

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of Determining the Proper)	DOCKET TV-130332
Carrier Classification of, and Complaint)	
for Penalties against:)	ORDER 02
)	
JOEDY SMITH d/b/a THE MOVING)	ORDER DENYING STAFF
GUYS)	MOTION FOR DEFAULT
)	
.....)	

INTRODUCTION

1 **Nature of Proceeding.** The Washington Utilities and Transportation Commission (Commission) initiated this special proceeding to determine whether Joedy Smith d/b/a The Moving Guys (The Moving Guys or Company), 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 **Appearances.** Mathew Perkinson, Compliance Investigator, Olympia Washington, represents Commission Staff (Staff).

3 **Procedural History.** On March 21, 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 The Moving Guys violated Revised Code of Washington (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 (subpoenas) to the

company commanding The Moving Guys to appear before the Commission at a special proceeding scheduled to convene on Wednesday, April 24, 2013, at 9:30 a.m., in the Commission's offices at 1300 S. Evergreen Park Drive S.W., Olympia, Washington, and to bring the documents specified in the *Subpoenas*.

4 On April 3, 2013, at 7:20 p.m., the Commission personally served (via legal messenger) the Complaint and Order Initiating Special Proceeding and Subpoenas at a residential address known to be associated with Mr. Smith and The Moving Guys: 14646 SE Allen Road, Bellevue, WA. According to the declaration of service, the documents were delivered to a Jane Doe, a woman identified by the process server as a co-resident and the wife of Mr. Smith.

5 **Hearing.** On April 24, 2013, the hearing convened, as scheduled, in Olympia, Washington, before Administrative Law Judge Adam E. Torem. Commission Staff appeared at the hearing but neither Mr. Smith nor any other representative of The Moving Guys appeared on behalf of the company.

6 Commission Staff testified that a few days after the legal messenger delivered the Complaint and associated documents to Jane Doe, she telephoned the Commission and spoke to Mr. Perkinson. Ms. Doe related that Mr. Smith was her ex-husband and no longer lived at the SE Allen Road address and had not resided there on the date the legal messenger delivered the Complaint. Ms. Doe informed Mr. Perkinson that Mr. Smith was presently incarcerated in a King County jail facility.

7 Commission Staff verified Ms. Doe's statement by reviewing King County's Jail Inmate Lookup Service (JILS). Mr. Perkinson testified that on April 22, 2013, JILS listed an inmate by the name of Joedy Maurice Smith being held in the Seattle Correction Facility on \$150,000 bail. Commission Staff made no attempt to contact Mr. Smith at the jail.

8 **Motion for Default.** Commission Staff moved for default pursuant to RCW 34.05.440(2) and Washington Administrative Code (WAC) 480-07-450. Commission Staff also requested that it be allowed to present a prima facie case demonstrating that The Moving Guys was operating as a household goods carrier without the required permit being issued by the Commission.

- 9 **Law.** 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 RCW 4.28.080 sets forth the ways a person may be served with a summons or subpoena. Pursuant to RCW 4.28.080(15), personal service may be made at a person’s place of usual abode with someone of suitable age and discretion who resides therein.¹ A judgment entered without proper service of the summons and complaint is void for lack of jurisdiction.²
- 11 **Decision.** Staff went to considerable trouble to hire a process server to personally deliver the complaint and associated documents to Mr. Smith and The Moving Guys. Typically, the law is satisfied by personal delivery of legal documents to a co-resident of the person’s “place of usual abode.” In this instance, the process server went to Mr. Smith’s last known residence address and delivered the papers to a presumed co-resident.
- 12 The Commission cannot enter a valid default order when a party has not been properly notified of the hearing. The record, more fully developed at hearing, demonstrates that Mr. Smith no longer resided on SE Allen Road in Bellevue when the process server delivered the Commission’s complaint. As Mr. Smith’s ex-wife explained to Staff, her residence was no longer Mr. Smith’s place of usual abode.
- 13 The Commission is not satisfied that Mr. Smith or The Moving Guys was provided fair and adequate notice of last week’s hearing. Staff’s motion for entry of a default order must be denied.

¹ *Sheldon v. Fettig*, 129 Wn.2d 601, 607, 919 P.2d 1209 (1996).

² *Vukich v. Anderson*, 97 Wn. App. 684, 691, 985 P.2d 952 (1999).

ORDER

14 THE COMMISSION ORDERS That Commission Staff's motion to hold The Moving Guys in default is denied.

DATED at Olympia, Washington, and effective April 29, 2013.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

ADAM E. TOREM
Administrative Law Judge

***NOTICE TO PARTIES:* This is an Interlocutory Order of the Commission. Administrative review may be available through a petition for review, filed within 10 days of the service of this Order pursuant to WAC 480-07-810(3).**

One copy of any such petition 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 must be filed by mail delivery to:

Attn: Steven V. King, Acting Executive Director and Secretary
Washington Utilities and Transportation Commission
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