

Decision No. R14-0080-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 13F-1372CP

COLORADO JITNEY LLC,

COMPLAINANT,

V.

EVERGREEN TRAILS INC., DOING BUSINESS AS HORIZON COACH LINES,

RESPONDENT.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
REGARDING COLORADO JITNEY'S REPRESENTATION**

Mailed Date: January 21, 2014

I. STATEMENT, FINDINGS, AND CONCLUSIONS

1. On December 23, 2013, Colorado Jitney LLC (Jitney) filed a formal Complaint against Evergreen Trails, Inc., doing business as Horizon Coach Lines. That Complaint instituted this proceeding.

2. On January 8, 2014, the Commission referred the Complaint to an administrative law judge (ALJ) for disposition. The Commission also scheduled a hearing regarding the Complaint for February 24, 2014.

3. According to the Complaint, Jitney is a limited liability corporation.

4. This is an adjudicative proceeding before the Commission.

5. Generally, a party in a proceeding before the Commission must be represented by an attorney authorized to practice law in the State of Colorado. Rule 1201(a), of the

Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1. There are some exceptions. For instance, individuals are entitled to represent their own interests, and a non-attorney may represent the interests of a closely-held entity if certain conditions are met. 1201(b)(I) and (II), 4 CCR 723-1; § 13-1-127, C.R.S.¹

6. The Commission has emphasized that this requirement is mandatory. Filings made by non-attorneys on behalf of a party who fails to demonstrate that the party may proceed without counsel are void and of no legal effect. *See, e.g.*, Decision No. C05-1018, Proceeding No. 04A-524W issued August 30, 2005; No. C04-1119, Proceeding No. 04G-101CP issued September 28, 2004; and No. C04-0884, Proceeding No. 04G-101CP issued August 2, 2004.

7. Jitney is not an individual, and thus, cannot represent its own interests. Jitney's Complaint is signed by Mr. Bradley J. Doran, Jitney's President. Mr. Doran is not an attorney licensed to practice law in the State of Colorado. To date, no attorney has entered an appearance on behalf of Jitney.

8. Jitney's filings do not establish its entitlement to be represented by a non-attorney.

9. If Jitney wishes to be represented by a non-attorney in this matter, it carries the burden to prove it is entitled to do so, by meeting the criteria of Rule 1201(b)(II), 4 CCR 723-1 and § 13-1-127(2), C.R.S.

10. To meet that burden of proof, Jitney must first establish that it is a closely-held entity. This means that it must establish that it has "no more than three owners." Section 13-1-127(1)(a), C.R.S. Second, Jitney must demonstrate that it meets the requirements of § 13-1-127(2), C.R.S. That statute provides that an officer may represent a closely-held entity

¹ Other exceptions exist, but the ALJ finds those do not apply.

before an administrative agency if **both** of the following conditions are met: (a) the amount in controversy does not exceed \$15,000; **and** (b) the officer provides the administrative agency with evidence, satisfactory to the agency, of the officer's authority to represent the closely-held entity.²

11. Jitney will be ordered to obtain counsel **or** to make a filing that shows cause why Rule 1201, 4 CCR 723-1 does not require it to be represented in this matter by an attorney at law in good standing before the Supreme Court of the State of Colorado.

12. If Jitney elects to obtain counsel, its attorney must file an entry of appearance in this matter **on or by 5:00 p.m. on February 14, 2014.**

13. If Jitney elects to show cause, **it must make a verified (*i.e.*, sworn before a notary) filing on or by 5:00 p.m. on February 14, 2014, that:**

- (a) establishes that it is a closely-held entity (*e.g.*, that it has no more than three owners);
- (b) states that the amount in controversy in this matter does not exceed \$15,000 and explains the basis for that statement;
- (c) identifies the individual who will represent a party in this matter;
- (d) establishes that the identified individual is an officer of a party; and
- (e) if the identified individual is not an officer of a party, has appended to it a resolution from a party's Board of Directors that specifically authorizes the identified individual to represent a party in this matter.

14. **Jitney is advised and on notice that failure to make the filing described in ¶¶ 10 and 13 above or file counsel's entry of appearance by 5:00 p.m. on February 14, 2014, may result in dismissal of the Complaint without prejudice.**

² As pertinent here, § 13-1-127(2.3), C.R.S., states that an officer of a corporation "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[.]"

15. **Jitney is advised and on notice, that should it obtain permission to be represented by a non-attorney in this matter, its representative will be bound by the same rules as attorneys.** *Negron v. Golder*, 111 P.3d 538, 541 (Colo. App. 2004); *Loomis v. Seely*, 677 P.2d 400, 402 (Colo. App. 1983).

II. ORDER

A. It Is Ordered That:

1. Colorado Jitney, LLC (Jitney) must choose to obtain legal counsel to represent it in this proceeding, **or** to make a show cause filing that comports with ¶¶ 10 and 13 above.

2. If Jitney elects to obtain legal counsel, then legal counsel shall enter an appearance in this proceeding **by 5:00 p.m. on February 14, 2014.**

3. If Jitney elects to show cause, it shall make a filing showing cause why it is not required to be represented by legal counsel **by 5:00 p.m. on February 14, 2014.** The show cause filing shall meet the requirements set out in ¶¶ 10 and 13, above.

4. Jitney shall be held to all advisements in this Decision.

5. This Decision shall be effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MELODY MIRBABA

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director