

Decision No. R14-0168-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 13G-1149HHG

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

MOVERS USA LLC.,

RESPONDENT.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
REQUIRING RESPONDENT TO MAKE
FILING AND ACCEPTING STAFF'S LATE FILING**

Mailed Date: February 14, 2014

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I. STATEMENT

1. On October 28, 2013, Commission Staff (Staff) with the Public Utilities Commission (Commission) filed a Civil Penalty Assessment Notice (CPAN) against Movers USA, LLC (Respondent) seeking to assess civil penalties against Respondent in the amount of \$4,235.00, including a 10 percent surcharge.

2. On November 26, 2013, the Commission referred the CPAN to an administrative law judge (ALJ) for disposition.

3. By Decision No. R13-1500-I issued December 4, 2013, the ALJ scheduled this matter for an evidentiary hearing for February 12, 2014 at 9:30 a.m. The same Decision established deadlines for the parties to exchange and file disclosures of the evidence they intend to introduce at the hearing. In particular, Staff was ordered to file and serve exhibit and witness lists and exhibits on or by 5:00 p.m. on January 22, 2014. Respondent was ordered to file and serve exhibit and witness lists and exhibits on or by 5:00 p.m. on January 29, 2014. Respondent was not required to file a witness list if it intended to call as a witness **only one** of the following: its owner, its operator, its officer, its member, or its manager. Respondent is not required to file a witness list. If Respondent wished for any other person to testify on its behalf, Respondent was required to file a witness list by January 29, 2014.

2. On January 23, 2014, Staff filed its exhibit and witness lists and exhibits. Respondent never filed a witness and exhibit list or exhibits.

3. The day before the February 12, 2014 hearing, Staff's counsel, Mr. Michael Axelrad, informally notified the ALJ that Staff and counsel received information that the Respondent's owner and representative, Roni Levin, would not be available for the hearing. Appendix A. Counsel did not provide information explaining why Respondent's owner

would be unavailable for the hearing. *Id.* At the same time, Staff's counsel also acknowledged that he filed Staff's disclosures one day late. Counsel indicated that Staff wished to move forward with the evidentiary hearing scheduled for February 12, 2014. The ALJ informed counsel that the issues would be addressed at the hearing.¹ *Id.*

4. At the date, time, and location designated, February 12, 2014 at 9:30 a.m., the ALJ convened the hearing. Staff appeared personally and through counsel, Mr. Axelrad. Mrs. Liat Levin appeared, but did not appear on behalf of Respondent. Mrs. Levin is married to Mr. Levin, Respondent's owner and representative. Mrs. Levin appeared simply to inform the ALJ that Mr. Levin could not appear at the hearing because he is currently incarcerated. She explained that Mr. Levin strongly desired to appear at the hearing. Mrs. Levin was unclear as to the nature of Mr. Levin's incarceration. She did not know how long he would be in prison, but she stated that Mr. Levin has not been formally sentenced, although he has entered into a plea arrangement. Mrs. Levin also explained that Respondent is no longer in business.

5. Staff indicated that they believe Mr. Levin's criminal charges relate to the operation of Respondent. Staff asked that the hearing proceed as scheduled.

6. Based upon Mrs. Levin's representations, the ALJ found that Respondent does not pose a continuing threat to the public, both because Respondent is not in business and because Mr. Levin is incarcerated. For good cause shown, the ALJ ordered that the hearing be continued to give Mr. Levin a further opportunity to appear.

¹ The ALJ notes that the email correspondence was sent to the most recent email address available for Respondent.

A. Respondent's Representation

7. The ALJ explained that because Respondent is a limited liability company, it need not be represented by Mr. Levin. This means Mr. Levin's presence at the hearing may not be necessary.² Indeed, Mr. Levin may only represent the company once he establishes that he is entitled to do so under Rule 1201(b)(II) of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1 and § 13-1-127(2), C.R.S. To meet these requirements, Respondent must first establish that it is a closely-held entity, meaning, it has "no more than three owners." Section 13-1-127(1)(a), C.R.S. Second, Respondent 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 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.³ Moreover, under § 13-1-127(2.3), C.R.S., the following persons are presumed to have authority to represent a closely-held entity: general partner, person in whom management is vested or reserved, and a member of a limited liability company.

8. Respondent may meet these requirements either by making a filing establishing it is entitled to be represented by a non-attorney, or by offering evidence at the time of the next hearing in this proceeding. If Respondent fails to establish it is entitled to be represented by a non-attorney, it must hire an attorney to represent it in this proceeding.

² The ALJ makes no assessment as to whether it would be necessary for Mr. Levin to testify on behalf of Respondent.

³ 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[.]"

B. Mr. Levin Must Make a Filing

9. Given the circumstance, the ALJ is not immediately scheduling a new hearing date. Instead, the ALJ will order that Mr. Levin make a filing with the Commission providing dates that he is available to appear at a hearing. If Mr. Levin will be incarcerated for a significant period of time, Mr. Levin should investigate whether the prison will allow him to appear in this proceeding by telephone and should report such information to the ALJ in his filing. The ALJ will permit a telephone appearance and is willing to assist with the coordination of a telephone appearance from prison. However, it is Mr. Levin's responsibility to provide information in his filing as to how that can be accomplished if he wishes to appear by telephone from prison.

10. Mr. Levin is on notice that the ALJ will not continue this matter indefinitely. Thus, Mr. Levin must make efforts to appear by telephone if he is unable to appear in person for a hearing by July, 2014. Otherwise, a hearing will be held in his absence.

C. Staff's Late Filing

11. For good cause shown, the ALJ will accept Staff's late-filed exhibit and witness lists and exhibits. The late filing has prejudiced no party.

12. Moreover, the ALJ will be establishing a new procedural schedule permitting the parties to supplement any disclosures already made.

D. New Disclosure Schedule

13. The ALJ will establish a new procedural schedule permitting the parties to supplement any disclosures already made once the new hearing date has been set.

II. ORDER

A. It Is Ordered That:

1. The February 12, 2014 hearing on the merits of the Civil Penalty Assessment Notice in this matter is continued. A new hearing date shall be scheduled at a later date.

2. **On or by 5:00 p.m. on March 12, 2014**, Mr. Levin shall make a filing with the Commission providing dates that he is available to appear at a hearing. If Mr. Levin obtains counsel to represent Respondent Movers USA, LLC, the filing must also provide dates that counsel will be available for a hearing. If Mr. Levin is unavailable to appear in person by July 1, 2014 due to incarceration, Mr. Levin must investigate whether the prison will allow him to appear in this proceeding by telephone; his filing must include such information, as well as information on how a telephone appearance from prison may be coordinated. The ALJ will permit Mr. Levin to appear by telephone at the hearing in this proceeding.

3. Commission Staff's late-filed exhibit and witness lists and exhibits are accepted.

4. If Respondent wishes to be represented by a non-attorney in this proceeding, Respondent must meet the requirements set forth in ¶ 7 above. Respondent may meet these requirements either by making a filing establishing it is entitled to be represented by a non-attorney, or by offering evidence at the time of the next hearing in this proceeding. If Respondent fails to establish it is entitled to be represented by a non-attorney, it must be represented by an attorney in good standing before the Colorado Supreme Court.

5. This Decision is 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