

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

In the Matter of Determining the Proper
Carrier Classification of, and Complaint
for Penalties Against

SAMUEL OWEN SVARNY d/b/a
BROTHERS MOVING

DOCKET TV-190499

ORDER 02

INITIAL ORDER CLASSIFYING
RESPONDENT AS HOUSEHOLD
GOODS CARRIER; ORDERING
RESPONDENT TO CEASE AND
DESIST; IMPOSING PENALTIES;
DEFAULT ORDER

BACKGROUND

Synopsis. *This is an Administrative Law Judge's Initial Order that is not effective unless approved or allowed to become effective as described in the notice at the end of this Order. If this Initial Order becomes final, the Washington Utilities and Transportation Commission (Commission) will find Samuel Own Svarny d/b/a Brothers Moving (Brothers Moving or Company) in default for failing to appear at the hearing. In addition, if this Initial Order becomes final, Brothers Moving will be classified as a household goods carrier, assessed a financial penalty in the amount of \$5,000 for two (2) violations of RCW 81.80.075(1), and required to cease and desist from operating as a household goods carrier without first obtaining a permit from the Commission.*

- 1 **Nature of Proceeding.** The Commission initiated this special proceeding to determine if Brothers Moving has engaged, and continues to engage, in business as a common carrier for transportation of household goods for compensation within the state of Washington without possessing the permit required for such operations.
- 2 **Procedural History.** On June 28, 2019, the Commission entered Order 01, Order Instituting Special Proceeding; Complaint Seeking to Impose Penalties; and Notice of Mandatory Appearance at Hearing, pursuant to RCW 81.04.510, initiating this docket on its own motion. The Complaint alleges that Brothers Moving violated RCW 81.80.075(1) by:
 - (1) offering on at least one occasion to transport household goods within the state of Washington;

**Pursuant to RCW 80.01.060(3)
This packet is the final
Order in this docket.**

- (2) advertising household goods moving services within the state of Washington on at least one occasion;

without the necessary permit required for such operations. On the same date, the Commission issued a *Subpoena and Subpoena Duces Tecum For Production of Documents* (Subpoenas) to the Company commanding, Samuel Svarny of Brothers Moving, to appear before the Commission at a special proceeding scheduled to convene at 9:00 a.m. on August 13, 2018, in the Commission's offices at 621 Woodland Square Loop S.E., Lacey, Washington, 98503 and to bring the documents specified in the *Subpoenas*.

- 3 On July 17, 2019, the Commission personally served (via legal messenger) the Complaint and Order Initiating Special Proceeding and Subpoenas on Mrs. Svarny, mother and co-resident in Seattle, WA.
- 4 **Hearing.** On August 13, 2019, the hearing convened as scheduled in Lacey, Washington, before Administrative Law Judge Laura Chartoff. 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 Brothers Moving is operating as a household goods carrier without the required permit from the Commission.
- 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. Based on the failure of Brothers Moving to appear or otherwise comply with the Commission's subpoenas, the Administrative Law Judge granted Commission Staff's request to enter a default order and to allow for presentation of its case.
- 6 Commission Staff presented the testimony of one witness, Mr. Brian Braun. Commission Staff provided a brief summary oral argument at the close of the hearing.
- 7 **Initial Order.** The Commission finds Brothers Moving in default pursuant to RCW 34.05.440(2) and WAC 480-07-450(1). The Commission also finds that Brothers Moving is operating as a household goods carrier without a permit. Further, the Commission orders Brothers Moving to pay a \$5,000 penalty for two (2) violations of RCW 81.80.075(1). Finally, the Commission orders Brothers Moving to cease and desist from future unauthorized operations.

8 **Appearances.** Brian Braun, Compliance Investigator, Lacey, Washington, represents Commission Staff.

DISCUSSION AND DECISION

A. Default

9 The Complaint and Order Instituting Special Proceeding 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 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 The Subpoenas include language ordering Brothers Moving to appear for the hearing and produce specified documents in compliance with subpoena powers granted to the Commission in RCW 34.05.446 and RCW 81.04.510.

11 At the time of the hearing, the Commission had served Brothers Moving with the Complaint and Order Instituting Special Proceeding and Subpoenas by personal service upon Mrs. Svarny, co-resident of Company owner.

12 **Decision.** Brothers Moving was properly and legally served with the Complaint and Order Instituting Special Proceeding and Subpoenas and provided due and proper notice of the August 13, 2019, hearing. Brothers Moving did not appear at the hearing and is hereby held in default. Further, Brothers Moving did not comply with the Subpoenas; the Company failed to appear and also failed to produce or otherwise provide any of the specified documents.

13 WAC 480-07-450(2) states: “A party who is dismissed from a proceeding or found in default may contest the order of dismissal or default by written motion filed within ten days after service of the order. A dismissed 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 notice with the Commission.

B. Operating as a Household Goods Carrier Without Authority.

14 **Applicable Law.** RCW 81.80.010(5) defines “household goods carrier” as:

a person who transports for compensation, by motor vehicle within this state, or who advertises, solicits, offers, or enters into an agreement to transport household goods.

RCW 81.80.075 prohibits household goods carriers from operating for compensation in Washington without first obtaining the required permit from the Commission. Upon proof of unauthorized operations, RCW 81.04.510 authorizes the Commission to order the unpermitted company to cease and desist its activities. Additionally, RCW 81.04.110 authorizes the Commission to file a complaint on its own motion setting forth any act or omission by a company that violates any law, or any order or rule of the Commission.

15 RCW 81.80.075(4) subjects persons who engage in business as a household goods carrier in the state of Washington without the required permit to a penalty of up to \$5,000 for each violation. In deciding the penalty amount to be imposed per violation, RCW 81.80.075(4)(b) requires the Commission to consider two factors: (a) willingness to comply with the provisions of RCW 81.80.070 and the rules governing household goods carriers contained in WAC 480-15 and (b) compliance history.

16 In a proceeding initiated under RCW 81.04.510, the responding company has the burden of proving that its alleged operations are not subject to the provisions of RCW 81.80.075.

17 If the Company is found to be operating as a household goods carrier without the required permit, the Commission is authorized and directed to enter an order requiring the corporation to cease and desist activities subject to regulation under Title 81.

18 The evidence in this matter unquestionably demonstrates that Brothers Moving has offered and advertised to engage in the business of moving household goods without a permit.

19 Mr. Brian Braun, a compliance investigator with the Commission, testified concerning his investigation into the operations and business practices of Brothers Moving. Mr. Brian Braun prepared a declaration summarizing his investigation, with appendices

documenting his findings.¹

20 **Decision.** By failing to appear at the hearing held on August 13, 2019, Brothers Moving has also failed to meet the burden of proving that the Company's business operations are not subject to the provisions of RCW 81.80.075. The evidence presented by Commission Staff through exhibits and witness testimony establishes that Brothers Moving has engaged in business as a household goods carrier without the necessary permit required by RCW 81.80.075.

FINDINGS AND CONCLUSIONS

- 21 (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.
- 22 (2) The Commission has jurisdiction over the subject matter of this proceeding and over Brothers Moving.
- 23 (3) On at least one occasion, Brothers Moving offered to transport household goods within the state of Washington without first having obtained a household goods carrier permit from the Commission in violation of RCW 81.80.075.
- 24 (4) On at least one occasion, Brothers Moving advertised to transport household goods without first having obtained a household goods carrier permit from the Commission in violation of RCW 81.80.075.
- 25 (5) Pursuant to RCW 34.05.440(2), Brothers Moving is held in default for failing to appear at the August 13, 2019, hearing and for failing to comply with the Subpoenas properly served.
- 26 (6) Brothers Moving is classified as a common carrier of household goods within the state of Washington, pursuant to RCW 81.80.010(5) and WAC 480-15-020.
- 27 (7) The Commission is directed by RCW 81.04.510 to order Brothers Moving to cease and desist from conducting operations requiring permit authority unless or until the required authority is obtained from the Commission.

¹ See Exhibit 1.

ORDER

THE COMMISSION ORDERS:

- 28 (1) Samuel Owen Svarny d/b/a Brothers Moving is held in default. Should Samuel Owen Svarny d/b/a Brothers Moving fail to respond to this Order by filing a written motion within ten (10) days requesting that the order be vacated pursuant to WAC 480-07-450(2), the default in this proceeding shall remain in place.
- 29 (2) Samuel Owen Svarny d/b/a Brothers Moving is classified as a common carrier of household goods within the state of Washington.
- 30 (3) Samuel Owen Svarny d/b/a Brothers Moving is ordered to immediately cease and desist operations as a household goods carrier within the state of Washington.
- 31 (4) Samuel Owen Svarny d/b/a Brothers Moving is assessed a penalty of \$5,000, due and payable immediately.
- 32 (5) 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 14, 2019.

/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) provides that any party to this proceeding has 20 days after the entry of this initial order to file a petition for administrative review (Petition). Section (3) of the rule identifies what you must include in any Petition as well as other requirements for a Petition. WAC 480-07-825(4) states that any party may file an answer (Answer) to a Petition within 10 days after service of the petition.

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.

WAC 480-07-830 provides that before the Commission enters 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. The Commission will not accept answers to a petition to reopen unless the Commission requests answers by written notice.

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).