

Decision No. R25-0265

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 25G-0031HHG

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

v.

RAFAEL BENJAMIN ROJAS DOING BUSINESS AS HUFFY PUFFY MOVING WITH EASE,

RESPONDENT.

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

Issued Date: April 9, 2025

I. STATEMENT AND SUMMARY

1. Proceeding No. 25G-0031HHG concerns Civil Penalty Assessment Notice (“CPAN”) No. 141772 issued by Commission Staff (“Staff”) on December 24, 2024, to Respondent Rafael Benjamin Rojas doing business as Huffly Puffy Moving With Ease (“Respondent” or “Huffly Puffy”). The CPAN assessed a total penalty of \$27,830 for two alleged violations of Article 10.1 of Title 40, C.R.S., inclusive of a surcharge and penalty enhancement under § 40-7-113(3), C.R.S.¹ The alleged violations are more specifically described in the CPAN and are alleged to have occurred on November 4, 2024, in Denver, Colorado.² The CPAN also

¹ Hearing Exhibit 106 at 1.

² *Id.*

states that the Commission may order Respondent to cease and desist from violating statutes and Commission rules.³

2. Staff effectuated personal service of the CPAN on Respondent on January 2, 2025.

3. On January 29, 2025, the Public Utilities Commission (“Commission”) referred this matter by minute entry to an administrative law judge (“ALJ”) for disposition.

4. On February 14, 2025, Staff filed its Notice of Intervention as of Right and Entry of Appearance.

5. Staff and Respondent are the only parties to this proceeding.

6. By Decision No. R25-0095-I, issued February 12, 2025, this matter was set for a hearing on March 11, 2025.

7. On March 11, 2025, at the scheduled time and place, the ALJ called this proceeding. Counsel for Trial Staff entered their appearance. Respondent did not appear.

8. Staff offered the testimony of Criminal Investigator Jospheh Potts (“CI Potts”).

9. Respondent did not make any filings in the proceeding. In addition, Respondent did not appear at the hearing.

10. Staff offered, and the ALJ admitted, Hearing Exhibits 101, 102 (including the confidential version of 102, or 102C), 103, 104, 105 (including the confidential version of 105, or 105C), 106, 107 (including the confidential version of 107, or 107C), and 108. In addition, Staff requested, and the ALJ took, administrative notice of proceeding number 18G-0792HHG.⁴

11. CI Potts requested that the Commission double the penalty amount and enter a cease and desist order against Respondent.

³ *Id.* at 3.

⁴ During the hearing, Staff incorrectly identified this proceeding number as 18G-072HHG. In Proceeding No. 18G-0792HHG, Rafael Benjamin Rojas’ wife was the respondent. Rafael Benjamin Rojas’ wife, as respondent, used his phone number for use as an unauthorized provider in Proceeding No. 18G-07292 HHG.

12. At the conclusion of the evidence, the ALJ closed the evidentiary record and took the matter under advisement.

13. In reaching this Recommended Decision, the ALJ has considered all arguments presented, including those arguments not specifically addressed in this Decision. Likewise, the ALJ has considered all evidence presented at the hearing, even if the evidence is not specifically addressed in this Decision.

14. Pursuant to § 40-6-109, C.R.S., the ALJ now transmits to the Commission the record of the proceeding and a written recommended decision in this matter.

II. FINDINGS OF FACT

15. CI Potts has been employed by the Commission for over three years.

16. Respondent received the CPAN by personal service.

17. Rafael Benjamin Rojas goes by the following aliases: Margerto Jo Ralph Rojas, Margerto Benjamin Rojas, Margerto Joe Ralph Rojas, Umberto Rojas, M. Ralph Rojas, Margerito Rojas, and Ben Rojas.

18. Rafael Benjamin Rojas, or one of his aliases, operates or has operated the following moving businesses: Huffy Puffy Moving With Ease, Mean Momma Boss B1tch, Fresh Start Moving, Mean Momma Boss, Big Momma Boss Moving, Moonlight Movers, Denver Small Movers, Ridiculous Movers, Calvin's Moving, 24 Hour Small Moves, and His and Hers Reliable Movers.

19. Rafael Benjamin Rojas is one of the individual respondents in proceeding number 24G-0194HHG. Specifically, Rafael Benjamin Rojas is Margerto B. Rojas.⁵

⁵ In Proceeding No. R24-0646, Rafael Benjamin Rojas was identified as Margerto B. Rojas and doing business as Mean Momma Boss B1tch Moving.

20. Rafael Benjamin Rojas violated §§ 40-10.1-107(1) and 40-10.1-502, C.R.S., on September 11, 2024.⁶

21. On November 4, 2024, Respondent Rafael Benjamin Rojas emailed CI Potts at an alias and provided a quote to move household goods from an apartment complex in Denver, Colorado, to another apartment complex in Lakewood, Colorado. Hearing Exhibit 105. Respondent quoted a price of \$255 for the first two hours and then \$90 per hour for the remainder. *Id.*

22. Respondent did not possess a permit authorizing him to offer to move household goods in intrastate commerce on November 4, 2024. In addition, Respondent neither maintained nor had on file the required financial responsibility on November 4, 2024.

III. ISSUES

23. Did the Respondent operate and/or offer to operate as a mover of household goods in intrastate commerce without first having obtained a permit as required under § 40-10.1-502(1)(a), C.R.S., by quoting an hourly rate to move household goods from a residence in Denver, Colorado, on November 4, 2024?

24. Did the Respondent fail to maintain and file evidence of financial responsibility in sums as required by the Commission on November 4, 2024, as required under § 40-10.1-107(1), C.R.S.?

25. If Respondent committed the violations as alleged in the CPAN, what penalty should be assessed against Respondent?

⁶ Decision No. R24-0646.

26. Should any penalty assessed against Respondent be subject to doubling pursuant to § 40-7-113(3), C.R.S., and Rule 6019(a), 4 *Code of Colorado Regulations* (“CCR”), 723-6?

27. Should the Commission issue a cease and desist order against Respondent?

IV. APPLICABLE LAW

28. Commission enforcement personnel have authority to issue CPANs under § 40-7-116, C.R.S., for alleged violations of provisions in article 10.1 of title 40 and §§ 40-7-112 and 113, C.R.S.⁷ That statute provides that the Commission has the burden of demonstrating a violation by a preponderance of the evidence. The Commission only has penalty assessment authority to the extent provided by statute, and the Commission must follow the provisions of those statutes when it imposes such penalties against common carriers.

29. Section 40-7-116, C.R.S., mandates a number of procedures for the Commission to impose civil penalties: After specifying that the listed officials are the ones authorized to issue civil penalty assessments for violations of law, § 116 states that, “When a person is cited for such violation, the person operating the motor vehicle involved shall be given notice of such violation in the form of a civil penalty assessment notice.” Section 116 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.” *Id.*

30. The CPAN’s content must provide adequate notice of the alleged violations.⁸

⁷ See §§ 40-7-113(1) and 116, C.R.S.; Rule 6018(a), of the Commission’s Rules Regulation Transportation by Motor vehicle, 4 CCR 723-6.

⁸ § 40-7-116(1), C.R.S. See § 24-4-105(2)(a), C.R.S.

31. A respondent in an adjudicatory proceeding is entitled to notice of the matters of fact asserted against it.⁹ Procedural due process requires fundamental fairness.¹⁰

32. The Administrative Procedure Act imposes the burden of proof in administrative adjudicatory proceedings upon “the proponent of an order.”¹¹ As provided in Commission Rule 1500, 4 CCR 723-1, “[t]he proponent of the order is that party commencing a proceeding.” Here, Staff is the proponent since it commenced the proceeding through issuance of the CPAN. Staff bears the burden of proof by a preponderance of the evidence.¹²

33. This preponderance of the evidence standard requires the fact finder to determine whether the existence of a contested fact is more probable than its non-existence.¹³ The standard requires substantial evidence, “which must do more than create a suspicion of the fact to be established.”¹⁴

34. Pursuant to § 40-7-113(3), C.R.S., “[i]f a person is assessed a civil penalty for a violation referenced in [the civil penalty section of the Public Utilities Law] 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.” “Person” is defined in § 40-7-102(10), C.R.S., to include individuals and companies.

⁹ § 24-4-105(2)(a), C.R.S.

¹⁰ *Mtn. States Tel. & Tel. Co. v. Dept. of Labor & Emp.*, 520 P.2d 586 (Colo. 1974).

¹¹ § 24-5-105(7), C.R.S.

¹² § 40-7-116(1)(d)(II); § 24-4-105(7), C.R.S.; Rule 6018(c), 4 CCR 723-6; Rule 1500, 4 CCR 723-1.

¹³ *Swain v. Colorado Dept. of Revenue*, 717 P.2d 507 (Colo. App. 1985).

¹⁴ See, e.g., *City of Boulder v. Pub. Utilis. Comm’n.*, 996 P.2d 1270, 1278 (Colo. 2000) quoting *CF&I Steel, L.P. v. Pub. Utilis. Comm’n.*, 949 P.2d 577, 585 (Colo. 1997).

V. FINDINGS AND ANALYSIS

A. Jurisdictional Findings

35. The evidence establishes the Commission's jurisdiction in this proceeding. Staff served the CPAN upon Respondent via personal service, in accordance with § 40-7-116, C.R.S., and the Commission has authority to issue the CPAN against Respondent.¹⁵

36. The ALJ finds that the CPAN provides proper notice of the alleged violations because it includes Respondent's name and address; cites the specific statutes alleged to have been violated; includes a brief description of the alleged violations, including the date and approximate location of the alleged violation; identifies the maximum penalty for the alleged violations, including the surcharge imposed per § 24-34-108(2), C.R.S., and the penalty enhancement provision per § 40-7-113(3), C.R.S.; includes the date of the notice; and a provides place for Respondent to sign to acknowledge receipt and liability for the CPAN and violations alleged therein.¹⁶

B. § 40-10.1-502(1)(a), C.R.S., violation and penalty enhancement

37. Under § 40-10.1-502(1)(a), C.R.S., a person must first obtain a permit from the Commission before operating or offering to operate as a mover in intrastate commerce.

38. The CPAN alleges that Respondent offered to operate as a mover in intrastate commerce by quoting an hourly rate to move household goods from one residence to another on November 4, 2024.

39. The evidence shows that on November 4, 2024, Rafael Benjamin Rojas offered to move household goods belonging to CI Potts, as an alias, from an apartment complex in

¹⁵ *Id.*

¹⁶ Hearing Exhibit 108; § 40-7-116(1)(b), C.R.S.; Rule 6018(b), 4 CCR 723-6.

Denver, Colorado, to another apartment complex in Lakewood, Colorado, on November 4, 2024, for a fee of \$255 for the first two hours and then \$90 per hour for the remainder. Hearing Exhibit 105.

40. Staff demonstrated that it was more likely than not that Respondent offered moving services without a permit in Denver, Colorado, on November 4, 2024, as alleged in the CPAN.

41. In addition, the uncontested evidence establishes that the penalty for this violation is subject to doubling based on Respondent's prior violation of the same statutory provision as found in Proceeding No. 24G-0194HHG. Hearing Exhibits 101 and 106.

C. § 40-10.1-107(1), C.R.S., violation and penalty enhancement

42. Under § 40-10.1-107(1), C.R.S., motor carriers shall maintain and file with the Commission evidence of financial responsibility in sums as required by the Commission.

43. Under Rule 6001(kk), 4 CCR 723-6, a mover refers to a motor carrier whose business is the moving of household goods from one location to another, as set forth in § 40-10.1-501, C.R.S.

44. The CPAN alleges that Respondent failed to maintain and file evidence of financial responsibility in required sums on November 4, 2024, when it held itself out as a mover in intrastate commerce by quoting an hourly rate to move household goods from one residence to another.

45. Staff demonstrated that it was more likely than not that Respondent did not have required financial responsibility maintained and filed with the Commission when it offered moving services for a fee without a permit on November 4, 2024.

46. In addition, the uncontested evidence establishes that the penalty for this violation is subject to doubling based on Respondent's prior violation of the same statutory provision as found in Proceeding No. 24G-0194HHG. Hearing Exhibits 101 and 106.

D. Penalty Assessment

47. Staff established that that Respondent committed the violations as alleged in the CPAN. Accordingly, the ALJ must determine the amount of the civil penalty to be assessed for these violations.

48. Section 40-7-113, C.R.S., authorizes the Commission to assess civil penalties. The Commission may consider aggravating or mitigating circumstances surrounding violations to fashion a penalty assessment that promotes the underlying purpose of such assessment.

49. Rule 1302(b) of the Rules of Practice and Procedure, 1 CCR 723-1, authorizes the Commission to impose a civil penalty after considering any evidence concerning some or all 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 business of the respondent; and
- (VIII) Such other factors as equity and fairness may require.

50. The ALJ considers these specific factors when determining what penalty to assess:

- (a) Respondent's history of prior offenses; (b) the circumstances of Respondent's violations; and
- (c) Respondent's degree of culpability.

51. Regarding Respondent's history of prior offenses, Respondent, under alias Margerto B. Rojas, has been adjudicated as committing the same violations alleged in the CPAN once before within the last 12 months. In Decision No. R24-0646, issued September 11, 2024 in Proceeding No. 24G-0194HHG, the ALJ found that Michelle Marie Rojas and Margerto B. Rojas doing business as Mean Momma Boss Bltch Moving violated § 40-10.1-107(1), C.R.S., and § 40-10.1-502(1)(a), C.R.S. Hearing Exhibit 101.

52. Regarding the circumstances of Respondent's violations and Respondent's degree of culpability, Respondent offered moving services for a fee without a permit or the requisite insurance on file a mere 54 days after the Commission found him in violation of the exact same statutory provisions. Decision No. R24-0646. In Decision No. R24-0646, the ALJ explained how Rafael Benjamin Rojas (going by Margerto B. Rojas in that proceeding) "expressed remorse for not knowing and complying with the law." *Id.* at 5. Nonetheless, Respondent continued to violate the same requirements. It is reasonable to find, and the ALJ does find, that Respondent knowingly committed the violations in this proceeding.

53. Based on the evidence presented and the finding of facts, 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 illegal behavior:

- a) A civil penalty of \$25,300, inclusive of the applicable surcharge and penalty enhancement, will be assessed for the proven violation of Count 1 in the CPAN, as ordered below; and
- b) A civil penalty of \$2530, inclusive of the applicable surcharge and penalty enhancement, will be assessed for the proven violation of Count 2 in the CPAN, as ordered below.

E. Cease and Desist Order

54. Section 40-10.1-112(1), C.R.S., authorizes the Commission to issue a cease and desist order. The statute states, in relevant part:

...[T]he 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 [article 10.1 of title 40, C.R.S.,] or of any term or condition of the motor carrier's certificate or permit;
- (b) Exceeding the authority granted by a certificate or permit;
- (c) A violation or refusal to observe any of the proper rules or orders of the commission.

55. The CPAN states: "**Notice: Upon proof of any violation alleged above, the Public Utilities Commission may order you to cease and desist activities in violation of statutes and Commission rules.**" Hearing Exhibit 106 (emphases in original). Respondent was on notice that the ALJ could issue a cease and desist order in this proceeding.

56. Staff has proven the violations alleged in the CPAN and the ALJ finds that Respondent should be ordered to cease and desist from operating or offering to operate as a household goods mover without a permit. The cease and desist order will apply to:

- (a) All Rafael Benjamin Rojas' aliases; (b) Any owner, principal, officer, member, partner, or

director of Rafael Benjamin Rojas; and (c) Any other entity owned or operated by Rafael Benjamin Rojas or any principal, officer, member, partner, or director of such entity.¹⁷

57. Respondent is advised and is on notice that violating the cease and desist order contained in this Decision may result in the Commission taking further action, both administrative and judicial, as permitted by statute.

VI. CONCLUSION

58. Staff sustained its burden of proving the allegations contained in Counts 1 and 2 of CPAN No. 141772 by a preponderance of the evidence as required by § 40-7-116, C.R.S. Staff also established that it is appropriate to enhance the penalties against Respondent under § 40-7-113(3), C.R.S.

59. Given Respondent's prior offenses of the same statutory violations and degree of culpability with regard to the violations in this proceeding, it is appropriate to assess the maximum amount of penalties allowed by law.

60. The total civil penalties for these violations will be assessed as \$27,830.

61. Respondent will be ordered to cease and desist from operating as a mover of household goods until obtaining a Commission permit and obtaining and filing with the Commission proof of financial responsibility.

VII. ORDER

A. The Commission Orders That:

1. Consistent with the discussion above, Respondent Rafael Benjamin Rojas doing business as Huffly Puffy Moving With Ease ("Respondent") violated one count of

¹⁷ See § 40-10.1-508, C.R.S.

§ 40-10.1-107(1), C.R.S., and one count of § 40-10.1-502(1)(a), C.R.S., on November 4, 2024, as alleged in Civil Penalty Assessment Notice No. 141722.

2. Respondent is assessed a civil penalty of \$27,830, inclusive of the applicable surcharge and statutory penalty enhancement, for its violations.

3. Respondent shall pay the Commission the civil penalties and the surcharge assessed in Ordering Paragraph No. 2 on or before May 2, 2025.

4. Respondent, in his name or under an alias, shall immediately cease and desist further operation as a mover of household goods until such time as it has complied with all Colorado statutes and Commission rules governing such operation. This cease and desist order applies to: (a) All Rafael Benjamin Rojas' aliases; (b) Any owner, principal, officer, member, partner, or director of Rafael Benjamin Rojas; and (c) Any other entity owned or operated by Rafael Benjamin Rojas, or any principal, officer, member, partner, or director of such entity.

5. Proceeding No. 25G-0031HHG is closed.

6. The 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.

7. As provided by § 40-6-106, 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 recommended 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.
- b. If a party seeks to amend, modify, annul, or reverse a basic finding 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.

8. 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. Responses to exceptions are due within seven days of the date exceptions are served.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

KELLY A. ROSENBERG

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Rebecca E. White".

Rebecca E. White,
Director