

Decision No. R14-0271-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14A-0059CP

IN THE MATTER OF THE APPLICATION OF UNIVERSAL TRANSPORTATION, LLC FOR
A 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
REGARDING REPRESENTATION**

Mailed Date: March 11, 2014

I. STATEMENT

1. Universal Transportation LLC (Applicant), filed the above-captioned proceeding with the Colorado Public Utilities Commission (Commission) on January 14, 2014.
2. The Commission provided public notice of the Application on January 27, 2014.
3. MKBS, LLC, doing business as Metro Taxi, Taxis Fiesta, South Suburban Taxi, and Northwest Suburban Taxi and Colorado Cab Company LLC, doing business as Denver Yellow Cab and SuperShuttle International Denver Inc., timely intervened of right.
4. During the Commission's weekly meeting held March 5, 2014, the Commission deemed the Application complete and referred the proceeding to an administrative law judge for disposition.
5. According to the Application, Applicant is a limited liability company.
6. This is an adjudicative proceeding before the Commission.
7. To date, no attorney has entered an appearance on behalf of Applicant.

8. 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. There are some exceptions. For instance, individuals are entitled to represent their own interests, and a non-attorney may represent the interests of a closely-held entity if certain conditions are met. Rules 1201(b)(I) and (II), 4 CCR 723-1; § 13-1-127, C.R.S.¹

9. Since Applicant has no counsel and is a limited liability company, it either must be represented by an attorney, or Respondent must be given permission to be represented by a non-attorney representative of Applicant (*e.g.*, the president or manager of the company).

10. If Applicant wishes to be represented by a non-attorney in this matter, it carries the burden to prove it is entitled to do so, by meeting the criteria of Rule 1201(b)(II), 4 CCR 723-1 and § 13-1-127(2), C.R.S. To meet that burden of proof, Applicant must establish that it is a closely-held entity. This means that it must establish that it has "no more than three owners." Section 13-1-127(1)(a), C.R.S. Second, Applicant must 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 officer's authority to represent the closely-held entity.²

¹ Other exceptions exist, but the ALJ finds those do not apply.

² 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[.]"

11. The Commission has emphasized that this requirement is mandatory. Filings made by non-attorneys on behalf of a party who fails to demonstrate that the party may proceed without counsel are void and of no legal effect. *See, e.g.*, Decision No. C05-1018, Proceeding No. 04A-524W issued August 30, 2005; No. C04-1119, Proceeding No. 04G-101CP issued September 28, 2004; and No. C04-0884, Proceeding No. 04G-101CP issued August 2, 2004.

12. The Application fails to establish that Applicant is entitled to be represented by a non-attorney. The Application asserts that less than \$15,000 is in controversy in this proceeding, but fails to provide a factual basis for that assertion. *See* § 13-1-127(2), C.R.S. The ALJ cannot find that less than \$15,000 is in controversy without a factual basis to support such a finding. The ALJ will order Applicant to make a filing which addresses this issue.

13. However, based upon the statements in the Application, the ALJ finds that Applicant has met other requirements of Rule 1201(b), 4 CCR 723-1 and § 13-1-127(2), C.R.S. In particular, the ALJ finds, based upon the Application, that Applicant is a closely-held entity in that it does not have more than three owners, and that Applicant has provided sufficient evidence showing that Seth O. Tuffour has authority to represent Applicant in this proceeding. Nevertheless, the ALJ will not permit Mr. Tuffour to represent the Applicant unless and until Applicant makes the filing required by this Decision.

14. In lieu of making the filing described above, Applicant may obtain counsel and have counsel file an entry of appearance as stated below.

15. Applicant will be ordered to choose to obtain legal counsel to represent it in this proceeding, *or* to make a filing that provides a factual basis for its assertion that less than \$15,000 is in controversy in this proceeding.

16. **Applicant is advised and on notice that failure to make the filing described by this Decision or have counsel's entry of appearance filed as required by this Decision may result in dismissal of the Complaint without prejudice.**

17. **Applicant is advised and on notice, that should it obtain permission to be represented by a non-attorney in this matter, its representative will be bound by the same rules as attorneys.** *Negron v. Golder*, 111 P.3d 538, 541 (Colo. App. 2004); *Loomis v. Seely*, 677 P.2d 400, 402 (Colo. App. 1983).

II. ORDER

A. It Is Ordered That:

1. Universal Transportation LLC (Applicant) must choose to obtain legal counsel to represent it in this proceeding, **or** to make a filing that provides a factual basis for its assertion that less than \$15,000 is in controversy in this proceeding.

2. If Applicant elects to obtain legal counsel, then legal counsel shall enter an appearance in this proceeding **on or by 5:00 p.m. on March 25, 2014.**

3. If Applicant elects to represent itself, it shall make a filing that provides a factual basis for its assertion that less than \$15,000 is in controversy in this proceeding **on or by 5:00 p.m. on March 25, 2014.**

4. Applicant shall be held to all advisements in this Decision.

5. 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