

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of Determining the Proper Carrier Classification of, and Complaint for Penalties against:) DOCKET TV-131606
))
) ORDER 02
))
RICARDO ERNESTO LOMEDICO d/b/a) INITIAL ORDER CLASSIFYING
PHOENIX MOVING & LOGISTICS) RESPONDENT AS HOUSEHOLD
) GOODS CARRIER; ORDERING
) RESPONDENT TO CEASE &
) DESIST; AND IMPOSING
) PENALTIES; DEFAULT ORDER
))
.....)

INTRODUCTION

Synopsis. *This is an Administrative Law Judge’s Initial Order that is not effective unless approved or allowed to become effective as described in the notice at the end of this Order. If this Initial Order becomes final, the Commission will find Ricardo Ernesto Lomedico d/b/a Phoenix Moving & Logistics in default for failing to appear at the hearing. In addition, if this Initial Order becomes final, Ricardo Ernesto Lomedico d/b/a Phoenix Moving & Logistics, will be classified as a household goods carrier, assessed a financial penalty in the amount of \$5,000 for two (2) violations of RCW 81.80.075(1), and required to cease and desist from operating as a household goods carrier without first obtaining a permit from the Commission.*

1 **Nature of Proceeding.** The Washington Utilities and Transportation Commission (Commission) initiated this special proceeding to determine whether Ricardo Ernesto Lomedico d/b/a Phoenix Moving & Logistics (Phoenix Moving & Logistics), has engaged, and continues to engage, in business as a common carrier for transportation of household goods for compensation within the state of Washington without possessing the permit required for such operations.

2 **Procedural History.** On Sept. 7, 2013 the Commission entered Order 01, Order Instituting Special Proceeding; Complaint Seeking to Impose Penalties; and Notice of Mandatory Appearance at Hearing, pursuant to RCW 81.04.510, initiating this docket on

its own motion. The Complaint alleges that Phoenix Moving & Logistics violated RCW 81.80.075(1) by:

- (1) offering on at least one occasion to transport household goods within the state of Washington
- (2) advertising household goods moving services within the state of Washington on at least one occasion

without the necessary permit required for such operations. On the same date, the Commission issued a *Subpoena and Subpoena Duces Tecum For Production of Documents* (Subpoenas) to the company commanding Phoenix Moving & Logistics to appear before the Commission at a special proceeding scheduled to convene at 9:30 a.m., Oct. 8, 2013, in the Commission's offices at 1300 S. Evergreen Park Drive S.W., Olympia, Washington, and to bring the documents specified in the *Subpoenas*.

3 On Sept. 7, 2013, the Commission personally served (via legal messenger) the Complaint and Order Initiating Special Proceeding and Subpoenas on Phoenix Moving & Logistics in Edmonds, WA.

4 **Hearing.** On Oct. 8, 2013, the hearing convened, as scheduled, in Olympia, Washington, before Administrative Law Judge Adam Torem. Commission Staff was the only party appearing at the hearing. Commission Staff moved for default pursuant to RCW 34.05.440(2) and WAC 480-07-450. Commission Staff also requested that it be allowed to present a prima facie case demonstrating that Phoenix Moving & Logistics was operating as a household goods carrier without the required permit being issued by the Commission.

5 RCW 34.05.440(2) allows the presiding officer discretion to enter a "default or other dispositive order" if a party fails to appear at the hearing. Based on the failure of Phoenix Moving & Logistics to appear or otherwise comply with the Commission's subpoenas, the Administrative Law Judge granted Commission Staff's request to enter a default order and to allow for presentation of its case.

6 Commission Staff presented the testimony of one witness, Ms. Lauren McCloy. Commission Staff provided a brief summary oral argument at the close of the hearing.

7 **Initial Order.** The presiding administrative law judge finds Phoenix Moving & Logistics in default pursuant to RCW 34.05.440(2) and WAC 480-07-450(1). Further, the presiding administrative law judge finds that Phoenix Moving & Logistics is operating as a household goods carrier without a permit. Further, the presiding administrative law judge orders Phoenix Moving & Logistics to pay a \$5,000 penalty for two (2) violations of RCW 81.80.075(1). Finally, the presiding administrative law judge orders Phoenix Moving & Logistics to cease and desist from future unauthorized operations.

8 **Appearances.** Lauren McCloy, Compliance Investigator, Olympia Washington, represents Commission Staff.

MEMORANDUM

A. Default

9 The Complaint and Order Instituting Special Proceeding includes a notice that any party who fails to attend or participate in the hearing may be held in default in accordance with the terms of RCW 34.05.440 and WAC 480-07-450. RCW 34.05.440(2) provides: “If a party fails to attend or participate in a hearing or other stage of an adjudicative proceeding ... the presiding officer may serve upon all parties a default or other dispositive order, which shall include a statement of the grounds for the order.” WAC 480-07-450(1) provides that that the Commission may find a party in default if the party fails to appear at the time and place set for a hearing.

10 The Subpoenas include language ordering Phoenix Moving & Logistics to appear for the hearing and produce specified documents in compliance with subpoena powers granted to the Commission in RCW 34.05.446 and RCW 81.04.510.

11 At the time of the hearing, the Commission had served Phoenix Moving & Logistics with the Complaint and Order Instituting Special Proceeding and Subpoenas by personal service upon Ricardo Ernesto Lomedico owner of Phoenix Moving & Logistics.

12 **Decision.** Phoenix Moving & Logistics was properly and legally served with the Complaint and Order Instituting Special Proceeding and Subpoenas and provided due and proper notice of the Oct. 8, 2013, hearing. Phoenix Moving & Logistics did not appear at the hearing and is hereby held in default. Further, Phoenix Moving & Logistics did not comply with the Subpoenas; it failed to appear and also failed to produce or otherwise

provide any of the specified documents.

WAC 480-07-450(2) states: “A party who is dismissed from a proceeding or found in default may contest the order of dismissal or default by written motion filed within ten days after service of the order. A dismissed party found in default may request that the order be vacated and, if the order is dispositive of the proceeding, that the proceeding be reopened for further process.” A notice appearing at the end of this order provides instructions for filing such a notice with the Commission.

B. Operating as a Household Goods Carrier Without Authority.

13 **Applicable Law.** RCW 81.80.010(5) defines “household goods carrier” as

a person who transports for compensation, by motor vehicle within this state, or who advertises, solicits, offers, or enters into an agreement to transport household goods.

RCW 81.80.070 prohibits household goods carriers from operating for compensation in Washington without first obtaining the required permit from the Commission. Upon proof of unauthorized operations, RCW 81.04.510 authorizes the Commission to order the unpermitted company to cease and desist its activities. Additionally, RCW 81.04.110 authorizes the Commission to file a complaint on its own motion setting forth any act or omission by a company that violates any law, or any order or rule of the Commission.

14 RCW 81.80.075(4) subjects persons who engage in business as a household goods carrier in the state of Washington without the required permit to a penalty of up to \$5,000 for each violation. In deciding the penalty amount to be imposed per violation, RCW 81.80.075(4)(b) requires the Commission to consider two factors: (a) willingness to comply with the provisions of RCW 81.80.070 and the rules governing household goods carriers contained in WAC 480-15 and (b) compliance history.

15 In a proceeding initiated under RCW 81.05.510, the responding company has the burden of proving that its alleged operations are not subject to the provisions of RCW 81.80.070.

16 If the company is found to be operating as a household goods carrier without the required permit, the Commission is authorized and directed to enter an order requiring the

corporation to cease and desist activities subject to regulation under Title 81.

17 The evidence in this matter unquestionably demonstrates that Phoenix Moving & Logistics has offered and advertised to engage in the business of moving household goods without a permit.

18 Ms. Lauren McCloy, a Compliance Investigator with the Commission, testified concerning her investigation into the operations and business practices of Phoenix Moving & Logistics. Ms. McCloy prepared a declaration summarizing her investigation, with appendices documenting her investigation. *Ex. 1.*

19 The Commission has never received a permit application from Phoenix Moving & Logistics or from its owner, Ricardo Ernesto Lomedico.

20 **Decision.** By failing to appear at the hearing held on Oct. 8, 2013, Phoenix Moving & Logistics has also failed to meet the burden of proving that its business operations are not subject to the provisions of RCW 81.80.070. The evidence presented by Commission Staff through exhibits and witness testimony establishes that Phoenix Moving & Logistics has engaged in business as a household goods carrier without the necessary permit required by RCW 81.80.070.

FINDINGS OF FACT

21 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington vested by statute with authority to regulate persons engaged in the business of transporting household goods for compensation over public roads in Washington.

22 (2) On at least one occasion, Phoenix Moving & Logistics offered to transport household goods within the state of Washington without first having obtained a household goods carrier permit from the Commission.

23 (3) On at least one occasion, Phoenix Moving & Logistics advertised to transport household goods without first having obtained a household goods carrier permit from the Commission.

- 24 (4) Phoenix Moving & Logistics failed to comply with the Subpoenas properly served.
- 25 (5) Phoenix Moving & Logistics failed to appear at the hearing convened on Oct. 8, 2013, pursuant to notice that was properly served.

CONCLUSIONS OF LAW

- 26 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of this proceeding and over Phoenix Moving & Logistics, pursuant to RCW 81.04.510, RCW 81.80.010, and RCW 81.80.070.
- 27 (2) Pursuant to RCW 34.05.440(2), Phoenix Moving & Logistics is held in default for failing to appear at the Oct. 8, 2013, hearing.
- 28 (3) Phoenix Moving & Logistics offered to perform household goods moving services without first having obtained a permit from the Washington Utilities & Transportation Commission, in violation of RCW 81.80.070.
- 29 (4) Phoenix Moving & Logistics advertised to perform household goods moving services without first having obtained a permit from the Washington Utilities & Transportation Commission, in violation of RCW 81.80.070.
- 30 (5) Phoenix Moving & Logistics is classified as a common carrier of household goods within the state of Washington, pursuant to RCW 81.80.010(4) and WAC 480-15-020.
- 31 (6) The Commission is directed by RCW 81.04.510 to order Phoenix Moving & Logistics to cease and desist from conducting operations requiring permit authority unless or until the required authority is obtained from the Commission.

ORDER

THE COMMISSION ORDERS:

- 32 (1) Phoenix Moving & Logistics is held in default. Should Phoenix Moving &
Logistics fail to respond to this Order by filing a written motion within ten (10)
days requesting that the order be vacated pursuant to WAC 480-07-450(2), the
default in this proceeding shall remain in place.
- 33 (2) Phoenix Moving & Logistics is classified as a common carrier of household
goods within the state of Washington.
- 34 (3) Phoenix Moving & Logistics is ordered to immediately cease and desist
operations as a household goods carrier within the state of Washington.
- 35 (4) Phoenix Moving & Logistics is assessed a penalty of \$5,000, payable
immediately.
- 36 (5) The Commission retains jurisdiction over the subject matter and the parties to this
proceeding to effectuate the terms of this Order.

DATED at Olympia, Washington, and effective Oct. 8, 2013.

ADAM TOREM
Administrative Law Judge

NOTICE TO PARTIES

This is an Initial Order. The action proposed in this Initial Order is not yet effective. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this Initial Order, and you would like the Order to become final before the time limits expire, you may send a letter to the Commission, waiving your right to petition for administrative review.

WAC 480-07-450(2) states that a party held in default has 10 days after service of a default order to file a written motion requesting the order be vacated and the proceeding reopened for further process. The party held in default must state the grounds relied upon, including its reasons for failing to appear.

WAC 480-07-825(2) provides that any party to this proceeding has twenty (20) days after the entry of this Initial Order to file a *Petition for Administrative Review*. **A party held in default must file a written motion requesting the order be vacated pursuant to WAC 480-07-450(2) within 10 days after service in order to have the Commission consider a Petition for Administrative Review from that party.** What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-825(3). WAC 480-07-825(4) states that any party may file an *Answer* to a Petition for review within ten (10) days after service of the Petition.

WAC 480-07-830 provides that before entry of a Final Order any party may file a Petition to Reopen a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. No Answer to a Petition to Reopen will be accepted for filing absent express notice by the Commission calling for such answer.

RCW 80.01.060(3) provides that an Initial Order will become final without further Commission action if no party seeks administrative review of the Initial Order and if the Commission fails to exercise administrative review on its own motion.

One copy of any Petition or Answer filed must be served on each party of record with proof of service as required by WAC 480-07-150(8) and (9). An original and **seven (7)** copies of any Petition or Answer must be filed by mail delivery to:

Attn: Steven V. King, Executive Director and Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, Washington 98504-7250