

Decision No. R19-0790-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19G-0438HHG

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

ELEVATED MOVES,

RESPONDENT.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
STEVEN H. DENMAN
GRANTING STAFF'S MOTION TO AMEND
THE PROCEDURAL SCHEDULE AND
VACATING AND RESCHEDULING THE HEARING**

Mailed Date: September 24, 2019

I. STATEMENT AND FINDINGS

1. This Proceeding was commenced on August 8, 2019, when Trial Staff of the Colorado Public Utilities Commission (Staff) issued Civil Penalty Assessment or Notice of Complaint to Appear (CPAN) No. 123654 to Respondent Elevated Moves.

2. The procedural history of the above-captioned proceeding is set forth in Decision No. R19-0726-I (mailed August 30, 2019) and is repeated here as necessary to put this Decision into context.

3. Staff and Respondent are the only Parties to this Proceeding.

4. Decision No. R19-0726-I set a hearing on this CPAN for October 8, 2019 at 9:30 a.m. in a Commission hearing room. The Decision also adopted the following procedural deadlines:

- (1) No later than September 12, 2019, Elevated Moves was ordered either to obtain counsel to represent it, or to file an affidavit showing cause why Rule 1201(a) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1, does not require it to be represented in this matter by an attorney currently in good standing before the Supreme Court of the State of Colorado;
- (2) Staff was ordered to file, and to serve on Elevated Moves (and its counsel if counsel had entered an appearance), no later than September 13, 2019, a list of its witnesses, detailed summaries of the testimony of each of its witnesses, and copies of the exhibits that it intends to offer into evidence at the hearing;
- (3) Elevated Moves was ordered to file, and to serve on Staff and its counsel, no later than September 27, 2019, a list of its witnesses, detailed summaries of the testimony of each of its witnesses, and copies of the exhibits that it intends to offer into evidence at the hearing; and
- (4) If the Parties have negotiated stipulations and/or a settlement agreement, they must be filed no later than seven days before the hearing, or no later than October 2, 2019.¹

5. A review of the Commission's records reveals that Elevated Moves failed, by September 12, 2019, either to have counsel enter an appearance on its behalf or to file the show cause affidavit required by Decision No. R19-0726-I.²

¹ The Commission served Decision No. R19-0726-I on August 30, 2019 on the Staff through the E-filing System, and on Elevated Moves by U.S. Mail at 1925 Dolores Way Carbondale, Colorado 81623-2235. The Decision was also served on September 10, 2019 by e-mail to Mr. Oscar Ramirez at oscar@elevatedmoves.com. Mr. Ramirez is the owner of Elevated Moves.

² Decision No. R19-0726-I, ¶ 20 at page 6, warned Respondent, as follows: “Elevated Moves is advised that its failure to make the [affidavit] filing described in ¶¶ 18 above, or to have its Counsel file an entry of appearance, by September 12, 2019, may result in serious consequences adverse to its interests in this Proceeding.” (Emphasis in the original.)

6. On September 13, 2019, Staff filed, and served on Mr. Oscar Ramirez, owner of Elevated Moves, its list of two witnesses, detailed summaries of the testimony of each witness, and copies of ten exhibits that it intends to offer into evidence at the hearing.

7. On September 23, 2019, Staff filed a Motion to Amend the Procedural Schedule (Motion),³ asking that the hearing be continued due to Staff counsel's pre-existing all-day hearing on October 8, 2019 before the Colorado Racing Commission. The Motion states that Staff's counsel attempted to confer with Respondent about the requested continuance and alternative dates by email on September 18, 2019 and by telephone (*i.e.*, by voice mail) on the morning of September 20, 2019. Counsel reports that he received no response from Elevated Moves either to his email or voice mail. Staff asserts that no prejudice will inure to Elevated Moves because the continuance will give Respondent more time to prepare for hearing. Finally, Staff asks that response time to the Motion be waived.⁴

8. The Administrative Law Judge finds that Staff has shown good cause for the continuance. Staff's counsel is unable to appear at the hearing due to a scheduling conflict with a pre-existing hearing before the Colorado Racing Commission. Staff made a reasonable good faith effort to contact Mr. Ramirez regarding the continuance and alternative hearing dates, but he did not reply to either Staff's email or its voicemail message.⁵ The continuance will not prejudice Elevated Moves, because it will give Mr. Ramirez more time to prepare for hearing.

9. Since the September 24, 2019 filing deadline for Elevated Moves and the October 8, 2019 hearing are fast approaching, time is of the essence in resolving the Motion.

³ The caption on Staff's Motion is different than the original Caption on the previous decision and pleadings. If Staff believes its caption is more correct, Staff should file a motion to amend the caption.

⁴ Motion, ¶¶ 1 through 5 at pages 1 and 2.

⁵ See Rule 1400(a) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1.

Response time to the Motion will be waived, pursuant to Rule 1308(c) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1.

10. The Hearing set for October 8, 2019 will be vacated. Among the alternative dates provided by Staff, the hearing will be rescheduled for October 22, 2019 at 9:30 a.m. in a Commission hearing room.

11. The remaining procedural dates and requirements adopted in Decision No. R19-0726-I will adjusted accordingly. That is: (1) on or before October 8, 2019, Elevated Moves shall file, and serve on Staff and its counsel, a list of its witnesses, detailed summaries of the testimony of each of its witnesses, and copies of the exhibits that it intends to offer into evidence at the hearing; and (2) the Parties shall file any stipulations or a settlement agreement no later than October 15, 2019.

II. ORDER

A. It Is Ordered That:

1. The Motion to Amend the Procedural Schedule, filed by Trial Staff of the Colorado Public Utilities Commission (Staff) on September 23, 2019, is granted, consistent with the foregoing discussion and Findings in this Decision.

2. Response time to the Motion to Amend the Procedural Schedule shall be waived, pursuant to Rule 1308(c) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1.

3. The hearing in this Proceeding set for October 8, 2019 at 9:30 a.m. in a Commission hearing room is vacated.

4. The evidentiary hearing in this Proceeding is re-scheduled as follows:

DATE: October 22, 2019

TIME: 9:30 a.m.

PLACE: Commission Hearing Room
1560 Broadway, Suite 250
Denver, Colorado

5. At the above date, time, and place the Parties will be given the opportunity to present evidence and to be heard, consistent with the advisements stated in Decision No. R19-0726-I (mailed August 30, 2019), which shall continue to be in force.

6. On or before October 8, 2019, Elevated Moves shall file, and serve on Staff and its counsel, a list of its witnesses, detailed summaries of the testimony of each of its witnesses, and copies of the exhibits that it intends to offer into evidence at the hearing.

7. The Parties shall file any stipulations or a settlement agreement no later than October 15, 2019.

8. The Parties shall comply with the advisements given in Decision No. R19-0726-I and with the requirements established in this Decision and shall make the filings that are required by this Decision.

9. This Decision shall be effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

STEVEN H. DENMAN

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director