

Decision No. R03-0009-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 02A-412CP

IN THE MATTER OF THE APPLICATION OF BOULDER EXPRESS, LLC, D/B/A BLUE SKY SHUTTLE (FORMERLY OWNER/DRIVER UNITED CORP., D/B/A BLUE SKY SHUTTLE), 1412 WEST 104TH AVENUE, SUITE 114, NORTHGLENN, COLORADO 80234 FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO OPERATE AS A COMMON CARRIER BY MOTOR VEHICLE FOR HIRE.

DOCKET NO. 02A-410CP

IN THE MATTER OF THE APPLICATION OF FLYING EAGLE EXPRESS SHUTTLE SERVICE, INC., 13024 EAST ALASKA PLACE, AURORA, COLORADO 80012 FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO OPERATE AS A COMMON CARRIER BY MOTOR VEHICLE FOR HIRE.

DOCKET NO. 02A-471CP

IN THE MATTER OF THE APPLICATION OF OVERSEAS EMPORIUM, INC., 16740 EAST ILIFF AVENUE, AURORA, COLORADO 80013 FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO OPERATE AS A COMMON CARRIER BY MOTOR VEHICLE FOR HIRE.

**INTERIM ORDER OF
ADMINISTRATIVE LAW JUDGE
DALE E. ISLEY
DENYING MOTIONS TO
WITHDRAW AS COUNSEL
AND TO DISMISS APPLICATION**

Mailed Date: January 3, 2003

I. STATEMENT

1. On December 20, 2002, a Motion for Leave to Withdraw as Counsel for Applicant, Overseas Emporium, Inc., d/b/a Airport Transportation Services, ATS Shuttle and Notification Certificate of Client's Responsibilities Upon Withdrawal of Counsel (Original

Motion to Withdraw) was filed in the captioned matter by The Harper Law Firm, P.C. (Harper), legal counsel of record for Overseas Emporium, Inc. (OE). On December 24, 2002, Harper filed an Amended Motion for Leave to Withdraw as Counsel for Applicant, Overseas Emporium, Inc., d/b/a Airport Transportation Services, ATS Shuttle and an Amended Notification Certificate of Client's Responsibilities Upon Withdrawal of Counsel (Amended Motion to Withdraw).¹

2. As grounds for its request to withdraw as OE's legal counsel, Harper states that it is entitled to so withdraw pursuant to unspecified terms of its contract with OE.

3. On December 30, 2002, Metro Taxi, Inc., filed a pleading entitled "Metro Taxi, Inc.'s (I) Statement of No Objection to Motion of Counsel for Overseas Emporium, Inc. to Withdraw, and (II) Metro Taxi, Inc.'s Motion to Dismiss Docket No. 02A-471CP for Failure of Applicant to be Represented by an Attorney or Alternative Fourth Motion *In Limine* Limiting Participation of Qualified Non-Attorney Representatives of Overseas Emporium, Inc. in These Cases" (Motion to Dismiss). Metro Taxi, Inc., does not object to Harper's request to withdraw as OE's legal counsel. However, if such withdrawal is granted and OE intends to proceed in this proceeding without the benefit of legal counsel, it seeks dismissal of OE's application and/or an order limiting the participation of non-attorneys acting on OE's behalf.

4. On December 31, 2002, OE filed its objection to the Motion to Withdraw.² OE contends that it has complied with the terms of its contract with Harper, that it has insufficient time to secure substitute counsel prior to commencement of the hearing, and that Harper's

¹ The Amended Motion to Withdraw was apparently designed to correct an inaccuracy in the Original Motion to Withdraw addressed by Decision No. R02-1439-I. The Original Motion to Withdraw and the Amended Motion to Withdraw may hereinafter collectively be referred to as the Motion to Withdraw.

² Decision No. R02-1439-I indicated that responses and/or objections to the Original Motion to Withdraw were due on December 30, 2002. However, the filing of the Amended Motion to Withdraw extended the ten-day response period provided by 4 *Code of Colorado Regulations* 723-1-21(c) to January 3, 2003.

withdrawal as its legal counsel at this late date would severely prejudice its ability to proceed with its case. OE requests that the Motion to Withdraw be denied and that Harper be required to represent it in this proceeding.

5. Rule 21(c) of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1-21(c), governs counsel requests to withdraw from Commission proceedings. It provides, in part, that "Objections to a motion and notice of withdrawal shall be filed within ten days after the motion has been properly served, and the motion shall not be ruled upon until the objection period has expired." (Emphasis added). Since the objection period to the Motion to Withdraw does not expire until 5:00 p.m. on January 3, 2003, this portion of Rule 21(c) would ordinarily preclude issuance of a definitive ruling on the Motion to Withdraw until January 6, 2003, the first day of hearing scheduled in these matters.

6. However, Rule 4 of the Commission's Rules of Practice and Procedure, 4 CCR 723-1-4, authorizes the Commission to vary its procedural rules if it finds that compliance is impossible, impracticable, or unreasonable. In light of the upcoming hearing, the fact that the Motion to Withdraw is now effectively "at issue" (by virtue of the filing of OE's objection to the same), and the need to resolve the uncertainty concerning the status of OE's legal representation prior to commencement of the hearing, it is found that, under the circumstances, it would be impractical and unreasonable to delay issuance of a ruling on the Motion to Withdraw until the expiration period applicable to such motion has expired.³

³ A copy of this Order was provided to Harper, OE, counsel for Metro Taxi, counsel for SuperShuttle Denver International, Inc., counsel for Boulder Express, Inc., and counsel for Golden West Commuter, LLC and Schafer-Schonewill and Associates, Inc., doing business as Englewood Express and/or Wolf Express Shuttle electronically on January 3, 2003.

7. The Motion to Withdraw will be denied. An attorney who undertakes to represent a client in a particular matter impliedly agrees that he will pursue it to its conclusion and he is not free to abandon it without reasonable cause. *See, Sobol v. District Court* 619 P.2d 765 (Colo. 1980). Rule 1.16 of the Colorado Rules of Professional Conduct (CRPC) sets forth the grounds justifying the termination of representation by legal counsel. Subsection (b)(1)(F) of that rule provides that the lawyer may terminate representation if the client “deliberately disregards an agreement or obligation to the lawyer as to expenses or fees.” This is apparently the basis upon which Harper seeks to withdraw as OE’s counsel when it asserts that it “is entitled to withdraw from this proceeding pursuant to the terms of a contract between law firm and OE in this matter.” Harper has asserted no other grounds supporting its Motion to Withdraw.

8. However, the information and material attached to OE’s objection supports its contention that it has materially complied with the contract between it and Harper. The material includes a copy of the “Contract for Legal Services-Flat Fee” (Contract) between OE and Harper. Under the terms of the Contract, Harper has agreed to represent OE in the captioned proceeding “through hearing” for a “flat fee” of \$4,000.00. *See*, paragraphs 1, 2.A., 2.C., and 2.D. of the Contract. The “flat fee” includes “ordinary” costs. *See*, paragraph 2.J. Also attached to OE’s objections are copies of two checks made payable to Harper in the combined amount of \$4,000.00 (presumably representing full payment of the “flat fee” called for by the Contract). Based on the foregoing it cannot be concluded that the Motion to Withdraw sets forth sufficient grounds justifying Harper’s withdrawal as OE’s legal counsel, at least for purposes of this proceeding.

9. In addition, CRPC 1.16(d) provides that “Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable, to protect the client’s interests, such

as giving reasonable notice to the client, allowing time for employment of other counsel...” Harper failed to do this. The Motion to Withdraw was filed approximately 2 weeks prior to commencement of a potential 13-day hearing involving multiple parties. As indicated previously, the objection period to the Motion to Withdraw expires only one business day prior to commencement of the hearing. This did not provide OE sufficient time to secure substitute counsel, nor would it have allowed substitute counsel sufficient time to prepare for hearing had he been so obtained. Allowing Harper to withdraw as OE’s counsel under these circumstances would be highly prejudicial to OE.⁴

10. In light of the foregoing, the Motion to Withdraw is denied and Harper will be ordered to continue its representation of OE in this proceeding. *See*, CRPC 1.16(c)(When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation). *See also*, *Sobol v. District Court*, *supra* (Question of whether attorney should be permitted to withdraw is within the discretion of the court and will not be reversed unless its discretion has been demonstrably abused).

11. The Motion to Dismiss is rendered moot by the terms of this Order and, therefore, will be denied.

II. ORDER

A. It Is Ordered That:

1. The Motion for Leave to Withdraw as Counsel for Applicant, Overseas Emporium, Inc., d/b/a Airport Transportation Services, ATS Shuttle, and the Amended Motion

⁴ Granting the Motion to Withdraw would, in all likelihood, also require the hearings in these consolidated proceedings to be continued once again so as to allow time for OE to secure substitute counsel and for such counsel to prepare for hearing. That result would be prejudicial to all other parties to this consolidated proceeding.

for Leave to Withdraw as Counsel for Applicant, Overseas Emporium, Inc., d/b/a Airport Transportation Services, ATS Shuttle, filed in the captioned matter by The Harper Law Firm, P.C., are denied.

2. The Harper Law Firm, P.C. shall continue its legal representation of Overseas Emporium, Inc., doing business as Airport Transportation Services, ATS Shuttle, in the captioned proceedings.

3. The Motion to Dismiss Docket No. 02A-471CP for Failure of Applicant to be Represented by an Attorney or Alternative Fourth Motion *In Limine* Limiting Participation of Qualified Non-Attorney Representatives of Overseas Emporium, Inc. in These Cases filed by Metro Taxi, Inc., is denied as moot.

4. This Order shall be effective immediately.

(SEAL)



ATTEST: A TRUE COPY

Bruce N. Smith
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

DALE E. ISLEY

Administrative Law Judge

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