

Decision No. R14-0939

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14G-0325EC

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

YACOB HAKIMYAN SR. DOING BUSINESS AS COLORADO MOUNTAIN
TRANSPORTATION,

RESPONDENT.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
ROBERT I. GARVEY
ASSESSING CIVIL PENALTY AND
CLOSING PROCEEDING**

Mailed Date: August 5, 2014
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I. STATEMENT

1. On April, 9 2014, Trial Staff (Complainant or Staff) of the Commission served Respondent Yacob Hakimyan Sr., doing business as Colorado Mountain Transportation

(Respondent or Colorado Mountain), with Civil Penalty Assessment Notice (CPAN) No. 109130 arising out of five alleged violations of *Rule 6105(i)(I) of the Rules Regulating Transportation by Motor Vehicle*, 4 *Code of Colorado Regulations* (CCR) 723-6 and one alleged violation of *Rule 6102(a)(I)*, 4 CCR 723-6, and 49 *Code of Federal Regulations* (CFR) § 396.17(a).

2. On April 30, 2014, this matter was referred to an administrative law judge (ALJ) by minute entry of the Colorado Public Utilities Commission (Commission or PUC).

3. On May 21, 2014, counsel for Staff entered their appearance.

4. Pursuant to Decision No. R14-0470-I, issued on May 5, 2014, an evidentiary hearing was convened in the Commission offices on July 15, 2014. Staff appeared through its counsel, Assistant Attorney General Arax Ruth Corn. Respondent, Yacob Hakimyan Sr., doing business as Colorado Mountain Transportation, appeared through Mr. Yacob Hakimyan. Mr. Hakimyan stated that Colorado Mountain Transportation is a sole proprietorship and he requested to represent the interests of Colorado Mountain.

5. The ALJ went over Mr. Hakimyan's rights and the hearing procedures. The ALJ also made inquiries as to Mr. Hakimyan's ability to understand and communicate in English. After being satisfied that Mr. Hakimyan understood his rights, hearing procedures and was able to understand and communicate in English, the ALJ allowed Mr. Hakimyan to proceed *pro se*.

6. Staff offered the testimony of Criminal Investigator (CI) Nate Riley. Respondent offered the testimony of Mr. Hakimyan. Hearing Exhibits 1 through 10 and Hearing Exhibit 13 were offered and admitted. At the conclusion of the evidence, both parties presented an oral closing statement. At that point, the ALJ closed the record and took the matter under advisement.

7. In reaching this Recommended Decision the ALJ has considered all arguments presented by the parties, including those arguments not specifically addressed in this Decision. Likewise, the ALJ has considered all evidence presented at the hearing, even if the evidence is not specifically addressed in this Decision.

8. Pursuant to § 40-6-109, C.R.S., the ALJ now transmits to the Commission the record of the hearing and a written recommended decision in this matter.

II. FINDINGS OF FACT

9. Nate Riley is a CI employed by the Commission's Transportation Investigation and Enforcement Section. His duties include performing safety and compliance reviews (SCRs) on carriers that are regulated by the Commission.

10. Respondent is a Luxury Limousine carrier operating with Commission Permit No. LL-01801. Colorado Mountain was granted authority to operate as a luxury limousine carrier on November 19, 2009 *Hearing Exhibit 1*.

11. Mr. Yacob Hakimyan is the sole owner of Colorado Mountain and its only employee.

12. Colorado Mountain operates for approximately three months of each year.

13. An SCR entails reviewing any applicable PUC files on the carrier, driver qualifications files, vehicle maintenance files, and inspection of the vehicles.

14. On March 11, 2014, CI Riley contacted Mr. Hakimyan via telephone to set up an SCR for March 27, 2014. During this phone conversation Mr. Hakimyan stated that he had submitted his fingerprints to Denver International Airport (DIA) and inquired as to whether this would meet PUC fingerprint requirements.

15. After the phone conversation CI Riley sent an e-mail to Mr. Hakimyan confirming the appointment. The e-mail also included a copy of an SCR done at Colorado Mountain in 2010.

Hearing Exhibit 4

16. The SCR conducted on March 11, 2010, by CI John Opeka, included warnings for failure of the Respondent to have vehicles periodically inspected and allowing drivers to drive without submitting fingerprints for a background check. *id.*

17. After the SCR conducted in 2010, CI Opeka explained the violations to Mr. Hakimyan. *Hearing Transcript p. 77, l.15-23.*

18. After March 11, 2014, but before March 27, 2014, CI Riley had three additional phone conversations with Mr. Hakimyan. During these conversations, in addition to other information, Mr. Hakimyan was told that the fingerprints submitted to DIA would not meet the PUC requirements and his vehicle would need an inspection in addition to maintenance records.

19. On March 27, 2014, CI Riley conducted an SCR at Colorado Mountain. CI Riley also conducted SCRs at other carriers that day including a carrier owned by Mr. Hakimyan's brother.

20. As a result of the SCR, CI Riley found a total of six violations. The violations included failure of the Respondent to have vehicles periodically inspected and allowing drivers to drive without submitting fingerprints for a background check. *See Hearing Exhibit 9.*

21. An SCR had not been done at Colorado Mountain after March 11, 2010, until the inspection on March 27, 2014.

22. CI Riley discussed the violations he found at Colorado Mountain with his supervisor and after taking into account the severity of the violations, risk to public safety and

also the size of the Colorado Mountain, he determined which violations to cite Colorado Mountain.

23. CI Riley issued a CPAN on April 3, 2014 for a total of six violations found during the safety and compliance inspection conducted on March 27, 2014. CI Riley cited the Respondent for five violations of allowing a driver to drive without submitting fingerprints for a background check¹ and one violation for no periodic inspection of the vehicle². *Hearing Exhibit 10.*

24. The Respondent does not contest the violations cited in the CPAN.

25. The Respondent had his fingerprints taken immediately after the SCR was completed.³

26. The Respondent has also had an inspection done on his vehicle.

27. The mailing address for Colorado Mountain that is registered with the Commission is P.O. Box 9366, Avon Colorado 81620. *Hearing Exhibit 2.*

28. CI Riley mailed the CPAN via certified mail to Colorado Mountain at the address that is registered with the Commission. *Hearing Exhibit 13.*

29. The CPAN was delivered to Colorado Mountain on April 8, 2014. *Id.*

¹ Rule 6105(i)(I), 4 CCR 723-1.

² Rule 6102(a)(I), 4 CCR 723-1 and 49 CFR § 396.17(a).

³ Mr. Hakimyan had his fingerprints taken after his SCR was completed and presented the fingerprint card to CI Riley before CI Riley finished his next SCR. Mr. Hakimyan submitted the fingerprint card and a \$39 fee to the PUC on April 3, 2014.

III. APPLICABLE LAW

30. As the proponent of a Commission order, Complainant has the burden of persuasion in this proceeding pursuant to 4 CCR 723-1-1500 of the Rules of Practice and Procedure.

31. Section 40-7-116, C.R.S., mandates a number of procedures for the imposition of civil penalties by the Commission: After specifying that the listed officials are the ones authorized to issue civil penalty assessments for violations of law, § 116(a) states that, “When a person is cited for the violation, the person operating the motor vehicle involved shall be given notice of the violation in the form of a civil penalty assessment notice.” Section 116 further directs that the civil penalty assessment notice “shall be tendered by the enforcement official, either in person or by certified mail, or by personal service by a person authorized to serve process under rule 4(d) of the Colorado rules of civil procedure.” § 40-7-116(b), C.R.S.

32. Except as otherwise provided by statute, the Administrative Procedure Act imposes the burden of proof in administrative adjudicatory proceedings upon “the proponent of an order.” § 24-4-105(7), C.R.S. As provided in Commission Rule 4 CCR 723-1-1500, “[t]he proponent of the order is that party commencing a proceeding.” Here, Staff is the proponent since it commenced the proceeding through issuance of the CPAN. Complainant bears the burden of proof by a preponderance of the evidence. *See*, § 13-25-127(1), C.R.S.; 4 CCR 723-1-1500. 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 Dept. of Revenue*, 717 P.2d 507 (Colo. App. 1985). While the quantum of evidence that constitutes a preponderance cannot be reduced to a simple formula, a party has met this burden of proof when the evidence, on the whole and however slightly, tips in favor of that party.

33. *Rule 6105(i)(I)*, 4 CCR 723-6⁴ provides the following:
- (i) A passenger carrier shall not permit a driver to drive for the passenger carrier if:
 - (I) the driver has not complied with this rule and § 40-10.1-110, C.R.S., as applicable;
34. Section 40-10.1-110, C.R.S., provides the following:
- (1) An individual who wishes to drive either a taxicab for a motor carrier that is the holder of a certificate to provide taxicab service issued under part 2 of this article or a motor vehicle for a motor carrier that is the holder of a permit to operate as a charter bus, children's activity bus, luxury limousine, or off-road scenic charter under part 3 of this article shall submit a set of his or her fingerprints to the commission. The commission shall forward the fingerprints to the Colorado bureau of investigation for the purpose of obtaining a fingerprint-based criminal history record check. Upon receipt of fingerprints and payment for the costs, the Colorado bureau of investigation shall conduct a state and national fingerprint-based criminal history record check using records of the Colorado bureau of investigation and the federal bureau of investigation. The commission is the authorized agency to receive information regarding the result of a national criminal history record check. The individual whose fingerprints are checked shall pay the actual costs of the state and national fingerprint-based criminal history record check.
 - (2) An individual whose fingerprints are checked in accordance with subsection (1) of this section may, pending the results of the criminal history record check, drive the motor vehicles for the motor carrier described in subsection (1) of this section for up to ninety days after the commission forwards the fingerprints to the Colorado bureau of investigation or until the commission receives the results of the check, whichever occurs first. The commission may temporarily extend the ninety-day period, in accordance with [section 24-33.5-412 \(7\), C.R.S.](#), based on a delay in processing criminal history record checks by the Colorado bureau of investigation or on other exigent circumstances beyond the commission's control. Upon the commission's receipt of the results, the individual may resume driving motor vehicles for the motor carrier described in subsection (1) of this section, so long as the driving does not violate applicable law and does not occur while the individual has a criminal conviction that disqualifies him or her from driving a motor vehicle in accordance with subsection (3) of this section

⁴ The CPAN was issued for violations occurring between February 16-23, 2014. On February 14, 2014 rule amendments adopted in Proceeding No. 13R-0009TR went into effect.

35. Rule 49 CFR § 396.17(a) provides the following:

- (a) Every commercial motor vehicle must be inspected as required by this section. The inspection must include, at a minimum, the parts and accessories set forth in appendix G of this subchapter. The term *commercial motor vehicle* includes each vehicle in a combination vehicle. For example, for a tractor semitrailer, full trailer combination, the tractor, semitrailer, and the full trailer (including the converter dolly if so equipped) must each be inspected.

(Emphasis supplied)

36. Section 40-10.1-110, C.R.S., provides the following:

A person who intentionally violates any provision of article 10.1 or 10.5 of this title not enumerated in paragraph (a), (b), or (e) of this subsection (1), any rule promulgated by the commission pursuant to this title, or any safety rule adopted by the department of public safety relating to motor carriers as defined in section 40-10.1-101 may be assessed a civil penalty of not more than one thousand one hundred dollars; except that any person who violates a safety rule promulgated by the commission is subject to the civil penalties authorized pursuant to 49 CFR 386, subpart G, and associated appendices to part 386, as such subpart existed on October 1, 2010.

37. Proper service of the CPAN is vital. “The mandatory requirements for valid service of process are fundamental because of the due process requirements of notice. *Bush v. Winker*, 892 P.2d 328, 332 (Colo. App. 1994).

IV. DISCUSSION AND CONCLUSION

38. In the instant case CI Riley sent the CPAN by certified mail to the address listed, with the Commission, by the Respondent, as the mailing address for Colorado Mountain. These actions are all consistent with proper service under § 40-7-116, C.R.S.

39. Service was made in accordance with § 40-7-116, C.R.S.

40. The Respondent does not contest the alleged violations contained in the CPAN. The Respondent freely admits that he failed to have an inspection done on his vehicle and allowed a driver to drive without submitting fingerprints for background check.

41. Respondent's defense is that he was confused regarding the PUC requirements for fingerprint submission and periodic inspections. Respondent argues that he believed that the DIA requirement for a fingerprint submission met his PUC requirement and that the maintenance he had done on his vehicle met the PUC requirement for periodic inspections.

42. In addition, the Respondent believes that he should have been notified by the PUC at the time he paid the annual motor vehicle fees in accordance with *Rule* 6009, 4 *CCR* 723-6, that it was necessary to submit fingerprints of its drivers to the Commission.

43. The defense presented by the Respondent can be interpreted as a claim that the violations were not intentional. While Mr. Hakimyan admits to the violations he stated "Yes, I am guilty that. I did not have it apparently. But not because ... not intentionally." *Hearing Transcript p. 86, l. 22-23.*

44. The Commission has recently addressed whether there is a requirement that the proponent of a civil penalty make a showing that a respondent intentionally violated the provision in question, before a civil penalty may be imposed. In Decision No. C14-0774⁵ the Commission stated:

We consider the plain and ordinary meaning of the language to give effect to the legislative intent.⁶ The Commission agrees with Staff that the highlighted language above omits that a person must "intentionally [violate]" Commission issued safety rules to be subject to certain civil penalties. The omission must be viewed as intentional and given effect.⁷ We clarify that, if Staff shows that the violation is of a safety rule promulgated by the Commission, consistent with § 40-7-113(1)(g), C.R.S., there is no element of intentional violation required to assess the civil penalties permitted by the statute.

Our reading of § 40-7-113(1)(g), C.R.S., promotes critical public safety interests. The General Assembly, through this statute, recognized the importance

⁵ *Proceeding No. 14G-0149EC, Public Utilities Commission of the State of Colorado v. Advanced Limousine LLC.*

⁶ *See State v. Nieto*, 993 P.2d 493, 502 (Colo. 2000).

⁷ *See Zamarripa v. Q&T Food Stores*, 929 P.2d 1332, 1339 (Colo. 1997).

of enforcing safety rules promulgated by the Commission without regard to the driver's state of mind or intent, with the objective of promoting public safety. Providers of transportation services subject to the Commission's safety rules are placed on notice of the applicability and enforcement of Commission safety rules without regard to the provider's intent. The Staff has the ability to bring violations of safety rules before the Commission; but, such claims must be proven during the hearing and evidentiary phases of the proceeding. The Commission's current regulations do not identify which rules are "safety rules" subject to the "except" clause of § 40-7-113(1)(g), C.R.S. Absent further rulemaking, we will depend upon the expertise and discretion of the ALJs and hearing officers to implement procedures to hear charges of safety rule violations and to ensure respondents are afforded due process rights in defending such charges.

45. Therefore, if the alleged violation was of a safety rule, it is not necessary to show the alleged violation was intentional, but if the alleged violation was of a non-safety rule, it must be shown that the Respondent intentionally violated the rule.

46. On March 11, 2010, an SCR was conducted at the Respondent's place of business. During the SCR Mr. Hakimyan initialed each page of the final report. Mr. Hakimyan also signed the last page acknowledging he received a copy of the report and that the violations were explained to him. The final report listed nine violations, included among the violations were "You have permitted drivers to drive who have not submitted their fingerprints for a background check" and "You have failed to have your vehicles periodically inspected." *Hearing Exhibit 3*

47. Mr. Hakimyan testified that CI Opeka explained each of the violations after the SCR in 2010. *Hearing Transcript p. 77, l.15-23*

48. On the date that CI Riley set up the SCR in March of 2014, he included a copy of the SCR conducted in 2010. *Hearing Exhibit 4*

49. Mr. Hakimyan and CI Riley spoke a total of four times before the SCR was conducted on March 27, 2014. In the phone conversations, Mr. Hakimyan asked and CI Riley answered questions as to what would be required for the SCR. *Hearing Transcript p. 45, l. 1-12.*

50. The testimony of CI Riley is credible that he informed Mr. Hakimyan that the fingerprints submitted to DIA were not sufficient to meet the requirements of the PUC.

51. The testimony of CI Riley is credible that he informed Mr. Hakimyan that he would need to have his vehicle inspected and that maintenance records alone would not meet the requirements of the PUC.

52. The Commission has determined that a violation is intentional within the meaning of § 40-7-113(1)(g), C.R.S., when a person is aware of a requirement or restriction and nonetheless commits an act, or fails to act, and that act or omission violates the requirement or restriction. *Commission Decision No. C00-1075*.⁸

53. Based upon the credible testimony of CI Riley, the admissions of Mr. Hakimyan, the conversations of CI Riley and Mr. Hakimyan between March 11, 2014 and March 27, 2014, the prior SCR in 2010 and the 2010 SCR report being sent to the Respondent on March 11, 2014, the Respondent was aware of what was required to be in compliance with PUC regulations prior to the SCR conducted on March 27, 2014.

54. The Respondent knew of these requirements; therefore the violations were intentional. Since the violations were intentional, it is not necessary to determine if the violations were of safety rules or other rules.

55. Staff has met its burden of proof by a preponderance of the evidence to show that Colorado Mountain, allowed a driver to drive without submitting fingerprints for a background check and failed to have a periodic inspection done on its vehicle.

⁸ *Proceeding No. 99K-590CP, Public Utilities Commission of the State of Colorado v. Valera Lea Holtorf doing business as Dashabout Shuttle Company and/or Roadrunner Express* issued September 29, 2000.

56. Having found violations of the cited regulations, it is necessary to determine the amount of the civil penalty to be assessed for these violations. The Commission is authorized to consider aggravating or mitigating circumstances surrounding particular violations in order to fashion a penalty assessment that promotes the underlying purpose of such assessment. § 40-7-113, C.R.S.

57. Pursuant to Commission Rule 4 CCR 723-1-1302(b):

- (a) The Commission may impose a civil penalty ... The Commission will consider any evidence concerning some ~~o~~all of the following factors:
- (I) the nature, circumstances, and gravity of the violation;
 - (II) the degree ~~o~~the respondent's culpability;
 - (III) the respondent's history of prior offenses;
 - (IV) the respondent's ability to pay;
 - (V) any good faith efforts by the respondent in attempting to achieve compliance and to prevent future similar violations;
 - (VI) the effect on the respondent's ability to continue in business;
 - (VII) the size ~~o~~the business ~~o~~the respondent; and
 - (VIII) such other factors as equity and fairness may require.

58. A warning was issued to Colorado Mountain in 2010 for the same violations contained in the CPAN issued in this proceeding.

59. It was of concern to the ALJ that the Respondent in part blamed the Commission Staff for its violations. The Respondent stated several times that the violations were in part ~~du~~to a lack of timely inspections. Respondent also placed fault on the Commission for not having suspended his permit at the time he made yearly filings since the violations contained in the CPAN should have been evident to the Commission.

60. Respondent fails to grasp the fact that it is Colorado Mountain's responsibility to follow regulations. The Commission cannot afford the cost and manpower to constantly be

checking to make sure regulations are being followed. The Respondent is required to follow the regulations or be subject to fines for violations. It is the policy and hope of the Commission that motivation for carriers to learn and follow the rules can come from the fines associated with their enforcement.

61. The welfare of the public is at stake with the safety and compliance review. It is through these reviews that the Commission can ensure the proper level of safety for all those on the roads of Colorado. These are important regulations and cannot be ignored or deemed unimportant.

62. Colorado Mountain is a small business which operates only three months out of each year. Colorado Mountain transports 10 to 15 customers to DIA each month it is operating.

63. It is noted the Respondent had his fingerprints taken within minutes of the inspection and submitted them to the Commission within ten days of the SCR. Respondent also has had periodic inspections done on his vehicle since the SCR in March of 2014.

64. It is also noted that the Respondent has admitted culpability for the violations and vowed to work to ensure that he remains in compliance with PUC rules and regulations.

65. Although there was no documentary evidence produced by Mr. Hakimyan to demonstrate Colorado Mountain's financial difficulties, the undersigned ALJ does find Mr. Hakimyan's testimony credible as to Colorado Mountain's financial difficulties.

66. For the foregoing reasons, the ALJ concludes that Respondent committed the violations as listed on CPAN No. 109130 between February 16, 2014 and February 23, 2014 and that the assessment of the \$800.00 civil penalty, plus \$80.00 surcharge is warranted.

67. The ALJ finds that a civil penalty of \$880.00 achieves the following purposes underlying civil penalty assessments: (a) deterring future violations, whether by other

similarly-situated carriers or by Respondent; (b) motivating Respondent to come into compliance; and (c) punishing Respondent for his past behavior.

68. Pursuant to § 40-6-109(2), C.R.S., the ALJ recommends that the Commission enter the following order.

V. ORDER

A. The Commission Orders That:

1. As alleged in Civil Penalty Assessment Notice No. 109130, Respondent, Yacob Hakimyan Sr., doing business as Colorado Mountain Transportation (Respondent), violated 4 *Code of Colorado Regulations* (CCR) 723-6-6105(i)(I); *Rule 6102(a)(I)*, 4 CCR 723-6; and 49 *Code of Federal Regulations* §396.17(a).

2. Respondent is ordered to pay to the Commission within 30 days of the date that this Recommended Decision becomes the decision of the Commission, the sum of \$880.00. This amount represents the total of the civil penalty assessed for the violations found in Ordering Paragraph No. 1 plus the mandatory 10 percent surcharge imposed by § 24-34-108, C.R.S.

3. Proceeding No. 14G-0325EC is now closed.

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

ROBERT I. GARVEY

Administrative Law Judge