

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

)	
WASHINGTON UTILITIES AND)	DOCKET TV-070647
TRANSPORTATION COMMISSION,)	
)	ORDER 01
Complainant,)	
)	
v.)	INITIAL ORDER CANCELING
)	CARRIER PERMIT; DEFAULT
BOOTS, INC.)	ORDER
d/b/a BROOKS A & A MOVING,)	
)	
Respondent.)	
)	
.....)	

1 ***Synopsis.** This is an Administrative Law Judge’s Initial Order that is not effective unless approved by the Commission or allowed to become effective pursuant to the Notice at the end of this Order. If this Initial Order becomes final, the Commission will find Boots, Inc., in default for failing to appear at the hearing. In addition, if this Order becomes final, the Commission will cancel Boots’ carrier permit, requiring the company to cease and desist from operating as a household goods carrier in the state of Washington.*

I. INTRODUCTION

2 **Nature of the Proceeding.** The Washington Utilities and Transportation Commission (Commission) instituted this proceeding under RCW 81.04.110 in response to a Complaint filed by Commission Staff alleging that Boots, Inc. (Boots), had failed to comply with the terms of Order 03, the Final Order Suspending Authority and Assessing Penalties for Violation of Commission Rules and Tariff 15-A (Order 03) in Docket TV-060885 (Final Order).

3 **Procedural History.** On April 6, 2007, using both certified mail and first class mail, the Commission served a Complaint and Order to Show Cause Why Permit Should Not be Canceled (Complaint and Show Cause Order) as well as a Notice of Hearing on Boots and its owner, Richard Brooks, at the company’s business address (14931 22nd Avenue West, Lynnwood, WA 98037), to initiate this proceeding under RCW 81.04.110.

- 4 On due and proper notice, the Commission convened a hearing on June 27, 2007, in Olympia, Washington, before Administrative Law Judge Adam E. 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 Boots had failed to comply with the Commission's Final Order.
- 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. Commission Staff supported its motion with a Declaration from Ms. Lisa Wyse confirming service of the Complaint and Show Cause Order on Boots. Based on the failure of Boots to appear or otherwise respond to the Notice of Hearing, the presiding Administrative Law Judge granted Commission Staff's request to enter a default order and to allow for presentation of its case.
- 6 In presenting its prima facie case in chief, Commission Staff provided a short opening statement and then presented the testimony of one witness, Ms. M. Carlene Hughes. Staff also provided a brief summary closing argument.
- 7 **Initial Order.** The presiding administrative law judge finds Boots in default pursuant to RCW 34.05.440(2) and WAC 480-07-450(1). Further, the presiding administrative law judge finds that Boots failed to comply with the Final Order in Docket TV-060885. Finally, the presiding administrative law judge orders that Boots' carrier permit be canceled and that the company cease and desist from all future operations as a household goods carrier in Washington State.
- 8 **Appearances.** Jennifer Cameron-Rulkowski, Assistant Attorney General, Olympia WA, represents Commission Staff. No one appeared for Boots.

II. MEMORANDUM

A. Default

- 9 The Complaint and Order to Show Cause 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 the Commission may find a party in default if the party fails to appear at the time and place set for a hearing.

- 10 Prior to the hearing, the Commission had served Boots with the Complaint and Show Cause Order by both regular mail and certified mail. Service by mail is complete upon deposit in the United States mail. *RCW 34.05.010(19); WAC 480-07-150(8)(a)*. Here, the Commission accomplished service on April 6, 2007, by both regular mail and certified mail to Boots’ business address in Lynnwood, WA. Although the certified mail was returned to the Commission as “unclaimed,” the regular mail was not returned to the Commission. *See* Exhibit 1, Declaration of Lisa Wyse.
- 11 Neither Mr. Brooks nor any other representative from Boots made contact with the Commission or Commission Staff in response to the service of the Complaint and the Show Cause Order on April 6, 2007.
- 12 Carlene Hughes, Transportation Program Coordinator for the Business Practices Investigations Section of the Commission, telephoned Boots on June 7, 2007. She spoke to a man identifying himself as “Crawford” who indicated that Mr. Brooks was aware of the hearing scheduled for June 27, 2007. Ms. Hughes was unable to speak directly with Mr. Brooks. However, she confirmed that the company’s address remained the same as that listed in the Complaint.
- 13 **Decision.** Boots was properly and legally served with the Complaint and Show Cause Order and provided due and proper notice of the June 27, 2007, hearing. Boots did not appear at the hearing and is hereby held in default.
- 14 RCW 34.05.440(3) states: “Within seven days after service of a default order under subsection (2) of this section ... the party against whom it was ordered may file a written motion requesting that the order be vacated, and stating the grounds relied upon.” A notice appearing at the end of this order provides instructions for filing such a motion with the Commission.

B. Failure to Comply with Final Order in Docket TV-060855.

- 15 On May 26, 2006, the Commission issued a Complaint against Boots in Docket TV-060885 alleging numerous violations of statute, rule, and Tariff 15-A, including unlawful collection of sales taxes from company customers. On July 17, 2006, Boots appeared at a hearing before the Commission and responded to these allegations. On January 26, 2007, the Commission issued a Final Order Suspending Authority and Assessing Penalties for Violations of Commissions Rules and Tariff 15-A.
- 16 The Final Order in Docket TV-060855 suspended Boots' permit for a period of 90 days, required the company to pay a number of penalties totaling \$93,000 within 30 days, required the company to refund unlawfully collected sales taxes and other fees to affected customers within six months, and required the company to consult with Commission Staff in developing a procedure to issue those refunds. The Final Order required that the refund procedure be reduced to a written agreement between Commission Staff and Boots and signed by the Executive Secretary within 30 days.
- 17 On February 9, 2007, Commission Staff sent a letter addressed to Mr. Brooks and Boots seeking to begin working with the company to develop the refund process required by the Final Order. The letter details two previous attempts made to contact Mr. Brooks by telephone earlier in February 2007 and the absence of any return contact from Mr. Brooks.¹
- 18 On February 26, 2007, Commission Staff sent a letter to the Executive Secretary as a status report on Docket TV-060855. The letter explained that 30 days had elapsed since issuance of the Final Order and Staff had been unable to make contact with Mr. Brooks. A courtesy copy of this letter was sent to Boots.²
- 19 Ms. Carlene Hughes testified that, as of June 27, 2007, neither Mr. Brooks nor any other representative of Boots had submitted any funds to the Commission as payment of the penalties established in the Final Order in Docket TV-060855.
- 20 Ms. Carlene Hughes further testified that, as of June 27, 2007, Boots had not submitted any proposal on how to implement the refunds required by the Final Order in Docket TV-060855.

¹ The presiding ALJ took official notice of this letter under WAC 480-07-495(2).

² The presiding ALJ also took official notice of this letter under the same authority.

21 Ms. Carlene Hughes testified that, as of June 27, 2007, Mr. Brooks had not made contact with anyone at the Commission since issuance of the Final Order in Docket TV-060855 in late January, 2007. She also noted that Boots had not filed its required Annual Report on or after the deadline of May 1, 2007.

22 The evidence in this matter unquestionably demonstrates that Boots has not complied with the terms of the Final Order in Docket TV-060855. Boots has not paid any portion of the \$93,000 in penalties assessed. Further, no evidence exists to demonstrate that Boots has refunded any of the unlawfully collected sales taxes or fees to its affected customers. Finally, Boots has not made contact with Commission Staff to develop an agreed procedure to issue those refunds, nor has the company responded whatsoever to multiple invitations from Staff to meet and set about developing such a process.

23 **Decision.** Boots has failed to comply with the Final Order in Docket TV-060855.

III. FINDINGS OF FACT

24 (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 the public roads of the state of Washington.

25 (2) The Final Order in Docket TV-060855 required Boots, a household goods carrier, to, among other things: (a) pay penalties totaling \$93,000, (b) refund unlawfully collected sales taxes and other fees to affected customers, and (c) work with Commission Staff to develop an agreed procedure to issue those refunds.

26 (3) Boots failed to remit any funds to the Commission as payment of the penalties assessed. Boots also failed to make any refunds to its customers as required by the Final Order in Docket TV-060855. Finally, Boots did not work with Commission Staff to develop a process for the refunds.

27 (4) Boots failed to appear at the hearing convened on June 27, 2007, pursuant to notice that was properly served.

- 28 (5) The record in this proceeding demonstrates that neither Boots nor Mr. Brooks has made any effort to comply with the Final Order in Docket TV-060855.

IV. CONCLUSIONS OF LAW

- 29 (1) The Commission has jurisdiction over the subject matter of this proceeding and over Boots pursuant to RCW 81.04.110, RCW 81.80 and WAC 480-15.
- 30 (2) The Commission is authorized under WAC 480-15-130 to enforce statutes, rules, and its own orders relating to household goods carriers.
- 31 (3) Boots is in violation of the Commission's Final Order in Docket TV-060855 by failing to comply with the terms of the Final Order.
- 32 (4) Pursuant to RCW 34.05.440(2), Boots is held in default for failing to appear at the June 27, 2007, hearing. Boots has failed to show cause why the Commission should not cancel its household goods carrier permit.
- 33 (5) Good cause exists under WAC 480-15-450 to cancel Boots' permit due to Boots' failure to correct conditions that led to the suspension of its permit and failure to supply information requested by the Commission as necessary for performance of the Commission's regulatory duties.
- 34 (6) The Commission is directed to cancel Boots' permit and order the respondent to cease and desist from conducting operations requiring permit authority unless or until Boots complies with the terms of the Final Order in Docket TV-060855 and the required authority is newly obtained from the Commission.

V. ORDER

THE COMMISSION ORDERS That:

- 35 (1) The respondent, Boots, Inc., is held in default.
- 36 (2) Boots, Inc.'s, permit and operating authority are cancelled for good cause.

- 37 (3) Boots, Inc., shall cease and desist from all operations in this state requiring permit authority under RCW 81.80 unless and until it complies with all terms of the Final Order in Docket TV-060855 and obtains anew all required permit authority from the Commission.

Dated at Olympia, Washington, and effective July 23, 2007.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

ADAM E. TOREM
Administrative Law Judge

NOTICE TO THE PARTIES

The actions proposed in this Default Order are not effective until the Utilities and Transportation Commission enters a final order or this Default Order becomes final by operation of law under RCW 80.01.060(3). If you disagree with this Default Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below.

Pursuant to RCW 34.05.440(3), within seven (7) days after service of this Default Order, which is entered pursuant to RCW 34.05.440(2), any party against whom it is ordered may file with the Commission a written motion that the order be vacated. The moving party must state in the motion the grounds relied upon for vacating the order.

If no written motion is timely filed, the actions proposed in this Initial Order, including direction to cease and desist, will become final by operation of law. Under the proposed order to cease and desist, the defaulting party is prohibited from operating motor vehicles for transportation of property for compensation, i.e., operating as a household goods carrier, on the public highways of the state of Washington without the necessary permit authority required for such operations by RCW 81.80.070.

A written motion that the order be vacated must be hand-delivered to the Commission's Records Center or mailed to:

Attn: Carole J. Washburn, Executive Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, Washington 98504-7250

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*. 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 (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 does not exercise administrative review on its own motion. You will be notified if this order becomes final.

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 eight copies of any Petition or Answer must be filed by mail delivery to:

Attn: Carole J. Washburn, Executive Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, Washington 98504-7250