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2 BEFORE THE WASHINGTON

3 UTILITIES AND TRANSPORTATION COMMISSION

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In the Matter of the ) Docket TV-190573

6 Investigation of: )

)

7 JESUS E. ALVARADO, )

)

8 D/B/A 2 BROTHERS MOVING )

SERVICES )

9 )

For Compliance with )

10 WAC 480-15-560 )

and WAC 480-15-570 )

11

12 BRIEF ADJUDICATIVE PROCEEDING, VOLUME I

13 Pages 1 - 16

14 ADMINISTRATIVE LAW JUDGE LAURA CHARTOFF

15

16 August 22, 2019

17 9:30 a.m.

18 Washington Utilities and Transportation Commission

621 Woodland Square Loop Southeast

19 Lacey, Washington

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23 REPORTED BY: CRYSTAL R. McAULIFFE, RPR, CCR 2121

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1 A P P E A R A N C E S

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3 ADMINISTRATIVE LAW JUDGE:

4 LAURA CHARTOFF

Utilities and Transportation

5 Commission

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12 ALSO PRESENT:

Jason Sharp

13 Motor Carrier Safety

Supervisor

14

EDWARD STEINER

15 Special Investigator,

Transportation Safety

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1 EXAMINATION INDEX

2

3 EDWARD STEINER PAGE

By Mr. Dallas . . . . . . . . . . . . . 8

4

JASON SHARP

5 By Mr. Dallas . . . . . . . . . . . . . 12

6 PROCEEDINGS INDEX

7

Opening Statement by Mr. Dallas . . . . . 5

8 Closing Statement By Mr. Dallas . . . . . 14

Judge Chartoff's Decision . . . . . 15

9

10 EXHIBIT INDEX

11 EXHIBITS FOR ADMISSION PAGE

12 ES-1 Compliance Review Report 9

13

14

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LACEY, WASHINGTON; AUGUST 22, 2019

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9:30 A.M.

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PROCEEDINGS

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5 JUDGE CHARTOFF: Okay. All right. Let's be

6 on the record. Good morning. This is Docket TV-190573,

7 which is captioned In the Matter of the Investigation of

8 Jesus E. Alvarado, doing business as 2 Brothers Moving

9 Services For Compliance with Washington Administrative

10 Code 480-15-560 and 480-15-570.

11 My name is Laura Chartoff. I am the

12 administrative law judge presiding over today's brief

13 adjudicative proceeding.

14 Today is Thursday, August 21, 2019, and the

15 time is approximately 9:30 a.m.

16 So let's start by taking appearances,

17 starting a short appearance from Staff.

18 MR. DALLAS: Good morning, Judge Chartoff.

19 I am Joe Dallas. I'm an Assistant Attorney General with

20 the Utilities and Transportation Division and I'm here

21 today on behalf of Commission Staff.

22 JUDGE CHARTOFF: Thank you.

23 I do not see the Company in the courtroom

24 today.

25 I'll just check the bridge line to see.

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1 Is Jesus Alvarado on the bridge line?

2 Hearing nothing, the -- the Company has failed to

3 appear.

4 How would you like to proceed?

5 MR. DALLAS: Staff asks that the Commission

6 find the Company in default under the RCW 34.05.440

7 subsection (2) and Washington Administrative Code

8 480-07-450, subsection (1).

9 The Company was properly served of this

10 Brief Adjudicative Proceeding on July 15, 2019.

11 Staff further requests that the Commission

12 proceed with this hearing to resolve the issues before

13 it today.

14 JUDGE CHARTOFF: Thank you. Okay.

15 I find Jesus E. Alvarado, doing business as,

16 2 Brothers Moving Services in default and will issue a

17 written order reflecting this finding. We will proceed

18 without the Company.

19 Mr. Dallas, you may proceed when ready.

20 OPENING STATEMENT

21 MR. DALLAS: Thank you.

22 Washington Administrative Code 480-15-450

23 provides that the Commission may counsel a household

24 goods carrier permit and operating authority for good

25 cause including where the carrier fails to apply with

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1 the safety of requirements.

2 In June 2019 Staff completed a compliance

3 review where 14 safety violations were documented.

4 On June 26, 2019, Staff notified the Company

5 of it's proposed continual safety rating as a result of

6 this compliance review.

7 On July 15, 2019, the Commission issued a

8 notice of intent to cancel the Company's permit due to

9 this proposed rating change pursuant to

10 49 CFR Section 358.13 which the Commission has adopted

11 by rule.

12 In this notice the Commission stated that it

13 intends to cancel the Company's household goods carrier

14 permit effective August 26, 2019, unless the Company can

15 obtain Commission approval of a safety management plan

16 prior to that date.

17 As of this hearing, the Company has not

18 provided an adequate safety management plan to Staff for

19 Staff to recommend approval to the Commission.

20 It is Staffs' intention to continue working

21 to develop an adequate safety management plan for

22 Commission approval if the Company requests Staffs'

23 assistance.

24 For the purposes of this hearing today Staff

25 intends to present sufficient evidence to prove the

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1 safety violations set forth in the notice of proposed

2 rating change and notice of intent to cancel.

3 Staff intends to present this evidence

4 through the testimony of Edward Steiner and Jason Sharp

5 who are seated next to me.

6 This evidence will show that Staff

7 documented 14 safety violations as a result of its

8 compliance investigation and, thereafter, assess these

9 violations in light of the six enumerated factors in

10 49 CFR 387.7 and proposed an overall safety rating of

11 "conditional."

12 Mr. Steiner will testify as to the 14

13 documented violations and Mr. Sharp will testify as to

14 why Staff proposed a conditional safety rating in light

15 of these 14 documented violations.

16 At this time, I would call Mr. Steiner to

17 testify.

18 JUDGE CHARTOFF: Okay. Mr. Steiner, please

19 stand and raise your right hand.

20 Do you swear or affirm that the testimony

21 you give today is the truth, the whole truth, and

22 nothing but the truth?

23 MR. SHARP: Yes, I do.

24 JUDGE CHARTOFF: Thank you.

25 /////

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1 EDWARD STEINER, witness herein, having been

2 first duly sworn on oath, was

3 examined and testified as

4 follows:

5

6 E X A M I N A T I O N

7 BY MR. DALLAS:

8 Q. Mr. Steiner, would you please state your name

9 and spell your last name for the record?

10 A. Edward Steiner, S-t-e-i-n-e-r.

11 Q. And what is your current occupation?

12 A. I am a safety compliance investigator.

13 Q. And how long have you been in that position?

14 A. A little over two years.

15 Q. And what does that position involve?

16 A. Position involves conducting safety compliance

17 investigations on regulated companies.

18 Q. Mr. Steiner, are you familiar with the matter

19 involving 2 Brothers Moving?

20 A. Yes, I am.

21 Q. And how are you involved?

22 A. I completed the safety investigation on the

23 Company.

24 Q. I am showing you a document identified as

25 proposed Exhibit ES-1.

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1 MR. DALLAS: Judge, I provided two copies of

2 the proposed exhibit on the bench, if you would like to

3 follow along.

4 BY MR. DALLAS:

5 Q. Mr. Steiner, what is Exhibit ES-1?

6 A. This is the Safety Compliance Review Report.

7 Q. And how are you familiar with this exhibit?

8 A. I completed this report.

9 Q. And do you agree with the information contained

10 within this exhibit?

11 A. Yes, I do.

12 Q. Do you believe it's correct and truthful?

13 A. Yes, I do.

14 Q. Do you have any changes you would like to make

15 to this exhibit?

16 A. No.

17 MR. DALLAS: Judge, at this time I'd offer

18 proposed Exhibit ES-1 into evidence?

19 JUDGE CHARTOFF: The exhibit marked ES-1 is

20 admitted.

21 (Exhibit No. ES-1 marked.)

22 BY MR. DALLAS:

23 Q. Mr. Steiner, I'd like to ask some questions of

24 Exhibit ES-1. Could you please reference pages 3 and 4

25 of the exhibit?

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1 Could you please explain what these two pages

2 consist of?

3 A. These pages consist of the violations that were

4 discovered during the safety compliance review of the

5 Company.

6 Q. And how many total violations did you document

7 in your compliance review?

8 A. Total of 14.

9 Q. And how many different violation types did you

10 discover?

11 A. A total of five.

12 Q. I would like to go over these five violation

13 types you discovered during your compliance review.

14 I will be going through them in chronological

15 order starting from the top of page 3 of Exhibit ES-1.

16 Could you please explain -- I mean, could you

17 please discuss the violation of WAC 480-15-555?

18 A. Yes. This violation requires the Company to

19 complete criminal background checks on all employees,

20 which they failed to do. And this is a critical listed

21 violation.

22 Q. Could you please explain the violations of

23 49 CFR 395.8 subsection (a) subsection (1)?

24 A. This violation requires the Company to complete

25 records of duty status for their drivers, which they

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1 failed to do. This is also a critical violation.

2 Q. Could you please explain the violations of

3 49 CFR 391.51 subsection (a)?

4 A. The Company is required to maintain driver

5 qualification files on their drivers, which they failed

6 to do.

7 Q. Could you please explain the violations of

8 49 CFR 396.3 subsection (b)?

9 A. This requirement requires the Company to

10 maintain vehicle maintenance and inspection records,

11 which they failed to do.

12 Q. And lastly, could you please explain the

13 violations of 49 CFR 396.17(a)?

14 A. The Company's required to complete a periodic

15 inspection annually, which they failed to do.

16 Q. And have you worked with the Company towards it

17 completing a safety management plan?

18 A. Yes, I have.

19 Q. And can you please explain your efforts?

20 A. Yes, I've been assisting the Company in

21 completing their safety management plan, which they have

22 submitted an initial safety management plan. However,

23 it was not adequate and we needed them to make changes,

24 which they failed to return a copy that was approved.

25 Q. Thank you.

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1 MR. DALLAS: No further questions.

2 Judge, at this time I would call Mr. Sharp

3 to testify.

4 JUDGE CHARTOFF: Okay. Thank you.

5 Okay. Mr. Sharp, do you swear or affirm

6 that the testimony you give today is the truth, the

7 whole truth, and nothing but the truth?

8 MR. SHARP: I do.

9 JUDGE CHARTOFF: Thank you. Please be

10 seated.

11 JASON SHARP, witness herein, having been

12 first duly sworn on oath, was

13 examined and testified as

14 follows:

15 E X A M I N A T I O N

16 BY MR. DALLAS:

17 Q. Mr. Sharp, would you please state your name and

18 spell your last name for the record?

19 A. Jason Sharp, S-h-a-r-p.

20 Q. And what is your current occupation?

21 A. I am the Motor Carrier Safety Supervisor at the

22 Utilities and Transportation Commission.

23 Q. And how long have you been in that position?

24 A. Just under two years now.

25 Q. And can you please describe what your position

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1 involves?

2 A. Yes. I oversee the assignments. Assign motor

3 carrier investigations to our motor carrier

4 investigator's team. I review the reports and

5 violations associated with them and issued

6 recommendations based on their findings.

7 Q. Thank you.

8 Mr. Sharp, I'm handing you Exhibit ES-1. Could

9 you please reference pages 13 and 14 of the exhibit?

10 A. Okay.

11 Q. Can you explain what these two pages consist of?

12 A. These pages laid out the explanation for how the

13 Company received its proposed conditional safety rating.

14 It incorporates six factors as established by the

15 Federal Motor Carrier Safety Administration, which the

16 compliance review process is adopted through

17 reference -- through WAC.

18 And this case, this explanation states that

19 2 Brothers Moving Services was found to be

20 unsatisfactory, a factor of three, which relates to

21 operational and driving regulations.

22 And, therefore, on page 14, there is a formula

23 to calculate the breakdown of the overall safety fitness

24 rating. And because factor three was found to be

25 unsatisfactory, the Company's overall rating was

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1 conditional.

2 Q. Thank you.

3 MR. DALLAS: No further questions.

4 JUDGE CHARTOFF: Okay. Thanks for your

5 testimony.

6 Do you care to make a closing statement?

7 MR. DALLAS: Yeah, I can make a very brief

8 one.

9 JUDGE CHARTOFF: Okay.

10

11 C L O S I N G S T A T E M E N T

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13 MR. DALLAS: Staff has submitted sufficient

14 evidence to prove that the Company has committed 14

15 safety violations and it's proposed conditional safety

16 rating.

17 Although it is Staffs' intention to continue

18 working with the Company to submit an adequate safety

19 management plan, Staff recommends that the Commission

20 cancel the Company's permit if it does not receive

21 Commission approval of a safety management plan prior to

22 August 26, 2019, pursuant to the notice of intent to

23 cancel that was served on July 15, 2019.

24 Thank you.

25 JUDGE CHARTOFF: Okay. Okay. So I find

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1 that Staff has proven the factual allegations and the

2 notice of intent to cancel and that the Company has not

3 obtained Commission approval of the safety management

4 plan. Therefore, I will order that the Commission will

5 cancel the permit and authority of Jesus E. Alvarado,

6 doing business as, 2 Brothers Moving to provide service

7 as a household goods carrier effective of August 26,

8 2019, unless they come into compliance by Monday,

9 August 26, 2019. And I will issue an order shortly to

10 that effect.

11 Anything else before we go off the record?

12 MR. DALLAS: No. Thank you, Your Honor.

13 JUDGE CHARTOFF: Okay. We are adjourned.

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15 (Adjourned at 9:46 a.m.)

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2 C E R T I F I C A T E

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5 STATE OF WASHINGTON )

) ss.

6 COUNTY OF KITSAP )

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8 I, CRYSTAL R. McAULIFFE, a Certified Court Reporter

9 in and for the State of Washington, do hereby certify

10 that the foregoing transcript of the Brief Adjudicative

11 Proceeding on AUGUST 22, 2019, is true and accurate to

12 the best of my knowledge, skill and ability.

13 IN WITNESS WHEREOF, I have hereunto set my hand and

14 seal this 28th day of August, 2019.

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CRYSTAL R. McAULIFFE, RPR, CCR 2121

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