

Decision No. R23-0718-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22A-0335CP

IN THE MATTER OF THE APPLICATION OF TIPSY VELO LLC, DOING BUSINESS AS TIPSY VOYAGE, FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO OPERATE AS A COMMON CARRIER BY MOTOR VEHICLE FOR HIRE.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
AVIV SEGEV
DENYING THE PARTIES' RESPECTIVE
MOTIONS TO DISMISS**

Mailed Date: October 24, 2023

I. STATEMENT

A. Procedural Background

1. On July 21, 2022, Topsy Velo, LLC, d/b/a Topsy Voyage (Applicant or Topsy Voyage) filed with the Commission its Permanent Authority Application (Application), through which Applicant seeks a Certificate of Public Convenience and Necessity (CPCN) to operate as a common carrier by motor vehicle for hire. This filing commenced Proceeding No. 22A-0335CP.

2. On July 25, 2022, the Commission issued a Notice of Applications and Petitions Filed (Notice). The Notice gave notice of the Application, set procedural deadlines, and established a 30-day intervention period.

3. On August 22, 2022, Absolute Prestige Limousine II LLC (Intervenor or Absolute Prestige) timely noticed its intervention of right by filing its Entry of Appearance, Intervention,

Letter of Authority, and Legal Representation for Absolute Prestige Limousine II, LLC (Intervention).

4. By Decision No. R22-0824-I, issued December 27, 2022, the ALJ, among other things, found and concluded that Ms. Shirleen Hutton, a non-attorney, may represent Absolute Prestige in this Proceeding.

5. On June 12, 2023, Applicant's Amended Final Witness and Exhibits (Applicant's Witness and Exhibit List) was filed by Topsy Voyage.

6. By Decision No. R23-0528-I, issued August 8, 2023, the ALJ, among other things, ordered Applicant to submit its final witness and exhibit lists no later than September 14, 2023.

7. On August 31, 2022, the Commission, via minute entry, deemed the Application complete and referred Proceeding No. 22A-0335CP to an Administrative Law Judge (ALJ) for disposition.

8. On September 21, 2023, Intervenor Absolute Prestige Limousine II, LLC's Witness & Exhibit List for Evidentiary Hearing (Intervenor's Witness and Exhibit List) was filed by Absolute Prestige.

9. On September 21, 2023, Intervenor Absolute Prestige Limousine II, LLC's Motion to Dismiss (Intervenor's Motion to Dismiss) was filed by Absolute Prestige.

10. On September 25, 2023, Applicant's Motion to Strike the Motion to Dismiss and the Intervention of Absolute Prestige Limousine II, LLC and for other Relief including the Vacating of Hearing on October 5, 2023 (Applicant's Motion to Strike and Dismiss) was filed by Topsy Voyage.

11. By Decision No. R23-0671-I, issued October 5, 2023, the ALJ rescheduled the evidentiary hearing in this matter and provided the parties with the opportunity to re-file their final witness and exhibit list.

12. On October 5, 2023, Intervenor filed its Response to Applicant's Motion to Strike the Motion to Dismiss and the Intervention of Absolute Prestige Limousine II, LLC and for Other Relief Including the Vacating of Hearing on October 5, 2023 (Intervenor's Response to Applicant's Motion to Strike and Dismiss).

a. Intervenor's Motion to Dismiss

13. In Intervenor's Motion to Dismiss, Absolute Prestige states that Applicant failed to provide its final witness and exhibit list as ordered in Decision R23-0528-I and has not otherwise indicated to that "any previous filings should stand in the place of the ordered documents noted in decision R23-0528-I."¹ Intervenor further states that such failure by Applicant "prejudices and compromises Intervenor and their [*sic*] ability to substantially argue against Applicant's position..."² And, on these grounds, Intervenor requests that the ALJ dismiss the Application.³

14. Because Topsy Voyage filed Applicant's Witness and Exhibit List on June 12, 2023, Absolute Prestige had ample notice of its contents. Further, Decision No. R23-0671-I rescheduled the evidentiary hearing in this matter and provided the parties with the opportunity to re-file their respective final witness and exhibit lists. As such, Applicant's failure to comply with the requirement ordered is a mere technical failure that did not prejudice Intervenor and for which a

¹ Intervenor's Motion to Dismiss at 2.

² *Id.*

³ *Id.*

dismissal is not an appropriate remedy. Therefore, Intervenor's Motion to Dismiss will be denied, as ordered below.⁴

b. Applicant's Motion to Strike and Dismiss

15. In Applicant's Motion to Strike and Dismiss Applicant states that: "[Intervenor] is a corporate entity not represented by an attorney licensed to practice law in Colorado;"⁵ [t]he preparation and filing of a 'Motion to Dismiss' is the practice of law,"⁶ [p]leadings filed by a corporate entity without an attorney are a nullity and should be stricken;"⁷ "[t]he entire intervention of Absolute must be stricken;"⁸ and given that Intervenor's Motion to Dismiss is illegal and frivolous, "Applicant should be compensated for the damages sustained by Absolute's illegal pleading and its very presence in this proceeding."⁹

16. In Decision No. R22-0824-I, the ALJ found that the filings made by Absolute Prestige, as well as other applicable portions of the record, establish that Absolute Prestige meet the requirements listed in Rule 1201(b), 4 CCR 723-1 to be represented by a non-attorney in this matter. Such representation includes the filing of motions, such as Intervenor's Motion to Dismiss and examining and cross-examining witnesses at an evidentiary hearing.¹⁰

⁴ The ALJ notes that Intervenor's Motion to Dismiss does not contain notice of conferral, as required pursuant to Rule 1400(a) of the Rules of Practice and Procedure, 4 CCR 723-1. Because this Decision denies Intervenor's Motion to Dismiss, Intervenor's failure to comply with Rule 1400(a) of the Rules of Practice and Procedure, 4 CCR 723-1 is moot.

⁵ Applicant's Motion to Strike and Dismiss at 1.

⁶ *Id.* at 2.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at 3

¹⁰ See Decision No. R15-0729-I in Proceeding No. 15A-0288CP, issued July 20, 2015 (finding that an intervenor's non-attorney representative "will be bound by, and will be held to, the same procedural and evidentiary rules and the same substantive law as those that bind and are applicable to licensed attorneys" and citing *People v. Romero*, 694 P.2d 1256, 1266 (Colo. 1985), *Negron v. Golder*, 111 P.3d 538, 541 (Colo. App. 2004) and *Loomis v. Seely*, 677 P.2d 400, 402 (Colo. App. 1983) as authority for such finding).

17. Given the denial ordered below of Intervenor's Motion to Dismiss, Applicant's request to strike Intervenor's Motion to Dismiss will be denied as moot, as ordered below.

18. It is found and concluded that the filing of Intervenor's Motion to Dismiss, while not merited, is not "illegal"¹¹ or "frivolous."¹²¹³ In addition, the dismissal of Absolute Prestige's intervention (a rather extreme remedy) is not an appropriate remedy in this instance. Therefore, Applicant's request to dismiss Absolute Prestige's intervention will be denied, as ordered below.¹⁴

19. Given the findings above and the denial ordered below of Applicant's request to dismiss Absolute Prestige's intervention, Intervenor's request to be compensated for the damages Applicant sustained due to the filing of Intervenor's Motion to Dismiss and Intervenor's "very presence in this proceeding"¹⁵ will be denied, as ordered below.

II. ORDER

A. It Is Ordered That:

1. Consistent with the discussion above, Intervenor Absolute Prestige Limousine II, LLC's Motion to Dismiss, filed September 21, 2023 by Absolute Prestige Limousine II LLC, is denied.

2. Consistent with the discussion above, Applicant's Motion to Strike the Motion to Dismiss and the Intervention of Absolute Prestige Limousine II, LLC and for other relief including

¹¹ Applicant's Motion to Strike and Dismiss at 3.

¹² *Id.*

¹³ *See supra*, Footnote. 10.

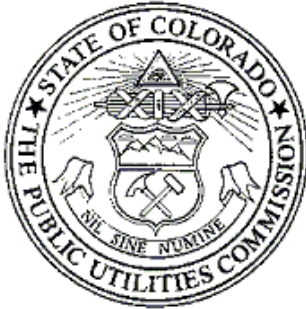
¹⁴ As one of the grounds for its request to dismiss Intervenor's intervention, Applicant points out that intervenor failed to confer with Applicant regarding Intervenor's Motion to Dismiss. *See* Applicant's Motion to Strike and Dismiss at 3. The ALJ notes that, at most, such failure would subject Intervenor's Motion to dismiss to be denied (which is ordered below consistent with the discussion herein). Such failure does not bear on the dismissal of Absolute Prestige as an intervenor herein.

¹⁵ Applicant's Motion to Strike and Dismiss at 3.

the vacating of hearing on October 5, 2023, filed September 25, 2023 by Topsy Velo, LLC, d/b/a Topsy Voyage, is denied.

3. This Decision shall be effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

AVIV SEGEV

Administrative Law Judge

ATTEST: A TRUE COPY

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

Rebecca E. White,
Director