

Decision No. R14-0268-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14F-0125TO

CHARLES SNYDER,

COMPLAINANT,

V.

RANDY'S HIGH COUNTRY TOWING, INC.,

RESPONDENT.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
REQUIRING COMPLAINANT TO SHOW CAUSE WHY
COMPLAINT SHOULD NOT BE DISMISSED AND
REQUIRING RESPONDENT TO MAKE FILING
REGARDING REPRESENTATION**

Mailed Date: March 11, 2014

I. STATEMENT, FINDINGS, AND CONCLUSIONS

1. On February 6, 2014, Charles Snyder filed a formal Complaint (Complaint) against Randy's High Country Towing, Inc. (Respondent). Among other requests, the Complaint requests that Mr. Snyder be permitted to appear by telephone at the hearing regarding the Complaint.

2. On February 11, 2014, the Public Utilities Commission (Commission) issued an order to Respondent to answer or satisfy the Complaint. At the same time, the Commission scheduled the matter for an evidentiary hearing for March 24, 2014 at 9:00 a.m.

3. On February 19, 2014, the Commission referred this proceeding to an Administrative Law Judge (ALJ) for disposition.

4. On February 21, 2014, Respondent filed an Answer to the Complaint.

5. By Decision No. R14-0223-I issued February 28, 2014, the ALJ granted Mr. Snyder's request to appear by telephone at the March 24, 2014 hearing on the merits of the Complaint.

6. In anticipation of the hearing on the merits of the Complaint, the ALJ scheduled a prehearing conference in accordance with Rule 1409(a) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1 to take place on March 10, 2014 at 1:00 p.m. MST. Decision No. R14-0222-I.

7. The ALJ ordered that the parties appear at the prehearing conference by telephone by dialing the telephone number provided at the designated date and time. Decision No. R14-0222-I. The parties were advised that their failure to appear at the prehearing conference could result in dismissal of the Complaint without prejudice, or a decision granting Mr. Snyder the relief sought in the Complaint. Decision No. R14-0222-I.

8. The purpose of the prehearing conference was to address procedural aspects of the hearing and to address Respondent's representation in this proceeding. *See* Decision No. R14-0222-I. Given that the ALJ ordered that Mr. Snyder may appear at the March 24, 2014 hearing by telephone, it was especially important to hold a prehearing conference to ensure that the evidentiary hearing could be held with the prosecuting party on the telephone.

9. The ALJ convened the prehearing conference by telephone at the date and time designated, March 10, 2014 at 1:00 p.m. MST. Mr. Scott Gault, a non-attorney, appeared by telephone on behalf of Respondent. Neither Mr. Snyder nor anyone representing Mr. Snyder

appeared at the prehearing conference (by telephone or in person). The ALJ recessed the hearing until 1:15 p.m. to give Mr. Snyder an additional opportunity to appear. Mr. Snyder did not appear.

10. To the extent possible, the hearing proceeded without Mr. Snyder. The ALJ addressed issues relating to Respondent's representation. *See* Rule 1201(b) of the Rules of Practice and Procedure, 4 CCR 723-1. Based upon statements made by Mr. Gault during the prehearing the conference, the ALJ finds and concludes that Respondent is a closely-held entity because it has no more than three owners, and that less than \$15,000 are in controversy in this proceeding. Mr. Gault is not an owner or officer of Respondent. The ALJ is without sufficient evidence to find that Mr. Gault has authority to represent Respondent in this proceeding. *See* § 13-1-127(2), C.R.S. During the prehearing conference, Mr. Gault did requested permission to represent Respondent in this proceeding. The ALJ did not grant the request during the hearing.

11. Instead, as stated during the prehearing conference, the ALJ will order Respondent to make a filing on or by March 24, 2014 showing that Respondent's owners authorize and request that Mr. Gault represent Respondent in this proceeding. Respondent is only required to make this filing if Mr. Snyder makes the filing described in ¶13 below, showing cause why the Complaint should not be dismissed.

12. The ALJ deems Mr. Snyder's failure to appear at the telephone prehearing conference a failure to prosecute his Complaint. Mr. Snyder's failure to prosecute his Complaint warrants dismissal of the Complaint without prejudice. Mr. Snyder was warned that the Complaint could get dismissed if he failed to appear at the prehearing conference. Decision No. R14-0222-I.

13. Mr. Snyder will be ordered to make a filing by March 17, 2014 showing cause why his Complaint should not be dismissed for his failure to prosecute the Complaint, resulting from his failure to appear at the prehearing conference.

14. Because Mr. Snyder has failed to prosecute the Complaint, the ALJ will vacate the March 24, 2014 9:00 a.m. hearing regarding the Complaint. Even if Mr. Snyder decides to prosecute his Complaint, another prehearing conference must be held before an evidentiary hearing may proceed; there is not enough time for that to take place before the March 24th hearing date.

15. Mr. Snyder is on notice that failure to make the show cause filing as required by this Decision will result in a decision dismissing the Complaint without prejudice.

II. ORDER

A. It Is Ordered That:

1. The March 24, 2014 9:00 a.m. hearing scheduled in this proceeding is vacated. No hearing will take place that date.

2. On or by 5:00 p.m. MST, on March 18, 2014, Mr. Charles Snyder shall make a filing with the Commission showing cause why the Complaint in this proceeding should not be dismissed for Mr. Snyder's failure to prosecute the Complaint, as discussed above. Mr. Snyder must also mail a copy of the show cause filing to Randy's High Country Towing, Inc (Respondent) when he sends the filing to the Commission. Mr. Snyder's show cause filing must include a statement indicating that he mailed the filing to the Respondent, the date it was mailed, and the address to which it was mailed.

3. On or by 5:00 p.m. MST on March 25, 2014, Respondent shall make a filing signed by its owners which authorizes and requests that Mr. Scott Gault or another identified

individual represent Respondent in this proceeding. Respondent is only required to make this filing if Mr. Snyder makes the show cause filing described in ordering paragraph 2 above. Respondent must provide a copy of this filing to Mr. Snyder when he sends it to the Commission; the filing must include a statement indicating Respondent mailed the filing to Mr. Snyder, the date it was mailed, and the address to which it was mailed.

4. 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

MELODY MIRBABA

Administrative Law Judge