

Decision No. R14-0342-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
SCHEDULING HEARING AND
ESTABLISHING DEADLINES**

Mailed Date: March 31, 2014

I. STATEMENT

1. On October 28, 2013, Commission trial 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.

2. By Decision No. R13-1500-I issued on 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. 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.

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

3. At the date, time, and location designated, February 12, 2014 at 9:30 a.m., the ALJ convened the hearing on the CPAN. Staff appeared through counsel, Mr. Michael Axelrad. Mrs. Liat Levine appeared, but not on behalf of Respondent. Mrs. Levine is married to Mr. Levine, Respondent's owner and representative. Mrs. Levine appeared to inform the ALJ that Mr. Levine could not appear at the hearing because he was incarcerated. She explained that Mr. Levine strongly desired to appear at the hearing.

4. For good cause shown, on February 14, 2014, the ALJ ordered that the hearing be continued to give Mr. Levine a further opportunity to appear. Decision No. R14-0168-I.

5. Decision No. R14-0168-I also addressed Respondent's representation in this proceeding. As the ALJ explained during the hearing, because Respondent is a limited liability company, it need not be represented by Mr. Levine and Mr. Levine's presence at the hearing may not be necessary.¹ Decision No. R14-0168-I further notified Respondent that if it wished for a non-attorney to represent it in this proceeding (*e.g.*, Mr. Levine), Respondent must establish that it is entitled to do so as required by Rule 1201(b)(II) of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1 and § 13-1-127(2), C.R.S. Decision

¹ The ALJ makes no assessment as to whether it would be necessary for Mr. Levine to testify on behalf of Respondent.

No. R14-0168-I identified those requirements and informed Respondent that it may meet the 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. To date, Respondent has made no filing in compliance with Rule 1201(b)(II), 4 CCR 723-1.

6. Decision No. R14-0168-I ordered Mr. Levine to make a filing with the Commission providing dates that he is available to appear at a hearing. The Decision further notified Mr. Levine that if he will be incarcerated for a significant period of time, that he 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.

7. Decision No. R14-0168-I put Mr. Levine on notice that the hearing will not be continued indefinitely. The Decision ordered that Mr. Levine 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.

8. Decision No. R14-0168-I required that by 5:00 p.m. on March 12, 2014, Respondent make a filing providing dates that Mr. Levine is available to appear at a hearing, and that if Mr. Levine is unavailable to appear in person by July 1, 2014 due to incarceration, he must investigate whether the prison will allow him to appear in this proceeding by telephone. The filing must include such information, as well as information on how a telephone appearance from prison may be coordinated. To date, no such filing has been made.

9. Indeed, Respondent has made no filing whatsoever in this proceeding.

10. The ALJ finds that Respondent has had ample opportunity to ensure its desired representative may appear at the hearing, and has failed to make any efforts to this end. The ALJ will schedule a hearing.

A. New Disclosure Schedule

11. The ALJ will establish a new procedural schedule permitting the parties to supplement any disclosures already made.

12. In anticipation of the hearing, the ALJ will order the parties to make disclosures of the witnesses and exhibits that they intend to present at the hearing in support of their position.

13. Witness lists shall include a description of the witnesses' testimony and the witnesses' last known address and telephone number. Witnesses are those persons who will testify on behalf of a party. All witnesses shall be sworn before commencing their testimony.

14. If Respondent intends to call only one of the following: its owner, operator, officer, member, partner, or manager, Respondent is not required to file a witness list.² However, if Respondent wishes for any other person to testify on its behalf, Respondent must file a witness list as required by this Decision.

15. Whether Respondent is required to file a witness list as stated above *does not* impact Respondent's responsibility to file and serve an exhibit list and exhibits.

16. An exhibit is any document or other tangible item the party wishes the ALJ to consider in reaching a decision in this matter.

17. As referenced in this Decision, serving a party with any document (*e.g.*, witness and exhibit lists and exhibits) means that the party is required to give the document to the other party to the proceeding. Service may be accomplished by United States Mail, or through the Commission's E-filing system, if the party being served is registered with the E-filing system.

² It is reasonable to presume that Respondent will call a single representative witness to testify regarding its position on the CPAN.

18. Reference to filing a document means that the party shall provide the document to the Commission. The filing must include a reference to the proceeding name and number.

19. All parties are advised that this proceeding is governed by the Rules of Practice and Procedure found at 4 CCR 723-1, Part 1. The ALJ expects the parties to comply with the Rules of Practice and Procedure. The rules are available on the Commission's website (www.dora.colorado.gov/puc) and in hard copy from the Commission.

II. ORDER

A. **It Is Ordered That:**

1. A hearing on the Civil Penalty Assessment Notice in this proceeding will be held as follows:

DATE: May 20, 2014
TIME: 10:00 a.m.
PLACE: Commission Hearing Room
1560 Broadway, 2nd Floor
Denver, Colorado

2. At the above date, time, and place you will be given the opportunity to be heard if you so desire.

3. Commission trial Staff (Staff) shall file and serve any exhibit and witness lists and exhibits on or by 5:00 p.m. on April 29, 2014. Staff need only make this filing if it wishes to supplement the exhibit and witness disclosures it has already made. In such a case, Staff shall file and serve complete exhibit and witness lists, which shall replace those already filed.

4. Movers USA, LLC (Respondent) shall file and serve exhibit and witness lists and exhibits on or by 5:00 p.m. on May 6, 2014. If Respondent intends to call as a witness only one of the following: its owner, its operator, its officer, its member, partner, or its manager,

Respondent is not required to file a witness list. However, if Respondent wishes for any other person to testify on its behalf, Respondent must file a witness list as required by this paragraph.

5. All exhibits shall be identified by sequential numbers (*e.g.*, Exhibit 1, Exhibit 2, Exhibit 3). The exhibits shall include the following information: exhibit number, proceeding number, name of the witness who will testify to the exhibit's foundation, and the date of the hearing. The parties may utilize the Commission's exhibit stamp to include this information on the exhibits; the parties are advised that they must have all their exhibits stamped prior to the time the hearing is scheduled to begin.

6. At the hearing, the parties shall bring an original and two copies of each exhibit they intend to introduce, along with a completed exhibit list in the format set forth in Appendix A to this Decision.

7. If any exhibit is longer than two pages, the party offering the exhibit shall sequentially number each page of the exhibit. The parties shall comply with all mandates in this Decision.

8. If Respondent wishes to be represented by a non-attorney in this proceeding, Respondent must meet the requirements set forth Decision No. R14-0168-I. 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.

9. 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