

Decision No. R25-0029-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24F-0430CP

ROMAN LYSENKO,

COMPLAINANT,

V.

303 PARTY BUS LLC AND 303 CONCERT RIDES LLC,

RESPONDENTS.

**INTERIM DECISION
DENYING MOTION TO DISMISS, REQUIRING FILING
AND SETTING PREHEARING CONFERENCE**

Issued Date: January 15, 2025

I. STATEMENT

1. On October 2, 2024, Roman Lysenko (“Complainant”) filed a Complaint against, 303 Party Bus LLC and 303 Concert Rides (collectively, “Respondents”). That filing commenced this proceeding.

2. On October 9, 2024, Rebecca White, Director, served a copy of the Complaint together with an order requiring the Respondents to satisfy or answer said complaint within 20 days, in accordance with § 40-6-108, C.R.S. An evidentiary hearing was scheduled for December 16, 2024.

3. On October 23, 2024, the above captioned proceeding was referred by minute entry to an Administrative Law Judge (“ALJ”).

4. On October 29, 2024, Respondents filed their Motion to Dismiss Complaint (“Motion to Dismiss”)

5. On October 30, 2024, Mr. Lysenko filed his Response to Motion to Dismiss (“Response”).

6. On November 8, 2024, Respondents filed their Motion for Leave to Reply and Reply to Response of Roman Lysenko (“Reply”).

7. On November 20, 2024, by Decision No. R24-0848-I, the evidentiary hearing was vacated pending a decision on the Motion to Dismiss.

II. DISCUSSION

A. **Motion to Dismiss**

8. The Respondents in the above captioned proceeding argue the Complaint should be dismissed due to the Complainant’s failure to follow Rule 1201 of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (“CCR”) 723-1.

9. Respondents argue that Mr. Lysenko is not acting as “an individual” but rather on behalf of Mountain Star Transportation LLC, doing business as Explorer Tours (“Mountain Star”).

10. Respondent states that Mr. Lysenko intervened on behalf of Mountain Star in Proceeding No. 23A-0552CP-EXT earlier this year because Mountain Star is a competitor shuttle provider to 303 Party Bus. Respondent states that Mr. Lysenko relies on facts and findings from Proceeding 23A-0552CP-EXT where he sought denial of 303 Party Bus’s application on behalf of Mountain Star in the instant proceeding.

11. Respondent argues that Mr. Lysenko is acting on behalf of Mountain Star, a closely held entity. Respondents affirmatively state with this Motion that the revocation of CPCN authority held since 2014 and cessation of their business will substantially exceed \$15,000 in lost revenues.

12. Respondents conclude that the Complaint fails to satisfy the attorney representation requirements of Rule 1201(a)-(b) because Mr. Lysenko is not acting in his individual capacity and the exemption for closely held entities does not apply to this proceeding since the amount in controversy exceeds \$15,000.

13. Respondents request that the Complaint be dismissed for the failure to meet the requirements of Rule 1201(a)-(b).

B. Response

14. Complainant in his Response states “Any person may file a formal complaint at any time and pursuant to Commission Rule 1201(b)(I), 4 CCR 723-1- 1201(b)(I) an individual who is not an attorney may represent his or her own interests.”

15. Complainant argues he should not lose his individual right to file a complaint because he owns Mountain Star.

16. Complainant states it is in his interest to live in a safe community and have utility companies obey the laws and rules.

C. Reply

17. The undersigned ALJ shall consider the Reply filed by the Respondent. The Reply does contain new facts based upon later filings by Mr. Lysenko.

18. The Respondent argues that the Response was filed by Mountain Star (dba Explorer Tours and/or Red Rocks Shuttle), as the “Filing Party” under Mountain Star’s PUC E-Filing

account, Mountain Star's email address for service, and Mountain Star's company information and not Mr. Lysenko.

19. Respondent argues that the Proceeding Detail in the Commission's e-filing system demonstrates every pleading in this case from Mr. Lysenko has been submitted by Mountain Star, including the Response and the original Complaint.

III. DISCUSSION

20. The undersigned ALJ agrees with the Respondents that Mr. Lysenko has made every filing in the above captioned proceeding using the account of Mountain Star. None of the filings made into the Commission's e-filing system by Mr. Lysenko were under a personal account in the Commission's e-filing system.

21. It is also noted that the caption in the initial filing by Mr. Lysenko does not list Mountain Star. In addition, the initial filing was signed by Roman Lysenko and does not include Mountain Star.

22. The response to the Motion to Dismiss also was signed by Roman Lysenko and does not mention Mountain Star.

23. Under § 40-10.1-112(2) C.R.S.:

Any person may file a complaint against a motor carrier for a violation of this article or a rule adopted under this article. The complainant may request any relief that the commission, in its authority, may grant, including an order to cease and desist, suspension or revocation of the motor carrier's certificate or permit, or assessment of civil penalties. Upon proof of violation, the commission may issue an order to cease and desist, suspend or revoke the motor carrier's certificate or permit, assess civil penalties as provided in article 7 of this title, or take any other action within the commission's authority. In assessing civil penalties under this subsection (2), the commission is not constrained by the procedural requirements of section 40-7-116.

24. Mr. Lysenko has the right under Colorado law to pursue this complaint in his personal capacity. While he has signed all the pleadings in his personal capacity, he has filed the pleadings in the Commission's e-filings system under the account of Mountain Star.

25. While the Respondents believe that Mr. Lysenko is acting as an officer for Mountain Star, under § 40-10.1-112(2) C.R.S, he may pursue the above captioned complaint in his individual capacity.

26. Mr. Lysenko clearly indicates in his filings that he wishes to proceed in his personal capacity and not as an officer of Mountain Star. While the filings have caused confusion, it is of a clerical nature¹. It is clear on the face of the pleadings themselves that Mr. Lysenko has initiated the complaint in his personal capacity.

27. This is a confusion in the use of the Commission's e-filing system, not a fatal error within the pleadings that requires the dismissal of the complaint.²

28. To prevent any further confusion, Mr. Lysenko is ordered to create an account in the Commission's e-filing system and make any further filings for this proceeding under that account and no longer under the account of Mountain Star.³

29. Failure to file any additional pleadings under an account registered under the name Roman Lysenko may cause the filing to not be accepted.

IV. ANSWER AND PREHEARING CONFERENCE

30. As of the date of this decision, the Respondents have not filed an Answer to the Complaint.

¹ Had Mr. Lysenko made the filings in the Commission's e-filings under his own account there would be no confusion and no basis for the Motion to Dismiss.

² Even if the undersigned ALJ agreed with the Respondents that this was a fatal flaw requiring dismissal, Mr. Lysenko could simply re-file the complaint under an e-filing account in his name.

³ To save costs for all parties, the undersigned ALJ will not dismiss this proceeding and have Mr. Lysenko re-file the complaint under his own account.

31. The Respondents shall have until February 7, 2025, to file an Answer in this proceeding.

32. A prehearing conference shall be scheduled to discuss a procedural schedule on February 13, 2025.

V. ORDER

It is Ordered That:

1. The Motion to Dismiss filed by 303 Party Bus LLC and 303 Concert Rides (collectively, “Respondents”), on October 29, 2024, is denied.

2. Complainant, Roman Lysenko, is ordered to create a personal account in the Commission’s e-filings system and make any further filings in this proceeding under that account.

3. Respondents are ordered to file an Answer to the complaint filed by Mr. Lysenko on October 2, 2024, by February 7, 2025.

4. A prehearing conference in this proceeding is scheduled as follows:

DATE: February 13, 2025

TIME: 10:00 a.m.

PLACE: Join by videoconference using Zoom

5. Participants in the hearing may not distribute the hearing link, access, or ID code to anyone not participating in the hearing. Participants may not appear in person at the Commission for the above-scheduled hearing. Instead, they must participate in the hearing from remote locations, consistent with the requirements of this Decision.

6. All participants must comply with the requirements in Attachment A to this Decision, which is incorporated into this Decision.

7. The Parties shall be held to the advisements in this Decision.
8. This Decision shall be effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ROBERT I. GARVEY

Administrative Law Judge

ATTEST: A TRUE COPY

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

Rebecca E. White,
Director