

Decision No. R25-0086

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24G-0320TO

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

MELVIN TOLIVER DOING BUSINESS AS COLORADO ROADSIDE RECOVERY,

RESPONDENT.

**RECOMMENDED DECISION
ASSESSING CIVIL PENALTY, ISSUING CEASE AND
DESIST ORDER, ORDERING REFUND,
AND CLOSING PROCEEDING**

Issued Date: February 12, 2025

TABLE OF CONTENTS

| | |
|---|----|
| I. STATEMENT..... | 2 |
| II. RELEVANT LAW | 3 |
| III. FINDINGS, ANALYSIS AND CONCLUSIONS | 7 |
| IV. TRANSMISSION OF THE RECORD..... | 14 |
| V. ORDER..... | 14 |
| The Commission Orders That:..... | 14 |

I. STATEMENT

1. This proceeding concerns Civil Penalty Assessment Notice (“CPAN”) No. 139768 issued by the Colorado Public Commission’s (“Commission” or “PUC”) Staff on July 29, 2024 (“CPAN No. 139768”), against Respondent Melvin Toliver, doing business as Colorado Roadside Recovery (“Respondent” or “Colorado Roadside”). CPAN No. 139768 assesses Colorado Roadside a total penalty of \$55,660 for violation of §§ 40-10.1-107(1) and 40-10.1-401(1)(a), Colo. Rev. Stat. (2024) (“C.R.S.”). The nature of the violations was listed in CPAN No. 139768 as follows:

Failure to maintain and file evidence of financial responsibility in sums as required by the Public Utilities Commission. (Fine doubled, pursuant to C.R.S. §40-7-113(3) as the Carrier was found liable for the same violation on 2/7/2024 in proceeding #23G-0227TO)

Failure to maintain and file evidence of financial responsibility in sums as required by the Public Utilities Commission. (Fine doubled, pursuant to C.R.S. §40-7-113(3) as the Carrier was found liable for the same violation on 2/7/2024 in proceeding #23G-0227TO)

Operating and/or offering to operate as a Towing Carrier in intrastate commerce without first having obtained a permit. (Fine doubled, pursuant to C.R.S. §40-7-113(3) as the Carrier was found liable for the same violation on 2/7/2024 in proceeding #23G-0227TO)

Operating and/or offering to operate as a Towing Carrier in intrastate commerce without first having obtained a permit. (Fine doubled, pursuant to C.R.S. §40-7-113(3) as the Carrier was found liable for the same violation on 2/7/2024 in proceeding #23G-0227TO)

The CPAN further states that the Commission may also order Respondent to cease and desist activities that violate statutes or Commission rules.¹

¹ CPAN No. 139768 at p. 3.

2. On October 3, 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 October 16, 2024, the Commission referred this proceeding to an Administrative Law Judge (“ALJ”) by minute entry.

4. By Decision No. R24-0786-I, issued October 30, 2024, the undersigned ALJ, among other things, set an evidentiary hearing for December 19, 2024.

5. 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 at the hearing.

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

7. During the course of the hearing, Hearing Exhibits 100-105, 107, and 108 were identified, offered, and admitted into evidence. Criminal Investigator Joseph Potts (“Investigator Potts”) testified in support of the allegations contained in CPAN No. 139768.

8. 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.

II. RELEVANT LAW

9. Under § 40-7-116, C.R.S., the Commission enforcement personnel have authority to issue CPANs.² The statute also provides that the Commission has the burden of demonstrating a violation by a preponderance of the evidence.³

² Section 40-7-116(1)(a), C.R.S.

³ Section 40-7-116(1)(d) (II), C.R.S.

10. 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.”⁴ As provided in Rule 1500 of the Commission’s Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (“CCR”) 723-1, “[t]he proponent of the order is that party commencing a proceeding.” Here, Staff is the proponent since it commenced this Proceeding through issuance of CPAN No. 139768. Staff bears the burden of proof by a preponderance of the evidence.⁵ The preponderance standard requires the finder of fact to determine whether the existence of a contested fact is more probably true than its non-existence.⁶ “Substantial evidence is that quantum of probative evidence which a rational fact-finder would accept as adequate to support a conclusion, without regard to the existence of conflicting evidence.”⁷

11. Pursuant to § 40-7-113(3), C.R.S., “[i]f a person is assessed a civil penalty for a violation referenced in subsection (1) of this section occurring on a date within twenty-four months after a previous violation, the civil penalty assessed for the second violation may be up to two times the amount specified by rule for the violation.”

12. Section 40-7-116(1)(b), C.R.S. provides that a 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, and shall contain:

(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;

⁴ Section 24-4-105(7), C.R.S.

⁵ See § 13-25-127(1), C.R.S. and 4 CCR 723-1-1500.

⁶ *Swain v. Colorado Dept. of Revenue*, 717 P.2d 507 (Colo. App. 1985).

⁷ *Metro Moving & Storage Co. v. Gussert*, 914 P.2d 411 (Colo. App. 1996) (citing *Monfort, Inc. v. Rangel*, 867 P.2d 122 (Colo.App.1993)).

(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.

13. Pursuant to 40-10.1-106, C.R.S.:

(1) The commission has the authority and duty to prescribe such reasonable rules covering the operations of motor carriers as may be necessary for the effective administration of this article, including rules on the following subjects:

(a) Ensuring public safety, financial responsibility, consumer protection, service quality, and the provision of services to the public; [and]

(b) The circumstances under which a towing carrier may perform a nonconsensual tow of a motor vehicle, the responsibilities and facilities of the towing carrier for the care or storage of the motor vehicle and its contents, and the minimum and maximum rates and charges to be collected by the towing carrier for the nonconsensual towing and storage of the motor vehicle.

14. Section 40-10.1-112(1), C.R.S., provides in pertinent part that:

Except as specified in subsection (3) of this section, the commission, at any time, by order duly entered, after hearing upon notice to the motor carrier and upon proof of violation, may issue an order to cease and desist... for the following reasons:

(a) A violation of this article...

15. Pursuant to § 40-10.1-401(1)(a), C.R.S., “[a] person shall not operate or offer to operate as a towing carrier in intrastate commerce without first having obtained a permit therefor from the commission in accordance with this article.”

16. Section 40-10.1-401(3)(a), C.R.S. states:

Except as otherwise provided in subsection (2) of this section and section 40-10.1-112 (4), the commission shall issue a permit to a towing carrier upon completion of the application and the filing of proof of workers’ compensation insurance coverage in accordance with the “Workers’ Compensation Act of Colorado”, articles 40 to 47 of title 8, C.R.S., and with the financial responsibility requirements of this article and may attach to the permit and to the exercise of the rights granted by the permit such restrictions, terms, and conditions, including altering the rates and charges of the applicant, as are reasonably deemed necessary for the protection of the property of the public.

17. 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.

18. Rule 6511(g) of the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6 states, in part:

(I) Notifications. The charges for notification(s) to the vehicle owner(s) and the lienholder(s) of the motor vehicle held in storage shall be in accordance with §§ 42-4-1804 and 42-4-2103, C.R.S., and the rules of the Colorado Department of Revenue. For purposes of notification, any motor vehicle in possession of the towing carrier, including motor vehicles incidental to the tow (for example, loaded on a trailer when the trailer was towed) shall comply with the notification requirements of Parts 18 and 21 of Article 4 of Title 42, C.R.S., and § 42-5-109, C.R.S.

(II) Consequences of failure to notify. A towing carrier holding a motor vehicle in storage who cannot demonstrate that it has made a good faith effort, as set forth in §§ 42-4-1804 and 42-4-2103, C.R.S., to comply with the notification requirements of Parts 18 and 21 of Article 4 of Title 42, C.R.S., and § 42-5-109, C.R.S., shall not charge, collect, or retain any fees associated with the tow or storage of the motor vehicle.

III. FINDINGS, ANALYSIS AND CONCLUSIONS

19. The undisputed facts in this Proceeding show that Respondent's towing operations are subject to requirements in article 10.1 of title 40, Colorado Revised Statutes. Because the CPAN alleges violations of §§ 40-10.1-107(1) and 40-1-10.1-401(1)(a), C.R.S., against a person who is required to comply with those statutes, the ALJ concludes that the Commission has jurisdiction and authority over this matter, and that the issuance of CPAN No. 139768 was authorized.

20. The ALJ finds and concludes that the CPAN No. 139768 complied with the requirements set forth in § 40-7-116 and was personally served on the Respondent by Investigator Joseph Potts.⁸

⁸ See CPAN No. 139768 at p. 3.

21. Investigator Potts is a Criminal Investigator in the Transportation Section of the Commission. Investigator Pott's duties include investigating complaints filed with the Commission. They are familiar with Colorado statutes and Commission rules that govern towing operators.

22. Investigator Potts conducted an investigation into Colorado Roadside following an informal complaint filed with the Commission by Alexander Kubik ("Mr. Kubik" or Complainant"), whose car was towed by Respondent, leading to the issuance of CPAN No. 139768.

23. Investigator Potts testified that upon initially searching the Commission's databases, based on information Investigator Potts obtained from Mr. Kubik⁹, Investigator Potts was unable to identify Colorado Roadside in the Commission's databases. Investigator Potts testified that while he had identified company with a similar name, that company was not located in the Denver Metro area and that company's phone numbers did not match the towing company phone number identified on the towing receipt Mr. Kubik submitted with his complaint.¹⁰ Investigator Potts then performed general internet searches for the phone number printed on Mr. Kubik's towing invoice receipt,¹¹ including on the Safety and Fitness Electronic Records database of the U.S. Department of Transportation ("SAFER database"). On the SAFER database, Investigator Potts identified a registry for a towing company (the "SAFER registry") whose phone number matched the phone number on Mr. Kubik's payment receipt.¹² The Safer registry identified "RAPID RESPONSE TOWING AND TRANSPORT INC," doing business as FINAL NOTICE

⁹ Investigator Potts testified that Mr. Kubik identified the towing company that towed Mr. Kubik's vehicle as "Rapid Response Towing and Recovery."

¹⁰ See hearing Exhibit 107.

¹¹ See *id.*

¹² Compare the phone number listed on p. 1 of Hearing Exhibit 4 with the Phone number listed on p. 2 of Hearing Exhibit 7.

TOWING AND RECOVERY”¹³ at the address of 4963 York Street, Denver, CO 80216, as the company to whom the phone number from Mr. Kubik’s towing payment receipt belonged.¹⁴ Using the information from the SAFER registry, Investigator Potts testified that he identified in the Commission’s databases the company Rapid Response Towing and Transport, doing business as Final Notice Towing and Recovery, as associated with Mr. Melvin Toliver. Investigator Potts further testified that according to the Commission’s records, Rapid Response Towing and Transport, doing business as Final Notice Towing and Recovery did not have a Commission-issued towing permit during March 2024 and May 2024. Investigator Potts testified that he then searched the Colorado’s Secretary of State website and identified a business record for the company “Final notice towing and recovery,” whose registrant’s name was “Rapid Response Towing and Transport inc,” its address was address was 4963 York Street, Denver, CO 80216, and its registered agent was Mr. Melvin Toliver.¹⁵ Based on information Investigator Potts obtained from Mr. Kubik’s as to the name of the towing Company that towed Mr. Kubik’s red Subaru (the “Vehicle”), “Colorado Roadside Recovery,” Investigator Potts concluded that Respondent towed the Vehicle on the dates in question, as further discussed below.

24. On March 22, 2024, Respondent towed the Vehicle from the parking garage at Mr. Kubik’s residence.¹⁶

25. On March 23, 2024, Mr. Kubik paid Respondent \$512.00 to retrieve the Vehicle that was towed by Respondent on the previous day, March 22, 2024.¹⁷ Given the lack of sufficient evidence in the record regarding any additional costs that Mr. Kubik may have incurred in

¹³ Hearing Exhibit 4 at p. 1.

¹⁴ *See id.*

¹⁵ *See* Hearing Exhibit 103.

¹⁶ *See* Hearing Exhibit 101.

¹⁷ *See* Hearing Exhibit 207.

connection with the tow and release of the Vehicle by Respondent on March 22, 2023, the ALJ makes no further findings regarding the same.

26. On or about May 2, 2024, Respondent towed the Vehicle from the parking garage at Mr. Kubik's residence.¹⁸

27. On May 3, 2024, Mr. Kubik paid Respondent \$60.00 to retrieve the Vehicle that was towed by Respondent on the previous day.¹⁹

28. Investigator Potts is familiar with the appearance of Mr. Melvin Toliver based on a prior interaction between Investigator Potts and Mr. Melvin Toliver. Investigator Potts identified Mr. Melvin Toliver as the person operating the truck that towed the Vehicle on May 2, 2024.

29. The same tow truck was used to make each of the tows of the Vehicle on March 22 and May 2, 2024.²⁰

30. Hearing Exhibits 101, 102, 107, and 108, and the uncontested testimony of Investigator Potts, establish that on March 22, 2024 and May 2, 2024, the Vehicle was towed by the Respondent.

31. Based on the testimony of Investigator Potts, Hearing Exhibit 101, and Hearing Exhibit 102, the ALJ finds and concludes that at no time pertinent herein was the Vehicle abandoned by Mr. Kubik.

32. Based on the evidence in the record, including Investigator's Potts' uncontested testimony, the ALJ finds and concludes that at no time relevant herein did Respondent possess a Commission-issued towing permit, nor appropriate insurance coverage as required by §§ 40-10.1-401(1) and (3), C.R.S.

¹⁸ See Hearing Exhibit 102.

¹⁹ See Hearing Exhibit 108.

²⁰ See Hearing Exhibits 101 and 102.

33. By Decision No. R24-0075 in Proceeding No. 23G-0227TO, issued February 7, 2024, the Commission found that Mr. Melvin Toliver, then operating under the name Rapid Response Towing and Transport, Inc., doing business as Final Notice Towing and Recovery, operated without a PUC-issued permit and did not carry any insurance coverage to operate as a towing carrier and/or storage lot.²¹ Upon searching the Commission's records, investigator Potts determined that since the issuance of Decision No. R24-0075, Mr. Melvin Toliver did not obtain a permit to operate as a towing carrier, nor appropriate insurance coverage for operate as a storage facility and/or as a towing carrier.²² Decision No. R24-0075 in Proceeding No. 23G-0227TO assessed against Respondent and ordered respondent to pay a civil penalty of \$56,925.00,²³ ordered Respondent to issue a refund of its towing fees/charges in the amount of \$1,801.00,²⁴ ordered Respondent to cease and desist from "operating as a towing carrier in intrastate commerce in the State of Colorado unless and until such time as Respondent: (1) secures a valid Commission permit to operate as a towing carrier; and (2) obtains and maintains all of the requisite insurance coverages and files proof of such financial responsibility with the Commission,"²⁵ and ordered Respondent to cease and desist from "engaging in the statutory and Rule violations discussed [in Decision No. R24-0075 in Proceeding No. 23G-0227TO], or committing any act in violation of the statutes and regulations applicable to towing carriers."²⁶

²¹ See Hearing Exhibit 105 at ¶ 70, 73.

²² See Decision No. R24-0075 in Proceeding No. 23G-0227TO, issued February 7, 2024 and §§ 40-10.1-401(1) and (2), C.R.S.

²³ Decision No. R24-0075 in Proceeding No. 23G-0227TO, issued February 7, 2024 at p. 23-24.

²⁴ *Id.* at 24.

²⁵ *Id.* at p. 24.

²⁶ *Id.*

34. The uncontested testimony of Investigator Potts establishes that Investigator Potts handed to the Respondent Decision No. R24-0075 in Proceeding No. 23G-0227TO at the same time Investigator Potts personally served Respondent with CPAN No. 139768.

35. The uncontested testimony of Investigator Potts establishes that at no time during Investigator Potts' investigation of Respondent in connection with this Proceeding and/or during the pendency of this Proceeding, did Respondent apply to obtain a towing permit from the Commission or submit proof of insurance to the Commission.

36. Here, the uncontested evidence of record demonstrate that Respondent committed each of the four violations alleged in CPAN No. 139768 – Respondent's failed file evidence of financial responsibility in sums as required by the Commission and Respondent's operating as a Towing Carrier in intrastate commerce without first having obtained a permit during each of the two times Respondent towed the Vehicle in March and May 2024. The uncontested evidence further establishes that penalty these violations is subject to doubling based on Respondent's prior violations found in Proceeding No. 23G-0227TO, as permitted by § 40-7-113(3), C.R.S.

37. 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.

38. The ALJ notes that respondent did not make any filings in this Proceeding, nor appeared at the hearing. The ALJ further notes the history of the towing-related violations, as set forth in Decision No. R24-0075 in Proceeding No. 23G-0227TO.

39. Based on the evidence presented and findings of fact, the ALJ find 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 illegal behavior.

40. A civil penalty of \$25,300.00, inclusive of the applicable surcharge, will be assessed for the proven violation in Count 1 of CPAN No. 139768, as ordered below.

41. A civil penalty of \$25,300.00, inclusive of the applicable surcharge, will be assessed for the proven violation in Count 2 of CPAN No. 139768, as ordered below.

42. A civil penalty of \$2,530.00, inclusive of the applicable surcharge, will be assessed for the proven violation in Count 3 of CPAN No. 139768, as ordered below.

43. A civil penalty of \$2,530.00, inclusive of the applicable surcharge, will be assessed for the proven violation in Count 4 of CPAN No. 139768, as ordered below.

44. In addition, consistent with CPAN No. 139768 and 40-10.1-112(1), C.R.S., and given the findings herein, Respondent will be ordered to cease and desist from violating §§ 40-10.1-107(1) and 40-10.1-401(1)(a), C.R.S., as ordered below.

45. In addition to their requests for the Commission to assess against Respondent the maximum civil penalty amount listed in CPAN No. 139768 and order Respondent to cease and desist from engaging in activities that violate statutes or Commission rules, Staff, through

Investigator Potts, requested during the evidentiary hearing to order Respondent to refund to Mr. Kubik all amounts expended by Mr. Kubik to retrieve his vehicle from Respondent.²⁷

46. Given the findings regarding Mr. Kubik's expenses to retrieve the Vehicle and the lack of abandonment of the Vehicle, and consistent with Rule 6511(g) of the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6, Respondent will be ordered to reimburse Mr. Kubic \$572.00, as ordered below.

IV. TRANSMISSION OF THE RECORD

47. 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 this written Recommended Decision.

V. ORDER

The Commission Orders That:

1. Consistent with the discussion above, Respondent Melvin Toliver, doing business as Colorado Roadside Recovery ("Respondent" or "Colorado Roadside"), is assessed a total civil penalty of \$55,600.00, inclusive of the applicable surcharge, for the violations stated in Civil Penalty Assessment Notice No. 139768, as discussed and found above.

2. No later than 30 days following the issuance date of a final Commission decision in this Proceeding, Respondent shall pay to the Commission the civil penalties and the surcharge assessed in Ordering Paragraph No. 1.

3. Respondent is hereby ordered to cease and desist from violating §§ 40-10.1-107(1) and 40-10.1-401(1)(a), Colo. Rev. Stat. (2024).

²⁷ Investigator Potts testified that Mr. Kubic expended \$47.00 on March 23, 2024, for a Lyft ride to Respondent's storage yard, \$512.00 on March 23, 2024 to Respondent for the release the Vehicle to Mr. Kubic, and \$60.00 on May 3, 2024 to Respondent for the release the Vehicle to Mr. Kubic. As discussed above, Staff did not present compelling evidence from which it can be discerned whether, why, and when Mr. Kubic expended \$47.00 for a Lyft ride.

4. Consistent with the discussion above, Staff's request to order Respondent to issue refund to Mr. Alexander Kubik is granted, in part, as to \$572.00 of the fees and/or costs incurred by Mr. Alexander Kubik.

5. No later than 30 days following the issuance date of a final Commission decision in this Proceeding, Respondent shall reimburse Mr. Alexander Kubik \$572.00.

6. Proceeding No. 24G-0320TO is closed.

7. 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.

8. 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 cursive script that reads "Rebecca E. White".

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

AVIV SEGEV

Administrative Law Judge