

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14A-0502BP

IN THE MATTER OF THE APPLICATION OF TJM HOLDINGS, LLC, DOING BUSINESS AS ATS FOR A PERMIT TO OPERATE AS A CONTRACT CARRIER BY MOTOR VEHICLE FOR HIRE.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
G. HARRIS ADAMS
GRANTING MOTION TO DISMISS
APPLICATION; DISMISSING APPLICATION
WITHOUT PREJUDICE; VACATING EVIDENTIARY
HEARING; AND CLOSING PROCEEDING**

Mailed Date: October 7, 2014

I. STATEMENT

1. On May 19, 2014, TJM Holdings, LLC, doing business as A T S (ATS or Applicant) filed its Application for a Permit to Operate as a Contract Carrier by Motor Vehicle for Hire. The matter was referred to an Administrative Law Judge (ALJ) for resolution by minute entry during the Commission's Weekly Meeting held July 30, 2014.

2. The Commission gave notice of the application on June 2, 2014. As originally noticed, the application sought the following authority:

For authority to operate as a contract carrier by motor vehicle for hire for the transportation of

passengers

between all points in the Counties of Adams, Denver, and Jefferson, State of Colorado.

RESTRICTIONS: This application is restricted:

(A) to providing transportation services to recipients of Medicaid;

- (B) to providing Non-Emergency Medical Transportation (NEMT) for the Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, Colorado; and
- (C) to providing transportation services to airports, bus stations and train stations.

3. MKBS, LLC, doing business as Metro Taxi &/or Taxis Fiesta &/or South Suburban Taxi &/or Northwest Suburban Taxi (Metro); Colorado Cab Company LLC, doing business as Denver Yellow Cab; and Staff of the Public Utilities Commission timely intervened of right.

4. By Decision No. R14-0929-I, issued August 5, 2014, a procedural schedule was adopted and a hearing was scheduled in this matter to be held on October 7, 2014. Among other things, ATS was ordered to file its list of witnesses and copies of its exhibits that it will present at the October 7, 2014 hearing no later than August 22, 2014. Paragraph 5 contains the following advisement:

Parties are advised that no witness will be permitted to testify, except in rebuttal, unless that witness is identified on a list of witnesses filed and served in accordance with the procedural schedule. **Parties are advised further** that no exhibit will be received in evidence, except in rebuttal, unless filed and served in accordance with the procedural schedule.

(Bolding in original)

5. ATS failed to file the required disclosures regarding the list of witnesses and copies of exhibits by the August 22, 2014 deadline.

6. On October 1, 2014, MKBS, LLC doing business as Metro Taxi's Motion to Dismiss the Application of TJM Holdings, LLC, doing business as ATS was filed. Metro requests dismissal of the application for ATS's failure to file disclosures as ordered.

7. By Decision No. R14-1209-I, issued October 2, 2014, response time to the motion was shortened. Any party desiring to file a response to the motion was ordered to do at or before the hearing scheduled to commence in this matter at 9:00 a.m. on October 7, 2014.

8. On October 7, 2014, Staff's Response to Motion to Dismiss was filed. In addition to, and in further support of Metro's motion, Staff points to the basis of opposition referenced in Staff's Entry of Appearance, Notice Pursuant to Rule 1007(A), and Notice of Intervention by Right. Staff contends that the Application did not contain all information required under Rule 6203(a)(XI) of the Commission's Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* (CCR) 723-6.

9. At the scheduled time and place, the hearing was convened. Respondent failed to appear.

10. A review of the Commission's file reveals that ATS has yet to file the ordered disclosures. Further, ATS has not filed a response to Metro's motion.

11. The motion to dismiss is unopposed; and, pursuant to Rule 1400 of the Commission's Rules of Practice and Procedure, 4 CCR 723-1, and Decision No. R14-1209-I, the ALJ deems the Applicant to have confessed the motion to dismiss.

12. The ALJ finds arguments in support of the motion to dismiss to be persuasive. ATS's failure to comply with the procedural order has resulted in prejudice to Metro by significantly hindering Metro's ability to adequately prepare for the upcoming evidentiary hearing and to ensure compliance of its own disclosures.

13. Without the presentation of witnesses and exhibits, ATS's Application, standing alone, does not meet ATS's burden of proof under 4 CCR 723-6203(a)(XI) and (e)(I) which requires, *inter alia*, ATS to show managerial, operational, or financial fitness as well as that the

service it proposes is superior, special, of a distinctive nature, or that the service will otherwise be specifically tailored to meet the potential customers' needs.

14. Because ATS has failed to comply with the procedural schedule and, therefore, cannot meet its burden of proof in this matter, the Application should be dismissed.

15. In accordance with § 40-6-109, C.R.S., it is recommended that the Commission enter the following order.

II. ORDER

A. The Commission Orders That:

1. MKBS, LLC, doing business as Metro Taxi's (Metro Taxi) Motion to Dismiss the Application of TJM Holdings, LLC, doing business as ATS (ATS) filed on October 1, 2014, is granted.

2. Applicant ATS is precluded from offering witnesses or exhibits at the evidentiary hearing in this matter.

3. Consequently, the Motion to Dismiss Application filed by Metro Taxi is granted.

4. The application of ATS for an Application for a Permit to Operate as a Contract Carrier by Motor Vehicle for Hire is dismissed without prejudice.

5. The evidentiary hearing scheduled in this matter for October 7, 2014 is vacated.

6. This Proceeding is now closed.

7. 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.

8. As provided by § 40-6-106, 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 recommended 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 a basic finding 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.

9. 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)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

G. HARRIS ADAMS

Administrative Law Judge