

Decision No. R24-0802

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24G-0085TO

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

SERGIO CORNEJO DOING BUSINESS AS MNS TOWING LLC,

RESPONDENT.

**RECOMMENDED DECISION
AMENDING CIVIL PENALTY ASSESSMENT NOTICE,
ASSESSING CIVIL PENALTY, AND CLOSING
PROCEEDING**

Issued Date: November 6, 2024

I. STATEMENT

1. This proceeding concerns Civil Penalty Assessment Notice (“CPAN”) No. 137420 issued by the Colorado Public Commission’s (“Commission”) Staff on February 22, 2024 (“CPAN No. 137420”), against Respondent Sergio Cornejo, doing business as MNS Towing, LLC (“Respondent” or “MNS Towing”). CPAN No. 137420 assesses MNS Towing a total penalty of \$6,957.50 for violation of Rules 6508(b)(I), 6007(j), 6007(k), 6-6007(l), 4 *Code of Colorado*

Regulations (“CCR”) 723-6, and §§ 40-10.1-405(2)(a)(I) and (II), and CCR 723-6-6511(h)(III),

Colo. Rev. Stat. (2024). The nature of the violations was listed in the CPAN as follows:

- (1) Carrier failed to obtain proper authorization before conducting a nonconsensual tow.
- (2) The carrier made fraudulent or intentionally false statements and/or records to Commission staff.
- (3) The carrier knowingly falsified any record subject to inspection by the Commission.
- (4) The carrier knowingly produced and/or retained false records to the Commission knowing they were false and/or inaccurate.
- (5) Carrier failed to take the required photograph(s) to show the reason for the tow (sign/markings).
- (6) Carrier failed to take the required photographs (4) of the vehicle condition prior to the tow.
- (7) Carrier failed to follow procedures upon the sale of a motor vehicle greater than \$350.

2. On May 17, 2024, Trial Staff of the Commission (“Staff”) filed its Notice of Intervention as of Right by Trial Staff of the Commission, Entry of Appearance, Notice Pursuant to Rule 1007(A) and Rule 1401, and Request for Hearing.

3. On May 29, 2024, the Commission referred this proceeding to an Administrative Law Judge (“ALJ”) by minute entry.

4. By Decision No. R24-0395-I, issued June 10, 2024, the undersigned ALJ, among other things, set an evidentiary hearing for September 4, 2024, in this Proceeding.

5. On August 14, 2024, Staff filed its Motion to Amend CPAN and Shorten Response Time (“First Motion to Amend”).

6. By Decision No. R24-0612-I, issued August 22, 2024, the undersigned ALJ granted the First Motion to Amend, in part, as to a portion of Staff's request to shorten response time,¹ and stated that the remaining relief sought in the First Motion to Amend will be addressed by a separate decision.²

7. By Decision No. R24-0629-I, issued September 4, 2024, the undersigned ALJ granted the remaining relief sought through the First Motion to Amend and ordered that Violation No. 7 in CPAN No. 137420 be amended to read: "Carrier failed to follow procedures upon the sale of a motor vehicle by failing to get an appraisal performed by an independent third person in accordance with C.R.S. 42-4-2104(1)(a)."

8. Staff and Respondent are the only parties to this Proceeding.

9. At the scheduled time and place, the matter was called for hearing. Staff appeared through counsel and participated in the hearing. Respondent did not appear.

10. As a preliminary matter, during the hearing, Staff made an oral motion pursuant to § 40-7-116(2), C.R.S., to amend the CPAN to correct a typographical error ("Second Motion To Amend"). Staff requested to amend the CPAN issued on February 22, 2024 to reflect the correct CPAN number of "137240" instead of "137420" (hereinafter "CPAN No. 137240"). Based upon good cause shown, the motion was then granted. The CPAN at issue for this Proceeding is CPAN No. 137240. The oral ruling is memorialized by this Recommended Decision.

11. During the course of the hearing, Hearing Exhibits 101-118 were identified, offered, and admitted into evidence. Criminal Investigator Jay Estrada ("Investigator Estrada") testified in support of the allegations contained in the CPAN at issue herein.

¹ While Decision No. R24-0612-I shortened the response time, it allowed Respondent nine days within which to respond to the First Motion To Amend, as opposed to the seven days that Staff requested in the Motion.

² Decision No. R24-0612-I at ¶ 8.

12. In reaching the findings and conclusions made herein, the undersigned ALJ considered all arguments and evidence presented in this Proceeding, even if such arguments and/or evidence are not specifically referenced herein.

13. In accordance with § 40-6-109, C.R.S., the ALJ now transmits to the Commission the record and exhibits in this proceeding along with a written Recommended Decision.

II. FINDINGS

14. Investigator Estrada is a Criminal Investigator in the Transportation Section of the Commission. Investigator Estrada's duties include investigating complaints filed with the Commission. He is familiar with Colorado statutes and Commission rules that govern towing operators.

15. Investigator Estrada conducted an investigation into MNS Towing following an informal complaint filed with the Commission by a vehicle owner whose car was towed by MNS Towing, leading to the issuance of CPAN No. 137240.³

16. At all times pertinent herein, Sergio Anthuar Cornejo Alcala ("Sergio Cornejo" or "Mr. Cornejo") owned and operated MNS Towing.⁴

17. At all times pertinent, MNS Towing held PUC Permit No. T-04287.⁵

18. On or about August 15, 2023, at approximately 7:32 p.m., MNS Towing towed a blue 1999 Honda CRV (the "Vehicle").⁶

19. MNS Towing's invoice for the tow of the Vehicle on August 15, 2023 ("MNS Towing invoice")⁷ indicates that: the Vehicle was "inoperable, in 24 hour Parking, Blocking

³ As set forth in Paragraph 10 herein, the original CPAN filed on February 22, 2024 by the Commission's Staff contained a typographical error (CPAN No. 137420) and is amended herein to CPAN No. 137240.

⁴ See Hearing Exhibit 107.

⁵ *Id.*

⁶ See Hearing Exhibit 103.

⁷ *Id.*

dumpster. Broken glass, inoperable flat Tires. manager Jean Request immediate tow[;]" and MNS Towing assessed a \$203.00 "Towing Charge", \$8.00 "Mileage" charge, and \$39.00 "Storage" charge.⁸ The invoice purports to include the signature of "Jean Agee."⁹

20. Upon being requested by Investigator Estrada, MNS Towing produced three photographs of the vehicle.¹⁰ These photographs were presented during the hearing as Hearing Exhibit 104. The photographs of the vehicle that were provided by MNS Towing show that the Vehicle was parked in a marked parking space, none of the Vehicle's tires were flat, and the Vehicle was not in the vicinity of a dumpster.¹¹

21. Investigator Estrada testified, and the evidence presented by Staff shows, that he had communicated with the property manager in question, Ms. Jean Agee, ("Ms. Agee") who indicated to Investigator Estrada that the tow of the Vehicle by MNS Towing was not authorized by the Ms. Agee and that the signature shown on Hearing Exhibit 103 did not belong to the Ms. Agee.¹²

22. Investigator Estrada testified, and the evidence presented by Staff shows, that on or about December 26, 2023, Respondent sold the vehicle to a salvage yard for the amount of \$500.00, 133 days after the date of the tow of the Vehicle.¹³ Investigator Estrada further testified that Respondent did not produce any document indicating that Respondent obtained an appraisal of the Vehicle by an independent third person. Based on the foregoing, the ALJ finds and concludes

⁸ *Id.*

⁹ *Id.*

¹⁰ *See* Hearing Exhibit 104.

¹¹ *Id.* The ALJ notes that Hearing Exhibit 104 shows that there is glass on the ground near the Vehicle. However, it is impossible to determine whether the glass on the ground belonged to the Vehicle. The ALJ further notes that even if the glass on the ground belonged to the Vehicle and was in that condition when Respondent's tow truck arrived at the scene, this alone would not make the Vehicle "inoperable."

¹² *See* Hearing Exhibit 102.

¹³ *See* Hearing Exhibit 105.

that Respondent failed to obtain an appraisal for the Vehicle by an independent third person prior to selling it.

23. Investigator Estrada also testified, and the evidence presented by Staff shows, that before the investigation giving rise to the issuance of CPAN No. 137240, Respondent was investigated by the Commission's staff on multiple occasions, resulting in: the filing of four CPANs against Respondent,¹⁴ the issuance of three Recommended Decisions assessing penalties against Respondent;¹⁵ and Respondent's payment and admission in connection with one of the CPANs that have been previously filed against Respondent.¹⁶ Investigator Estrada further testified, and the evidence presented by Staff shows, that there are two currently pending CPAN proceedings against Respondent before the Commission.¹⁷

24. Investigator Estrada testified that the owner of the Vehicle had prior interactions with Respondent in connection with an investigation by the Commission which resulted in the sending of a violation warning letter to Respondent, who, in turn, agreed to refund the towing fees to the vehicle owner for that prior tow.¹⁸ Investigator Estrada further testified that the owner of the Vehicle was unable to retrieve the Vehicle prior to it being sold.

25. Respondent's address on file with the Commission, as of the time of issuance of MNS Towing invoice was 2910 Gunnison Street, Colorado Springs, CO 80909.¹⁹

¹⁴ See Hearing Exhibits 109, 111, 113, and 115.

¹⁵ See Hearing Exhibits 110, 114, and 116.

¹⁶ See Hearing Exhibit 112.

¹⁷ See Hearing Exhibits 117 and 118.

¹⁸ Investigator Estrada testified that the prior incident was documented under the PUC's Consumer Contract Tracking System ("CCTS") as CCTS #130135. However, Staff did not file a copy of CCTS #130135 as a hearing exhibit in this Proceeding.

¹⁹ See Hearing Exhibit 107.

26. At the conclusion of his investigation, on February 22, 2024, Investigator Estrada issued CPAN No. 137240.²⁰

27. Investigator Estrada mailed the CPAN, via certified mail, to Respondent's mailing address on file with the Commission.²¹

28. The undersigned ALJ further finds and concludes that Respondent was properly served with Decision No. R24-0395-I, issued on June 10, 2024. Respondent failed to appear for hearing on September 4, 2024 to address the allegations against him and did not present any evidence in this Proceeding.

29. Investigator Estrada testified that Staff is seeking a full pursuit of the penalties set forth in CPAN No. 137240. The "Total [Civil Penalty] Amount" set forth in the CPAN No. 137240 is "\$4,427.50."²² However, CPAN No. 137240 specifies the maximum penalty amount associated with each of the violations listed in CPAN No. 137240 (\$1,2650.00 for Violation No. 1; \$1,2650.00 for Violation No. 2; \$1,2650.00 for Violation No. 3; \$1,2650.00 for Violation No. 4; \$316.25 for Violation No. 5; \$316.25 for Violation No. 6; and \$1,2650.00 for Violation No. 7).²³ Therefore, the actual cumulative amount of money sought to be assessed by Staff against Respondent for the violations listed in CPAN No. 137240 is \$6,957.50.00 (and not \$4,427.50).

III. DISCUSSION

30. Commission enforcement personnel have authority to issue CPANs pursuant to § 40-7-116, C.R.S. This statute provides that the Commission has the burden of demonstrating a violation by a preponderance of the evidence. The Commission only has penalty assessment

²⁰ See Hearing Exhibit 106.

²¹ See *id.* and USPS delivery receipt for CPAN No. 137240, which was filed as an attachment to CPAN No. 137240.

²² See CPAN No. 137240 at p. 1.

²³ *Id.*

authority to the extent provided by statute and the Commission must follow the provisions of those statutes when it imposes such penalties against towing carriers.

31. Except as otherwise provided by statute, the Administrative Procedure Act imposes the burden of proof in administrative adjudicatory proceedings upon “the proponent of an order.”²⁴ As provided in Commission Rule 4 CCR 723-1-1500 of the Commission’s Rules of Practice and Procedure, “[t]he proponent of the order is that party commencing a proceeding.” Here, Staff is the proponent of an ordering assessing civil penalty against Respondent since it commenced this Proceeding through issuance of the CPAN. Staff, therefore, bears the burden of proof by a preponderance of the evidence.²⁵ The preponderance standard requires the finder of fact to determine whether the existence of a contested fact is more probable than its non-existence.²⁶ While the quantum of evidence that constitutes a preponderance cannot be reduced to a simple formula, a party has met this burden of proof when the evidence, on the whole and however slightly, tips in favor of that party.

32. Section 40-7-116, C.R.S. mandates a number of procedures for the imposition of civil penalties by the Commission. Section 40-7-116(1)(a), C.R.S., states in part: “When a person is cited for the violation, the person operating the motor vehicle involved shall be given notice of the violation in the form of a civil penalty assessment notice.” Section 40-7-116(1)(b), C.R.S., further directs that the civil penalty assessment notice “shall be tendered by the enforcement official, either in person or by certified mail, or by personal service by a person authorized to serve process under rule 4(d) of the Colorado rules of civil procedure.” Section 40-7-116(1)(b) (I)-(VII), C.R.S., further directs that the civil penalty assessment notice shall contain:

²⁴ Section 24-4-105(7), C.R.S.

²⁵ See § 13-25-127(1), C.R.S. and 4 CCR 723-1-1500.

²⁶ *Swain v. Colorado Dept. of Revenue*, 717 P.2d 507 (Colo. App. 1985).

- (I) The name and address of the person cited for the violation;
- (II) A citation to the specific statute or rule alleged to have been violated;
- (III) A brief description of the alleged violation, the date and approximate location of the alleged violation, and the maximum penalty amounts prescribed for the violation;
- (IV) The date of the notice;
- (V) A place for the person to execute a signed acknowledgment of receipt of the civil penalty assessment notice;
- (VI) A place for the person to execute a signed acknowledgment of liability for the violation; and
- (VII) Such other information as may be required by law to constitute notice of a complaint to appear for hearing if the prescribed penalty is not paid within ten days.

33. The evidence establishes the Commission's jurisdiction in this proceeding. CPAN No. 137240 was served upon Respondent via certified mail and in accordance with § 40-7-116(1)(b), C.R.S.

34. Commission Staff met its burden of proof when the evidence, on the whole, tipped in its favor and was not rebutted by Respondent.

35. Rule 6508(b)(1), 4 CCR 723-6 states, in part:

(b) Authorization to perform nonconsensual tow.

(I) A towing carrier shall not tow any motor vehicle unless one of the following conditions is met:

(A) the towing carrier is directed to perform a tow by a law enforcement officer;

(B) the towing carrier is requested to perform a tow by the owner, authorized operator, or authorized agent of the owner of the motor vehicle; or

(C) the towing carrier is requested to perform a tow upon the authorization of the property owner.

36. Rule 6007, 4 CCR 723-6 states, in part:

(j) No motor carrier shall make or cause to be made fraudulent or intentionally false statements or records to the Commission or Commission staff.

(k) No Person shall knowingly falsify, destroy, mutilate, change, or cause falsification, destruction, mutilation, or change to any record subject to inspection by the Commission.

(l) No Motor Carrier, its agents, or its representatives, shall produce or retain false records or records the Motor Carrier, its agents, or its representatives knew or should have known to be false or inaccurate. The Motor Carrier shall be responsible for the accuracy of the records it retains and produces.

37. Section 40-10.1-405(2)(a), C.R.S. provides:

(a) Before a towing carrier connects a towing vehicle to a vehicle without consent, the towing carrier shall document the vehicle's condition and the reason for the tow by:

(I) Taking at least four photographs of the vehicle, with at least one photograph taken from the front, one photograph taken from the rear, one photograph taken from the driver's side, and one photograph taken from the passenger's side. These photographs must:

(A) Show the entire vehicle from the required angle;

(B) Have the vehicle fill at least three-fourths of the photograph, measured from side to side; and

(C) Be rendered in a resolution of at least two thousand pixels by at least two thousand pixels.

(II) Taking a photograph that shows the reason for the vehicle being towed without consent. The photograph must:

(A) Show the position of the vehicle in relation to the reason, including any sign, that the vehicle was towed; and

(B) Be rendered in a resolution of at least two thousand pixels by at least two thousand pixels.

38. Rule 6511(h)(III), 4 CCR 723-6 states in part:

(III) Sale of an abandoned motor vehicle to cover the outstanding towing and storage charges must be done in accordance with the notice and procedural requirements of Parts 18 and 21 of Article 4 of Title 42, C.R.S., and § 42-5-109, C.R.S.

39. Section 42-4-2104(a) provides, in part:

To sell a motor vehicle that was abandoned on private property, the operator must sell the motor vehicle in a commercially reasonable manner at a public or private sale held not less than thirty days nor more than sixty days after the postmarked date the notice was mailed pursuant to section 42-4-2103 (4) or the date the operator receives notice that no record exists for such vehicle. The operator must make the sale to a licensed motor vehicle dealer or wholesaler, or wholesale motor vehicle auction dealer, or through a classified newspaper advertisement published in Colorado. The appraisal must be performed by an independent third person...

40. Here, the evidence of record, based upon Investigator Estrada's investigation, demonstrates that Respondent committed each of the alleged seven violations of the statutory provisions of § 40-10.1-405, C.R.S., and the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6. As pertinent herein, Respondent towed the Vehicle without authorization in violation of Rule 6508(b)(I). Respondent made fraudulent or intentionally false statements or records to Commission staff, falsified the records subject to inspection by the Commission, and knowingly produced false records to the Commission knowing the records were false and/or inaccurate, in violation of Rules 6007(j), (k), and (l). Respondent failed to take at least four photographs of the Vehicle, with at least one photograph taken from the front, one photograph taken from the rear, one photograph taken from the driver's side, and one photograph taken from the passenger's side, in violation of § 40-10.1-405(2)(a)(I), C.R.S. Respondent failed to take a photograph that shows the reason for the vehicle being towed without consent, in violation of § 40-10.1-405(2)(a)(II), C.R.S. Respondent also failed to follow required procedures prior to the

sale of the Vehicle by failing to obtain an appraisal of the Vehicle by an independent third person in violation of Rule 6511(h)(III).

41. Having found the above violations of the cited regulations, it is necessary to determine the amount of the civil penalty to be assessed for these violations. Section 40-7-112, C.R.S., authorizes the Commission to consider aggravating or mitigating circumstances surrounding particular violations in order to fashion a penalty assessment that promotes the underlying purpose of such assessments.

42. According to Rule 1302(b) of the Rules of Practice and Procedure., 4 CCR 723-1:

The Commission may impose a civil penalty, when provided by law. The Commission will consider any evidence concerning some or all of the following factors:

- (I) the nature, circumstances, and gravity of the violation;
- (II) the degree of the respondent's culpability;
- (III) the respondent's history of prior offenses;
- (IV) the respondent's ability to pay;
- (V) any good faith efforts by the respondent in attempting to achieve compliance and to prevent future similar violations;
- (VI) the effect on the respondent's ability to continue in business;
- (VII) the size of the respondent's business; and
- (VIII) such other factors as equity and fairness may require.

43. The ALJ notes that Respondent did not appear for the hearing and did not refute any of the evidence presented by Staff. The ALJ finds and concludes that Respondent has significant history of proven violations and failure to comply with Commission Decision.²⁷

²⁷ See Hearing Exhibits 110, 112, 114, and 116.

The undersigned ALJ further notes that in rendering this Decision, the undersigned ALJ did not consider any unproven violations or pending proceedings against Respondent.

44. Based on the evidence presented and findings of fact, the ALJ finds that the following civil penalty achieves the following purposes underlying civil penalty assessments to the maximum extent possible within the Commission's jurisdiction: (a) deterring future violations, whether by other similarly situated carriers and by Respondent; and (b) punishing Respondent for its past illegal behavior.

45. The ALJ notes that while the total civil penalty amount identified in CPAN No. 137240, \$4,427.50, is incorrect, Staff included in CPAN No. 137240 a brief description of the alleged violation, the date and approximate location of the alleged violation, and the maximum penalty amounts associated with each violation, in compliance with § 40-7-116(1)(b)(III), C.R.S. The ALJ finds and concludes that Respondent had notice of the nature of the violations listed in CPAN No. 137240 and Respondent's potential financial liability therefor. Therefore, and consistent with the discussion above, the ALJ will assess the full civil penalty amount sought by Staff against Respondent, \$6,957.50, as further described and ordered below.

46. Civil penalties, each in the amount of \$1,265.00, each of which includes the applicable surcharge, for a total of \$6,325.00, will be assessed for the proven violations in Counts 1-4, and 7 of CPAN No. 137240.

47. Civil penalties, each in the amount of \$316.25, each of which includes the applicable surcharge, for a total of \$632.50, will be assessed for the proven violations in Counts 5 and 6 of CPAN No. 137240.

48. Pursuant to § 40-6-109(2), C.R.S., the ALJ recommends that the Commission enter the following order.

IV. **ORDER**

The Commission Orders That:

1. Consistent with the discussion above, the Civil Penalty Assessment Notice (“CPAN”) number, 137420, which is referenced in the CPAN filed on February 22, 2024 by Trial Staff of the Colorado Public Utilities Commission (“Staff”) shall be amended to read 137240.

2. Consistent with the discussion above, Sergio Cornejo, doing business as MNS Towing LLC (“Respondent”), is assessed a total civil penalty of \$6,957.50, inclusive of the applicable surcharge, for the violations discussed and found above.

3. No later than 30 days following the date of the final Commission decision issued in this Proceeding, Respondent shall pay to the Commission the civil penalties and the surcharge assessed in Ordering Paragraph No. 2.

4. Proceeding No. 24G-0085TO 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.

- (I) 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.
- (II) 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.

(b) 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)



ATTEST: A TRUE COPY

A handwritten signature in dark ink, reading "Rebecca E. White". The signature is fluid and cursive, with the first name being the most prominent.

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

AVIV SEGEV

Administrative Law Judge