

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Investigation of

JESUS E. ALVARADO D/B/A 2
BROTHERS MOVING SERVICES

For Compliance with WAC 480-15-560
and WAC 480-15-570

DOCKET TV-190573

ORDER 01

CANCELLING HOUSEHOLD
GOODS PERMIT; DEFAULT
ORDER

BACKGROUND

- 1 On July 15, 2019, the Washington Utilities and Transportation Commission (Commission) issued a Notice of Intent to Cancel Permit as a Household Goods Carrier; Notice of Brief Adjudicative Proceeding; Setting Time for Oral Statements in the Matter of the Investigation of Jesus E. Alvarado d/b/a 2 Brothers Moving Services (2 Brothers Moving or Company) for Compliance with WAC 480-15-560 and WAC 480-15-570. The Commission scheduled the brief adjudicative proceeding on its own initiative to determine whether it should cancel 2 Brothers Moving's household goods carrier permit. The notice scheduled the brief adjudicative proceeding for August 22, 2019, at 9:30 a.m., and stated that any party who failed to attend or participate in the hearing may be held in default.
- 2 On August 22, 2019, the Commission convened a brief adjudicative proceeding before Administrative Law Judge Laura Chartoff. Commission staff (Staff) was the only party that appeared at the hearing. As such, Staff moved for default pursuant to RCW 34.05.440 and WAC 480-07-450, and requested that it be allowed to present evidence. Judge Chartoff granted Staff's request to enter a default order and allowed Staff to go forward with its case.
- 3 Staff first presented the testimony of Edward Steiner, Motor Carrier Safety Investigator. Mr. Steiner testified that in June 2019, he conducted an investigation of 2 Brothers Moving's compliance with safety requirements in WAC 480-15. As a result of the safety investigation, Mr. Steiner documented the following critical safety violations:

- Two violations of 49 C.F.R. § 392.2 for failing to investigate two employees' criminal backgrounds as required by WAC 480-15-555;
- Eight violations of 49 C.F.R. § 395.8(a)(1) for failing to require a driver to prepare a record of duty status using the appropriate method;
- One violation of 49 C.F.R. § 391.51(a) for failing to maintain a driver qualification file for each driver employed;
- One violation of 49 C.F.R. § 396.3(b) for failing to keep minimum records of inspection and vehicle maintenance; and
- One violation of 49 C.F.R. § 396.17(a) for using a commercial motor vehicle not periodically inspected.

4 Mr. Steiner testified that on June 26, 2019, he advised the Company that the safety investigation resulted in a proposed conditional safety rating. He further explained that the Company submitted an initial safety management plan that Staff reviewed and determined was not sufficient. Mr. Steiner stated that Staff sent needed changes to the Company and that the Company failed to return the safety management plan with the changes.

5 Jason Sharp, Motor Carrier Safety Supervisor, also testified for Staff. Mr. Sharp explained how the violations resulted in a proposed conditional rating.

6 Joe Dallas, Assistant Attorney General, Lacey, Washington, represents Staff.

DISCUSSION AND DECISION

A. Default.

7 When a party to a hearing fails to appear at the time and place set for hearing, the Commission may dismiss the party or find them in default.¹ The Commission must

¹ RCW 34.05.440(2); WAC 480-07-450(1).

implement any dismissal or default by written order served upon all parties, and the order may also dispose of the issues in the proceeding.²

8 At the hearing, Staff moved that 2 Brothers Moving be held in default for failing to appear. Commission records show that 2 Brothers Moving was served the complaint and notice of the hearing by email at the Company's email address of record, and that 2 Brothers Moving failed to appear or otherwise respond to the complaint by the date of the hearing. Electronic service is sufficient for commencing adjudicative proceedings against regulated companies.³ Because 2 Brothers Moving was properly served notice of the hearing and failed to appear, we find 2 Brothers Moving in default.

9 2 Brothers Moving may contest this order of default by written motion. WAC 480-07-450(2) states: "A party who is . . . found in default may contest the order of . . . default by written motion filed within ten days after service of the order. A . . . 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 motion with the Commission.

B. Household Goods Carrier Permit

10 Washington law requires household goods carriers to comply with federal safety requirements and undergo routine safety inspections. The Commission may cancel a household goods carrier permit if the carrier fails to comply with applicable laws and commission rules pertaining to operation of household carriers, including safety requirements set in law or rule. WAC 480-15-450(1)(e).

11 2 Brothers Moving received notice of its proposed conditional safety rating on June 26, 2019. A carrier may request a change in its safety rating based on evidence that the Company has taken corrective actions to address the identified violations and currently meets the safety fitness standard. Carriers that receive a proposed conditional safety rating have 60 days to request and receive a change to the proposed rating before the proposed rating becomes final. 2 Brothers Moving's deadline for requesting and receiving an upgrade to its safety rating was August 25, 2019.

² *Id.*

³ WAC 480-07-150(4); *See also* General Order 588 – Final Adoption Order – WSR 17-06-051, Docket A-130355 ¶16 and Appendix A (March 2, 2017)

12 2 Brothers Moving submitted a proposed safety management plan that Staff reviewed and determined was not sufficient. Staff then requested changes to the plan and the Company failed to return the proposed safety management plan with changes. Based on the testimony and evidence presented at the hearing, the Commission finds that the Company failed to take corrective action to address the violations within the 60-day time period provided by federal law. Accordingly, the Commission finds good cause to cancel the Company's household goods carrier certificate effective August 26, 2019, for failing to comply with applicable laws and Commission rules pertaining to operations of household goods carriers, including safety requirements set in law or rule. 2 Brothers Moving must cease and desist all operations, including advertising and offering its services, unless and until the Company's permit is reinstated or the Company applies for and obtains a new permit from the Commission.

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 2 Brothers Moving.
- 15 (3) On June 26, 2019, Staff concluded its compliance review of 2 Brothers Moving that resulted in a proposed conditional safety rating based on the following critical violations:
- Two violations of 49 C.F.R. § 392.2 for failing to investigate two employees' criminal backgrounds as required by WAC 480-15-555;
 - Eight violations of 49 C.F.R. § 395.8(a)(1) for failing to require a driver to prepare a record of duty status using the appropriate method;
 - One violation of 49 C.F.R. § 391.51(a) for failing to maintain a driver qualification file for each driver employed;
 - One violation of 49 C.F.R. § 396.3(b) for failing to keep minimum records of inspection and vehicle maintenance; and

- One violation of 49 C.F.R. § 396.17(a) for using a commercial motor vehicle not periodically inspected.
- 16 (4) 2 Brothers Moving failed to cure the deficiencies that led to its proposed conditional safety rating within 60 days, as required. Accordingly, 2 Brothers Moving's household goods carrier certificate should be cancelled.
- 17 (5) The Commission should order 2 Brothers Moving to cease and desist from conducting operations requiring permit authority unless or until its permit is reinstated or it applies for and obtains a new permit from the Commission.
- 18 (6) 2 Brothers Moving is held in default for failing to appear at the August 22, 2019, hearing.

ORDER

THE COMMISSION ORDERS:

- 19 (1) Jesus E. Alvarado d/b/a 2 Brothers Moving Services is held in default. Should Jesus E. Alvarado d/b/a 2 Brothers Moving Services fail to respond to this Order by filing a written motion within ten (10) days requesting that this Order be vacated pursuant to WAC 480-07-450(2), the default in this proceeding shall become final.
- 20 (2) Jesus E. Alvarado d/b/a 2 Brothers Moving Services' household goods carrier permit THG-063594 is cancelled, effective immediately.
- 21 (3) Jesus E. Alvarado d/b/a 2 Brothers Moving Services must cease and desist all operations associated with this permit unless or until its permit is reinstated or it applies for and obtains a new permit from the Commission.
- 22 (4) The Commission retains jurisdiction over the subject matter and the parties to this proceeding to effectuate the terms of this Order.

DATED at Lacey, Washington, and effective August 26, 2019.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ Laura Chartoff

LAURA CHARTOFF

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)(a) provides that any party to this proceeding has twenty-one (21) days after the entry of this Initial Order to file a *Petition for 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(2)(b). WAC 480-07-825(2)(c) states that any party may file a *Response* 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.

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).