

Decision No. R14-0073-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
REQUIRING RESPONDENT TO
OBTAIN LEGAL COUNSEL**

Mailed Date: January 21, 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. Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1201(a)¹ requires a party in a proceeding before the Commission to be represented by an attorney except that, pursuant to

¹ This Rule is found in the Rules of Practice and Procedure, Part 1 of 4 *Code of Colorado Regulations*.

Rule 4 CCR 723-1-1201(b)(II) and as relevant here, 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. The Commission has held that, unless an exception applies, a party must be represented by counsel in an adjudicatory proceeding. In addition, the Commission has held that, if a party does not establish that an exception applies to it, there are two consequences: first, any filing made by a non-attorney on behalf of the party is void and of no legal effect; and, second, the party must have an attorney in order to participate in a hearing, a prehearing conference, or an oral argument.

5. This is an adjudicatory proceeding before the Commission. Nitro Towing and Recovery Inc. (Nitro) is a Colorado corporation, is a party, and is not represented by an attorney in this proceeding.

6. On November 27, 2013, by Decision No. R13-1475-I in Proceeding No. 13G-1165TO, Administrative Law Judge (ALJ) Mana L. Jennings-Fader, the ALJ then assigned to the proceeding, ordered Respondent either to obtain legal counsel for the proceeding or to show cause why it should be permitted to proceed without legal counsel. If Respondent chose to retain counsel, its counsel was to enter an appearance on or before December 11, 2013. If Respondent chose to show cause, it was to make its show cause filing on or before December 11, 2013.

7. Decision No. R13-1475-I contained the following advisements:

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

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

Id. at ¶¶ 13-14 (bolding in original).

8. On November 27, 2013, by first-class mail, the Commission mailed Decision No. R13-1475-I to Respondent. As of the date of this Decision, Decision No. R13-1475-I has not been returned to the Commission as undeliverable.

9. As of the date of this Decision, Nitro has not responded to the order to show cause (*i.e.*, Decision No. R13-1475-I). As of the date of this Decision, Nitro has not requested additional time within which to respond to the order to show cause.

10. By Decision No. R14-0017-I, issued January 7, 2014, Proceeding Nos. 13G-1190TO, No. 13G-1166TO, and 13G-1165TO were consolidated and Proceeding No. 13G-1190TO was designated as the primary proceeding.

11. Despite Nitro's failure to respond to Decision No. R13-1475-I, a further decision was issued addressing representation in the now consolidated proceeding.

12. On January 7, 2014, by Decision No. R14-0019-I, the ALJ again ordered Respondent either to obtain legal counsel for this proceeding or to show cause why it should be permitted to proceed in this matter without legal counsel. If Respondent chose to retain counsel, its counsel was to enter an appearance on or before January 16, 2014. If Respondent chose to show cause, it was to make its show cause filing on or before January 16, 2014.

13. Decision No. R14-0019-I contained the following advisements:

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

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.

Id. at ¶¶ 13-14.

14. On January 7, 2014, by first-class mail, the Commission mailed Decision No. R14-0019-I to Respondent. As of the date of this Decision, Decision No. R14-0019-I has not been returned to the Commission as undeliverable.

15. As of the date of this Decision, no attorney has entered an appearance on behalf of Nitro. As of the date of this Decision, Nitro has not requested additional time within which to obtain counsel.

16. As of the date of this Decision, Nitro has not responded to the order to show cause (*i.e.*, Decision No. R14-0019-I). As of the date of this Decision, Nitro has not requested additional time within which to respond to the order to show cause.

17. Nitro failed to comply with the Decision No. R14-0019-I requirement that Nitro either obtain legal representation or show cause. Nitro was advised of the consequences of its failure to comply.

18. The ALJ finds that, although given the opportunity to do so, Nitro has not established that it comes within the exception contained in Rule 4 CCR 723-1-1201(b)(II). Therefore, in accordance with Rule 4 CCR 723-1-1201(a), the ALJ finds that Nitro must be represented by an attorney in this proceeding.

19. The ALJ will order Nitro to obtain an attorney to represent it in this matter.

20. **Nitro is advised, and is on notice, that it cannot proceed in this case without an attorney who is admitted to practice law in, and who is in good standing in, Colorado.**

II. ORDER

A. It Is Ordered That:

1. Nitro Towing and Recovery Inc. (Nitro) shall obtain an attorney, who is licensed to practice law in Colorado and who is in good standing, to represent it in this proceeding.
2. Any filing made by non-attorneys on behalf Nitro are and will be void and of no legal effect. A non-attorney may not represent Nitro in this proceeding.
3. This 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