Condra testified that Adeba filed an Application for Authority to Transfer Contract Carrier Permit No. B-10012 (Application) to Medemdemia T. Merin, doing business as Shalom Transportation (Merin). Hearing Exhibit 5, ¶ 1, *see* Hearing Exhibit 3. The Commission granted that Application on May 14, 2014 by Decision No. C14-0523 (Decision) in Proceeding No. 14A-0253BP-Transfer. Hearing Exhibit 5. In so doing, the Commission transferred PUC Permit No. B-10012 from Adeba to Merin, and also placed certain conditions upon Merin before commencing operation under the transferred permit. *Id.* Among those conditions, was a requirement to cause proof of insurance or surety bond to be filed with the Commission. *Id.* The transferee has 60 days from the effective date of the Decision to comply with the terms of the Decision (which must be done before commencing operation). *Id.* If Merin fails to comply with the terms of the Decision in that timeframe, and does not seek additional time to meet the Decision's requirements, the Commission decision approving the transfer shall be void. *Id.*, Ordering Paragraph 6.

17. It is Staff's position that the Commission should still revoke the permit once assigned to Adeba, even though the Commission has transferred the permit to a new owner. As grounds, Staff argues that Adeba is required under the Commission's Rules to maintain and keep current and effective proof of insurance on file with the Commission until the new owner of the permit files its proof of insurance with the Commission.

18. The circumstances here present only one genuine possibility that would require Adeba to file proof of insurance for PUC No. B-10012. In particular, if the new owner, Merin, does not meet the Commission's pre-operation requirements within 60 days of the effective date of the Decision transferring the permit, and does not seek additional time to meet those requirements, the Commission decision approving the transfer shall be void.

19. Ultimately, the problem lies with the Complaint's assumption that Adeba presently owns the permit which the Commission seeks to revoke in this proceeding.⁴ As of the date of the hearing and the issuance of this Decision, Adeba does not own the permit which the Complaint seeks to revoke. Adeba cannot operate under PUC No. B-10012.⁵ Because Adeba does not own the permit to be revoked, the ALJ finds and concludes that Staff has failed to meet its burden of proof to revoke PUC No. B-10012 in this proceeding.

20. Based on the above, the Complaint against Adeba should be dismissed without prejudice. If the situation described in ¶18 above arises, Staff can re-file a complaint against Adeba.⁶

21. As to the remaining Respondents, 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 (except for

⁴ Nor was Adeba the owner of the permit with the Complaint was issued on June 20, 2014. *See* Hearing Exhibits 2 and 5.

⁵ Given that Adeba cannot legally operate under PUC No. B-10012, and there is no evidence indicating that it is operating illegally, the ALJ is satisfied that dismissal of the Complaint against Adeba does not raise public safety concerns.

⁶ Staff can also re-file the Complaint against Adeba under other legal circumstances it believes justify jurisdiction and judgment against Adeba.

Adeba), are in violation of their respective financial responsibility requirements. Rule 6007(e), 4 CCR 723-6.

22. Except for Adeba, there was no evidence rebutting this presumption.

23. Except for Adeba, 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, and garage keeper's liability insurance, 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. Except for Adeba, the ALJ finds that Staff met its burden of proof as to the Respondents listed in Appendix A.

24. 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.

25. Except for Adeba, 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, the authorities and permits listed in Appendix A should be revoked.

26. As explained above, because Adeba is not the holder of a permit at issue in this proceeding, the Complaint against Adeba should be dismissed without prejudice.

27. 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. Except for Mergerssa Adeba, doing business as Shalom Transportation, (Adeba) 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 files the required Certificate of Insurance with the Commission before the effective date of this Recommended Decision.

3. The Complaint against Adeba in this proceeding is dismissed without prejudice.

4. Proceeding No. 14C-0668-INS is closed.

5. 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.

6. 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.

7. 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