

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20C-0286-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
G. HARRIS ADAMS
REVOKING AUTHORITIES AND PERMITS**

Mailed Date: July 24, 2020

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I. SUMMARY

1. This Recommended Decision grants the relief sought in the Public Utilities Commission Staff's (Staff or Commission Staff) Complaints against all but one of the motor-carrier Respondents listed in Appendix A to this Recommended Decision, and revokes Respondents' authorities and permits based on the failure to keep currently effective proof of financial responsibility on file with the Commission. This Recommended Decision also provides avenues for Respondents listed in Appendix A to avoid revocation by taking action before this Recommended Decision becomes effective.

II. STATEMENT, FINDINGS, LAW, ANALYSIS, AND CONCLUSIONS

2. Commission Staff instituted the cases against the Respondents in this proceeding by "Order of Summary Suspension and Complaint and Notice of Hearing" (Complaint or Complaints) against the motor carrier-Respondents on July 2, 2020. Hearing Exhibit 2.

3. The Complaints¹ against each of the Respondents in this proceeding provide notice of the allegations against the Respondents. Hearing Exhibit 2. Specifically, the Complaint 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. *Id.* 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

¹ 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.

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.*

4. As noticed in the Complaints, on July 22, 2020, at approximately 12:00 p.m., the undersigned Administrative Law Judge (ALJ) held the hearing on the Complaints. Commission Trial Staff member Vanessa Condra and counsel appeared on behalf of Commission Staff. Negede Mammo testified on behalf of Air Crew Exclusive, LLC. Hearing Exhibits 1 through 5 were admitted into evidence during the hearing.

5. Ms. Condra is responsible for reviewing Commission records and coordinating with other Commission Staff to commence proceedings against motor carriers to suspend and revoke their permits and authorities when they do not have currently effective proof of insurance or surety coverage on file with the Commission. Ms. Condra assisted with initiating this proceeding against Respondents because the Commission received notice from each of the Respondents' insurance or surety carriers of the imminent cancellation of their insurance or surety coverage. Hearing Exhibits 1, 2, and 3.

6. Ms. Condra explained that the Commission served the Complaints and Attachment A to the Complaints (Hearing Exhibit 3) upon the Respondents by United States mail on July 2, 2020, 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.

7. Respondents provided the Commission the addresses and identities of their designated agents that were used to serve the Complaints in this proceeding. The Certificate of Service (Hearing Exhibits 1 and 4), for the Complaints demonstrates that the Commission served

the Respondents by mailing the Complaints addressed as indicated in the “Hearing Cycle Listing.” Hearing Exhibit 4. The Hearing Cycle Listing referenced in the Certificate of Service is Hearing Exhibit 1. *See* Hearing Exhibit 1 and 5. Hearing Exhibit 1 is the list of carriers, their designated agents and addresses as on file with the Commission as of July 2, 2020, whose insurance or surety faced imminent termination. *See also* Hearing Exhibit 2.

8. On the date of the hearing (July 22, 2020), Ms. Condra searched Commission records to identify any pending Commission proceeding that may impact this proceeding (*e.g.*, application seeking to transfer or suspend Respondents’ permits), and to determine if any of the Respondents listed in Hearing Exhibit 1 came into compliance with the Commission’s financial responsibility requirements since the Complaints were issued. She found that Biodiesel for Bands, doing business as BFB Shuttle and Car Service (BFB), had filed to suspend its authority. In light thereof, it is requested that the Complaint against this carrier be dismissed. She also determined that a number of Respondents came into compliance since the Complaints were issued, so she created an updated list of the Respondents to reflect this (Hearing Exhibit 5). The Respondents listed in Hearing Exhibit 5 remain out of compliance with the Commission’s financial responsibility requirements as of the July 22, 2020 hearing.²

9. Based on the foregoing, Staff requested that the authorities and permits of the Respondents listed in Hearing Exhibit 5 be revoked.

² In contrast, Hearing Exhibit 1 is the list of carriers who were non-compliant when the Commission issued the Complaints on July 2, 2020. As the difference in the numbers of carriers listed in Hearing Exhibits 1 and 5 make evident, many carriers came into compliance since the Commission issued the Complaints. All the carriers listed in Hearing Exhibit 5 are listed in Hearing Exhibit 1.

10. Mr. Negede Mammo testified on behalf of Air Crew Exclusive, LLC, regarding the profound financial impact of the COVID-19 virus on the demand for his services. As a result, he has not been operating. He understands and acknowledges that he does not have currently-effective proof of financial responsibility on file with the Commission. However, he plans and hopes to be able to resume operations on or about August 1, 2020. Accordingly, he plans to file proof of financial responsibility prior to resuming operations.

A. Applicable Law.

1. Financial Responsibility Requirements and the Commission's Authority to Revoke Permits and Authorities.

11. Generally, motor carriers holding a Commission permit, authority, or certificate must maintain and file 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 public interest. § 40-10.1-107(1), C.R.S. (2019); Rule 6008 of the Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* (CCR) 723-6. Motor carriers 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. Commission Rule 6008 identifies the amount, type of protection, and form for the insurance or surety coverage that motor carriers must maintain at all times in order to safeguard the public interest.

12. Specifically, motor carriers must obtain and keep motor vehicle liability insurance or surety bond coverage in force at all times. Rule 6008(a)(I), 4 CCR 723-6. In addition to motor vehicle liability coverage, towing carriers and household goods movers must maintain and keep cargo liability insurance or surety bond coverage in force at all times. Rule 6008(a)(I) and (III), 4 CCR 723-6. Towing carriers must obtain and keep worker's compensation insurance in force at

all times; and towing carriers providing storage must obtain and keep garage keeper's liability insurance in force at all times. Rule 6008(a)(IV) and (V), 4 CCR 723-6. And, in addition to motor vehicle liability and cargo liability coverage, household good movers must obtain and keep general liability insurance or surety coverage in force at all times. Rule 6008(a)(VI), 4 CCR 723-6.

13. 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), 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.*

14. 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.*

15. Section 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.

2. Notice and Service Requirements.

16. The Commission must provide Respondents with notice of the Complaints against them, including sufficient facts to adequately advise Respondents of the relief sought and how they are alleged to have violated the law, as well as the time affixed for a hearing on the Complaints. §§ 40-10.1-112(1) and 40-6-108, C.R.S.; Rule 1302(h), 4 CCR 723-1 of the Commission's Rules of Practice and Procedure; *see also* § 24-4-105(2), C.R.S. Such notice must be served upon the Respondents, which may be accomplished by mail. § 40-6-108(3), C.R.S.; Rule 1205(a) and (d), 4 CCR 723-1; *see also* § 24-4-104(10), C.R.S.

17. Regulated motor carriers must 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 upon whom the Commission may serve complaints and other notices. *Id.*; Rule 1205(a) and (d), 4 CCR 723-1. And, regulated motor carriers are responsible for updating the Commission on changes to their designated agent, including the agent's mailing and email addresses, within two days of the change. Rule 6006(b), 4 CCR 723-6. Service on a motor carrier's designated agent 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. A certificate of service issued by the Commission's Director is *prima facie* evidence that service has been obtained. § 40-6-108(3), C.R.S.

18. In addition, Commission Rule 1205(a), 4 CCR 723-1 requires that a person filing any pleading or other document with the Commission must serve all other parties; the same rule allows parties to serve pleadings and documents by e-mail.

3. Burden of Proof.

19. Staff carries the burden of proof by a preponderance of the evidence to demonstrate that the Complaints' allegations are true and that the Complaints were properly served on each of the Respondents. § 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 Dep't 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*, 719 P.2d 361, 363 (Colo. App. 1986).

D. Findings, Analysis and Conclusions.

20. The evidence was undisputed. The ALJ finds that the Complaints were served on Respondents listed in Hearing Exhibit 5 by United States mail at the most recent addresses and upon the designated agents on file with the Commission, and that Respondents provided the information used for service. *See* Hearing Exhibits 1 - 5. The ALJ concludes that Staff demonstrated by a preponderance of the evidence that it properly served the Complaints upon each of the Respondents listed in Hearing Exhibit 5. § 40-6-108(3), C.R.S.; Rule 1205(a) and (d), and Rule 1302(g)(II)(e), 4 CCR 723-1; and Rule 6006(a) and (c), 4 CCR 723-6.

21. The ALJ finds that the Complaints comply with the relevant notice requirements because they: (a) inform Respondents that the Commission has received insurance or surety

cancellation notices for each Respondent and the effective date of such cancellation; (b) advise Respondents that their authorities or permits are summarily suspended as of the coverage cancellation date; (c) notify Respondents that they may not conduct operations under their authorities or permits after the coverage cancellation and summary suspension date; (d) inform Respondents that the Commission has initiated a proceeding to permanently revoke their permits or authorities for failing to maintain and provide proof of effective insurance or surety coverage; (e) notify Respondents of the date, time, and means to attend the remote hearing on the Complaints at which Respondents have an opportunity to present data, views, and arguments; and (f) advise Respondents of the legal authority for the Complaints and relief sought. Hearing Exhibit 2. Rule 6009(e), 4 CCR 723-6; *see* §§ 40-6-108 and 24-4-105(2), C.R.S.

22. The ALJ concludes 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 Hearing Exhibit 5 that their insurance or surety coverage was or will be cancelled or terminated. Hearing Exhibit 2. 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.

23. With the exception of BFB, the evidence was undisputed that the Respondents listed in Hearing Exhibit 5 remain out of compliance with their respective financial responsibility requirements as required by § 40-10.1-107(1), C.R.S. and Commission Rule 6008.

24. 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, general liability, garage keeper's liability coverage, worker's compensation

coverage, and cargo 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 Hearing Exhibit 5. Thus, except as to BFB addressed below, 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 Hearing Exhibit 5. Hearing Exhibit 5 is attached to this Recommended Decision as Appendix A.

25. 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 ensuring that document is provided to the Commission. § 40-10.1-107, C.R.S., and Rule 6008, 4 CCR 723-6. The Respondents listed in Hearing Exhibit 5 have failed to do so.

26. The undersigned is sympathetic to Air Crew Exclusive, LLC, regarding the profound financial impact of the COVID-19 virus on the demand for service. Mr. Mammo understands and acknowledges that he does not have currently-effective proof of financial responsibility on file with the Commission. However, he plans and hopes to be able to resume operations on or about August 1, 2020. He will file proof of financial responsibility prior to resuming operations.

27. Staff's request to dismiss the Complaint against BFB will be granted. Because all Respondents listed in Hearing Exhibit 5 have failed to keep currently effective proof of financial responsibility on file with the Commission, their authorities and permits should be revoked. However, as provided below, Complaints against carriers who come into compliance with their

financial responsibility requirements before the effective date of this Recommended Decision will be dismissed, and their permits will not be revoked. This allows ample time for Air Crew Exclusive, LLC, as well as other Respondents, to avoid a final Commission decision revoking their permits or authorities.

28. Pursuant to § 40-6-109, C.R.S., the ALJ transmits the record of this proceeding, this recommended decision containing findings of fact and conclusions thereon, and a recommended order to the Commission.

III. ORDER

A. The Commission Orders That:

1. The Complaint against Biodiesel for Bands, doing business as BFB Shuttle and Car Service (BFB), is dismissed without prejudice.

2. Except as to BFB addressed above, the remaining authorities or permits listed in Appendix A attached hereto are revoked as of the effective date of this Recommended Decision.

3. Ordering Paragraph No. 2 will be void and the case dismissed as to any Respondent who takes one of the following actions before the effective date of this Recommended Decision:

- a. files the required Certificate of Insurance or surety with the Commission;
 - b. files an Application to Suspend their permit or authority with the Commission, if permitted by Commission rule; or
 - c. submits a permit cancellation form to the Commission, if permitted by Commission rule.
4. Proceeding No. 20C-0286-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.

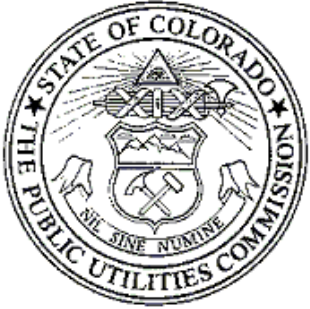
6. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision will be served upon the parties, who may file exceptions to it.

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.

7. If exceptions to this Recommended 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

G. HARRIS ADAMS

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director