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1 BEFORE THE WASHINGTON UTILITIES AND
2 TRANSPORTATION COMMISSION

3 In the Matter of the)
Temporary Permit Authority of) TV-001209
4)
Joseph Dean Smith, d/b/a) Volume I
5 Joe The Mover) Pages 1-11
_____)
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8 A hearing in the above matter was held on
9 November 1, 2000, at 1:30 p.m., at 1300 South Evergreen
10 Park Drive Southwest, Olympia, Washington, before
11 Administrative Law Judge TRE HENDRICKS.

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13 The parties were present as follows:

14 THE COMMISSION, by Shannon Smith, Assistant
Attorney General, 1400 South Evergreen Park Drive
15 Southwest, Olympia, Washington 98504-0128.

16 JOSEPH DEAN SMITH d/b/a JOE THE MOVER, by
Stephen Cramer, Attorney at Law, 202 South 348th Street,
17 Federal Way, Washington 98003.

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Joan E. Kinn, CCR, RPR
25 Court Reporter

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P R O C E E D I N G S

JUDGE HENDRICKS: My name is Tre Hendricks, and I will be presiding over this hearing today. Also present from the Commission's administrative law judge division is Ann Rendahl. The Washington Utilities and Transportation Commission has set this matter for hearing at the offices of the Commission in Olympia, Washington on November 1st, 2000, upon due and proper notice to all interested parties.

I will take appearances at this time beginning with the petitioner. Please state for the record your name, who you represent, your address, telephone, fax number, and your E-mail if you do use one.

MR. CRAMER: I'm Stephen Cramer, C-R-A-M-E-R. I represent the petitioner, Joseph Smith, who is also here at the table. My street address is 202 South 348th Street in Federal Way. Mailing address is P.O. Box 3767. Telephone, (253) 661-1337, and fax number 874-8005. I don't have E-mail.

JUDGE HENDRICKS: That's fine.

MR. CRAMER: And I represent the petitioner.

JUDGE HENDRICKS: Thank you. And for Commission staff.

MS. SMITH: Shannon Smith, Assistant Attorney

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1 General. My address is 1400 South Evergreen Park Drive
2 Southwest, Olympia, Washington 98504-0128, P.O. Box
3 40128. My phone number is area code (360) 664-1192, fax
4 number is area code (360) 586-5522. E-mail is
5 ssmith@wutc.wa.gov. And I'm representing Commission
6 staff.

7 JUDGE HENDRICKS: Thanks. I will just ask if
8 there's anyone else who is present who wishes to make an
9 appearance in the matter.

10 Let the record show there was no response.

11 Are there any preliminary matters that need
12 to be addressed before --

13 MR. CRAMER: None for the petitioner.

14 JUDGE HENDRICKS: Then are you ready to make
15 your presentation?

16 MR. CRAMER: Yes, we are.

17 JUDGE HENDRICKS: Please proceed.

18 MR. CRAMER: If I could reduce this to 25
19 words or less, the only issue in front of the hearing
20 today is whether or not the temporary permit should have
21 an exclusion which prohibits Joseph Smith from employing
22 or using his brother, Jay Smith, in his moving business.
23 That's what is generated. That's the only thing we're
24 questioning. The remainder of the petition is
25 acceptable.

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1 As we have indicated in our briefing and
2 declaration, first of all, what does it mean to use
3 somebody in your business. I think there's an inherent
4 ambiguity in that concept. Does it mean Jay Smith can't
5 come into the office and talk with his brother? That is
6 inherently ambiguous. That was tacked on to the first
7 permit, which just prohibited employment.

8 And it's been our position all the way
9 through this thing that, no, Joseph Smith shouldn't use
10 his brother as an independent contractor or in any way
11 use him in a capacity where he would be acting as a
12 common carrier without a permit. That's a done deal.
13 We're not arguing that.

14 But we are arguing that there is no rational
15 basis for prohibiting Jay Smith from working for his
16 brother as an employee. And, in fact, he was doing that
17 up until last July when the temporary permit came down
18 and had that exclusion in it from which we filed this
19 appeal.

20 The Commission has expressed a great deal of
21 concern about Jay Smith having anything to do with the
22 moving business as an unlicensed common carrier, and we
23 understand that. There's a separate Superior Court
24 lawsuit addressing that very issue. I think
25 unfortunately there has been a lot of merger of the

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1 issues involved here between Jay Smith and his brother.
2 The fact is, as we indicated in our reply
3 memorandum, the business Joe the Mover that Joseph D.
4 Smith owns and operates is a sole proprietorship. It's
5 owned by him exclusively. His brother has never had any
6 ownership interest in that business. The documents we
7 provided are public records. All of the vehicles are
8 titled in Joseph Smith's name. He does business as
9 Stealth Moving as another d/b/a, which has nothing to do
10 with his brother. But all the vehicles are titled in
11 his name, the tax returns have been filed as Joseph D.
12 Smith doing business as Joe the Mover. Industrial
13 insurance, virtually every public account that has to be
14 filed is in the name of Joe Smith.

15 All I can say is I don't know if this is
16 confusion or whether it's neglect or whatever, but the
17 simple fact is that Jay Smith has no ownership interest
18 in this business, and there is no rational reason to say
19 he can't work as a salaried employee, as I think he was
20 working as an office manager at one point, as long as
21 that's what he is is recognized as an employee. And
22 it's our position that exclusion should be excluded from
23 the permit for that simple reason. There's just no
24 rational relationship. Nobody has even explained why
25 that needs to be. It just is, it just happened, and we

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1 think it should be excluded. And we will just rest on
2 the documents that we filed with the Commission.

3 JUDGE HENDRICKS: Okay, thank you.

4 Commission staff?

5 MS. SMITH: Yes, very briefly, and this is
6 all set out in our response to the motion for
7 modification that was filed with the Commission on
8 September 5th of 2000. The Commission staff is
9 concerned about involvement of Jason Smith in the
10 business owned by his brother, Joseph Smith. There is
11 evidence that was presented to the Commission as an
12 addendum to our response for the motion for modification
13 which are papers that we filed in the Superior Court
14 action that Mr. Cramer has referenced. And indeed that
15 is a separate action.

16 The narrow issue here is whether or not the
17 Commission should modify the temporary permit held by
18 Joseph Smith to remove the exclusion of having his
19 brother Jason Smith be an employee of the moving
20 business.

21 And Commission staff's concern is that in the
22 paperwork that we filed with the Superior Court is
23 evidence is that the two brothers have, in fact, whether
24 they are doing it now, but have in the past owned a
25 moving business together. There is evidence that we

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1 submitted to the court with respect to an Internet web
2 page, some of the trucks being painted with Jay and Joe
3 the Mover and the business name Jay and Joe the Mover.

4 And the Commission staff is concerned that
5 the involvement of Jason Smith in a business with his
6 brother would result in Jason Smith having an interest
7 in the business, perhaps not an ownership interest or a
8 financial interest, but enough of a presence in the
9 business that the Commission staff would be concerned,
10 because there is quite a long history with Jason Smith
11 doing business as a common carrier without having a
12 license to do that.

13 And, in fact, I believe there has been a
14 motion filed with the Commission by Joseph Smith to use
15 the business name Jay and Joe the Mover in his Joe the
16 Mover business, and that again causes us some concern,
17 because we don't believe that Jason Smith, the name Jay
18 the Mover, whether it's appended to Joe in the business
19 name, is in the public interest, because Jay the Mover
20 operated for so many years as an illegal mover, and
21 there's a court injunction against him engaging in that
22 business. And we're just very concerned about the
23 participation that Jason Smith might have in the
24 business operated by his brother, Joseph Smith.

25 And we just do not believe that it is in the

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1 public interest for that temporary or for that
2 restriction in the temporary permit to be lifted at this
3 time. Perhaps some time in the future, it might be
4 something that the Commission staff would have no
5 objection to, but at this point in time, we do have an
6 objection to that. We don't believe it's in the public
7 interest for Jason Smith to be involved in his brother's
8 business as an employee, and I understand that they're
9 not asking that he be allowed to contract with his
10 brother.

11 And with respect to some ambiguity with the
12 word use, I don't believe that the Commission staff
13 would have any problem with Jason Smith stopping by the
14 office to visit his brother. Clearly that's not
15 something that the Commission staff has a concern about,
16 and that's not the intent of the Commission's
17 restriction. It's just to avoid him actually being
18 involved in the business with his brother, whether you
19 call that person an employee, an independent contractor,
20 an associate, or any other name other than employee, the
21 Commission wanted to make sure that Jason Smith would
22 not be involved in the business with his brother.

23 And the rest of our argument is all contained
24 in our memorandum that we filed.

25 JUDGE HENDRICKS: Okay, thank you.

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1 MR. CRAMER: Brief response?

2 JUDGE HENDRICKS: Yeah, please, go ahead.

3 MR. CRAMER: It's pretty obvious that the
4 Commission does not want Jason Smith to have anything to
5 do with his brother's business. But then as I stated in
6 my opening remarks, we don't have any explanation of why
7 if Jason Smith works in the capacity of an employee that
8 is somehow going to affect the public interest in any
9 adverse way whatsoever. Instead we have rhetoric, we
10 have the Commission is concerned, the Commission doesn't
11 want involvement. If there's going to be a restriction
12 like this, at least the initial burden goes to the
13 Commission to show why it's rationally related to any
14 public interest. There hasn't been that showing.

15 The undisputed evidence here is that Jason
16 Smith operated as Jay the Mover up until April or May of
17 1998, I believe, at which time he stopped. Joseph Smith
18 had a business, kept using it, he used his brother's
19 name, he called it Jay and Joe the Mover, although Jason
20 Smith clearly had no ownership interest in that
21 business. I think, you know, what the Commission here
22 is trying to do is inflict some kind of penalty on Jason
23 Smith because of his activities in the past by not
24 letting him work for his brother. And again, that's
25 just a penalty. It makes -- it has no connection to any

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1 rational interest here.

2 The concerns of the Commission, if any, could
3 certainly be alleviated by saying that Joseph Smith will
4 have no involvement with his brother in this business
5 except as an employee. We can put it in terms of a
6 written employment contract. We can make sure all the
7 filings are done with the state and the federal
8 government as far as identifying him as an employee and
9 reporting his earnings and so on. You know, if you need
10 proof, if you need separateness from Jay and Joe as far
11 as the fact that Jay doesn't own this business and never
12 will, that's how you do it. You don't just say you
13 can't work there. That's what this comes down to.
14 There might be a legitimate concern that can certainly
15 be addressed by something less egregious than just
16 saying that Jay Smith can't ever work there.

17 That's all I have.

18 JUDGE HENDRICKS: Okay. Does anybody else
19 have any other comments?

20 MS. SMITH: No, nothing except for we have
21 provided written, a written brief with the attachments
22 to that.

23 JUDGE HENDRICKS: If there's nothing further,
24 we can adjourn the hearing.

25 Is anybody going to want to file any further

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1 briefing?

2 MR. CRAMER: No.

3 MS. SMITH: No.

4 JUDGE HENDRICKS: Would either party be
5 willing to waive the initial order and go straight to a
6 final order by the Commissioners?

7 MR. CRAMER: We would. I think there's no
8 reason to drag things out any longer.

9 MS. SMITH: Commission staff agrees.

10 JUDGE HENDRICKS: Okay. Then is there
11 anything further to come before the Commission at this
12 time?

13 MS. SMITH: No.

14 MR. CRAMER: No.

15 JUDGE HENDRICKS: Thank you for attending.
16 The hearing is adjourned.

17 (Hearing adjourned at 1:50 p.m.)

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