

Decision No. R14-0851

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 13F-1372CP

COLORADO JITNEY LLC,

COMPLAINANT,

V.

EVERGREEN TRAILS INC., DOING BUSINESS AS HORIZON COACH LINES,

RESPONDENT.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
DISMISSING COMPLAINT WITHOUT PREJUDICE**

Mailed Date: July 21, 2014

I. STATEMENT, FINDINGS, AND CONCLUSIONS

1. On December 23, 2013, Colorado Jitney LLC (Jitney) filed a formal Complaint against Evergreen Trails, Inc., doing business as Horizon Coach Lines (Horizon). That Complaint instituted this proceeding.

2. On January 8, 2014, the Commission referred the Complaint to an administrative law judge (ALJ) for disposition.

3. The Commission scheduled this matter for an evidentiary hearing on the Complaint for February 24, 2014.

4. On January 16, 2014, Horizon, by and through counsel, filed an Unopposed Motion to Continue Hearing Due to Scheduling Conflict (first Unopposed Motion to Continue).

5. On January 21, 2014, Horizon filed an Answer to the Complaint.

6. On January 21, 2014, the ALJ ordered Jitney to make a filing showing cause why it may be represented by a non-attorney, or have counsel enter an appearance on its behalf. Decision No. R14-0080-I.

7. That same day, the ALJ also vacated the February 24, 2014 hearing as requested in the first Unopposed Motion to Continue, rescheduled the hearing for March 25 and 26, 2014, and established procedural deadlines. Decision No. R14-0081-I.

8. On February 13, 2014, counsel entered an appearance on behalf of Jitney, thereby addressing Decision No. R14-0080-I.

9. On February 21, 2014, Jitney filed an “Unopposed Motion to Vacate and Reschedule Hearing” (second Unopposed Motion to Vacate). In the second Unopposed Motion to Vacate, Jitney sought a continuance of the March 25 and 26, 2014 hearing because its counsel did not have enough time to prepare for the hearing. Jitney also requested that the ALJ order a new procedural schedule (for the filing of exhibits and witness lists).

10. On February 26, 2014, the ALJ granted the second Unopposed Motion to Vacate. The ALJ rescheduled the evidentiary hearing for April 28, 2014 and established new deadlines for the parties to make disclosures of the evidence they intend to present at the hearing. Decision No. R14-0200-I.

11. On Friday, April 25, 2014, the parties, through counsel, informally notified the ALJ that they reached a settlement in principal, and requested that the April 28, 2014 hearing be continued so that they may have time to finalize their agreement.

12. On April 28, 2014, based upon the parties' request, the ALJ continued the April 28, 2014 hearing to June 13, 2014, to allow the parties time to finalize and file their settlement agreement. Decision No. R14-0436-I. The same Decision required the parties to file any settlement or stipulation reached by 5:00 p.m. on June 10, 2014.

13. On June 10, 2014, the parties, through counsel, informally notified the ALJ that although they have continued to actively engage in settlement discussions, they have been unable to finalize their agreement. Moreover, Respondent indicated that one of its witnesses had become unavailable for the June 13, 2014 hearing date. The parties agreed that they could not move forward with a hearing on June 13, 2014, and asked that the hearing be continued. They indicated this would allow them additional time to finalize their settlement agreement.

14. On June 12, 2014, based on the parties' request, the ALJ continued the June 13, 2014 hearing, and again rescheduled the hearing, this time for July 24, 2014. Decision No. R14-0643-I. The same Decision required the parties to file their settlement agreement on or by 5:00 p.m. on July 18, 2014.

15. On July 18, 2014, Jitney filed an "Unopposed Motion to Amend Complaint, to Add Party Respondent and to Vacate and Reschedule Hearing" (Motion to Amend). The Motion to Amend seeks to vacate the July 24, 2014 hearing to allow Jitney to amend its Complaint to add the City and County of Denver (Denver) as a party to this proceeding. Jitney argues it cannot have full relief unless Denver is a party to this proceeding. Jitney wishes to conduct discovery with Denver (should Denver be added as a party to this proceeding). Respondent does not oppose the Motion.

16. The Motion to Amend and the multiple continuances sought and received demonstrate that Jitney is simply not ready to prosecute its claims. Jitney could have named

Denver in the original Complaint, or sought to amend the Complaint six months ago. Instead, the parties have sought and received four continuances of hearing dates scheduled in this matter over a six-month period. The ALJ has been flexible to accommodate the parties' schedules, to allow them time to reach a settlement in this matter, and to allow ample time to prepare for an evidentiary hearing. Despite all of this, Jitney is simply not prepared to move forward in this proceeding. Given the history of delays in this case, the ALJ finds that permitting Jitney to amend the Complaint will likely result in uncertain delays that wastes administrative resources.¹

17. The ALJ finds that the better solution to Jitney's inability to move forward is to dismiss the Complaint without prejudice. This will allow Jitney time to prepare to move forward in this proceeding, and re-file its complaint when it is ready. The ALJ perceives no prejudice to any party by dismissing the Complaint without prejudice. Under either circumstance (amending complaint or dismissing without prejudice), Horizon would have to answer a new complaint, the parties would be re-engaging in discovery, issuing new subpoenas, preparing for a hearing with new issues and evidence, and, potentially re-commencing settlement discussions in light of the additional party and claims.² But, more importantly, dismissal allows Jitney all the time it deems appropriate to prepare so that it is ready to move forward when the new complaint is filed.

18. The ALJ finds that dismissal of the Complaint without prejudice is just, reasonable, and appropriate because Jitney is not prepared to prosecute the Complaint in this proceeding. Dismissal will save the parties' resources from further futile efforts, and will serve the interests of administrative economy.

¹ For example, excluding the time to serve an amended complaint and for it to be answered, the chance of multiple procedural schedules and additional continuances appears likely given the history of this case.

² Also, there is no filing fee for complaints.

19. Pursuant to § 40-6-109, C.R.S., the Administrative Law Judge recommends that the Commission enter the following order.

II. ORDER

A. The Commission Orders That:

1. The formal Complaint filed in this proceeding by Colorado Jitney LLC is dismissed without prejudice.

2. The hearing scheduled for July 24, 2014 is vacated.

3. Proceeding No. 13F-1372CP is closed.

4. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

5. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

a) If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b) If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

6. If exceptions to this Recommended Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(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