

Decision No. R20-0800

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20F-0413TO

RICARDO GARCIA NIEVES,

COMPLAINANT,

V.

TOWING OPERATIONS, LLC DOING BUSINESS AS WYATT'S TOWING,

RESPONDENT.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
VACATING HEARING AND GRANTING COMPLAINT**

Mailed Date: November 10, 2020

I. STATEMENT

A. Summary.

1. Because Respondent, Towing Operations LLC, doing business as Wyatt's Towing (Wyatt's or Respondent) did not satisfy or answer the above-captioned Complaint, and the record contains sufficient information, this Decision grants the Complaint and orders Wyatt's to refund the monies collected for the tow subject to the Complaint. Pursuant to § 40-6-109, C.R.S., the Administrative Law Judge (ALJ) transmits to the Commission the record of this proceeding, this recommended decision containing findings of fact and conclusions thereon, and a recommended order.

B. Background.

2. Complainant, Ricardo Garcia Nieves (Complainant) initiated this proceeding on October 1, 2020 by filing a formal complaint (Complaint) with the Colorado Public Utilities Commission (Commission) against Respondent, Wyatt's.

3. On October 6, 2020, the Commission issued an Order to Satisfy or Answer, and an Order Setting Hearing and Notice of Hearing. *See* Order to Satisfy or Answer (Order to Satisfy) and Order Setting Hearing and Notice of Hearing (Notice of Hearing), (both filed on October 6, 2020), and an Errata Order to Satisfy or Answer (Errata) (filed on October 7, 2020).¹

4. The Commission ordered Wyatt's to satisfy the matters in the Complaint or to answer the complaint in writing within 20 days from service of the Order to Satisfy and the Complaint. *See* Order to Satisfy and Errata. The Commission served the Order to Satisfy and a copy of the Complaint on Wyatt's Towing electronically through the Commission's E-Filing System. *See* Certificate of Service for Order to Satisfy filed on October 6, 2020. The Certificate of Service for the Order to Satisfy demonstrates that Wyatt's is a registered user with the Commission's E-Filing System. *Id.*

5. The Commission's Order to Satisfy notifies Wyatt's that if it fails to satisfy the Complaint, if adequate evidence of its satisfaction is not presented to the Commission, or if no answer is filed within the required time, the Complaint's allegations may be deemed admitted, and the Commission may grant so much of the relief sought in the Complaint as is within its power and jurisdiction or may set the Complaint for Hearing. *See* Order to Satisfy.

¹ The Errata inserts an issuance date that was missing from the original Order to Satisfy. *See* Errata and Order to Satisfy. The Errata inserts October 6, 2020 as the issuance date. *Id.* The ALJ notes that the Notice of Hearing includes this same date as the issuance date. Notice of Hearing at 2.

II. RELEVANT LAW, FINDINGS, AND CONCLUSIONS

6. The Commission has jurisdiction over this Complaint and over Complainant, pursuant to § 40-6-108, C.R.S. (2020). Respondent is a regulated towing carrier, as defined by Rule 6501(r) of the Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* (CCR) 723-6 and is subject to this Commission's jurisdiction.

7. Commission rules define a non-consensual tow as "the transportation of a motor vehicle by tow truck if such transportation is performed without the prior consent or authorization of the owner or operator of the motor vehicle." Rule 6501(i), 4 CCR 723-6.

8. Rule 6508(b), 4 CCR 723-6, outlines the circumstances under which a towing carrier may perform nonconsensual tows of motor vehicles from parking lots. Specifically, a carrier may not tow a vehicle from a parking lot unless: directed to do so by law enforcement; requested to do so by the vehicle owner or the owner's agent; requested to do so by the property owner or owner's agent. Rule 6508(b)(I), 4 CCR 723-6. And, a towing carrier must also provide notice of the parking limitations, restrictions, regulations, or prohibitions and that vehicles parking in violation of those restrictions are subject to be towed at the vehicle owner's expense. Rule 6508(b)(III), 4 CCR 723-6.

9. If a tow is performed in violation of Commission rules, the towing carrier may not charge or retain any fees or charges for the services it performs, and must return any monies collected to the vehicle's owner or authorized agent. Rule 6511(g), 4 CCR 723-6.

10. The Commission properly served Wyatt's with the Order to Satisfy and Complaint on October 6, 2020 through the Commission's E-Filing System, as Wyatt's is a registered user of the E-Filing's system. *See* Rule 1205(b), 4 CCR 723-1 of the Commission's Rules of Practice and Procedure; and Certificate of Service for Order to Satisfy.

11. More than 20 days have passed since the Order to Satisfy and Complaint were issued and served on Wyatt's on October 6, 2020. Wyatt's has failed to respond to the Order to Satisfy or Answer. Therefore, the allegations of the Complaint are deemed admitted.

12. The admitted facts establish that the vehicle was parked in the correct parking spot (*i.e.*, parking spot from which the vehicle should not be towed); the towing carrier towed the vehicle in error; and that the vehicle's owner or agent did not consent to the tow. Complaint at 1. For these reasons, the preponderance of the evidence establishes that the tow was unauthorized and performed in violation of Rule 6508, 4 CCR 723-6.² The Complaint will be granted. Complainant seeks a refund for the full amount paid for the subject tow, that is \$551.40. *Id.*

13. Wyatt's Commission-issued permit authorizes it to perform nonconsensual tows only in accordance with Commission rules and Colorado law. As a regulated towing carrier, Wyatt's has an obligation to ensure that it performs a nonconsensual tow in compliance with the Commission's rules. Based upon the violation of the Commission rule, appropriate relief is requested. Given the above findings and conclusions, Wyatt's must refund the money collected for the subject tow. Rule 6511(g), 4 CCR 723-6.

III. ORDER

A. The Commission Orders That:

1. The Complaint filed by Complainant, Ricardo Garcia Nieves (Nieves) on October 1, 2020 against Respondent, Towing Operations LLC, doing business as Wyatt's Towing (Wyatt's) is granted.

² In addition, there may have been an error or mistake involving the tow signs in the parking lot. *Id.* ("the complaint feels its there fault for parking lot, been mistaken painting."). Complaint at 1. The ALJ makes no findings on this because the facts alleged in the Complaint are unclear.

2. Wyatt's may not charge or retain any money already collected for the improper tow that is the subject of the Complaint. Wyatt's must refund to Nieves the amount of \$551.40 within seven calendar days of the effective date of this Decision.

3. The hearing scheduled for December 14, 2020 at 9:00 a.m., in Denver, Colorado is vacated.

4. If Wyatt's fails to refund the money as ordered, it will constitute a violation of this Decision.

5. Proceeding No. 20F-0413TO is closed.

6. 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.

7. 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.

8. 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)



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