

Decision No. R14-0121-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14G-0031CP

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

COLORADO TOUR LINE, L.L.C., DOING BUSINESS AS
GRAY LINE OF DENVER,

RESPONDENT.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
REQUIRING RESPONDENT
TO SHOW CAUSE OR TO RETAIN
LEGAL COUNSEL IN THIS MATTER,
REQUIRING STAFF TO MAKE FILING,
AND CONTAINING ADVISEMENTS**

Mailed Date: January 31, 2014

I. STATEMENT

1. On January 3, 2014, the Commission appears to have served, by certified mail (return receipt requested), Civil Penalty Assessment Notice or Notice of Complaint No. 108367 (the CPAN) on Colorado Tour Line, L.L.C., doing business as Gray Line of Denver (CTL or Respondent). That CPAN commenced this Proceeding.

2. On January 24, 2014, counsel for Trial Staff of the Commission (Staff) entered his appearance in this Proceeding. In that filing and pursuant to Rule 4 *Code of Colorado*

Regulations (CCR) 723-1-1007(a),¹ Staff counsel identified the trial Staff and the advisory Staff in this Proceeding.

3. Staff and Respondent, collectively, are the Parties.

4. On January 29, 2014, by Minute Order, the Commission assigned this Proceeding to an Administrative Law Judge (ALJ).

A. Respondent to Retain Legal Counsel or to Make Show Cause Filing.

5. Rule 4 CCR 723-1-1201(a) 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. The Commission has held that, unless it is established that 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 an individual who is not an 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.

6. This is an adjudication before the Commission.

7. Respondent is a limited liability company, is a party in this matter, and is not represented by an attorney in this Proceeding.

8. 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

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

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 officer² 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 Commission with evidence, satisfactory to the Commission, of the officer's authority to represent the closely-held entity.³

9. **By this Interim Decision, the ALJ will order Respondent to choose one of these options: either retain a lawyer to represent it in this Proceeding⁴ or show cause why Rule 4 CCR 723-1-1201 does not require it to be represented in this Proceeding by a lawyer.**

10. *If Respondent chooses to retain an attorney to represent it in this matter*, then its attorney must enter an appearance in this Proceeding no later than **February 14, 2014**.

11. *If Respondent chooses to show cause*, then, no later than **February 14, 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;⁵ (c) that identifies the individual

² 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.

³ 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[.]"

⁴ The lawyer must be an attorney at law currently in good standing before the Colorado Supreme Court.

⁵ In this Proceeding, the amount in controversy is \$ 275, which is the maximum assessment sought in the CPAN.

who will represent Respondent 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, has appended to it a resolution from Respondent's Board of Directors that specifically authorizes the identified individual to represent Respondent in this matter.

12. **CTL 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 CTL to retain counsel to represent it in this Proceeding.**

13. **CTL is advised, and is on notice, that if the ALJ issues a subsequent Decision that requires CTL to retain legal counsel, then CTL will not be permitted to participate in this matter without an attorney.** This means, among other things, that CTL will not be able to participate in the evidentiary hearing in this matter.

14. **CTL is advised, and is on notice, that if the ALJ issues a subsequent Interim Decision that permits CTL to proceed without an attorney (that is, *pro se*) in this matter, then CTL'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 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. *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 also applies in Commission proceedings.

B. Filing Regarding Potential Hearing Dates.

15. The CPAN stated that, if it chose to do so, Respondent could pay one-half of the maximum assessment set out in the CPAN within ten days from the date of service. If made, the payment would constitute an admission of liability and would resolve this matter.

16. Review of the Commission file in this Proceeding reveals that Respondent did not make the payment. As a consequence of Respondent’s election not to pay, the CPAN is contested. The ALJ must schedule the evidentiary hearing in this Proceeding.

17. By this Interim Decision, the ALJ will order Staff to contact Respondent in order to discuss dates for the evidentiary hearing in this matter. By this Interim Decision, the ALJ will order Staff to file, not later than **February 21, 2014**, a list of three proposed hearing dates, each of which is agreeable to the Parties. If possible, the ALJ will select one of the proposed dates. By this Interim Decision, the ALJ will order Respondent to cooperate with Staff with respect to the required filing.

18. **The Parties are advised, and are on notice, that** if Staff fails to make the required filing, the ALJ will select the evidentiary hearing date without input from the Parties.

19. **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 Staff’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 must be provided in the list of witnesses to be filed in accordance with the procedural schedule that the ALJ will establish in a future Interim Decision.

20. **The Parties are advised, and are on notice, that** no person will be permitted to testify (except in Staff's rebuttal case) unless that person is identified in the list of witnesses.

21. **The Parties are advised, and are on notice, that** complete copies of all exhibits (except an exhibit offered in Staff's rebuttal case or an exhibit to be used in cross-examination) must be filed in advance of the hearing and in accordance with the procedural schedule that the ALJ will establish in a future Interim Decision.

22. **The Parties are advised, and are on notice, that** no document will be admitted as an exhibit (except in Staff's rebuttal case or when used in cross-examination) unless a complete copy of the document is filed in advance of the hearing.

C. Other Matters and Advisements.

23. **The Parties are advised, and are on notice, that** the ALJ requires each party to be familiar with, and to abide by, the Rules of Practice and Procedure, 4 CCR 723 Part 1. These Rules are available on-line at www.dora.colorado.gov/puc.

24. **The Parties are advised, and are on notice, that** the date of filing with the Commission is the date on which the Commission *receives* a document. Thus, for example, 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 timely with the Commission.

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

II. ORDER

A. It Is Ordered That:

1. Colorado Tour Line, L.L.C., doing business as Gray Line of Denver, 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 Colorado Tour Line, L.L.C., doing business as Gray Line of Denver, chooses to retain an attorney, the attorney for Colorado Tour Line, L.L.C., doing business as Gray Line of Denver, shall enter an appearance in this Proceeding not later than February 14, 2014.

3. If Colorado Tour Line, L.L.C., doing business as Gray Line of Denver, chooses to show cause, then Colorado Tour Line, L.L.C., doing business as Gray Line of Denver, shall make, not later than February 14, 2014, 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 ¶ 11, above.

4. Not later than February 21, 2014, Staff of the Commission shall make a filing regarding proposed evidentiary hearing dates. The filing shall comply with ¶ 17, above.

5. Colorado Tour Line, L.L.C., doing business as Gray Line of Denver, shall cooperate with Staff of the Commission with respect to the filing required by Ordering Paragraph No. 4.

6. If Staff of the Commission does not make the filing required by Ordering Paragraph No. 4, the Administrative Law Judge will schedule the evidentiary hearing in this Proceeding without input from the Parties.

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

8. 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