

Docket No. TV-190573 - Vol. I

**In the Matter of Jesus E. Alvarado d/b/a 2 Brothers
Moving Service**

August 22, 2019



206.287.9066 | 800.846.6989

1325 Fourth Avenue, Suite 1840, Seattle, Washington 98101

www.buellrealtime.com

email: info@buellrealtime.com



BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the) Docket TV-190573
Investigation of:)
)
JESUS E. ALVARADO,)
)
D/B/A 2 BROTHERS MOVING)
SERVICES)
)
For Compliance with)
WAC 480-15-560)
and WAC 480-15-570)

BRIEF ADJUDICATIVE PROCEEDING, VOLUME I
Pages 1 - 16
ADMINISTRATIVE LAW JUDGE LAURA CHARTOFF

August 22, 2019

9:30 a.m.

Washington Utilities and Transportation Commission
621 Woodland Square Loop Southeast
Lacey, Washington

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

Page 2

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S

ADMINISTRATIVE LAW JUDGE:

LAURA CHARTOFF
Utilities and Transportation
Commission
621 Woodland Square Loop SE
Lacey, Washington 98503
(360) 664-1139
laura.chartoff@utc.wa.gov

FOR COMMISSION STAFF:

JOE DALLAS
Assistant Attorney General
PO Box 40128
Olympia, Washington 98504
(360)664-1192
joe.dallas@utc.wa.gov

ALSO PRESENT:

Jason Sharp
Motor Carrier Safety
Supervisor

EDWARD STEINER
Special Investigator,
Transportation Safety

* * * * *

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
9 Judge Chartoff's Decision 15

9

10 EXHIBIT INDEX

11 EXHIBITS FOR ADMISSION PAGE

12 ES-1 Compliance Review Report 9

13

14

15

16

17

18

19

20

21

22

23

24

25

Page 4

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

LACEY, WASHINGTON; AUGUST 22, 2019

9:30 A.M.

PROCEEDINGS

JUDGE CHARTOFF: Okay. All right. Let's be on the record. Good morning. This is Docket TV-190573, which is captioned In the Matter of the Investigation of Jesus E. Alvarado, doing business as 2 Brothers Moving Services For Compliance with Washington Administrative Code 480-15-560 and 480-15-570.

My name is Laura Chartoff. I am the administrative law judge presiding over today's brief adjudicative proceeding.

Today is Thursday, August 21, 2019, and the time is approximately 9:30 a.m.

So let's start by taking appearances, starting a short appearance from Staff.

MR. DALLAS: Good morning, Judge Chartoff. I am Joe Dallas. I'm an Assistant Attorney General with the Utilities and Transportation Division and I'm here today on behalf of Commission Staff.

JUDGE CHARTOFF: Thank you.

I do not see the Company in the courtroom today.

I'll just check the bridge line to see.

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

Page 6

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

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 /////

Page 8

1 EDWARD STEINER, witness herein, having been
2 first duly sworn on oath, was
3 examined and testified as
4 follows:

5

6 EXAMINATION

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.

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?

Page 10

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 Q. 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

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.

Page 12

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

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

Page 14

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

12

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

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.

14

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

16

17

18

19

20

21

22

23

24

25

Page 16

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

STATE OF WASHINGTON)
) ss.
COUNTY OF KITSAP)

I, CRYSTAL R. McAULIFFE, a Certified Court Reporter
in and for the State of Washington, do hereby certify
that the foregoing transcript of the Brief Adjudicative
Proceeding on AUGUST 22, 2019, is true and accurate to
the best of my knowledge, skill and ability.

IN WITNESS WHEREOF, I have hereunto set my hand and
seal this 28th day of August, 2019.

CRYSTAL R. McAULIFFE, RPR, CCR 2121