

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 13A-0084BP

IN THE MATTER OF THE APPLICATION OF AMERICAN TRANSIT EXPRESS, LLC, FOR
A PERMIT TO OPERATE AS A CONTRACT CARRIER BY MOTOR VEHICLE FOR HIRE.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
STRIKING INTERVENTION**

Mailed Date: May 10, 2013

I. STATEMENT, FINDINGS, DISCUSSION AND CONCLUSIONS

1. The procedural history of this proceeding is set out in Decision No. R13-0440-I which was issued on April 16, 2013. Only those portions of the procedural history necessary to understand this Recommended Decision are repeated here.

2. On February 6, 2013, American Transit Express, LLC (Applicant), filed an Application to Operate as a Contract Carrier of Passengers by Motor Vehicle with attachments (Application). That filing commenced this docket.

3. On February 12, 2013, Kids Wheels LLC (Kids Wheels) filed an “Entry of Appearance and Intervention” (Intervention). Kids Wheels is not represented by legal counsel in this matter. Kids Wheels is a limited liability company.

4. On March 21, 2013, the Commission deemed the Application complete and referred this matter to an Administrative Law Judge (ALJ) for disposition by minute entry during the Commissioners’ Weekly Meeting.

5. This is an adjudicative proceeding before the Commission.

6. For the reasons discussed in Decision No. R13-0440-I, the ALJ ordered Kids Wheels to: (1) supplement its intervention to comply with Rule 1401(e), 4 *Code of Colorado Regulations* (CCR) 723-1 of the Commission's Rules of Practice and procedure, **and** (2) to either have an attorney enter an appearance on its behalf, or show cause why it may be represented by a non-attorney in this action on or by April 29, 2013. Decision No. R13-0440-I. Kids Wheels has failed to comply with the order.

7. As stated in Decision No. R13-0440-I, Kids Wheels' Intervention did not comply with Rule 1401(e), 4 CCR 723-1. In particular, Kids Wheels' Intervention failed to: (1) include a copy of its authority; (2) show that its authority is in good standing; (3) explain how the existing authority conflicts with the requested authority; and (4) explain the consequences to Kids Wheels and the public interest if the application is granted. Decision No. R13-0440-I, ¶16. The ALJ put Kids Wheels on notice that it must comply with Rule 1401(e) to participate in this proceeding. *Id.*

8. Rule 1201(a), 4 CCR 723-1 requires a party in a proceeding before the Commission be represented by an attorney. Kids Wheels is not represented by counsel in this matter. Kids Wheels failed to show that an exception to Rule 1201, 4 CCR 723-1, applies.

9. By Decision No. R13-0440-I, the ALJ put Kids Wheels on notice that unless it establishes an exception to Rule 1201(a), 4 CCR 723-1, any filing made by a non-attorney on behalf of a party is void and of no legal effect and that a non-attorney may not represent that party in a Commission adjudicative proceeding. Decision No. R13-0440-I at ¶24. Decision No. R13-0440-I put Kids Wheels on notice that failure to have an attorney enter an appearance on its behalf or to show cause why it may be represented by a non-attorney may result in an

order denying Kids Wheels the opportunity to participate in this matter. Decision No. R13-0440-I at ¶30.

10. As found in Decision No. R13-0440-I, the Intervention does not meet the mandatory requirements of Rule 1401, 4 CCR 723-1. Despite having been afforded an opportunity to cure the defects, Kids Wheels failed to respond. The ALJ finds that Kids Wheels has failed to have an attorney enter an appearance on its behalf and failed to show cause why it is not required to be represented by a non-attorney in this matter. As such, Kids Wheels' Intervention is void and of no legal effect. The Intervention will be stricken.

11. Striking Kids Wheels' Intervention eliminates Kids Wheels as a party in this action. The remaining parties are Applicant, Colorado Cab Company, LLC, and Colorado Springs Transportation, LLC.

12. In accordance with § 40-6-109, C.R.S., it is recommended that the Commission enter the following order.

II. ORDER

A. The Commission Orders That:

1. The "Entry of Appearance and Intervention" filed by Kids Wheels LLC (Kids Wheels) on February 12, 2013 is stricken.

2. Kids Wheels is dismissed from this proceeding.

3. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

4. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

a) If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b) If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

5. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MELODY MIRBABA

Administrative Law Judge

ATTEST: A TRUE COPY

Doug Dean,
Director