

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19C-0229-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**

Mailed Date: May 30, 2019

TABLE OF CONTENTS

| | | |
|-----|--|---|
| I. | STATEMENT, FINDINGS, AND CONCLUSIONS | 1 |
| A. | Financial Responsibility and Designated Agent Requirements. | 2 |
| B. | Legal Authority to Revoke Permits and Burden of Proof. | 4 |
| C. | Witness Testimony. | 5 |
| D. | Conclusions. | 6 |
| II. | ORDER..... | 9 |
| A. | The Commission Orders That: | 9 |

I. STATEMENT, FINDINGS, AND CONCLUSIONS

1. The Public Utilities Commission (Commission) instituted the cases listed on the attached Appendix A by “Order of Summary Suspension and Complaint and Notice of Hearing” (Complaint or Complaints) served upon the motor carriers (Respondents¹) on May 6, 2019,

¹ Unless otherwise specified, references to Respondents is a reference to each Respondent identified in Hearing Exhibit 4, which is Appendix A to this Decision.

by United States mail, at the most recent addresses on file with the Commission for the Respondents. Hearing Exhibits 1 through 4.

2. The Complaints² against each of the Respondents listed on Appendix A alleges that the Commission received notice from the Respondents' insurance or surety carriers that the Respondents' insurance or surety coverage will be cancelled as specifically identified in each Complaint. Hearing Exhibit 2. The Complaints further notify Respondents that their authorities or permits have been, or will be summarily suspended on the date specified in each Complaint, and informs Respondents of the date, time, and location for a Commission hearing to determine whether their authorities or permits should be permanently revoked for failing to maintain proper evidence of insurance or surety coverage with the Commission. *Id.*

3. As noticed in the Complaints, on May 28, 2019, at approximately 12:00 p.m., the undersigned Administrative Law Judge (ALJ) held the hearing on the Complaints. Commission Trial Staff member Vanessa Condra appeared through counsel and testified on behalf of Commission Staff (Staff). No Respondent appeared.

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

A. Financial Responsibility and Designated Agent Requirements.

5. Generally, motor carriers holding a Commission permit, authority, or certificate must maintain evidence of financial responsibility with the Commission in such sum, for such protection, and in such form as the Commission deems necessary to adequately safeguard the

² This proceeding involves numerous Respondents against whom the Commission initiated Complaints by sending them each an "Order of Summary Suspension and Complaint and Notice of Hearing." Hearing Exhibit 2. Each of those Complaints is assigned a unique "Case No." which specifies the grounds unique to each Respondent. And, each of those Case Numbers are part of this single proceeding. Thus, references to specific Case Numbers identify a specific Complaint within this proceeding against an identified Respondent.

public interest. § 40-10.1-107, C.R.S.; Rule 6008 of the Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* (CCR) 723-6.

6. In addition to motor vehicle liability and general liability insurance, towing carriers and household goods movers must maintain and keep in force at all times cargo liability insurance (among other insurance). Rule 6008(a)(I), (II), and (VI) (motor vehicle and general liability insurance requirements) and Rule 6008(a)(III) (cargo liability insurance requirement), 4 CCR 723-6. Towing carriers providing storage must maintain and keep in force at all times garage keeper's liability coverage. Rule 6008(a)(IV), 4 CCR 723-6.

7. Motor carriers are responsible for maintaining and filing evidence of the required financial responsibility coverage with the Commission. § 40-10.1-107(1), C.R.S., and Rule 6008(a)(II), (III), (IV), and (VI), 4 CCR 723-6. They must ensure their insurance or surety coverage is kept continuously effective during the life of a certificate or permit to operate. § 40-10.1-107(3), C.R.S. Insurers and sureties must notify the policy or bond holder *and* the Commission when terminating a policy or bond at least 30 days before the effective date of termination; failing that, termination is not valid. § 40-10.1-107(4), C.R.S. As a result, the Commission receives notice from insurance or surety carriers about imminent policy or bond terminations for motor carriers licensed by the Commission. *Id.*

8. A notice of cancellation from a motor carrier's insurance or surety carrier is evidence that the motor carrier no longer has proof of financial responsibility on file with the Commission. Rule 6008(e), 4 CCR 723-6. 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. *Id.*

9. Regulated motor carriers are required to provide the Commission “its designation of the name, mailing address, and physical address of a Person upon whom service may be made of any lawful notice, order, process, or demand.” Rule 6006(a), 4 CCR 723-6. That person is the motor carrier’s designated agent. *Id.* And, carriers must notify the Commission of changes in the designated agent’s identity, name, mailing and physical address, and phone number by filing a new designation within two days of a change. Rule 6006(b), 4 CCR 723-6. Service on a motor carrier’s designated agent as on file with the Commission is service upon the carrier and is “prima facie evidence” that the carrier received notice. Rule 6006(c) and (d), 4 CCR 723-6. In addition, complaints may be served by mail. Rule 1205(a) and (d), 4 CCR 723-1 of the Commission’s Rules of Practice and Procedure.

B. Legal Authority to Revoke Permits and Burden of Proof.

10. Sections 40-10.1-112(1)(a) and (c), C.R.S., provide that a Commission issued authority or permit may be suspended, revoked, altered, or amended if it is established to the satisfaction of the Commission at a properly-noticed hearing that the holder of that authority or permit has violated Article 10.1, Title 40 of the Colorado Revised Statutes, or any applicable Commission rule. Rules 6009 and 6011 also provide the Commission authority to revoke a permit or authority in the circumstances here. 4 CCR 723-6.

11. Staff carries the burden of proof by a preponderance of the evidence to demonstrate that the Complaints’ allegations are true. § 24-4-105(7), C.R.S.; Rule 1500, 4 CCR 723-1. The preponderance standard requires the fact finder 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, tips in favor of that party. *Schocke v. State, Dep’t of Revenue, Motor*

Vehicle Div., 719 P.2d 361, 363 (Colo. App. 1986). As pertinent here, this means Staff must prove that it is more probable than not that the Respondents listed in Hearing Exhibit 4 have failed to maintain and file proof of effective insurance or surety coverage with the Commission as required by § 40-10.1-107, C.R.S., and Rule 6008, 4 CCR 723-6. In addition, Staff must also demonstrate that the Complaints were properly served on each of the Respondents.

C. Witness Testimony.

12. At the hearing on May 28, 2019, Ms. Condra testified that the Commission served the Complaints upon the Respondents listed in Appendix A by United States mail on May 6, 2019, at the addresses, and upon the persons identified as designated agents for the Respondents, as provided in the Commission's files. Hearing Exhibits 1 through 4. Ms. Condra testified that Respondents provided the Commission with the addresses and identities of their designated agents that were used to serve the Complaints in this proceeding. The Certificate of Service (Hearing Exhibit 3), for the Complaints demonstrates that the Commission's Director served the Respondents by mailing the Complaints addressed as indicated in Hearing Cycle Listing. Hearing Exhibit 3. Ms. Condra clarified that the Hearing Cycle Listing referenced in the Certificate of Service (Hearing Exhibit 3) references the list of Respondents and their designated agents, as addressed, in Hearing Exhibit 1. Hearing Exhibit 1 reflects the list of carriers whose insurance or surety faced imminent termination as of May 6, 2019.³ *See also* Hearing Exhibit 2.

13. Ms. Condra also testified that one of the Complaints (Case No. 09890-INS), against Capacity Builders Inc. (Capacity), was returned to the Commission. Ms. Condra reviewed the returned envelope and confirmed that the Complaint was sent to the

³ All the carriers listed in Hearing Exhibit 4 are also listed in Hearing Exhibit 1. Hearing Exhibit 4 is Appendix A to this Decision.

address and designated agent, as on file with the Commission for Capacity. On the date Ms. Condra became aware of the returned mail, May 17, 2019, she contacted Capacity at the two email addresses on file with the Commission about the Complaint and returned mail; she sent both the Complaint and returned mail to Capacity as part of that email contact.

14. Ms. Condra further testified that the Commission issued the Complaints against Respondents because the Commission received notice from each of the Respondents' insurance or surety carriers of the imminent termination of their insurance or surety coverage. Hearing Exhibit 1.

15. Ms. Condra was unaware of any pending applications or proceedings before the Commission involving the Respondents which may impact this proceeding (*e.g.*, application seeking to transfer or suspend Respondents' permits). Ms. Condra searched Commission records as of the hearing date to determine if any of the Respondents had come into compliance with the Commission's financial responsibility requirements since the Complaints were issued. As of the May 28, 2019 hearing, the Respondents listed in Hearing Exhibit 4 remained out of compliance with the Commission's financial responsibility requirements.⁴

16. Based on the foregoing, Staff requested that the authorities and permits of the Respondents listed in Hearing Exhibit 4 (Appendix A) be revoked.

D. Conclusions.

17. The evidence was undisputed.

⁴ In contrast, Hearing Exhibit 1 is the list of carriers who were non-compliant when the Commission issued the Complaints on May 6, 2019. As the difference in the numbers of carriers listed in Hearing Exhibits 1 and 4 make evident, many carriers came into compliance since the Commission issued the Complaints.

18. Though the Complaint against Capacity, (Case No. 09890-INS), was returned, the ALJ finds that Capacity was properly served with the Complaint. That is because Capacity, as a regulated motor carrier, is responsible to ensure that the designated agent and service address it provides to the Commission is updated and accurate. Rule 6006(a) and (b), 4 CCR 723-6. Capacity's failure to file and maintain *accurate* service information with the Commission created the risk realized here. The Complaint was served by mail on Capacity, a corporation, at the address and upon the designated agent that Capacity provided to the Commission. As a result, service upon Capacity is proper, notwithstanding that the Complaint was returned. Rule 6006, 4 CCR 723-6; and Rule 1205(a) and (d), 4 CCR 723-1. Similarly, the ALJ concludes that service of the Complaints upon the remaining Respondents was proper because they were served by United States mail at the most recent addresses and upon the designated agents on file with the Commission. Rule 6006, 4 CCR 723-6; Rule 1205(a) and (d), 4 CCR 723-1; and Hearing Exhibits 1 through 4. Thus, the ALJ finds that Staff demonstrated that it properly served the Complaints upon each of the Respondents listed in Hearing Exhibit 1 and 4.

19. The ALJ further finds that the Complaints are in compliance with § 24-4-104, C.R.S., and Commission Rules because they provide: (a) notice of the nature of the allegations and the relief sought against the Respondents; (b) the opportunity for each of the Respondents to respond to the allegations; and (c) notice of the hearing on the Complaints. Hearing Exhibit 2.

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, (Hearing Exhibit 4), that their insurance or surety was cancelled or terminated as of May 29, 2019. This creates the rebuttable presumption that the relevant

Respondent carriers are in violation of their respective financial responsibility requirements. Rule 6008(e), 4 CCR 723-6. The record contains no evidence rebutting this presumption.

21. 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, general, cargo, and garage keeper's liability coverage in such form and in such manner as required by § 40-10.1-107, C.R.S. and Rule 6008, 4 CCR 723-6, for the Respondents identified in Appendix A. Thus, Staff met its burden of proof to show by a preponderance of the evidence that the allegations in the Complaints are true as to the Respondents listed in Appendix A.

22. 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 or surety, 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., and Rule 6008, 4 CCR 723-6. The Respondents in Appendix A have failed to do so.

23. Because all Respondents listed in Appendix A have failed to keep currently effective proof of financial responsibility on file with the Commission their authorities and permits should be revoked.

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. The authorities or permits listed in Appendix A and attached hereto are revoked as of the effective date of this Decision.

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

3. Proceeding No. 19C-0229-INS is closed.

4. This Recommended Decision will 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 will 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 will 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 may not exceed 30 pages in length, unless the Commission finds good cause and 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