

Decision No. R24-0667

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24M-0111TO

IN THE MATTER OF THE PETITION OF DEBONAIR LIMITED TO REVERSE AN INITIAL
TOWING PERMIT DENIAL PURSUANT TO 40-10.1-401(2)(A), C.R.S., AND RULE 6504(D).

**RECOMMENDED DECISION
GRANTING SUMMARY JUDGMENT,
DISMISSING PETITION, AND VACATING
EVIDENTIARY HEARING**

Issued Date: September 16, 2024

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I. STATEMENT, SUMMARY, AND PROCEDURAL HISTORY**A. Summary**

1. This Decision grants the Motion for Summary Judgment filed by Trial Staff (“Staff”) of the Colorado Public Utilities Commission (“PUC” or “Commission”); dismisses the Petition filed by Debonair Limited, doing business as Debonair Limited Towing and Recovery (“Petitioner” or “Debonair”); and vacates the fully remote evidentiary hearing in this matter currently set for September 23, 2024.

B. Procedural History and Factual Background

2. This Proceeding concerns Debonair’s above-captioned Petition seeking to reverse a Commission decision denying it a towing permit.

3. On February 5, 2024, Debonair filed Towing Permit Application No. 1021161. On February 14, 2024, the Transportation Section of the PUC sent a letter to Debonair’s owner, Cournell Fannings, notifying him that Debonair was ineligible for a towing carrier permit “until after July 1, 2025,” because Mr. Fannings had pled guilty to a felony in Adams County District Court in July 2020 (“the denial letter”).¹ Specifically, the letter noted that Mr. Fannings pleaded guilty to the illegal possession of a weapon by a prior offender in violation of § 18-12-108(1), C.R.S., a class six felony.² The denial letter explained that Rule 6504 of the Commission’s Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* (“CCR”) 723-6, prohibits the issuance of a towing permit to anyone who has been convicted of a felony within the five years preceding a towing application.

¹ See Towing Permit Application Denial Letter (“Denial Letter”), dated February 14, 2024, attached to Petition.

² *Id.*

4. The denial letter also advised Mr. Fannings that the decision denying his application could be appealed within 60 days of the denial letter's issuance.³ On March 6, 2024, Debonair filed this Petition, accompanied by a copy of the February 14, 2024 denial letter, asking that the denial be reversed.

5. In the Petition, Mr. Fannings did not deny his felony conviction. On the contrary, he acknowledged that he “made some very poor choices that landed me in the system” and still owes some restitution as a result “because the amount is so large,” but that he has been making payments “as best [as he] can.”⁴ Despite his prior legal entanglements, the Petition states Mr. Fannings is working hard to turn his life around, is on the path to a better future, and is just trying “to make a better life for myself and my children.”⁵ In the Petition, Mr. Fannings writes eloquently and movingly about his “passion” for towing, his desire to “give back to the community” by providing roadside assistance and recovery “during a snowstorm or heavy traffic,” and his belief that being issued a towing permit will open a pathway for him to achieve these goals.⁶ Further, the Petition adds, although Mr. Fannings states that he “understand[s he has] a past and there is nothing [he] can do to change that . . . [he] can change [his] future.”⁷ The Petition therefore “sincerely ask[s]” the PUC “to re-consider my application for a PUC number and allow me to do what I do best to further better myself and my famil[y’s] future.”⁸

6. On March 27, 2024, the Commission referred this proceeding by minute entry to an Administrative Law Judge (“ALJ”) for disposition, after receiving and reviewing it.

³ *Id.*

⁴ Petition, filed Mar. 6, 2024.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

7. On April 10, 2024, Trial Staff of the Commission (“Staff”) filed a Notice of Intervention of Right [...], Entry of Appearance, Notice Pursuant to Rule 1007(a) and Rule 1401, and Request for Hearing.

8. By Decision No. R24-0389-I, issued June 6, 2024, the undersigned ALJ scheduled this matter for an evidentiary hearing to be held July 25, 2024.

9. Decision No. R24-0389-I also ordered Petitioner to provide the Commission within two weeks of the issuance of the decision (or on or before June 20, 2024) with proof that it could be represented in this Proceeding by a non-attorney — its owner/operator Cournell Fannings.

10. Subsequently, on June 28, 2024, Staff filed a Motion for Summary Judgment requesting that the Petition be dismissed on the grounds that Petitioner is barred from obtaining a towing permit under Rule 6504(b)(II) of the Commission’s Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6, which expressly prohibits the Commission from granting a towing permit “if the applicant has: (a) a conviction in the state of Colorado, within the five years preceding the date the criminal history record check is completed, of any felony under any Title of [the Colorado Revised Statutes] or any towing-related offense.”

11. Petitioner did not respond timely to either Decision No. R24-0389-I requiring it to file proof of its representation, or to Staff’s Motion for Summary Judgment.

12. Because the Commission could not serve Petitioner by email and was unable to reach Petitioner by telephone, the undersigned ALJ became concerned that Petitioner was not being served with pleadings filed in this proceeding. By Decision No. R24-0507-I, issued July 16, 2024, the undersigned ALJ therefore vacated the evidentiary hearing to be held July 25, 2024, and instead scheduled a prehearing conference to be held July 25, 2024, commencing at 11:00 a.m.

13. The ALJ held the prehearing conference remotely by Zoom as scheduled on July 25, 2024, at 11:00 a.m. Mr. Fannings appeared on behalf of Debonair. Justin Cox appeared on behalf of Staff.

14. At the prehearing conference, the parties discussed the status of this proceeding with the ALJ; established contact information for Mr. Fannings and Debonair so that Petitioner can receive filings and pleadings electronically going forward; determined Mr. Fannings' ability to represent Petitioner in this Proceeding; and set an evidentiary hearing and other procedural deadlines. The ALJ also notified Mr. Fannings of the pending Motion for Summary Judgment and advised that a response to the Motion for Summary Judgment was necessary if he wished to contest it.

15. Decision No. R24-0540-I, issued July 26, 2024, memorialized the instructions and issues discussed at the July 25, 2024 prehearing conference. In particular, the undersigned ALJ granted Mr. Fannings permission to represent Petitioner in this Proceeding; set a deadline of August 8, 2024, by which Petitioner was to respond to Staff's Motion for Summary Judgment; ordered Petitioner to file any exhibits it wished to introduce at hearing (as well as a witness and exhibit list) by September 3, 2024; and scheduled a fully-remote evidentiary hearing to be held September 23, 2024.

16. On August 2, 2024, Petitioner submitted a statement in response to the Motion for Summary Judgment, along with an attachment providing an image of Debonair's website.

17. As of the date of this Recommended Decision, however, Petitioner has not filed any exhibits or submitted a witness and exhibit list in advance of the evidentiary hearing.

II. MOTION FOR SUMMARY JUDGMENT

18. On June 28, 2024, Staff moved for summary judgment dismissing the Petition.

A. Arguments

19. Staff contends that because of Mr. Fannings' July 2020 felony conviction, Petitioner "is mandatorily disqualified and prohibited from obtaining a towing carrier permit" under Rule 6504(b)(II). Staff argues that the facts are undisputed establishing Mr. Fannings' prior conviction within the five years preceding Petitioner's towing application. Essentially, Staff argues that because Rule 6504(b)(II) expressly bars anyone with a felony conviction within the preceding five years from obtaining a towing permit, the Petition must be rejected.

20. In response, Petitioner does not dispute Mr. Fannings' prior conviction or that the conviction occurred less than five years before Debonair applied for a towing permit. Rather, Petitioner filed the following statement repeating his request that the denial be reconsidered. The entirety of Petitioner's response states:

I am responding to the Motion filed concerning my permit I have less than one year to gain access to a permit. I have been in compliance with the secretary of state and good standings since I've been open for nearly 2 years. I have been out of trouble and focused on my company and trying to better, my company and my family to put us in a better position. I would greatly appreciate it if you grant me this permit.

21. Petitioner attached an image of Debonair's website, providing a 24-hour telephone contact number for Debonair's towing and recovery services.

B. Undisputed Facts

22. Debonair seeks to provide towing and recovery services in the State of Colorado.

23. Debonair filed Towing Permit Application 1021161 and 24AP-T-46423 on February 5, 2024.⁹

⁹ Denial Letter.

24. The Towing Permit Application was denied on February 14, 2024, because Rule 6504 of the Commission's Rules Regulating Transportation by Motor Vehicle prohibited the issuance of a permit to any applicant convicted of a felony in Colorado in the five years preceding the application.¹⁰

25. Debonair is solely owned by Mr. Fannings.¹¹

26. On July 1, 2020, Mr. Fannings entered a plea of guilty to the charge of weapon possession by a prior offender, a violation of § 18-12-108(1), C.R.S., a class six felony, in Adams County District Court in Case No. 2019CR4506.¹²

27. Mr. Fannings admits he was convicted of a felony less than five years ago.¹³

C. Governing Law

1. Summary Judgment Standard

28. Colorado Rule of Civil Procedure ("C.R.C.P.") 56 outlines the standards and procedures for initiating or opposing a motion for summary judgment. C.R.C.P. 56(a) permits a party seeking to recover on a claim, cross-claim, or counter-claim to file a motion for summary judgment 21 days after the commencement of the action. Under C.R.C.P. 56(b), a party defending a claim, cross-claim, or counter-claim may also move for summary judgment.

29. When a decision maker considers a motion for summary judgment, "[t]he judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."¹⁴ The key

¹⁰ *Id.*

¹¹ Decision No. R24-0540-I, issued July 26, 2024, p. 5, ¶ 17.

¹² Denial Letter.

¹³ Petition; Responsive Statement to Motion for Summary Judgment, filed Aug. 2, 2024.

¹⁴ C.R.C.P. 56(c).

component for a motion for summary judgment to be successful is for the moving party to show that the case truly presents “no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law.”¹⁵

30. Colorado courts, in construing and further defining the summary judgment standards set forth in C.R.C.P. 56, typically recognize that the purpose of summary judgment is “to permit the parties to pierce the formal allegations of the pleadings and save the time and expense connected with a trial when, as a matter of law, based on undisputed facts, one party could not prevail.”¹⁶ “Thus, a [decision maker] may enter summary judgment on behalf of a moving or nonmoving party if, in addition to the absence of any genuine factual issues, the law entitles one party or the other to a judgment in its favor.”¹⁷ “By its very terms, this standard provides that the mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact.”¹⁸ “If the evidence opposing summary judgment is merely colorable or is not significantly probative, summary judgment may be granted.”¹⁹

31. A “material fact” is “a fact the resolution of which will affect the outcome of the case.”²⁰ If a trier of fact can draw different inferences from the application of the legal criteria to the facts, a motion for summary judgment should be denied.²¹ “Whether a genuine issue exists as to any issue of material fact is itself a question of law.”²²

¹⁵ *Id.*

¹⁶ *Mt. Emmons Min. Co. v. Crested Butte*, 690 P.2d 231, 238 (Colo. 1984) (quoting *Ginter, Jr. v. Palmer & Co.*, 196 Colo. 203, 205, 585 P.2d 583, 584 (1978)).

¹⁷ *Mt. Emmons Min.*, 690 P.2d at 239.

¹⁸ *Anderson v. Lindenbaum*, 160 P.3d 237, 239 (Colo. 2007) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986)).

¹⁹ *Anderson*, 160 P.3d at 239 (quoting *Anderson* 477 U.S. at 249).

²⁰ *Mt. Emmons Min.*, 690 P.2d at 239.

²¹ *See id.*

²² *Keybank Nat'l Ass'n v. Mascarenas*, 17 P.3d 209, 215 (Colo. App. 2000).

32. “The moving party has the initial burden to show that there is no genuine issue of material fact.”²³

33. Once the moving party meets this initial burden, “the burden shifts to the nonmoving party to establish that there is a triable issue of fact.”²⁴

34. “In determining whether summary judgment is proper, the nonmoving party is entitled to the benefit of all favorable inferences that may reasonably be drawn from the undisputed facts, and all doubts must be resolved against the moving party.”²⁵ When a motion for summary judgment is made, “the opposing party’s response, by affidavits or otherwise, must set forth specific facts showing that there is a genuine issue for trial.”²⁶

2. Law Governing Towing Applications

35. The Colorado legislature allows the Commission to deny a towing application permit if an applicant was convicted of felony in the five years before filing the towing permit application. The statute provides:

The commission may deny an application. . . under this part 4 of a person that has, within the immediately preceding five years, been convicted of, or pled guilty or nolo contendere to, a felony or a towing-related offense. The commission may also deny an application under this part 4 . . . of a towing carrier based upon a determination that the towing carrier or any of its owners, principals, officers, members, partners, or directors has not satisfied a civil penalty arising out of an administrative or enforcement action brought by the commission.²⁷

²³ *AviComm Inc. v. Colo. Public Utils. Comm’n*, 955 P.2d 1023, 1029 (Colo. 1998).

²⁴ *Id.*

²⁵ *Bebo Constr. Co. v. Mattox & O’Brien*, 990 P.2d 78, 83 (Colo.1999).

²⁶ *Keybank Nat’l Ass’n*, 17 P.3d at 215.

²⁷ § 40-10.1-401(2)(a)(I), C.R.S.

36. Adhering to this statutory authority, the Commission adopted a rule clarifying when a towing permit application can be denied. Rule 6504 mandates as follows:

(b) Qualification determination for towing carrier permit.

(II) An application for a towing carrier permit shall be denied, if the applicant has:

(A) a conviction in the state of Colorado, within the five years preceding the date the criminal history record check is completed, of any felony under any Title of C.R.S. or any towing-related offense;

37. Rule 6504(a) also expressly states that the rule applies to “principals” as that term is defined in the Rules’ definitions. The Commission’s Rules define “principal” as:

(iii) “Principal” means a Person who:

(I) participates directly or indirectly in a firm, partnership, corporation, company, association, joint stock association, or other legal entity taking an action as an entity;

(II) is authorized to act on behalf of an entity;

(III) participates in the election, appointment, or hiring of Persons that are authorized to act on behalf of an entity; and

(IV) through his/her conduct or activity, directly or indirectly controls an entity subject to the Commission’s jurisdiction, irrespective of his/her formal title or financial interest in the entity.

Examples of Principals include the owner of a sole proprietorship, a member or manager of a limited liability company, a partner in a partnership, and an officer, director, or shareholder of a corporation.²⁸

D. Findings and Conclusions

38. Mr. Fannings is the sole owner of Debonair. He is therefore a “principal” within the meaning of Commission Rules 6001(iii) and 6504, 4 CCR 723-6, and subject to Rule 6504(b)’s

²⁸ Rule 6001(iii) of the Commission’s Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* (“CCR”) 723-6.

prohibition against the issuance of a towing permit to an applicant who has been convicted of a felony in Colorado within the preceding five years.

39. Here, it is undisputed that Petitioner's owner, Mr. Fannings, was convicted of a felony in July 2020. Rule 6504 expressly prohibits the issuance of a towing permit to an applicant convicted of a felony in the five years preceding the filing of the towing permit application.

40. Staff has thus met its initial burden of demonstrating that there is no genuine issue of fact in dispute and that Petitioner cannot succeed under the law.²⁹

41. Once Staff established the absence of any genuinely disputed material facts and its entitlement to summary judgment in its favor as a matter of law, the burden shifted to Petitioner to bring forth evidence demonstrating the existence of disputed material facts and/or show that the law as applied to the facts did not necessitate the entry of judgment in Staff's favor.

42. Petitioner did not meet this burden. Petitioner pled for compassion, essentially asking that a towing permit be issued to it despite Rule 6504(b)'s clear and unambiguous mandate barring Petitioner's application at this time.

43. Although the ALJ is sympathetic to Petitioner's plea and plight, Rule 6504(b) is clear and unambiguous in its prohibition. The ALJ must apply Rule 6504 — as with all Rules Regulating Transportation by Motor Vehicle — equally to Petitioner as to other applicants.³⁰

²⁹ *AviComm*, 955 P.2d at 1029.

³⁰ The ALJ notes, though, that although Rule 6504(b) currently prohibits Petitioner from receiving a towing permit, the prohibition will expire on the fifth anniversary of Mr. Fannings' felony conviction. Petitioner will therefore be free to reapply for a towing permit in nine-to-ten months, in July 2025, and the ALJ encourages Petitioner to do so.

44. Accordingly, the ALJ finds and concludes that Staff is entitled to summary judgment as a matter of law. Staff's Motion for Summary Judgment will be granted and the Petition will be dismissed.³¹

45. Finally, because the Petition will be dismissed, the evidentiary hearing set for September 23, 2024, will be vacated.

III. ORDER

It is Ordered That:

1. The Motion for Summary Judgment filed by Trial Staff of the Colorado Public Utilities Commission is granted.

2. The Petition filed by Debonair Limited, doing business as Debonair Limited Towing and Recovery ("Petitioner" or "Debonair"), on March 6, 2024, is dismissed.

3. The fully-remote evidentiary hearing scheduled for September 23, 2024, commencing at 9:00 a.m. is vacated.

4. Proceeding No. 24M-0111TO 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 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

³¹ If Petitioner disagrees with this Recommended Decision, Petitioner may ask the full Commission to review this Recommended Decision by filing an exception to this Decision (i.e., an appeal of this Decision) with the Commission. Any exceptions must be filed within 20 days of this Recommended Decision, as set forth in the ordering paragraphs below.

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.

7. 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

ALENKA HAN

Administrative Law Judge

ATTEST: A TRUE COPY

Rebecca E. White,
Director