

Decision No. R24-0229-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24F-0073CP

GREEN JEEP TOURS LLC,

COMPLAINANT,

V.

PURPLE MOUNTAIN TOUR COMPANY LLC AND ZACHARY BUGG AND BROOKE
LYNN CARSWELL,

RESPONDENTS.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
ALENKA HAN
GRANTING RESPONDENTS' MOTION FOR EXTENSION
OF TIME TO RESPOND TO COMPLAINT AND
ACCEPTING RESPONSIVE PLEADING INTO RECORD**

Mailed Date: April 12, 2024

I. STATEMENT AND PROCEDURAL HISTORY

1. On February 12, 2024, Green Jeep Tours LLC (Complainant or Green Jeep) commenced this Proceeding by filing a Formal Complaint against Purple Mountain Tour Company LLC (Purple Mountain); Zachary Bugg, Lay Representative of Purple Mountain; and Brooke Lynn Carswell, Managing Director of Purple Mountain (collectively, Respondents). Green Jeep alleges that Respondents have “offered to sell and ha[ve] sold individual tickets” for transportation services without the proper certificate of public convenience and necessity in violation of Rule 6016 of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-6 and requests relief.

2. Specifically, Green Jeep seeks 13 enumerated grounds for relief from Purple Mountain's alleged regulatory violation, including entering findings that Purple Mountain violated Commission rules; that Bugg and Carswell "aided and abetted" Purple Mountain in violating Commission rules; that Respondents be enjoined from engaging in violative behavior; that cease and desist orders be entered against Respondents and their activities; and that Respondents be barred from obtaining Commission authority to operate in the future.

3. On February 16, 2024, after receiving the Formal Complaint, the Commission issued a Notice of Hearing setting this Proceeding for an evidentiary hearing to be held on April 22, 2024, commencing at 9:00 a.m.

4. Also on February 16, 2024, the Commission issued and sent to Respondents an Order to Satisfy or Answer the Formal Complaint notifying Respondents that a Formal Complaint had been asserted against them. The Order to Satisfy or Answer advised Respondents that a responsive pleading to the Formal Complaint or evidence that they had satisfied the allegations of the Formal Complaint was due "20 days from service upon you of this order and copy of the attached complaint." The Order to Satisfy or Answer was accompanied by a copy of the Notice of Hearing, Formal Complaint, verification, and attachments to the Formal Complaint. Twenty days after service of the Formal Complaint thus expired on March 7, 2024.

5. The Order to Satisfy or Answer and all the accompanying documents were sent to Respondents on February 16, 2024, by email to purplemountaintours@gmail.com, and by US Mail to 165 Virginia Drive, #2, Estes Park, CO 80517.

6. On February 21, 2024, the Commission referred this Proceeding by minute entry to an Administrative Law Judge (ALJ) for disposition. The Proceeding was subsequently assigned to the undersigned ALJ.

7. Because the Commission had not received a response from Respondents within the time period established by the Order to Satisfy or Answer, on March 22, 2024, the undersigned ALJ issued Decision No. R24-0188-I ordering Respondents to file a responsive pleading within seven days of the Decision and requesting the parties to advise the ALJ of their preferred hearing format.

8. In addition to serving Decision No. R24-0188-I at the email and physical addresses to which the Order to Satisfy or Answer had been served, Decision No. R24-0188-I was also served on Respondents at another email address, info@purplemountaintourco.com.¹

9. One week later, on March 29, 2024, Respondents moved for a one-week extension of time, up to and including April 5, 2024, within which to respond to the Formal Complaint.² Respondents represented that they had conferred with Complainant about the Motion for Extension of Time to Respond to Complaint (Motion for Extension of Time) and that Complainant objected to the motion.

10. On April 5, 2024, Respondents filed their Evidence of Satisfaction, Response to Complaint and Statement Regarding Hearing, along with exhibits suggesting that Respondents were no longer offering or accepting payment for single-ticket transportation sales.

11. On April 9, 2024, Complainant filed its Response in Opposition to Motion for Extension of Time to Respond to Complaint.

12. By Decision No. R24-0220-I, issued April 9, 2024, the undersigned ALJ scheduled a prehearing conference to be held April 11, 2024.

¹ See Certificate of Service to Decision No. R24-0188-I, dated Mar. 22, 2024.

² See Respondents' Motion for Extension of Time to Respond to Complaint (Motion for Extension of Time), filed Mar. 29, 2024.

II. MOTION FOR EXTENSION OF TIME TO RESPOND TO COMPLAINT**A. Parties' Positions**

13. In their Motion for Extension of Time, Respondents represent that they were unaware that Complainant had commenced this action because they “missed both the electronic delivery and physical delivery” of the Formal Complaint, Order to Satisfy or Answer, and Notice of Hearing the Commission sent to them.³ Respondents admit receiving an electronic copy of the Notice of Hearing, but explain that they “incorrectly believed it was related to another matter.”⁴

14. They state that, as a consequence of not receiving the Formal Complaint or recognizing the significance of the Notice of Hearing, they “did not become aware of the Complaint” until they received Decision No. R24-0188-I on March 22, 2024.

15. Because their counsel was “out of state” until April 4, 2024, they indicated they were unable to file a responsive pleading to the Formal Complaint until April 5, 2024. As noted above, Respondents filed their Evidence of Satisfaction and Response to Complaint that day.

16. In response, Complainant notes that the Order to Satisfy or Answer the Formal Complaint set a deadline of March 7, 2024, by which Respondents were to file a responsive pleading, but that Respondents did not file a responsive pleading by that date despite being “represented by able counsel with a bevy of associates and support staff.”⁵

17. Complainant further notes that although that although the undersigned ALJ granted Respondents additional time to file a responsive pleading to the Formal Complaint, up to and including March 29, 2024, Respondents instead filed their Motion for Extension of Time asserting, in Complainant’s words, “the weakest of excuses for failing to answer and for needing

³ Motion for Extension of Time, p. 2, ¶ 6.

⁴ *Id.*

more time.”⁶ Calling the “excuse . . . totally inadequate and [an] insult[to] the intelligence of the reader,” Complainant argues that Respondents’ assertion that they “missed” the filing of the Formal Complaint despite being “represented by able counsel” is “not credible.”⁷

B. Findings and Conclusions

18. The ALJ disagrees with Complainant’s characterization.

19. First, the ALJ notes that the Formal Complaint does not identify Respondents’ counsel. Service of a formal complaint on a respondent is the Commission’s responsibility.⁸ But, nowhere in its Formal Complaint did Complainant identify Respondents’ counsel.

20. The Certificate of Service associated with the Order to Satisfy or Answer confirms that it was not forwarded to Respondents’ counsel. Rather, as noted above, it was emailed to Respondents at an email address on file with the Commission and mailed to an address listed for Respondents in Estes Park via US Mail.

21. However, mail to the Estes Park address was returned to the Commission as undeliverable.⁹

22. Given that the Commission was unaware Respondents were represented, and that mail sent to Respondents was returned as undeliverable, the ALJ finds it not only plausible but likely that Respondents were unaware that Complainant had commenced this Formal Complaint.

23. Moreover, upon receiving Decision No. R24-0188-I issued by the undersigned ALJ, Respondents took timely action — within the time allowed by the undersigned ALJ — to request additional time to file a responsive pleading to the Formal Complaint. Subsequently,

⁵ Complainant’s Response in Opposition to Motion for Extension of Time to Respond to Complaint, p. 2, ¶ II, filed Apr. 9, 2024.

⁶ *Id.* at p. 2, ¶ IV.

⁷ *Id.* at p. 2, ¶ 2.

⁸ Rule 1302(f) of the Commission’s Rules of Practice and Procedure, 4 *Code of Colo. Regulations* (CCR) 723-1.

Respondents filed a responsive pleading indicating they had satisfied the Formal Complaint before the expiration of the additional time they had requested.

24. The ALJ finds and concludes that based on this record, Respondents have established good cause for their requested extension of time to satisfy or answer the Formal Complaint.

25. Respondents' Motion for Extension of Time will therefore be granted.

26. Respondents' Evidence of Satisfaction, Response to Complaint and Statement Regarding Hearing, filed April 5, 2024, will be accepted into the record of this Proceeding.

27. Finally, Complainant's request that Respondents' Evidence of Satisfaction, Response to Complaint and Statement Regarding Hearing be stricken, that the Formal Complaint be deemed admitted, and that the relief sought in the Formal Complaint be granted, will be denied.

III. ORDER

A. It Is Ordered That:

1. Respondents' Motion for Extension of Time to Respond to Complaint filed by Purple Mountain Tour Company, Zachary Bugg, and Brooke Lynn Carswell (collectively Respondents) on March 29, 2024, is granted.

2. Respondents' Evidence of Satisfaction, Response to Complaint, and Statement Regarding Hearing, filed by Respondents on April 5, 2024, is accepted into the record of this Proceeding.

⁹ See returned mail envelopes addressed to Zachary Bugg, Brooke Carswell, and Purple Mountain Tour Company, received by the Commission Apr. 2, 2024.

3. The relief requested by Complainant Green Jeep Tours LLC in ¶¶ V.2, 3, and 4 of its Response in Opposition to Motion for Extension of Time to Respond to Complaint, filed April 9, 2024, is denied.

4. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ALENKA HAN

Administrative Law Judge

ATTEST: A TRUE COPY

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

Rebecca E. White,
Director