

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of Determining the Proper
Carrier Classification of, and Complaint
for Penalties Against

MOVING ART CORPORATION

DOCKET TV-180844

ORDER 02

INITIAL ORDER CLASSIFYING
RESPONDENT AS HOUSEHOLD
GOODS CARRIER; ORDERING
RESPONDENT TO CEASE AND
DESIST; IMPOSING AND SUSPENDING
PENALTIES ON CONDITION OF
FUTURE COMPLIANCE

BACKGROUND

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, Moving Art Corporation (Moving Art or Company) will be assessed a financial penalty in the amount of \$5,000 for two (2) violations of RCW 81.80.075(1). A \$4,750 portion of the penalty will be suspended for a period of two years from the date of this order, then waived, subject to the condition that Moving Art refrains from further operations as a household goods carrier without first obtaining the required permit from the Utilities and Transportation Commission (Commission). In addition, if this Initial Order becomes final, Moving Art will be classified as a household goods carrier and required to permanently cease and desist from operating as a household goods carrier without first obtaining a permit from the Commission.*

- 1 **Nature of Proceeding.** The Commission initiated this special proceeding to determine if Moving Art 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 October 17, 2018, 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 Moving Art 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 Artur Dubonosov, Company owner, or a Company representative to appear before the Commission at a special proceeding scheduled to convene at 9 a.m. on November 13, 2018, 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 **Hearing.** On November 13, 2018, the hearing convened as scheduled in Olympia, Washington, before Administrative Law Judge Laura Chartoff.

4 **Appearances.** Brian Braun, Compliance Investigator, Olympia, Washington, represents the Commission's regulatory staff (Commission Staff).¹ Artur Dubonosov, Everett, WA, represents the Company, *pro se*.

DISCUSSION

5 **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 81.80.075 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

¹ In adjudications the Commission's regulatory staff participates like any other party, while an administrative law judge or the Commissioners make the decision. To assure fairness, the Commissioners and the presiding administrative law judge do not discuss the merits of the proceeding with regulatory staff or any other party without giving notice and opportunity for all parties to participate. See RCW 34.05.455.

own motion setting forth any act or omission by a company that violates any law, or any order or rule of the Commission.

6 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: (i) willingness to comply with the provisions of RCW 81.80.070 and the rules governing household goods carriers contained in WAC 480-15 and (ii) compliance history.

7 **Stipulation Presented by Parties.** At hearing, Artur Dubonosov, owner, agreed that Moving Art has been operating as a household goods carrier in the state of Washington without the required permit. The Company offered to transport household goods on at least one occasion and also advertised to transport household goods on at least one occasion.

8 Mr. Dubonosov has agreed to permanently shut down and cease operations as a household goods carrier, as defined by WAC 480-15, without first obtaining a permit from the Commission.

9 **Penalties.** Under RCW 81.04.075(4), Commission Staff is authorized to seek a penalty of up to \$10,000 against the Company. Based upon the above-noted stipulation, Staff now seeks a lesser penalty of \$5,000 and, on the condition that the Company honors its pledge of compliance by maintaining a permit from the Commission, seeks to have \$4,500 of the penalty suspended for two years, then waived.

10 At the hearing, Mr. Dubonosov requested that the penalty be further reduced. Mr. Dubonosov testified that he did not receive the initial compliance letter from Commission Staff explaining that he must cease and desist operating as a household goods carrier unless and until he obtains a permit from the Commission. Mr. Dubonosov claimed that had he known he needed a permit to operate lawfully, he would have immediately ceased operating upon learning his activities were prohibited. Mr. Dubonosov further testified that a \$500 penalty would create a financial hardship because his wife recently had a baby.

11 We agree with Staff's recommendation that the Commission should impose a \$5,000 penalty for two violations, which is consistent with how the Commission treats similarly situated companies. We also agree with Staff that the Company's compliance history is a negative factor, making a suspended penalty appropriate as a tool to ensure Mr.

Dubonosov does not re-enter the household goods moving business without first obtaining the required permit. We find, however, that several factors weigh in favor of suspending a larger portion of the penalty than originally recommended by Staff. First, these are first-time violations. Second, Mr. Dubonosov credibly testified that he did not receive the original cease and desist letter and was unaware that he needed a permit. Finally, Mr. Dubonosov testified that a \$500 penalty would be a hardship at this time. Under these circumstances, we conclude that requiring the Company to pay a \$250 portion of the penalty and suspending a \$4,750 portion of the penalty will sufficiently penalize the Company's conduct while providing a strong incentive to comply with Commission rules in the future.

- 12 Accordingly, we require Moving Art to pay the \$250 portion of the penalty that is not suspended in \$50 installments over a period of five months according to the schedule set out in Appendix A to this Order. The Company is cautioned, however, that if it misses a payment due date, the entire amount of the penalty, including the \$4,750 suspended portion, will become immediately due and payable without further Commission order.

FINDINGS AND CONCLUSIONS

- 13 (1) The 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.
- 14 (2) The Commission has jurisdiction over the subject matter of this proceeding and over Moving Art.
- 15 (3) On at least one occasion, Moving Art offered to transport household goods within the state of Washington without first having obtained a household goods carrier permit from the Commission in violation of RCW 81.80.075.
- 16 (4) On at least one occasion, Moving Art advertised to transport household goods without first having obtained a household goods carrier permit from the Commission in violation of RCW 81.80.075.
- 17 (5) Moving Art should be ordered to immediately cease and desist operations as a household goods carrier within the state of Washington.
- 18 (6) Moving Art should be assessed a penalty of \$5,000 for two violations of RCW 81.80.075. A \$4,750 portion of the penalty should be suspended for a period of

two years from the date of this Order, and then waived, provided Moving Art refrains permanent from further operations as a household goods carrier in the state of Washington without first obtaining the required permit from the Commission, and provided Moving Art pays the unsuspended portion of the penalty by the due date imposed in this Order.

ORDER

THE COMMISSION ORDERS:

- 19 (1) Moving Art is classified as a common carrier of household goods within the state of Washington.
- 20 (2) Moving Art is ordered to immediately cease and desist operations as a household goods carrier within the state of Washington.
- 21 (3) Moving Art is assessed a penalty of \$5,000. A \$4,750 portion of the penalty is suspended for a period of two years from the date of this Order, and waived thereafter, provided Moving Art refrains permanently from further operations as a household goods carrier in the state of Washington without first obtaining the required permit from the Commission.
- 22 (4) The unsuspended portion of the penalty (\$250) is due and payable subject to the payment schedule in Appendix A to this Order. If a payment is missed, the entire amount of the penalty, including the suspended portion of \$4,750, will become due and payable the day after the missed penalty was due.
- 23 (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 November 21, 2018.

LAURA CHARTOFF
Administrative Law Judge

Appendix A

Due Date	Amount
12/19/2018	\$50
01/22/2018	\$50
02/19/2018	\$50
03/19/2018	\$50
04/19/2018	\$50

If a payment is missed, the entire amount of the penalty, including the suspended portion of \$4,750, will become due and payable the day after the missed penalty was due.

NOTICE TO THE 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 480-07-825(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*. Section (3) of the rule identifies what you must include in any petition as well as other requirements for a petition. WAC 480-07-825(4) states that any party may file an *Answer* to a Petition for review within (10) days after service of the petition.

WAC 480-07-830 provides that before the Commission enters 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. The Commission will not accept answers to a petition to reopen unless the Commission requests answers by written notice.

RCW 80.01.060(3), as amended in the 2006 legislative session, 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.

Any Petition or Response must be electronically filed through the Commission's web portal as required by WAC 480-07-140(5). Any Petition or Response filed must also be electronically served on each party of record as required by WAC 480-07-140(1)(b).