

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

In the Matter of Determining the Proper	)	DOCKET TV-071670
Carrier Classification of	)	
	)	ORDER 02
DANIEL JOHN BUSBY	)	
d/b/a CAREFUL MOVERS	)	
.....	)	
	)	DOCKET TV-072234
In the Matter of the Penalty Assessment	)	
Against	)	ORDER 01
	)	
DANIEL JOHN BUSBY	)	ORDER OF CONSOLIDATION;
d/b/a CAREFUL MOVERS	)	INITIAL ORDER TO CEASE AND
	)	DESIST
.....	)	

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 Order becomes final, this Order will require Daniel John Busby, d/b/a Careful Movers, to cease and desist from operating as a household goods carrier in the state of Washington without obtaining permit authority from the Commission as required under RCW 81.80.070. Further, if this Order becomes final, this Order will require Daniel John Busby, d/b/a Careful Movers, to pay a total penalty in the amount of \$2,000, to be paid over the course of no more than twelve (12) months, in accordance with the terms of a payment plan imposed by Commission Staff.*

**I. INTRODUCTION**

2 **Nature of the Proceeding.** The Washington Utilities and Transportation Commission (Commission) instituted this proceeding under Revised Code of Washington (RCW) 81.04.510 to determine whether Daniel John Busby, d/b/a Careful Movers (Careful Movers), is 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.

3 **Appearances.** Kevin Keefe, Seattle, Washington, represents Mr. Busby and Careful Movers. Michael Fassio, Assistant Attorney General, Olympia Washington, represents the Commission’s regulatory staff (Commission Staff or Staff).<sup>1</sup>

4 **Procedural History.** On December 6, 2007, the Commission served an Order Instituting Special Proceeding, Subpoena, and Notice of Hearing on Mr. Busby at his company’s business address (12529 Highway 99, Everett, Washington 98204-5506), to initiate a classification proceeding in Docket TV-071670 under RCW 81.04.510.

5 Also on December 6, 2007, the Commission assessed a penalty in Docket TV-072234 in the amount of \$2,000 against Careful Movers for two statutory violations. First, the Commission assessed a penalty of \$1,500 for violation of RCW 81.80.070, which requires household goods carriers to obtain a permit before transporting household goods for compensation on the public highways of Washington State. Second, the Commission assessed a penalty of \$500 for violation of RCW 81.80.357, which requires a commission permit number to be listed in any advertisement of household goods moving services.

6 On December 14, 2007, Careful Movers responded timely to the Penalty Assessment and applied for mitigation of the penalty amount. Although Careful Movers’ response admitted to the violations alleged, it asked for an administrative hearing and a decision by an administrative law judge (ALJ) on this matter.

7 Due to the similar subject matter of these two dockets, the Commission determined that the cases should be heard on the same day. Therefore, on December 21, 2007, the Commission issued a Notice of Substitution of Presiding Officer and Notice Rescheduling Hearing in Docket TV-071670. On that same day, the Commission issued a Notice of Hearing in Docket TV-072234.

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<sup>1</sup> In formal proceedings, such as this, the Commission’s regulatory staff functions as an independent party with the same rights, privileges, and responsibilities as other parties to the proceeding. There is an “*ex parte* wall” separating the Commissioners and the presiding Administrative Law Judge from all parties, including regulatory Staff. *RCW 34.05.455.*

8 On due and proper notice, the Commission convened a hearing on January 15, 2008, in Olympia, Washington, before Administrative Law Judge Adam E. Torem. Commission Staff was the only party personally appearing at the hearing. Kevin Keefe, attorney for Careful Movers, appeared telephonically due to travel constraints imposed by inclement weather. Mr. Busby did not attend the hearing.

9 Commission Staff presented the testimony of one witness, Ms. Sheri Hoyt, and offered fourteen (14) exhibits in support of its case. Although Careful Movers cross-examined Ms. Hoyt, it offered no evidence of its own. Careful Movers conceded that it had committed the alleged violations but sought the hearing only to request mitigation of the penalty amount. Both Careful Movers and Commission Staff provided brief summary oral argument at the close of the hearing.

10 **Initial Order.** The Initial Order finds that Careful Movers is operating motor vehicles for transportation of property, i.e., operating as a household goods carrier, without the necessary authority. The Order requires Careful Movers to cease and desist from future unauthorized operations. In addition, the Initial Order denies Careful Movers' application for mitigation and upholds the \$2,000 penalty assessed by the Commission.

## II. MEMORANDUM

### A. Consolidation.

11 The Commission's procedural rules allow that "the commission, in its discretion, may consolidate two or more proceedings in which the facts or principles of law are related." *Washington Administrative Code (WAC) 480-07-320*.

12 At hearing, the parties agreed that the classification matter (Docket TV-071670) and the penalty assessment (Docket TV-072234) were based on the same consumer complaint and addressed the same alleged violations of RCW 81.80.070 and RCW 81.80.357. The parties agreed that it was appropriate for the Commission to consolidate the matters into a single proceeding and to issue a single order deciding both cases.

13 Docket TV-071670 and Docket TV-072234 pertain to the same facts and principles of law. Therefore, the two matters are consolidated for hearing and decision.

**B. Operating as a Household Goods Carrier Without Authority.**

- 14 The Commission regulates intra-state household goods carriers under RCW 81.80. No “common carrier” shall operate for the transportation of property for compensation in this state without first obtaining from the Commission a permit to do so. *RCW 81.80.070*. “Common carrier” means any person who undertakes to transport property for the general public by motor vehicle for compensation. *RCW 81.80.010(4)*. “Motor carrier” means and includes “common carrier.” *RCW 81.80.010(7)*. The term “household goods” means “personal effects and property used or to be used in a residence, when it is a part of the equipment or supply of such residence, and is transported between residences or between a residence and a storage facility, with the intent to later transport to a residence.” *WAC 480-15-020*.<sup>2</sup>
- 15 In addition to requiring household goods carriers to obtain a permit from the Commission before beginning operations, state law also prohibits household goods carriers from advertising their operations without first obtaining a permit and then listing the carrier’s current Commission permit number. *RCW 81.80.355*; *RCW 81.80.357(1)*.
- 16 In a proceeding initiated under RCW 81.04.510, the responding corporation has the burden of proving that its alleged operations are not subject to the provisions of RCW 81.80.070.
- 17 If the corporation is found to be operating as a household goods carrier without the necessary permit authority, the Commission is authorized and directed to enter an order requiring the corporation to cease and desist activities subject to regulation under Title 81 RCW. *RCW 81.04.510*.
- 18 The evidence in this matter unquestionably demonstrates that Careful Movers has engaged in the business of moving household goods without the necessary permit and

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<sup>2</sup> This regulatory definition was the one in effect at the time of the violations addressed in this Order. It should be noted, however, that on December 27, 2007, the Commission adopted new rules governing household goods carriers in WAC 480-15. The new definition of “household goods” now reads “The personal effects and property used, or to be used, in a residence when transported between residences or between a residence and a storage facility with the intent to later transport to a residence. Transportation of the goods must be arranged and paid for by the customer or by another individual, company or organization on behalf of the customer.”

has also advertised its operations as a household goods carrier without listing the carrier's permit number. Careful Movers concedes as much.

- 19 Ms. Sheri Hoyt, a compliance specialist with the Commission, testified concerning her investigation into the operations and business practices of Careful Movers. Ms. Hoyt prepared a summary of her investigation, with appendices documenting her investigation. *Exh. 1.*
- 20 Ms. Hoyt explained that Careful Movers previously held a household goods permit from the Commission, but that it had expired on February 9, 2006, because Careful Movers failed to file its annual report or pay its regulatory fees. *Exh. 2.*
- 21 Ms. Hoyt noted that Mr. John Foster, an investigator with the Commission, visited Careful Movers on February 15, 2006, and spoke with Mr. Busby about the canceled permit. *Exhs. 4 and 5.* Several days later, on February 21, 2006, the Commission sent Careful Movers a follow-up letter explaining that the company was “no longer permitted to haul household goods or general commodities for hire in the state of Washington” and that Careful Movers “must stop operating immediately.” *Exh. 3.*
- 22 Ms. Hoyt became aware of Careful Movers' current operations when a consumer, Ms. Colleen Kelly, filed a complaint with the Commission alleging that the company had failed to complete a move of her household goods to her satisfaction and had been refusing to honor her request for a partial refund. *Exh. 7.*
- 23 Ms. Kelly's complaint, filed with the Commission on July 5, 2007, indicated that she hired Careful Movers on December 23, 2006, to move her household goods from Lake City, Washington, to Seattle, Washington. Ms. Kelly provided a bill of lading from Careful Movers showing that 2 men and a van performed her move. Ms. Kelly also provided bank records indicating that she paid Careful Movers the sum of \$495.25 for their services. *Exh. 7, at 9-13; Exh. 8; Exh. 9; Exh. 10; Exh. 11.* Ms. Kelly explained that she was eventually able to obtain a partial refund of \$245.00 from Careful Movers. *Exh. 7, at 8.*
- 24 Ms. Sandra White, a consumer program specialist with the Commission, worked with Ms. Kelly to address her complaint. Ms. White determined that Careful Movers was not registered with the Commission and that the Commission had no jurisdiction over the type of complaint presented. Therefore, she recommended that Ms. Kelly seek any further relief in civil court. Nevertheless, Ms. White requested copies of all

documentation associated with Ms. Kelly's move. On August 9, 2007, after reviewing these documents, Ms. White notified the Commission's Business Practices and Transportation Sections that Careful Movers was operating without a permit; however, she closed the complaint file as non-jurisdictional. *Exh. 7, at 2-6 and 14.*

25 On August 15, 2007, Ms. Kelly provided the Commission with a sworn declaration summarizing her experiences with Careful Movers. The declaration confirms that on December 23, 2006, Ms. Kelly paid Careful Movers the sum of \$495.25 for moving her household goods from the Lake City area of Seattle to a new apartment in Seattle. The declaration also details Ms. Kelly's dissatisfaction with the move. *Exh. 8.*

26 As part of her investigation, Ms. Hoyt searched the Internet and telephone directories for Careful Movers and found several listings for the company. On August 15, 2007, Commission staff personnel called four different telephone numbers for Careful Movers and each was answered by a man stating "Careful Movers..." *Exh. 1, at 8; see also Exh. 14.*

27 Ms. Hoyt discovered that the company's website, [www.carefulmovers.net](http://www.carefulmovers.net), contains advertising material promoting the company's services of performing residential and commercial moves in Washington. The company's website states:

Whether you're moving a small household or a 100 person office,  
Careful Movers is the company for the job.

The company's website also has an on-line quote form for both home and office moves. *Exh. 12 and Exh. 13.*

28 None of these advertisements include a reference to a Commission permit number.

29 At hearing, Ms. Hoyt testified that the company's website remained active as of January 14, 2008, the day before hearing.

30 **Decision.** Careful Movers concedes that its business operations are subject to the provisions of RCW 81.80.070. Even without that concession, the evidence presented by Commission Staff through exhibits and witness testimony establishes that Careful Movers has transported property, i.e., household goods, for compensation over the highways of the state of Washington without obtaining authority from the Commission, as required by RCW 81.80.070. The evidence and testimony presented

also establish that Careful Movers has and continues to advertise its operations as a household goods carrier without identifying a Commission permit number, in violation of RCW 81.80.357(1).

### **C. Penalty Assessment – Application for Mitigation**

- 31 On December 6, 2007, the Commission issued a penalty assessment in the amount of \$2,000 against Careful Movers. The company responded to the penalty assessment by admitting to the alleged violations but asking for a hearing and an ALJ decision to mitigate the penalty amount.
- 32 Ms. Hoyt’s investigation contains a summary of previous Commission actions taken against Careful Movers in February 2000. In Penalty Assessment No. 99781, the Commission assessed a \$1,500 penalty for three violations relating to advertising as a public service company without holding a permit. In Penalty Assessment No. 10034, the Commission assessed a \$1,500 penalty for operating as a common carrier of household goods without a permit to do so. *Exh. 1, at 5.*
- 33 Careful Movers requested mitigation. The Commission assigned Docket TV-000418 and set the matter for a brief adjudicatory proceeding. In that matter, Careful Movers and Commission Staff reached a settlement in which Careful Movers filed an application for a temporary household goods permit and paid a reduced total penalty of \$1,500. The Commission approved the settlement in September 2000. *Id.*
- 34 Within the next two years, Careful Movers requested permanent authority to operate as a household goods carrier in the State of Washington. On August 2003, the Commission approved the request and issued Careful Movers Permit No. HG-11879. *Exh. 1, at 6.* This is the same permit that, as noted above, expired in February 2006.
- 35 At hearing in this matter, the company’s attorney questioned Ms. Hoyt to confirm that Ms. Kelly’s complaint against Careful Movers was the only complaint currently on file against his client.
- 36 Careful Movers argued that mitigation was appropriate because of the existence of only the single consumer complaint. Careful Movers also asked that if mitigation was denied, a payment plan be approved to minimize the financial burden placed on Mr. Busby and Careful Movers as they attempt to continue operating the business.

37 Commission Staff countered that mitigation would not be appropriate because Careful  
Movers has not demonstrated any efforts to comply with the law in this case.  
However, Commission Staff indicated its acceptance of a payment plan arrangement  
so long as Careful Movers paid any penalty imposed in no more than 12 months.

38 The Commission has not received a permit application from Careful Movers nor from  
Daniel John Busby since the expiration of the company's permit in February 2006.

39 **Decision.** Careful Movers argued that the \$2,000 penalty assessed should be  
mitigated because only a single complaint has been filed against the company.  
However, the penalty assessed by the Commission is not designed to address the  
complaint filed by Ms. Colleen Kelly, but rather Careful Movers' ongoing operations  
without the required household goods carrier permit.

40 The facts presented in this case regarding Careful Movers operating without the  
required permit are essentially a repeat of the circumstances from Docket TV-000418.  
In that case, the approved settlement mitigated the penalty assessed by half.

41 Here, the company presented no relevant rationale for mitigation of the penalties  
assessed. Careful Movers has previously been penalized for operating and advertising  
without a permit, the same violations committed in this matter.

42 Mitigation of penalties is generally not merited for repeat violations. No unusual or  
extraordinary circumstances exist in this matter. Therefore, Careful Movers'  
application for mitigation is denied.

### III. FINDINGS OF FACT

43 (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 Washington State.

44 (2) The issues presented in Docket TV-071670 and Docket TV-072234 are  
substantially similar and therefore appropriate for consolidation.

45 (3) Careful Movers holds itself out to the public as a corporation engaged in the  
business of transporting household goods for compensation over the public



highways within Washington State, advertising its services by means of on-line telephone directories as well as through a company website.

- 46 (4) Careful Movers, through its employees, transported the household goods of Ms. Colleen Kelly on December 23, 2007, for compensation over the public highways of Washington State.
- 47 (5) Careful Movers has not applied for, nor obtained from the Commission, permit authority allowing it to operate as a household goods carrier within Washington State.
- 48 (6) The Commission assessed a penalty of \$1,500 for Careful Movers' operating without a permit. The Commission also assessed a penalty of \$500 for Careful Movers' advertising without listing a permit number.
- 49 (7) Careful Movers admitted the violations but applied for mitigation of the penalties imposed.

#### IV. CONCLUSIONS OF LAW

- 50 (1) The Commission has jurisdiction over the subject matter of this proceeding and over Careful Movers pursuant to RCW 81.04.510, RCW 81.80.070, and RCW 81.80.357.
- 51 (2) Pursuant to WAC 480-07-320, Docket TV-071670 and Docket TV-072234 are consolidated for both hearing and decision.
- 52 (3) Careful Movers did perform and is performing business operations requiring operating authority from the Commission, without first having obtained that authority, in violation of RCW 81.80.070.
- 53 (4) Careful Movers is classified as a common carrier of household goods within Washington State, pursuant to RCW 81.80.010(4) and WAC 480-15-020.
- 54 (5) The Commission is directed by RCW 81.04.510 to order the respondent to cease and desist from conducting operations requiring permit authority unless or until the required authority is obtained from the Commission.

- 55 (6) There is no basis in fact, law, or regulation to mitigate the penalties assessed.

**V. ORDER**

THE COMMISSION ORDERS:

- 56 (1) Careful Movers is classified as a common carrier of household goods within the state of Washington.
- 57 (2) Careful Movers shall cease and desist from operations in this state requiring permit authority under RCW 81.80.070 unless or until it obtains the required authority from the Commission.
- 58 (3) Careful Movers shall pay the penalty of \$2,000 as assessed. Careful Movers shall make regular payments in accordance with the terms of a payment plan determined by Commission Staff that requires full payment to be made no later than 12 months following the date that a Final Order or Notice of Finality is issued in this case.

Dated at Olympia, Washington, and effective February 8, 2008.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

ADAM E. TOREM  
Administrative Law Judge

### 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