

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14C-1011-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: October 29, 2014

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I. STATEMENT, FINDINGS OF FACT, AND CONCLUSIONS

1. The cases listed on the attached Appendix A (Hearing Exhibit 4) were instituted by “Order of Summary Suspension and Complaint and Notice of Hearing” (Complaint or Complaints), issued by the Commission Director and served upon the Respondents¹ on

¹ Reference to Respondents is a reference to each Respondent identified on Hearing Exhibit 4, which is Appendix A to this Decision.

October 10, 2014 (Hearing Exhibits 2 and 3) 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. *Id.* 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 October 28, 2014 at 12:00 p.m., 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. Goitom Kiflemariam appeared and testified on his own behalf. No other Respondent appeared.

5. Hearing Exhibits 1 through 4 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 and keep in force at all times 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. Towing carriers must also maintain 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. Rule 6007(a)(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.

9. The required certificates of insurance and surety bonds cannot be terminated or cancelled unless and until the insurance carrier provides 30 days' written notice of the same to the Commission. § 40-10.1-107(4), C.R.S.; Rule 6007(i), 4 CCR 723-6. Consequently, the Commission regularly receives notice from insurance carriers when they have cancelled the insurance or surety bonds of motor carriers who are licensed by the Commission. Failure to have proof of current and effective insurance or surety coverage 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. Indeed, the required notice from the insurance and surety carriers of cancellation is evidence that the carriers no longer have proof of financial responsibility on file with the Commission.

B. Governing Legal Standards.

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.

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.

C. Witness Testimony.

12. Ms. Condra testified that the Complaints were served upon the Respondents listed on Appendix A by United States mail on October 10, 2014, at the most recent addresses on file with the Commission. Hearing Exhibits 2 and 3. The addresses on file with the Commission were provided by the Respondents.

13. 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 4 (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.

14. 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. In addition, Ms. Condra searched Commission records prior to the hearing to determine whether any Respondent has a pending application or proceeding before the Commission which may impact the instant proceeding (*e.g.*, application seeking to transfer or suspend Respondents' permits). Ms. Condra found none. As all Respondents remained non-compliant, Staff recommended and requested that the authorities and permits of the Respondents listed in Appendix A be revoked.

15. Mr. Kiflemariam is a sole proprietor doing business as Classic Transport Service. As an initial matter, the ALJ found that Mr. Kiflemariam may represent himself in this proceeding, consistent with Rule 1201(b)(I) of the Rules of Practice and Procedure, 4 CCR 723-1. Mr. Kiflemariam owns two permits at issue in this proceeding, PUC No. CAB-00032 and PUC No. LL-02421. Hearing Exhibit 4. He explained that he purposely did not renew PUC No. CAB-00032 in 2014 because he was no longer using the permit, and wished for it to be "cancelled."² Mr. Kiflemariam did not dispute his failure to have proof of financial responsibility onfile with the Commission for PUC No. CAB-00032.

16. As to PUC No. LL-02421, Mr. Kiflemariam explained that he has been doing "sub-contracting" work for "SuperShuttle" and that his vehicles were being operated under SuperShuttle's permit and insurance. He also testified that he recently recovered one of the

² Mr. Kiflemariam requested that this permit not be revoked, but that it be cancelled instead so that he could revive it in the future and use it. The ALJ explained that is not within the ALJ's authority in this proceeding, because what he actually seeks is to suspend the permit.

vehicles previously dedicated to the SuperShuttle operation, and will be operating that vehicle under PUC No. LL-02421. He is in the process of obtaining insurance to operate under PUC No. LL-02421. Mr. Kiflemariam did not dispute his present failure to have proof of insurance on file with the Commission for that permit.

17. The ALJ explained to Mr. Kiflemariam that if the ALJ renders a recommended decision revoking his permits, that the decision does not become final for 20 days, during which time he may have proof of insurance filed with the Commission, and that doing so would void a decision in this proceeding revoking said permits.

D. Conclusions.

18. The evidence was undisputed.

19. The ALJ finds and concludes that service of the Complaints upon each of the Respondents is proper because they were served by United States mail, at the most recent addresses on file with the Commission. Hearing Exhibits 2 and 3. The ALJ further finds 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 provide notice of the hearing regarding the Complaints. Hearing Exhibits 2 and 3.

20. 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 for the permits identified in Appendix A. This creates the rebuttable presumption that the Respondent carriers are in violation of their respective financial responsibility requirements. Rule 6007(e), 4 CCR 723-6. There was no evidence rebutting this presumption. Indeed, the only Respondent

who appeared (Mr. Kiflemariam), confirmed that the Complaints against him are accurate, and that he has failed to have proof of current insurance on file with the Commission.

21. The ALJ appreciates that Mr. Kiflemariam appeared at the hearing and explained his reasons for allowing the insurance relating to his permits to expire. However, the explanations do not negate the undisputed facts that: (1) Mr. Kiflemariam has not filed an application to suspend (or transfer) either of his permits; (2) none of his operations under the permits are currently insured; and (3) there is no current proof of financial responsibility for both permits on file with the Commission. For these reasons, revocation is appropriate and necessary. As explained during the hearing, Mr. Kiflemariam may remedy this revocation by filing proof of current financial responsibility with the Commission within 20 days of this Decision, as set forth in Ordering Paragraph No. 2, below.

22. 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, worker's compensation 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.

23. 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.

24. 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, worker's compensation insurance, and cargo liability insurance, the authorities and permits listed in Appendix A should be revoked.

25. 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. 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 or surety 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. Proceeding No. 14C-1011-INS is 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

MELODY MIRBABA

Administrative Law Judge