

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14A-0337CP

IN THE MATTER OF THE APPLICATION OF COY CLUB, LLC DOING BUSINESS AS DENVER BAR CART 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 COLORADO
CRUISERS' REPRESENTATION**

Mailed Date: June 3, 2014

I. STATEMENT

1. On April 14, 2014, CoY Club, LLC, doing business as Denver Bar Cart (Applicant) filed the above-captioned application. That same day, Applicant's counsel entered his appearance. Applicant amended the Application by a filing made on April 21, 2014.

2. The Commission provided public notice of the Application on April 21, 2014.

3. MKBS LLC, doing business as Metro Taxi, Taxis Fiesta, South Suburban Taxi, Northwest Suburban Taxi, Colorado Cab Company LLC, doing business as Denver Yellow Cab and Boulder Yellow Cab, Shamrock Taxi of Fort Collins Inc., Colorado Springs Transportation LLC, and Colorado Cruisers Inc., doing business as Colorado Crewz-In (Colorado Cruisers) (collectively, interveners) timely intervened of right. The interveners object to the Application.

4. During the Commission's weekly meeting held May 28, 2014, the Commission deemed the Application complete and referred it to an administrative law judge (ALJ) for disposition.

5. According to attachments to its “Letter of Intervention” (Intervention), Colorado Cruisers is a corporation formed under the laws of Colorado.

6. This is an adjudicative proceeding before the Commission. Colorado Cruisers has filed an Intervention seeking to participate in this adjudicative proceeding.

7. 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. 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.

8. There are some exceptions to the requirement that parties be represented by an attorney. For instance, a non-attorney may represent the interests of a closely-held entity if certain conditions are met. Rule 1201(b)(II), 4 CCR 723-1; § 13-1-127, C.R.S.¹ Nevertheless, a closely-held entity wishing to be represented by a non-attorney must demonstrate its eligibility to do so in the entity’s intervention. Rule 1201(b)(II), 4 CCR 723-1.

9. Colorado Cruisers’ Intervention is not signed by a licensed attorney.² It appears to be signed by a non-attorney representative of the company. Despite Rule 1201(b)(II), Colorado Cruisers’ Intervention does not demonstrate that the company is entitled to be represented by a non-attorney, or the non-attorney representative who signed and filed the Intervention.

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

² To date, no attorney has entered an appearance on behalf of Colorado Cruisers.

10. The ALJ will give Colorado Cruisers an additional opportunity to come into compliance with Rule 1201, 4 CCR 723-1 by either making a filing establishing it is entitled to be represented by a non-attorney, or by having its attorney enter an appearance in this proceeding.

11. To proceed in this matter without an attorney, Colorado Cruisers carries the burden to prove it meets the criteria of Rule 1201(b)(II), 4 CCR 723-1 through a verified filing establishing the below.³ First, Colorado Cruisers must establish that it is a closely-held entity as that term is defined by § 13-1-127(1)(a), C.R.S. This means that it must establish that it has “no more than three owners.” *Id.* Second, Colorado Cruisers must demonstrate that it meets the requirements of § 13-1-127(2), C.R.S. That statute provides that an officer⁴ of the closely-held entity may represent it 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 authority of the officer to represent the closely-held entity.⁵ Thus, the filing must provide a factual basis for the ALJ to conclude: the amount in controversy in this proceeding is not more than \$15,000, and the person designated by Colorado Cruisers has authority to represent it in this proceeding.

12. Colorado Cruisers is on notice that failure to make the filing described in ¶ 11 above or have counsel’s entry of appearance filed as required by this Decision may result in a decision denying it the ability to participate in this proceeding.

³ A verified filing is one that is signed under oath, *e.g.*, in front of a notary public.

⁴ 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.

⁵ 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[.]”

13. Colorado Cruisers is also 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).

14. Colorado Cruisers is further on notice that for any future applications or interventions it may file, the undersigned ALJ will strictly hold it to Rule 1201(b)(II) and will dismiss or strike its applications or interventions if it fails to comply with Rule 1201(b)(II), 4 CCR 723-1.

II. ORDER

A. It Is Ordered That:

1. Colorado Cruisers Inc., doing business as Colorado Crewz-In (Colorado Cruisers) must choose to obtain legal counsel to represent it in this proceeding, or to make a filing that meets the requirements set forth in ¶11 above.

2. If Colorado Cruisers elects to obtain legal counsel, then its legal counsel shall enter an appearance in this proceeding on or by 5:00 p.m. on June 13, 2014.

3. If Colorado Cruisers elects to represent itself, it shall file with the Commission and serve upon the parties a filing that meets the requirements set forth in ¶11 above on or by 5:00 p.m. on June 13, 2014.

4. Colorado Cruisers 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