

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 13A-1290BP

IN THE MATTER OF THE APPLICATION OF MOSS LLC FOR A PERMIT TO OPERATE
AS A CONTRACT CARRIER BY MOTOR VEHICLE FOR HIRE.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
PERMITTING APPLICANT TO APPEAR
WITHOUT LEGAL COUNSEL; REQUIRING
APPLICANT TO MAKE FILING; VACATING
PROCEDURAL SCHEDULE; NOTIFYING
PARTIES THAT APPLICATION
HAS BEEN DEEMED COMPLETE;
AND CONTAINING ADVISEMENTS**

Mailed Date: January 24, 2014

TABLE OF CONTENTS

I.	<u>STATEMENT</u>	2
A.	Application Deemed Complete and Time for Commission Decision.	3
B.	Applicant <i>Pro Se</i>	4
C.	Applicant to Make Filing Regarding Procedural Schedule and Evidentiary Hearing.....	6
D.	Additional Advisements.	9
II.	<u>ORDER</u>	9
A.	It Is Ordered That:	9

I. STATEMENT

1. On December 10, 2013, Moss LLC (Moss or Applicant) filed an Application for a Permit to Operate as a Contract Carrier Motor Vehicle for Hire (Application). Attached to the filing are several documents.¹ That filing commenced this Proceeding.

2. On December 16, 2013, the Commission issued its Notice of Application Filed (Notice) in this Proceeding (Notice at 3); established an intervention period; and established a procedural schedule. This Interim Decision will vacate the procedural schedule.

3. On January 10, 2013, MKBS, LLC, doing business as Metro Taxi and/or Taxis Fiesta and/or South Suburban Taxi and/or Northwest Suburban Taxi (Metro Taxi), timely filed its Entry of Appearance and Intervention by Right in Opposition to the Permanent Authority Application or Alternative Motion to Permissively Intervene.² By that filing, Metro Taxi establishes that it is an intervenor by right; thus, it is a party in this Proceeding. Metro Taxi opposes the Application and is represented by legal counsel.

4. On January 15, 2014, Colorado Cab Company LLC, doing business as Denver Yellow Cab and Boulder Yellow Cab (Colorado Cab), timely filed its Entry of Appearance and Notice of Intervention by Right and Alternative Motion for Permissive Intervention. By that filing, Colorado Cab establishes that it is an intervenor by right; thus, it is a party in this Proceeding. Colorado Cab opposes the Application and is represented by legal counsel.

¹ One of the attachments is filed under seal with the Commission as the document contains information that the Applicant claims is confidential.

² On the same date, Metro Taxi also filed its Preliminary List of Witnesses and its Preliminary List of Exhibits.

5. On January 15, 2014, Colorado Springs Transportation, LLC (CST), timely filed its Entry of Appearance and Notice of Intervention by Right and Alternative Motion for Permissive Intervention. By that filing, CST establishes that it is an intervenor by right; thus, it is a party in this Proceeding. CST opposes the Application and is represented by legal counsel.

6. On January 15, 2014, Shamrock Taxi of Fort Collins, Inc. (Shamrock), timely filed its Entry of Appearance and Notice of Intervention by Right and Alternative Motion for Permissive Intervention. By that filing, Shamrock establishes that it is an intervenor by right; thus, it is a party in this Proceeding. Shamrock opposes the Application and is represented by legal counsel.

7. The intervention period has expired. No other person has filed an intervention of right or a motion for leave to intervene. In addition, as of the date of this Interim Decision, there is no pending motion for leave to intervene out-of-time.

8. Colorado Cab, CST, Metro Taxi, and Shamrock, collectively, are the Intervenors. Applicant and Intervenors, collectively, are the Parties.

9. On January 22, 2014, by Minute Order, the Commission referred this matter to an Administrative Law Judge (ALJ).

A. Application Deemed Complete and Time for Commission Decision.

10. On January 22, 2014, by Minute Order, the Commission deemed the Application complete as of that date. When it filed the Application, Moss provided neither its supporting testimony and exhibits nor a detailed summary of its direct testimony and copies of its exhibits in support of the Application.

11. Pursuant to § 40-6-109.5(2), C.R.S., and absent an enlargement of time by the Commission³ or Applicant's waiver of the statutory provision, a Commission decision on the Application should issue no later than 210 days from the date on which the Commission deemed the Application to be complete. The Commission should issue its decision on the Application on or before **August 20, 2014**.

B. Applicant *Pro Se*.

12. Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1201(a)⁴ requires a party in a proceeding 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, provided the Commission grants permission. The Commission has held that, unless an exception applies, a party must be represented by legal 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.

13. This is an adjudication before the Commission.

14. Applicant is a Colorado limited liability company, is a party in this matter, and is not represented by an attorney in this Proceeding.

³ Section 40-6-109.5(4), C.R.S., permits the Commission to extend the time for decision an additional 90 days upon a finding of extraordinary conditions.

⁴ This Rule is found in the Rules of Practice and Procedure, Part 1 of 4 *Code of Colorado Regulations* 723.

15. In order to be represented in this matter by an individual who is not an attorney, Applicant must establish that: (a) it is a closely-held entity within the meaning of § 13-1-127(1)(a), C.R.S.; (b) the amount in controversy does not exceed \$ 15,000; and (c) the individual who will represent Applicant has authority to represent Applicant.

16. On December 10, 2013, Moss submitted a verified statement concerning self-representation. In its submission, Applicant states: (a) it has no more than three owners; (b) the amount in controversy in this matter is less than \$ 15,000; and (c) as owner, Mr. Moses K. Abraha is the individual who has authority to represent Applicant. Application at 7.

17. Review of the information provided in the Application establishes that Applicant is a closely-held entity within the meaning of § 13-1-127(1)(a), C.R.S., as Applicant has three or fewer owners.

18. Review of the information provided in the Application establishes that the amount in controversy likely is less than \$ 15,000. On this point, the ALJ observes that it is very difficult to place a value on the requested contract carrier permit because, at present, Applicant does not provide transportation service and, as a result, has no financial history.

19. Applicant states that Mr. Moses K. Abraha is its owner and will be its non-lawyer representative in this matter. Review of the information provided in the Application establishes that Mr. Abraha is Applicant's owner and, thus, is presumed to have the authority to appear on behalf of the closely-held entity.

20. Based on the information provided and the record in this matter, the ALJ finds that Applicant has met the requirements of Rule 4 CCR 723-1-1201(b)(II). Although he is not an attorney, Mr. Moses K. Abraha may represent Applicant in this matter.

21. **Applicant is advised, and is on notice, that Mr. Abraha Abiakam is the only individual who is not an attorney who is authorized to be Moss's representative in this Proceeding.**

22. **Applicant and Mr. Abraha are advised and are on notice that the non-attorney representative Moses K. Abraha will be bound by, and will be held to, the same procedural and evidentiary rules as those that bind attorneys.** The Colorado Supreme Court has held that,

[b]y 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. *Negron v. Golder*, 111 P.3d 538, 541 (Colo. App. 2004); *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.

C. Applicant to Make Filing Regarding Procedural Schedule and Evidentiary Hearing.

23. The Intervenors oppose the Application and request an evidentiary hearing in this Proceeding. Accordingly, it is necessary to establish a procedural schedule and an evidentiary hearing date in this matter. In addition, it is necessary to address issues pertaining to discovery and pertaining to the treatment of information claimed to be confidential. To accomplish this, the ALJ will order Applicant to consult with Intervenors and then to make, on or before

February 4, 2014, a filing that: (a) contains a procedural schedule, including hearing date, that is satisfactory to all Parties; and (b) addresses the issues discussed below. The ALJ will order Intervenor to cooperate with Applicant with respect to this filing.

24. The procedural schedule filing must contain at least the following: (a) the date by which Applicant will file its list of witnesses and complete copies of the exhibits it will offer in its direct case; (b) the date by which each intervenor will file its list of witnesses and complete copies of the exhibits it will offer in its case; (c) the date by which each party will file, if necessary, an updated and corrected list of witnesses and complete copies of updated or corrected exhibits; (d) the date by which each party will file prehearing motions, including dispositive motions;⁵ (e) the date by which the Parties will file any stipulation or settlement agreement reached;⁶ (f) *three* proposed evidentiary hearing dates;⁷ and (g) a statement as to whether the Parties wish to make oral closing statements at the conclusion of the evidentiary hearing.

25. In considering proposed hearing dates, the Parties are reminded that, absent an enlargement of time or a waiver of § 40-6-109.5, C.R.S., the Commission decision in this matter should issue on or before August 20, 2014. To allow time for a recommended decision, exceptions, response to exceptions, and a Commission decision on exceptions, the **hearing in this matter must be *concluded* no later than May 16, 2014.**

26. Unless modified, Rule 4 CCR 723-1-1405 governs discovery. The February 4, 2014 filing must contain: (a) any modifications or special provisions that the Parties wish the

⁵ This date can be no later than ten calendar days before the first day of hearing.

⁶ This date can be no later than three business days before the first day of hearing.

⁷ If possible, the ALJ will choose one of the proposed hearing dates.

The ALJ notes that, given the number of Intervenor, the evidentiary hearing may take more than one day. If the Parties are of the opinion that more than one hearing day will be necessary, Applicant should propose three “sets” of hearing dates. Within each proposed “set,” the hearing days should be consecutive within the same week (*i.e.*, no intervening weekends and no intervening State holidays).

ALJ to order with respect to discovery; and (b) an explanation of the need for the requested modifications or special provisions.

27. Rules 4 CCR 723-1-1100 and 723-1-1101 govern the treatment of information claimed to be confidential. If the procedures and timeframes contained in Rules 4 CCR 723-1-1100 and 723-1-1101 are not adequate, the February 4, 2014 filing must contain: (a) any special provisions that the Parties wish the ALJ to order with respect to the treatment of information claimed to be confidential; and (b) an explanation of the need for the requested provisions.

28. When the February 4, 2014 filing is received, the ALJ will issue an Interim Decision scheduling the evidentiary hearing and establishing the procedural schedule.

29. **The Parties are advised, and are on notice, that** if Applicant fails to make the February 4, 2014 filing regarding the proposed hearing dates and proposed procedural schedule to which the Parties agree, the ALJ will schedule the evidentiary hearing and will establish the procedural schedule without input from the Parties.

30. **The Parties are advised, and are on notice, that** the testimony in this Proceeding will be presented through oral testimony at the evidentiary hearing. For each witness (except a witness offered in Applicant's rebuttal case), the following information must be provided: (a) the witness's name; (b) the witness's address; (c) the witness's business or daytime telephone number; and (d) a detailed statement of the testimony that the witness is expected to provide. This information will be provided on the list of witnesses to be filed in accordance with the procedural schedule. No person, *including Mr. Moses K. Abraha*, will be permitted to testify (except in Applicant's rebuttal case) unless that person is identified as required on the list of witnesses.

31. **The Parties are advised, and are on notice, that** complete copies of all exhibits (except an exhibit offered in Applicant's rebuttal case or an exhibit to be used in cross-examination) will be filed in advance of the hearing. The exhibits will be filed in accordance with the procedural schedule. No document will be admitted as an exhibit (except when offered in Applicant's rebuttal case or when used in cross-examination) unless a complete copy of the document is filed in advance of the hearing.

D. Additional Advisements.

32. **The Parties are advised, and are on notice, that** the Parties must be familiar with, and must abide by, the Rules of Practice and Procedure, 4 CCR 723 Part 1.⁸

33. **The Parties are advised, and are on notice, that** filing with the Commission occurs on the date that the Commission *receives* a document. Thus, if a document is placed in the mail on the date on which the document is to be filed, then the document is *not* filed with the Commission until the date on which the Commission receives it and the filing is *not* timely.

34. **The Parties are advised that** the Commission has an E-Filings System available. One may learn about, and -- if one chooses to do so -- may register to use, the E-Filings System at dora.colorado.gov/puc.

II. ORDER

A. It Is Ordered That:

1. Colorado Cab Company LLC, doing business as Denver Yellow Cab, is a party in this Proceeding.

2. Colorado Springs Transportation, LLC, is a party in this Proceeding.

⁸ These Rules are available on-line at dora.colorado.gov/puc.

3. MKBS, LLC, doing business as Metro Taxi and/or Taxis Fiesta and/or South Suburban Taxi and/or Northwest Suburban Taxi, is a party in this Proceeding.

4. Shamrock Taxi of Fort Collins, Inc., is a party in this Proceeding.

5. Moss LLC is authorized to proceed with Mr. Moses K. Abraha as its non-attorney representative in this matter. Mr. Moses K. Abraha is the only individual who is not an attorney who is authorized to represent Moss LLC in this Proceeding.

6. The procedural schedule established in the Notice of Application Filed dated December 16, 2013 is vacated.

7. On or before February 4, 2014, Moss LLC shall make a filing that complies with the requirements of ¶¶ 23-27, above.

8. All intervenors shall cooperate with Moss LLC in the preparation of the filing required by Ordering Paragraph No. 7.

9. Consistent with the discussion above, if Moss LLC fails to make the filing required by Ordering Paragraph No. 7, the Administrative Law Judge, without input from the Parties, will schedule the evidentiary hearing and will establish the procedural schedule.

10. The Parties are held to the advisements in this Interim Decision.

11. This Interim Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MANA L. JENNINGS-FADER

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director