

Decision No. R14-0019-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 13G-1190TO

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

NITRO TOWING AND RECOVERY INC.,

RESPONDENT.

PROCEEDING NO. 13G-1166TO

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

NITRO TOWING AND RECOVERY INC.,

RESPONDENT.

PROCEEDING NO. 13G-1165TO

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

NITRO TOWING AND RECOVERY INC.,

RESPONDENT.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
G. HARRIS ADAMS
REGARDING REPRESENTATION**

Mailed Date: January 7, 2014

I. STATEMENT

1. In November 2013, the Commission issued Civil Penalty Assessment Notice or Notice of Complaint (CPAN) No. 107879. This CPAN commenced Proceeding No. 13G-1190TO.

2. In October 2013, the Commission issued CPAN No. 106595. This CPAN commenced Proceeding No. 13G-1166TO.

3. In October 2013, the Commission issued CPAN No. 107548. This CPAN commenced Proceeding No. 13G-1165TO.

4. By Decision No. R14-0017-I, the above-captioned proceedings were consolidated.

A. Respondent and Legal Counsel or Show Cause.

5. Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1201(a) of the Commission's Rules of Practice and Procedure requires a party in an adjudication before the Commission to be

represented by an attorney except that, pursuant to Rule 4 CCR 723-1-1201(b)(II) and as relevant here, an individual who is not an attorney may appear to represent the interests of a closely-held entity, as provided in § 13-1-127, C.R.S.

6. The Commission has held that, unless an exception applies, a party must be represented by legal counsel in an adjudication. In addition, the Commission has held that, if a party does not establish that an exception applies to it, there are two consequences: first, filings made by a non-attorney on behalf of the party are void and of no legal effect; and, second, the party must be represented by an attorney in order to participate in a prehearing conference, in an evidentiary hearing, and in oral argument.

7. This is an adjudicatory proceeding before the Commission.

8. Nitro Towing and Recovery, Inc. (Respondent or Nitro Towing) is a corporation, is a party in this matter, and is not represented by an attorney in this Proceeding.

9. If Respondent wishes to be represented in this matter by an individual who is not an attorney, then Respondent must prove to the Commission that it is entitled to proceed in this case without an attorney. To prove that it may proceed without an attorney, Respondent must do the following: First, Respondent must prove that it is a closely-held entity, which means that it has no more than three owners. Section 13-1-127(1)(a), C.R.S. Second, Respondent must prove that it meets the requirements of § 13-1-127(2), C.R.S. That statute provides that an officer¹ may represent a closely-held entity before the Commission only if both of the following conditions are met: (a) the amount in controversy does not exceed \$ 15,000; and (b) the officer provides the

¹ Section 13-1-127(1)(i), C.R.S., defines “officer” as “a person generally or specifically authorized by an entity to take any action contemplated by” § 13-1-127, C.R.S.

Commission with evidence, satisfactory to the Commission, of the officer's authority to represent the closely-held entity.²

10. By this Interim Decision, the Administrative Law Judge (ALJ) will order Nitro Towing to choose one of these options: either obtain a lawyer to represent it in this Proceeding³ or show cause why Rule 4 CCR 723-1-1201 does not require it to be represented in this Proceeding by lawyer.

11. If Respondent chooses to obtain an attorney to represent it in this matter, then Respondent's attorney must enter an appearance in this matter no later than January 16, 2014.

12. If Respondent chooses to show cause, then, no later than January 16, 2014, Respondent must show cause why Rule 4 CCR 723-1-1201 does not require it to be represented by an attorney in this matter. To show cause, Respondent must file a verified statement: (a) that establishes that Respondent is a closely-held entity as defined above; (b) that establishes that the amount in controversy in this matter does not exceed \$ 15,000;⁴ (c) that identifies the individual whom Respondent wishes to have as its representative in this matter; (d) that establishes that the identified individual is an officer of Respondent; and (e) that, if the identified individual is not an officer of Respondent, it has appended to its filing, a resolution from Respondent's Board of Directors that authorizes the identified individual to represent Respondent in this matter.

13. Nitro Towing is advised, and is on notice, that if it fails either to show cause or to have its attorney file an entry of appearance as required by this Interim Decision, the ALJ will

² As pertinent here, § 13-1-127(2.3), C.R.S., states that an officer "shall be presumed to have the authority to appear on behalf of the closely held entity upon providing evidence of the person's holding the specified office or status[.]"

³ The lawyer must be an attorney at law currently in good standing before the Colorado Supreme Court.

⁴ In this Proceeding, the amount in controversy is the maximum assessment sought in the CPAN.

issue a subsequent Interim Decision that requires Nitro Towing to retain legal counsel in this Proceeding.

14. Nitro Towing is advised, and is on notice, that if the ALJ issues a subsequent Interim Decision that requires Nitro Towing to retain legal counsel in this Proceeding, Nitro Towing will not be permitted to participate in this matter without an attorney.

15. This means, among other things, that Respondent will not be able to participate in the evidentiary hearing in this matter.

16. Nitro Towing is advised, and is on notice, that if the ALJ issues a subsequent Interim Decision that permits Nitro Towing to proceed *pro se* (that is, without an attorney) in this matter, then Nitro Towing's non-attorney representative will be bound by, and will be held to, the same procedural and evidentiary rules as those to which attorneys are held. The Colorado Supreme Court has held:

By electing to represent himself [in a criminal proceeding,] the defendant subjected himself to the same rules, procedures, and substantive law applicable to a licensed attorney. A *pro se* defendant cannot legitimately expect the court to deviate from its role of impartial arbiter and [to] accord preferential treatment to a litigant simply because of the exercise of the constitutional right of self-representation.

People v. Romero, 694 P.2d 1256, 1266 (Colo. 1985). This standard applies in civil proceedings. *Cornelius v. River Ridge Ranch Landowners Association*, 202 P.3d 564 (Colo. 2009); *Loomis v. Seely*, 677 P.2d 400, 402 (Colo. App. 1983) ("If a litigant, for whatever reason, presents his own case to the court, he is bound by the same rules of procedure and evidence as bind those who are admitted to practice law before the courts of this state. [Citation omitted.] A judge may not become a surrogate attorney for a *pro se* litigant."). This standard applies in Commission proceedings.

II. ORDER**A. It Is Ordered That:**

1. Nitro Towing and Recovery, Inc., shall make the following choice: either retain an attorney to represent it in this matter or show cause why it is not required to be represented by an attorney in this matter.

2. If Nitro Towing and Recovery, Inc., chooses to retain an attorney, the attorney for Nitro Towing and Recovery, Inc., shall enter an appearance in this proceeding no later than January 16, 2014.

3. If Nitro Towing and Recovery, Inc., chooses to show cause, then, no later than January 16, 2014, Nitro Towing and Recovery, Inc., shall make a filing to show cause why it is not required to be represented by an attorney in this matter. The show cause filing shall meet the requirements set out in ¶ 12, above.

4. This Interim Decision is effective immediately.

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

G. HARRIS ADAMS

Administrative Law Judge