

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14A-0355CP-EXTENSION

IN THE MATTER OF THE APPLICATION OF MOUNTAIN CONCIERGE, LLC TO
EXTEND OPERATIONS UNDER CERTIFICATE OF PUBLIC CONVENIENCE AND
NECESSITY TO OPERATE AS A COMMON CARRIER BY MOTOR VEHICLE FOR HIRE.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
REQUIRING ALL PARTIES TO
SHOW CAUSE OR OBTAIN COUNSEL**

Mailed Date: July 1, 2014

I. STATEMENT, FINDINGS, AND CONCLUSIONS

1. Mountainside Concierge, LLC (Applicant), filed an Application for a Certificate of Public Convenience and Necessity to Operate as a Common Carrier by Motor Vehicle for Hire (Application) with the Colorado Public Utilities Commission (Commission) on April 18, 2014. Applicant amended its Application on April 28, 2014 (amended Application).

2. The Commission gave public Notice of the second amended Application on May 19, 2014.

3. San Miguel Mountain Ventures, LLC, doing business as Telluride Express, Montrose Express and Wild West Tours (Telluride Express), and Durango Taxi, LLC (Durango Taxi), (collectively, the interveners), timely intervened of right in objection to the authority sought by the amended Application.

4. Applicant, Telluride Express, and Durango Taxi are all limited liability companies. None of these companies are represented by attorneys licensed to practice law before the Colorado Supreme Court in this proceeding.

5. This is an adjudicative proceeding before the Commission.

6. Generally, a party in a proceeding before the Commission must be represented by an attorney authorized to practice law in the State of Colorado. Rule 1201(a), of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1.

7. The Commission has emphasized that this requirement is mandatory, that a filing made by non-attorneys on behalf of that party is void and of no legal effect, and that a non-attorney may not represent a party in Commission adjudicative proceedings. *See, e.g.*, Decision No. C05-1018, Proceeding No. 04A-524W; Decision No. C04-1119, Proceeding No. 04G-101CP; and Decision No. C04-0884, Proceeding No. 04G-101CP.

8. There are a few exceptions to Rule 1201(a). For instance, pursuant to Rule 1201(b)(II), 4 CCR 723-1, a non-attorney may represent the interests of a closely-held entity, as provided in § 13-1-127, C.R.S. But, Rule 1201(b)(II), 4 CCR 723-1, requires that an applicant and intervener wishing to be represented by a non-attorney must demonstrate in its application or intervention that it is eligible to do so.

9. Any party wishing to be represented by a non-attorney must meet the criteria of Rule 1201(b)(II), 4 CCR 723-1, and carries the burden to prove that it is entitled to proceed in this case without an attorney. To meet that burden of proof, the party must first establish that it is a closely-held entity. This means that a party must establish that it has "no more than three owners." Section 13-1-127(1)(a), C.R.S. Second, a party must also 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 authority of the officer to represent the closely-held entity.¹ If the party wishes to be represented by a non-attorney who is not an officer of the company, the party must provide satisfactory evidence that the officer has authority to represent the closely-held entity.

10. The parties have not established their eligibility to be represented by a non-attorney in this proceeding.

11. Applicant has partially met the requirements of Rule 1201(b)(II) to be represented by a non-attorney. Specifically, the Application establishes that Applicant is a closely-held entity, and wishes to be represented by its sole owner and officer. The Application alleges that less than \$15,000 is in controversy here. However, the Application does not allege a factual basis for its conclusion that less than \$15,000 is in controversy. In order to be represented by a non-attorney, Applicant must make a filing which sets forth a factual basis for its assertion that less than \$15,000 is in controversy in this proceeding. Applicant also has the option to obtain counsel.

12. Neither intervener addressed the factors in Rule 1201(b)(II), 4 CCR 723-1 and § 13-1-127, C.R.S. Interveners will be ordered to either obtain counsel, or to make a filing that shows cause why Rule 1201, 4 CCR 723-1 does not require them to be represented in this matter

¹ 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. 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[.]”

by an attorney at law currently in good standing before the Supreme Court of the State of Colorado.

13. If an intervener elects to show cause, it must make a filing that: (a) establishes that it is a closely-held entity (*e.g.*, that it has no more than three owners); (b) states that the amount in controversy in this matter does not exceed \$15,000 and explains the basis for that statement; (c) identifies the individual who will represent a party in this matter; (d) establishes that the identified individual is an officer; and (e) if the identified individual is not an officer, has appended to it a resolution from a party's Board of Directors that specifically authorizes the identified individual to represent a party in this matter.

14. The parties are advised and on notice that failure to have counsel enter an appearance or make the show cause filing described above by the deadline set forth below may result in dismissal of the Application without prejudice or a decision striking the interventions and dismissing interveners as parties to this proceeding.

II. ORDER

A. It Is Ordered That:

1. Mountainside Concierge, LLC must have legal counsel enter an appearance in this proceeding, or make a show cause filing that comports with ¶ 11 above **on or by 5:00 p.m. on July 14, 2014.**

2. San Miguel Mountain Ventures, LLC, doing business as Telluride Express, Montrose Express and Wild West Tours, and Durango Taxi, LLC, must have legal counsel enter an appearance in this proceeding, or make a show cause filing that comports with ¶¶ 9 and 13 above **on or by 5:00 p.m. on July 14, 2014.**

3. All parties shall be held to the advisements in this Decision.

4. This Decision shall be 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