

Decision No. R04-1515-I

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

DOCKET NO. 04F-605CP

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CRAIG S. SUWINSKI,

COMPLAINANT,

V.

VAIL SUMMIT RESORTS, INC., DOING BUSINESS AS KEYSTONE RESORTS, INC.,

RESPONDENT.

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**INTERIM ORDER OF  
ADMINISTRATIVE LAW JUDGE  
WILLIAM J. FRITZEL  
DENYING MOTION TO DISMISS COMPLAINT**

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Mailed Date: December 21, 2004

**I. STATEMENT**

1. On November 15, 2004, Craig S. Suwinski (Complainant) filed a complaint naming Vail Summit Resorts, Inc., doing business as Keystone Resorts, Inc., as Respondent. Complainant alleges that Respondent failed to comply with the Commission's Rules, Relating to Rule 4 *Code of Colorado Regulations* (CCR) 723-31-8 by failing to provide external identification of its vehicles.

2. On November 18, 2004, the Commission issued an Order to Satisfy or Answer and scheduled hearing for January 7, 2005.

3. On November 29, 2004, Respondent filed a Motion to Dismiss the Complaint for the reason that Respondent has failed to state a claim upon which relief can be granted.

4. On December 8, 2004, Complainant filed a Response Objecting to the Motion to Dismiss.

5. Section 40-6-108(1)(a), C.R.S., states:

Complaint may be made by the commission on its own motion or by any corporation, person, chamber of commerce or board of trade, or by any civic, commercial, mercantile, traffic, agricultural or manufacturing association or organization, or by any body politic or municipal corporation by petition or complaint in writing, setting forth any act or thing done or admitted to be done by any public utility, including any rule, regulation, or charge heretofore established or fixed by or for any public utility, in violation, or claimed to be in violation, of any provision of law or of any order or rule by the commission.

6. The Commission's Rules of Practice and Procedure, 4 CCR 723-1-61(a) states in part:

...A Formal complaint shall set forth sufficient facts and information to adequately advise the respondent public utility and the Commission of how any law, order, Commission rule, or public utility tariff provision has been violated...

Rule 4 CCR 723-1-61(b) provides that an individual may file a formal complaint against a public utility.

7. In considering a motion to dismiss for failure of a complainant to state a claim upon which relief can be granted, the courts (and the Commission) must accept as true all allegations of material fact stated in the complaint and must consider the allegations in the light most favorable to the complainant. *Dorman v. Petrol Aspen, Inc.*, 914 P.2d 909, 911 (Colo. 1996). Motions to dismiss on the grounds that complainant has failed to state a claim upon which relief can be granted are generally disfavored by the courts, and the motion may prevail only if it appears beyond doubt that the complainant cannot prove facts in support of the claim. *Dunlap v. Colorado Springs Cablevision, Inc.*, 829 P. 2d 1286, 1289 (Colo. 1992)

8. In applying the above standard to the instant case and motion, it is found and concluded that the Motion to Dismiss should be denied. The complaint states facts that if proven by Complainant, could entitle Complainant to relief.

## **II. ORDER**

### **A. It Is Ordered That:**

1. The motion of Vail Summit Resorts, Inc., doing business as Keystone Resorts, Inc., to dismiss the complaint is denied.
2. Respondent shall answer the Complaint.
3. This Order is effective immediately.

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

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Administrative Law Judge