

Decision No. R18-0912-I

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

PROCEEDING NO. 18G-0495HHG

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COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

MAMADOU FOFANA DOING BUSINESS AS STRONG MAN MOVING,

RESPONDENT.

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**INTERIM DECISION OF  
ADMINISTRATIVE LAW JUDGE  
STEVEN H. DENMAN  
RESCHEDULING EVIDENTIARY  
HEARING AND NOTICE OF HEARING**

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Mailed Date: October 16, 2018

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**I. STATEMENT****A. Procedural History**

1. This Proceeding was commenced on July 24, 2018, when Trial Staff of the Colorado Public Utilities Commission (Staff) issued Civil Penalty Assessment or Notice of Complaint to Appear (CPAN) No. 121942 to Mamadou Fofana, doing business as Strong Man Moving (Strong Man Moving or Respondent).

2. The CPAN cites Respondent with one Count of violating § 40-10.1-107(1), C.R.S.,<sup>1</sup> in Denver, Colorado on July 9, 2018, specifically, for “Failure to maintain and file evidence of financial responsibility in sums as required by the Public Utilities Commission.” The CPAN also cites Respondent with one Count of violating § 40-10.1-502(1)(a), C.R.S.,<sup>2</sup> in Denver, Colorado on July 9, 2018, specifically, for “Operating and/or offering to operate as a mover in intrastate commerce without first having obtained a permit from the Commission.” (CPAN, page 1.)

3. The CPAN assessed for the first Count a civil penalty of \$11,000.00, plus an additional 15 percent surcharge required by § 24-34-108, C.R.S., for a total penalty of \$12,650.00. For the second Count, the CPAN assessed a civil penalty of \$1,100.00, plus the additional 15 percent surcharge, for a total penalty of \$1,265.00. The total amount of civil penalties assessed by the CPAN, including surcharges, is \$13,915.00. (CPAN, page 1.)

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<sup>1</sup> Section 40-10.1-107(1), C.R.S., requires that: “Each motor carrier shall maintain and file with the commission evidence of financial responsibility in such sum, for such protection, and in such form as the commission may by rule require as the commission deems necessary to adequately safeguard the public interest..”

<sup>2</sup> Section 40-10.1-502(1)(a), C.R.S., requires that: “A person shall not operate or offer to operate as a mover in intrastate commerce pursuant to this article, or advertise services as a mover, without first having obtained a permit from the commission in accordance with this part 5.” Part 5 of Article 10.1 of Title 40, C.R.S., is entitled “Motor Carriers of Household Goods.”

4. The procedural history of this proceeding is set forth in Decision No. R18-0707-I (mailed on August 21, 2018) and is repeated here as necessary to put this Decision into context.

5. Cory Brodzinski of Staff affirmed that, on July 23, 2018, he served the CPAN on Strong Man Moving by certified U.S. mail, return receipt requested. (CPAN, page 2.)

6. On August 15, 2018, by minute entry, the Commission referred this Proceeding to an Administrative Law Judge (ALJ) for disposition. Subsequently, the undersigned ALJ was assigned to preside over this Proceeding.

7. On August 20, 2018, Counsel for Staff filed a Notice of Intervention as of Right by Staff, Entry of Appearance and Notice Pursuant to Rule 1007(a) and Rule 1401. Staff's Intervention by Right was acknowledged in Decision No. R18-0707-I.

8. This matter is an adjudicatory proceeding before the Commission. Staff and Respondent are the Parties to this Proceeding.

9. As of August 21, 2018, no entry of appearance had been entered on behalf of Respondent.

10. In Decision No. R18-0707-I, the ALJ determined that, according to the Commission's records, Strong Man Moving was a sole proprietorship. The ALJ also determined that Mamadou Fofana appeared to be the owner of Strong Man Moving, and if that is true, he would meet the criteria of Rule 1201(b)(I) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1, and could represent Strong Man Moving in this Proceeding. The ALJ advised Mr. Fofana that he should seriously consider retaining counsel to represent Strong Man Moving.

11. Decision No. R18-0707-I also scheduled an evidentiary hearing for October 9, 2018 at 9:30 a.m. in a Commission hearing room in Denver, Colorado.

12. In addition, Decision No. R18-0707-I established a procedural schedule for each Party to file pre- hearing disclosures. Staff was ordered to file on or before September 5, 2018, and to serve on Strong Man Moving, a list of exhibits and witnesses, detailed summaries of the testimony of each witness, and copies of the exhibits that it intended to offer into evidence at the hearing. Strong Man Moving was ordered to file on or before September 26, 2018, and to serve on Staff and its counsel, its list of its witnesses, detailed summaries of the testimony of each witness, and copies of the exhibits that it intended to offer into evidence at the hearing.

13. Prior to issuing Decision No. R18-0707-I, the ALJ verified the certificate of service. Commission records showed that the then-current mailing address on file for Strong Man Moving was 9815 E. Alabama Drive Unit #413 Denver, Colorado 80247. Decision No. R18-0707-I was served by U.S. mail on Strong Man Moving at that address.

14. On September 5, 2018, Staff filed its Exhibit and Witness Lists, including a list of its witnesses, detailed summaries of the testimony of each witness, and copies of 14 exhibits that it intended to offer into evidence at the hearing. According to the Certificate of Service, Staff served its Exhibit and Witness Lists and copies of the 14 exhibits by U.S. mail on Strong Man Moving at three different addresses: 9815 E. Alabama Drive, Unit #413, Denver, Colorado 80247; 1480 E. Girard Pl., Building A #618, Englewood, Colorado 80113; and 9979 E. Wyoming Pl., #2112, Aurora, Colorado 80247. Staff's Exhibit and Witness Lists pleading stated that this Proceeding had been set for hearing on October 9, 2018 by Decision No. R18-0707-I.

15. By the September 26, 2018 deadline set in Decision No. R18-0707-I, Strong Man Moving failed to file, or to serve on Staff and its counsel, its list of its witnesses, detailed summaries of the testimony of each witness, and copies of the exhibits that it intended to offer into evidence at the hearing. Nor did Respondent file a timely request for an extension of time to make the required filing.

16. While preparing for the evidentiary hearing, the ALJ became concerned that Respondent Strong Man Moving may not have been served with Decision No. R18-0707-I, including the notice of the October 9, 2018 evidentiary hearing. The ALJ's review of Commission files and E-filing records on the morning of October 9, 2018, revealed that the envelop mailed by Commission administrative staff to Strong Man Moving, at 9815 E. Alabama Drive Unit #413 Denver, Colorado 80247, was returned to the Commission as undeliverable – "Moved Left No Address Unable to Forward."

17. On October 9, 2018 at approximately 9:30 a.m., the ALJ called this Proceeding for hearing. Staff appeared through counsel and was prepared to proceed. No representative of Respondent Strong Man Moving appeared for the hearing.

18. Staff presented the direct testimony of Cory Brodzinski, a criminal investigator with the Commission Transportation Staff. Hearing Exhibits 1 through 14 were admitted into evidence. Mr. Brodzinski testified that, as a result of an investigation, he sent a Violation Warning Letter on June 16, 2017 (Hearing Exhibit 6) to Strong Man Moving at 9815 E. Alabama Drive Unit #413 Denver, Colorado 80247 (Alabama Drive address). A trade name filing made by Mr. Fofana with the Colorado Secretary of State, effective on July 18, 2017 and renewed on May 18, 2018, listed the Alabama Drive address as the primary business address for Strong Man Moving. (Hearing Exhibit 1, pp. 2, 4 and 5.) Mr. Brodzinski testified that he

understood that the Alabama Drive address was the business and mailing address for Strong Man Moving, and he himself inserted the Alabama Drive address into Commission records as Strong Man Moving's mailing address. Mr. Brodzinski also testified that he served the CPAN in the Proceeding on Strong Man Moving by Certified U.S. mail, return receipt requested, at two different addresses: (1) the Alabama Drive address; and (2) 9979 E. Wyoming Place, Englewood, Colorado 80247 (Wyoming Place address). He testified that service of the CPAN at the Wyoming Place address was delivered on July 23, 2018 (Hearing Exhibit 12, pp. 1 and 4), while service at the Alabama Drive address was not delivered.

19. At the hearing, counsel for Staff stated that Staff's Exhibit and Witness list filing sent to the Alabama Drive address was returned as not deliverable.

20. A Craig's List advertisement for Strong Man Moving lists the Wyoming Place address. (Hearing Exhibit 13.)

21. A Better Business Bureau listing for Strong Man Moving lists a third address: 50 S. Havana St., Aurora, Colorado 80012-6446 (Havana Street address). (Hearing Exhibit 4.)

22. On September 4, 2018, Mr. Fofana filed with the Colorado Secretary of State, Articles of Organization to convert Strong Man Moving to a limited liability company. The filing listed a fourth address as the principal office address for Strong Man Moving: 1480 Girard Place, Apt. 618A, Englewood, Colorado 80113 (Girard Place address). (Hearing Exhibit 14, pp. 3 through 6.)

23. As found above, Staff's Exhibit and Witness list filing and copies of exhibits were served on Strong Man Moving at three different addresses: the Alabama Drive address; the Girard Place address; and the Wyoming Place address. The Alabama Drive address mailing was returned as undeliverable.

**B. Necessity to Reschedule the Evidentiary Hearing.**

24. After examining Commission records and the Hearing Exhibits introduced by Staff, the ALJ concludes that Respondent Strong Man Moving did not receive adequate notice of the October 9, 2018 evidentiary hearing, because the envelope containing Decision No. R18-0707-I, including the notice of the October 9, 2018 evidentiary hearing, mailed by the Commission administrative staff at the Alabama Drive address, was returned to the Commission as undeliverable.

25. The ALJ will schedule another evidentiary hearing in this Proceeding for October 26, 2018 in a Commission hearing room in Denver, Colorado. In order to make good faith efforts to serve notice of the new hearing date on Strong Man Moving, copies of this Interim Decision will be mailed by the Commission to all four addresses for Mr. Fofana and Strong Man Moving.

26. In order to have a fair and meaningful rescheduled evidentiary hearing for both Staff and Strong Man Moving, the ALJ has arranged for a transcript of the October 9, 2018 evidentiary hearing to be prepared and filed in this Proceeding, so that it will be available to Mr. Fofana and Strong Man Moving for review prior to the new hearing date. Staff's Hearing Exhibits are also in the Commission's file in this Proceeding, and are available to Mr. Fofana and Strong Man Moving for review prior to the new hearing date.

27. Staff will be *not* be ordered to re-file, or to re-serve on Strong Man Moving its list of its witnesses, detailed summaries of the testimony of each of its witnesses, and copies of the exhibits that it intends to offer into evidence at the hearing.<sup>3</sup> However, Staff will be ordered to

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<sup>3</sup> The ALJ understands that Staff's Exhibit and Witness list filing and copies of exhibits may have been served successfully on Strong Man Moving at the Girard Place address and the Wyoming Place address.

bring to the October 26, 2018 hearing a complete copy of its Hearing Exhibits admitted at the prior hearing, so that Mr. Fofana may have access to hard copies of those exhibits at the rescheduled hearing.

28. Mr. Fofana and Strong Man Moving will be ordered to bring to the October 26, 2018 hearing four copies of any exhibits that he intends to offer into evidence at the hearing.

29. Any Party wishing to make an oral closing statement at the hearing may do so immediately following the close of the evidence (*i.e.*, after presentation of the evidence near the end of the hearing).

30. After re-scheduling the hearing, the ALJ will not consider future requests to continue the hearing, unless there is a showing of good cause. If a Party is unable to attend the hearing, they shall file a motion for a continuance no later than October 19, 2018. After conferral with the other Party, the motion shall state the reasons the filing Party is unable to attend, state good cause for the requested continuance, and state dates they and the other Party are available for the continued hearing.

### **C. Additional Advisements**

31. Staff bears the burden of proof by a preponderance of the evidence. Section 24-4-105(7), C.R.S.; § 13-25-127(1), C.R.S.; Rule 1500, 4 CCR 723-1. The preponderance standard requires that the evidence of the existence of a contested fact outweighs the evidence to the contrary. *Mile High Cab, Inc. v. Colorado Public Utilities Commission*, 302 P.3d 241, 246 (Colo. 2013). That is, the finder of fact must 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.<sup>4</sup>

32. The burden of proving an affirmative defense rests on the defendant (or the respondent in Commission proceedings) asserting the defense. The defense must be proven by a preponderance of the evidence. *Western Distributing Co. v. Diodoso*, 841 P.2d 1053, 1057-1059 (Colo. 1992). In formal complaint, civil penalty assessment, and show cause proceedings before the Commission, the respondent has the burden to prove the defenses it raises by a preponderance of the evidence. *See Public Utilities Comm'n. v. Trans Shuttle, Inc.*, Decision No. R01-881 (Mailed Date of August 29, 2001) ¶ III.C, p. 9, in Docket No. 01G-218CP; *see generally* Rule 1302 of the Rules of Practice and Procedure, 4 CCR 723-1. In this Proceeding Strong Man Moving bears the burden of proving its affirmative defenses, if any, by a preponderance of the evidence.

33. **The Parties are advised and on notice** that this proceeding is governed by the Rules of Practice and Procedure found at 4 CCR 723-1, Part 1. The ALJ expects the Parties to comply with these rules. The Rules of Practice and Procedure are available on the Commission's website (<http://www.dora.colorado.gov/puc>), as well as in hard copy from the Commission upon request.

34. **The Parties are advised and are on notice** that the Commission has an E-Filings System available. One may learn about -- and if one wishes to do so, may register to use -- that system at <http://www.dora.colorado.gov/puc>.

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<sup>4</sup> Proof by a preponderance of the evidence of unlawful conduct constitutes substantial evidence to support the Commission's decision in a CPAN proceeding. Substantial evidence is more than a scintilla, and it must do more than create a suspicion of the existence of the fact to be established. *Integrated Network Services, Inc. v. Public Utilities Comm'n.*, 875 P.2d 1373, 1378 (Colo. 1994).

35. **The Parties are advised and are on notice** that they are each responsible for filing pleadings and other documents with the Commission. Pursuant to Rule 1204 of the Rules of Practice and Procedure, 4 CCR 723-1, a filing is made when the Commission receives the document. Thus, if a document is placed in the mail on the date on which the document is to be filed, the document is not filed with the Commission in a timely manner. Pleadings and other documents are filed with the Commission either by using the E-filings System or by filing a paper document, including the original and three copies. Emailing pleadings and other documents to the ALJ, the Director of the Commission, the Commissioners, or other employees of the Commission **does not** constitute proper filing under Rule 1204, 4 CCR 723-1.

36. **Each Party is specifically advised** that all filings with the Commission must also be served upon the other Party in accordance with Rule 1205, 4 CCR 723-1.

37. **Each party is specifically advised** that, pursuant to Rule 1400(b) of the Rules of Practice and Procedure, 4 CCR 723-1, the Party responding to a motion (*i.e.*, the Party that did not file the motion) has the procedural right to file a written response to the filed motion no later than 14 days after service of the motion, unless the time for filing a response is shortened by a separate order from the ALJ.

## II. **ORDER**

### A. **It Is Ordered That:**

1. The evidentiary hearing in this Proceeding is rescheduled as follows:

DATE: October 26, 2018  
TIME: 9:30 a.m.  
PLACE: Commission Hearing Room  
1560 Broadway, Suite 250  
Denver, Colorado

2. At the above date, time, and place you will be given the opportunity to present evidence and to be heard, consistent with the requirements advisements stated in this Decision.

3. A transcript of the October 9, 2018 evidentiary hearing has been ordered and will be filed in this Proceeding, so that it will be available to Mamadou Fofana, doing business as Strong Man Moving (Strong Man Moving), for review prior to the new hearing date.

4. Trial Staff of the Colorado Public Utilities Commission (Staff) shall bring to the October 26, 2018 hearing a complete copy of its Hearing Exhibits that were admitted at the October 9, 2018 hearing, so that Mr. Fofana and Strong Man Moving will have access to hard copies of those Hearing Exhibits at the rescheduled hearing.

5. At the October 26, 2018 hearing, Strong Man Moving shall bring four copies of the exhibits that it intends to offer into evidence at the hearing.

6. The Parties shall comply with the orders, requirements, and advisements established in this Decision.

7. This Decision shall be effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

STEVEN H. DENMAN

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Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,  
Director