

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 17C-0051-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
STEVEN H. DENMAN
REVOKING AUTHORITIES AND PERMITS**

Mailed Date: February 21, 2017

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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 in Hearing Exhibit 4, which is Appendix A to this Decision.

January 23, 2017 (Hearing Exhibits 1 through 3) by United States mail, at the most recent addresses on file with the Public Utilities Commission (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 Commission has received notice from the Respondents' insurance or surety companies to cancel the Respondents' insurance or surety coverage as specifically identified in each Complaint. *Id.* The Complaints further notify the Respondents that their authorities or permits have been summarily suspended and that at the date, time, and location noticed in the Complaints, 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 Complaints, on February 14, 2017 at approximately 12:05 p.m., the undersigned Administrative Law Judge (ALJ) called the cases for hearing. Staff of the Commission (Staff) appeared through counsel, and Staff member Vanessa Condra testified on behalf of the Staff. Respondent Cowboy Way Haulin' LLC (Cowboy Way) appeared, and Ms. Tracie Johnson testified on its behalf. No other Respondents appeared for the hearing.

4. Hearing Exhibits 1 through 4 were offered by Staff and admitted into evidence during the hearing.

A. The Commission's Requirements Relating to Financial Responsibility.

5. 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 (2014), 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 safeguard the public interest adequately.

6. In addition to motor vehicle liability insurance, towing carriers and household goods movers must maintain and keep in force at all times cargo liability insurance (among other insurance). Rule 6007(a)(III), 4 CCR 723-6. Those towing carriers providing storage must maintain and keep in force at all times garage keeper's liability coverage. Rule 6007(a)(IV), 4 CCR 723-6. In addition, towing carriers with employees must also maintain and keep in force at all times workers' compensation insurance 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.

7. The motor carriers are responsible for filing proof of the required financial responsibility coverage with the Commission. *See* § 40-10.1-107, C.R.S., and Rule 6007, 4 CCR 723-6.

8. The required certificates of insurance and surety bonds cannot be terminated or cancelled unless and until the insurance or surety carrier provides 30 days' written notice of the same to the Commission. *See* § 40-10.1-107(4), C.R.S.; Rule 6007(i), 4 CCR 723-6. Consequently, the Commission regularly receives notice from insurance or surety carriers when they have cancelled the insurance or surety bonds of motor carriers who are licensed by the Commission.

9. 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. *See* § 24-4-105(7), C.R.S.; Rule 1500 of the Commission's Rules of Practice and Procedure, 4 CCR 723-1. 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 January 23, 2017, at the most recent addresses on file with the Commission. Hearing Exhibits 1 through 3. The addresses on file with the Commission were provided by the Respondents.

13. Ms. Condra further testified that the Complaints were sent to Respondents 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, as of the date of the February 14, 2017 evidentiary hearing.²

14. As of the conclusion of the February 14, 2017 hearing, none of the Respondents listed in Appendix A have 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.*, an application seeking to transfer or suspend a Respondent's permit). Ms. Condra found no pending proceedings relating to the Respondents listed in Hearing Exhibit 4 (Appendix A) which could impact this proceeding.

15. Staff recommended and requested that the authorities and permits of the Respondents listed in Appendix A be revoked.

16. Ms. Tracie Johnson, Secretary for Cowboy Way, testified that her company is a towing service, which recovers disabled and wrecked vehicles for major insurance companies and tows them to specified locations for assessment of damages and claims. Cowboy Way previously had the required insurance on file with the Commission for its tow truck.³ She testified that a dispute with its insurance company, Berkshire Hathaway, was responsible for the cancellation of the insurance policies for Cowboy Way.⁴

² By contrast, Hearing Exhibit 1 is the list of carriers who were non-compliant when the Complaints were issued and served. As a comparison of Hearing Exhibit 1 with Hearing Exhibit 4 makes evident, many carriers have come into compliance since the Complaints were issued.

³ A review of Commission records confirms that Cowboy Way had cargo and liability insurance policies on file since November 25, 2016, when Cowboy Way received Towing Permit No. T-04658, until the recent cancellation notice was filed with the Commission on January 31, 2017.

⁴ Hearing Exhibit 2, page 8, shows that Cowboy Way's Cargo and Liability insurance policies were cancelled on January 31, 2017.

17. Ms. Johnson testified that, on or about December 27, 2016, without Cowboy Way's consent, Berkshire Hathaway changed its policy from towing company to transport hauling company. The initial minimum bill increased from \$213 to \$2,217 and the total policy cost increased from \$3,097 to \$8,080. She explained that, as a towing company Cowboy Way has only one tow truck with capacity to tow two vehicles, whereas a transport hauling company can haul four or more vehicles at a time. Berkshire Hathaway refused to change the insurance policy back to the original coverage and, when Cowboy Way was unable to pay the increased amount, Berkshire Hathaway cancelled their insurance without notice. Ms. Johnson testified that Kevin Johnson, the owner, has been having discussions with an independent agent regarding obtaining the necessary insurance coverage from other companies. However, as of the date of the hearing, Cowboy Way did not yet have insurance.

D. Conclusions.

18. The evidence presented by Staff was undisputed.

19. The evidence established that, as of the date of the hearing, Cowboy Way did not have the required proof of financial responsibility on file with the Commission.

20. 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 1 through 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 Exhibit 2.

21. 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 or certificates identified in Appendix A. This proof 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.

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, cargo liability coverage, garage keeper's liability coverage, and worker's compensation coverage in such form and in such manner as required for the Respondents as stated in Appendix A. *See* § 40-10.1-107, C.R.S., and Rule 6007, 4 CCR 723-6. 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 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. *See* § 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, cargo liability coverage, garage keeper's liability coverage,

and worker's compensation coverage, 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. 17C-0051-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)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

STEVEN H. DENMAN

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director