

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 APPLICANT’S
MOTIONS TO STRIKE INTERVENTION**

Mailed Date: November 9, 2022

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I. STATEMENT

A. Procedural Background

1. On July 21, 2022, Topsy Velo, LLC, d/b/a Topsy Voyage (Topsy Voyage or Applicant) 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 and 23, 2022, Pali-Tours Ltd, Absolute Prestige Limousine II LLC, and Colorado Detours LLC d/b/a Western Colorado Wine Tour (collectively Intervenors) timely noticed their intervention of right.

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

5. On October 5, 2022, Topsy Voyage filed three motions, each seeking to strike each of the Intervenors' intervention in this proceeding (collectively Motions to Strike Interventions).

6. On October 12, 14, and 18, 2022, Intervenors filed their respective responses to the Motions to Strike Interventions) (collectively Responses to Motions to Strike Interventions).

B. Legal Standards Regarding Legal Representation

7. Rule 1201(a), 4 *Code of Colorado Regulations* (CCR) 723-1 of the Rules of Practice and Procedure requires a party in a proceeding before the Commission to be represented by an attorney authorized to practice law in the State of Colorado, except that, pursuant to Rule 1201(b), 4 CCR 723-1, an individual may appear without an attorney to represent the interests of a closely-held entity, as provided in § 13-1-127, C.R.S. According to § 13-1-127(1)(a), C.R.S. a closely held entity is an entity with no more than three owners.

8. According to § 13-1-127(2)(a), a closely held entity may be represented before the Commission by an officer of the closely held entity if the amount at issue in the controversy before the Commission does not exceed fifteen thousand dollars.

9. According to Rule 1500, 4 CCR 723-1, the proponent of a Commission's decision bears the burden of proof with respect to the relief the proponent seeks.

C. Closely-Held Entity Exception

10. Because Topsy Voyage, the movant, is claiming that Intervenors are required to be represented, it bears burden of showing that the closely-held entity exception¹ to the general legal representation requirement² does not apply, or is otherwise unavailable, to Intervenors. The closely-held entity exception applies to entities with three or less owners. The Motions to Strike Interventions are silent as to the number of owners of each of the Intervenors.

11. The ALJ finds and concludes that Topsy Voyage failed to meet its burden of showing that the closely-held entity exception does not apply, or is otherwise unavailable, to Intervenors.

D. Amount at Issue

12. Because Topsy Voyage, the movant, is claiming that Intervenors are required to be represented, it also bears burden of showing that the amount at issue in the controversy in this matter exceeds \$15,000.

13. In the Motions to Strike Interventions, Topsy Voyage states that "this application proceeding involves an amount well in excess of \$15,000." In support of this proposition, Topsy Voyage attached to each of the Motions to Strike Interventions a verified statement, signed by the Applicant's principal, John Barbier (Topsy Voyage's verified statement), which purports to identify

¹ See Rule 1201(b), 4 CCR 723-1.

² See Rule 1201(a), 4 CCR 723-1.

the: “value of the vehicle to be used for business” as well as the monthly and annual expenses and costs associated with Topsy Voyage’s “[v]ehicle maintenance,” “[f]ull expense to run vehicle,” “[o]ffice space costs,” “[c]ost of advertising,” “[c]ost of office help,” “[c]ost of telephone,” “[c]ost of website maintenance, and “[c]ost of insurance.”³

14. While the exact amount in controversy in this proceeding may in dispute, it is apparent that the value of Topsy Voyage’s vehicle and monthly and/or its annual expenses and costs do not *equate* to the amount in controversy. Because this proceeding chiefly involves an Application for a CPCN, the amount in controversy is that of the CPCN Topsy Voyage is seeking through the Application.

15. The ALJ finds and concludes that Topsy Voyage failed to meet its burden of showing that amount in controversy exceeds \$15,000.00.

E. Failure to File Witness Lists and Copies of Exhibits

16. In the Motions to Strike Interventions, Topsy Voyage states that Intervenors’ respective interventions should be stricken because Intervenors failed to comply with the requirements to file their respective witness lists and copies of its exhibits within 20 days after Notice’s expiration date.

17. First, an intervenor’s failure file copies of exhibits and its list of witnesses does not preclude Intervenors from participating in the hearing and opposing approval of Applicant’s requested authority. Second, in this instance and time, the striking of Intervenors’ respective interventions (a rather extreme remedy) is not an appropriate remedy for Intervenors’ failure to comply with a disclosure deadline. Therefore, Topsy Voyage request to strike Intervenors’ interventions on the grounds that Intervenors failed to comply with the requirements to file their

³ See Topsy Voyage’s verified statement at ¶1.

respective witness lists and copies of its exhibits within 20 days after Notice's expiration date will be denied.

II. ORDER

A. It Is Ordered That:

1. The three Motions to Strike Interventions, filed by Topsy Velo, LLC, d/b/a Topsy Voyage on October 5, 2022, pertaining to the interventions of Absolute Prestige Limousine II LLC, Pali-Tours Ltd, and Colorado Detours LLC d/b/a Western Colorado Wine Tour, are denied.
2. 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 "Doug Dean".

Doug Dean,
Director