

Decision No. R19-1018

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19C-0658-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: December 18, 2019

I. STATEMENT

A. Summary

1. This Decision grants the relief sought in the Public Utilities Commission Staff's (Staff or Commission Staff) Complaints against the motor-carrier Respondents listed in Appendix A to this Decision, and revokes their authorities and permits based on their failure to keep currently effective proof of financial responsibility on file with the Commission.

II. BACKGROUND AND FACTUAL FINDINGS

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 November 22, 2019. Hearing Exhibit 2. As noticed in the Complaints, on December 11, 2019, the undersigned Administrative Law Judge (ALJ) held the hearing on the Complaints. Commission Staff member Ms. Vanessa Condra and counsel appeared on behalf of Commission Staff. No Respondent appeared.

3. Ms. Condra testified on behalf of Commission Staff. Hearing Exhibits 1 through 4 were admitted into evidence during the hearing.

4. The Complaints¹ against each of the Respondents in this proceeding allege 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 inform 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.*

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 and 2.

6. Ms. Condra explained that the Commission served the Complaints upon the Respondents by United States mail on November 22, 2019, at the addresses, and upon the

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.

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 Exhibit 3) for the Complaints demonstrates that the Commission served the Respondents by mailing the Complaints addressed as indicated in the "Hearing Cycle Listing," Hearing Exhibit 3. The Hearing Cycle Listing (Hearing Exhibit 1) is the list of carriers, their designated agents, and addresses as on file with the Commission as of November 22, 2019, whose insurance or surety faced imminent termination. *See also* Hearing Exhibit 2. Ms. Condra also testified that three Complaints in this proceeding were returned by mail, and that she reviewed the returned mail, and confirmed that the Complaints were each mailed to the most recent addresses and designated agents on file with the Commission. Those three carriers are: Black Eagle Inc., doing business as Knight's Towing (Black Eagle); Care Transportation LLC; and Fame Health Care Services, Inc.

8. On the date of the hearing (December 11, 2019), 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 one pending proceeding that may impact this matter: an application to abandon PUC No. 55930 owned by Jody Boyer doing business as Toad Hop Tours (Jody Boyer). Based on that proceeding, Ms. Condra asked that the Complaint against Jody Boyer be dismissed.

9. Ms. Condra 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. *See* Hearing Exhibit 4. The Respondents listed in Hearing Exhibit 4 remain out of compliance with the Commission's financial responsibility requirements as of the December 11, 2019 hearing.² Based on the foregoing, Staff requested that the authorities and permits of the Respondents listed in Hearing Exhibit 4 be revoked, except for Jody Boyer's.

III. RELEVANT LAW, ANALYSIS, AND CONCLUSIONS

A. Relevant Law

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

10. Generally, motor carriers³ 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 public interest. § 40-10.1-107, C.R.S. (2019); Rule 6008 of the Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* (CCR) 723-6. Commission Rule 6008 identifies the amount, type of protection, and form that motor carriers must maintain at all times in order to safeguard the public interest.

11. 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

² In contrast, Hearing Exhibit 1 is the list of carriers who were non-compliant when the Commission issued the Complaints on November 22, 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. All the carriers listed in Hearing Exhibit 4 are listed in Hearing Exhibit 1.

³ As referenced in this Decision, motor carriers are carriers who hold a Commission permit, authority, or certificate.

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.

12. 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.*

13. 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.*

14. 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.

2. Notice and Service Requirements

15. 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. §§ 24-4-105(2), 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. Such notice must be served upon the Respondents, which may be accomplished by mail. *Id.*; §§ 40-6-108(3) and 24-4-104(10), C.R.S.; Rule 1205(a) and (d), 4 CCR 723-1.

16. 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 address, 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.

3. Burden of Proof

17. 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).

B. Analysis and Conclusions

18. The evidence was undisputed. The ALJ finds that the Complaints were served on the Respondents by United States mail at the most recent addresses and upon the designated agents on file with the Commission. Hearing Exhibits 2 to 4. This finding applies equally to the three carriers whose Complaints were returned by mail.⁴ All carriers are obligated to ensure they have provided an accurate address for their designated agent for service of Commission documents and orders; failing to do so runs the risk that Commission mail will be returned. Rule 6006(a) and (b), 4 CCR 723-6. This is a known risk given that Rule 6006(c) and (d) plainly state that service on a carrier's designated agent on file with the Commission is service on the carrier, and that a certificate of service indicating service on the designated agent is *prima facie* evidence

⁴ The ALJ notes that the return envelopes for the Complaints are in the administrative record, having been filed within this proceeding. The ALJ further notes that the addresses on those envelopes are identical to the addresses listed in Hearing Exhibits 1 and 4 for each of the relevant three carriers.

19. that the carrier received the notice. Based on the foregoing, the ALJ finds that Staff demonstrated by a preponderance of the evidence that it properly served the Complaints upon each of the Respondents listed in Hearing Exhibits 1 and 4, including Black Eagle; Care Transportation LLC; and Fame Health Care Services, Inc. §§ 40-6-108(3) and 24-4-104(10), 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.

20. 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 location of the hearing on the Complaints at which Respondents will 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.

21. 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 4 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.

22. 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 4. 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 Hearing Exhibit 4. Hearing Exhibit 4 is attached to this Decision as 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 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 4 have failed to do so.

24. Because all Respondents listed in Hearing Exhibit 4 have failed to keep currently effective proof of financial responsibility on file with the Commission, their authorities and permits should be revoked. However, given that Jody Boyer has a pending application to abandon PUC No. 55930, the ALJ recommends that Jody Boyer's permit remain suspended, but that it not be revoked. If the Commission grants the pending application to abandon, the

suspension will become moot. If not, Jody Boyer's permit will remain suspended and Staff may file another complaint to revoke the Jody Boyer's permit.

25. 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.

IV. ORDER

A. The Commission Orders That:

1. Except for Jody Boyer doing business as Toad Hop Tours's (Jody Boyer) PUC No. 55930, the authorities or permits listed in Appendix A and attached hereto are revoked as of the effective date of this Decision. Jody Boyer's PUC No. 55930 remains suspended; should the Commission grant Jody Boyer's pending application to abandon PUC No. 55930, the suspension is lifted as moot.

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-0658-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