

Decision No. R14-0029-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 13G-1329TO

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

PARKING AUTHORITY LLC,

RESPONDENT.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
REQUIRING RESPONDENT
TO SHOW CAUSE OR TO RETAIN
COUNSEL, REQUIRING STAFF
TO MAKE FILING, AND
CONTAINING ADVISEMENTS**

Mailed Date: January 10, 2014

I. STATEMENT

1. On December 13, 2013, the Commission served, by certified mail (return receipt requested), Civil Penalty Assessment Notice or Notice of Complaint No. 107699 (the CPAN) on Parking Authority LLC (Parking Authority or Respondent). That CPAN commenced this Proceeding.

2. On December 26, 2013, Respondent requested an evidentiary hearing in this Proceeding.

3. On January 8, 2014, by Minute Order, the Commission assigned this Proceeding to an Administrative Law Judge (ALJ).

4. On January 9, 2014, counsel for Trial Staff of the Commission (Staff) entered his appearance in this Proceeding. In that filing and pursuant to Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1007(a),¹ Staff counsel identified the trial Staff and the advisory Staff in this Proceeding.

5. Staff and Respondent, collectively, are the Parties.

A. Respondent and Legal Counsel or Show Cause.

6. Rule 4 CCR 723-1-1201(a) requires a party in an adjudication before the Commission to be represented by an attorney except that, pursuant to Rule 4 CCR 723-1-1201(b)(II) and as relevant here, an individual may appear without an attorney to represent the interests of a closely-held entity, as provided in § 13-1-127, C.R.S. The Commission has held that, unless it is established that an exception applies, a party must be represented by counsel in an adjudication. In addition, the Commission has held that, if a party does not establish that an exception applies to it, there are two consequences: first, filings made by a non-attorney on behalf of the party are void and of no legal effect; and, second, the party must be represented by an attorney in order to participate in a prehearing conference, in an evidentiary hearing, and in oral argument.

7. This is an adjudication before the Commission.

8. Respondent is a Limited Liability Company, is a party in this matter, and is not represented by an attorney in this Proceeding.

9. If Respondent wishes to be represented in this matter by an individual who is not an attorney, then Respondent must prove to the Commission that it is entitled to proceed in this

¹ This Rule is found in the Rules of Practice and Procedure, Part 1 of 4 *Code of Colorado Regulations* 723.

case without an attorney. To prove that it may proceed without an attorney, Respondent must do the following: **First**, Respondent must prove that it is a closely-held entity, which means that it has no more than three owners. Section 13-1-127(1)(a), C.R.S. **Second**, Respondent must prove that it meets the requirements of § 13-1-127(2), C.R.S. That statute provides that an officer² may represent a closely-held entity before the Commission *only* if both of the following conditions are met: (a) the amount in controversy does not exceed \$ 15,000; and (b) the officer provides the Commission with evidence, satisfactory to the Commission, of the officer's authority to represent the closely-held entity.³

10. **By this Interim Decision, the ALJ will order Respondent to choose one of these options: either obtain a lawyer to represent it in this Proceeding⁴ or show cause why Rule 4 CCR 723-1-1201 does not require it to be represented in this Proceeding by a lawyer.**

11. *If Respondent chooses to obtain an attorney to represent it in this matter, then its attorney must enter an appearance in this Proceeding no later than **January 24, 2014**.*

12. *If Respondent chooses to show cause, then, no later than **January 24, 2014**, Respondent must show cause why Rule 4 CCR 723-1-1201 does not require it to be represented by an attorney in this matter. To show cause, Respondent must file a verified statement: (a) that establishes that Respondent is a closely-held entity as defined above; (b) that establishes that the amount in controversy in this matter does not exceed \$ 15,000;⁵ (c) that identifies the individual*

² 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.

³ As pertinent here, § 13-1-127(2.3), C.R.S., states that an officer "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[.]"

⁴ The lawyer must be an attorney at law currently in good standing before the Colorado Supreme Court.

⁵ In this Proceeding, the amount in controversy is \$ 2,420, which is the maximum assessment sought in the CPAN.

whom Respondent wishes to have as its representative in this matter; (d) that establishes that the identified individual is an officer of Respondent; and (e) that, if the identified individual is not an officer of Respondent, has appended to it a resolution from Respondent's Board of Directors that specifically authorizes the identified individual to represent Respondent in this matter.

13. **Parking Authority is advised, and is on notice, that if it fails either to show cause or to have its attorney file an entry of appearance as required by this Interim Decision, the ALJ will issue a subsequent Interim Decision that requires Parking Authority to obtain counsel to represent it in this Proceeding.**

14. **Parking Authority is advised, and is on notice, that if the ALJ issues a subsequent Decision that requires Parking Authority to obtain counsel, Parking Authority will not be permitted to participate in this matter without an attorney.** This means, among other things, that Respondent will not be able to participate in the evidentiary hearing in this matter.

15. **Parking Authority is advised, and is on notice, that if the ALJ issues a subsequent Interim Decision that permits Parking Authority to proceed *pro se* (that is, without an attorney) in this matter, then Parking Authority's non-attorney representative will be bound by, and will be held to, the same procedural and evidentiary rules as those to which attorneys are held.** The Colorado Supreme Court has held that,

[b]y electing to represent himself [in a criminal proceeding,] the defendant subjected himself to the same rules, procedures, and substantive law applicable to a licensed attorney. A *pro se* defendant cannot legitimately expect the court to deviate from its role of impartial arbiter and [to] accord preferential treatment to a litigant simply because of the exercise of the constitutional right of self-representation.

People v. Romero, 694 P.2d 1256, 1266 (Colo. 1985). This standard applies in civil proceedings.

Cornelius v. River Ridge Ranch Landowners Association, 202 P.3d 564 (Colo. 2009);

Loomis v. Seely, 677 P.2d 400, 402 (Colo. App. 1983) (“If a litigant, for whatever reason, presents his own case to the court, he is bound by the same rules of procedure and evidence as bind those who are admitted to practice law before the courts of this state. [Citation omitted.] A judge may not become a surrogate attorney for a *pro se* litigant.”). This standard applies in Commission proceedings.

B. Filing Regarding Potential Hearing Dates.

16. As stated above, Respondent has requested an evidentiary hearing in this Proceeding. As a consequence, the CPAN is contested. The Proceeding must be set for hearing.

17. By this Interim Decision, the ALJ will order Staff to contact Respondent in order to discuss dates for the evidentiary hearing in this matter. By this Interim Decision, the ALJ will order Staff to file, not later than **February 2, 2014**, a list of three proposed hearing dates, each of which is agreeable to the Parties. If possible, the ALJ will select one of the proposed dates. By this Interim Decision, the ALJ will order Respondent to cooperate with Staff with respect to the required filing.

18. **The Parties are advised, and are on notice, that if** Staff fails to make the required filing, the ALJ will select the evidentiary hearing date without input from the Parties.

C. Other Matters and Advisements.

19. **The Parties are advised, and are on notice, that** the ALJ requires each party to be familiar with, and to abide by, the Rules of Practice and Procedure, 4 CCR 723 Part 1. These Rules are available on-line at www.dora.colorado.gov/puc.

20. **The Parties are advised, and are on notice, that** the date of filing with the Commission is the date on which the Commission *receives* a document. Thus, for example,

if a document is placed in the mail on the date on which the document is to be filed, then the document is *not* filed timely with the Commission.

21. **The Parties are advised, and are on notice, that** the Commission has an E-Filings System available. One may learn about, and -- if one wishes to do so -- may register to use, the E-Filings System at www.dora.colorado.gov/puc.

II. ORDER

A. **It Is Ordered That:**

1. Parking Authority LLC shall make the following choice: either retain an attorney to represent it in this matter or show cause why it is not required to be represented by an attorney in this matter.

2. If Parking Authority LLC chooses to retain an attorney, the attorney for Parking Authority LLC shall enter an appearance in this Proceeding not later than January 24, 2014.

3. If Parking Authority LLC chooses to show cause, then Parking Authority LLC shall make, not later than January 24, 2014, a filing to show cause why it is not required to be represented by an attorney in this matter. The show cause filing shall meet the requirements set out in ¶ 12, above.

4. Not later than February 7, 2014, Staff of the Commission shall make a filing regarding proposed evidentiary hearing dates. The filing shall comply with ¶ 17, above.

5. Parking Authority LLC shall cooperate with Staff of the Commission with respect to the filing required by Ordering Paragraph No. 4.

6. If Staff of the Commission does not make the filing required by Ordering Paragraph No. 4, the Administrative Law Judge will schedule the evidentiary hearing in this Proceeding without input from the Parties.

7. The Parties are held to the advisements in this Interim Decision.

8. This Interim Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MANA L. JENNINGS-FADER

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director