

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION

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|------------------------|---|-------------------------------|
| GERTRAUDE M. TAUT, |) | DOCKET NO. TV-021248 |
| |) | |
| Complainant, |) | |
| v. |) | FINAL ORDER AFFIRMING INITIAL |
| |) | ORDER ON ADJUDICATIVE |
| ALL MY SONS MOVING AND |) | PROCEEDING |
| STORAGE, |) | |
| |) | |
| Respondent. |) | |

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1 **Synopsis:** *The Commission affirms and adopts the result of an initial order on brief adjudication. In doing so, the Commission finds that All My Sons Moving and Storage failed to comply fully with pertinent requirements of law in transporting household goods. The Commission establishes the appropriate fee to be paid for transportation, packing, and storage in transit.*

2 **Nature of the proceeding:** This is a brief adjudication brought on to resolve the issues in a formal complaint lodged by Gertrude M. Taut, complainant, against All My Sons Moving and Storage ("All My Sons"), respondent. The complaint alleges that All My Sons failed to follow pertinent regulations when it transported Ms. Taut's possessions and billed for its services.

3 **Procedural history.** This matter was heard as a brief adjudication before Administrative Law Judge Lawrence J. Berg on November 8, 2002. Commission Staff appeared as a party to the proceeding. The Judge entered an initial order on November 18, 2002. All My Sons and Ms. Taut both commented on the

decision pursuant to WAC 480-09-500(6); Commission Staff responded to the parties' comments.

4 **Initial Order:** The initial order found that All My Sons failed to comply with regulations relating to the disclosure of information and the adjustment of an estimated price. The initial order determined the proper charge for the move, under the circumstances found in the order, and established the means of calculating the charge for storage of goods in respondent's warehouse.

5 **Comments on the Initial Order, and Answers:** All My Sons and Ms. Taut both commented on the initial order. Ms. Taut addressed perceived uncertainties, challenged findings as to details of the circumstances, and asked that the Commission penalize All My Sons for violations. All My Sons did not challenge the result, but offered additional explanatory information regarding its actions. Commission Staff responded to comments from both parties.

6 **Commission decision:** The Commission affirms the initial order in all regards. The order is thorough, is based on the information provided by the parties and assessments of their credibility, and is well within the law. The Commission adopts the result of the order as its own.

7 **Appearances:** Complainant Gertrude M. Taut, Tacoma, Washington, appeared on her own behalf. Respondent All My Sons appeared by James Bergstrom, its Operations Manager, Kent, Washington. Commission Staff appeared by Lisa Watson, Asst. Attorney General, Olympia, Washington.

MEMORANDUM

8 **Underlying facts.** Complainant in this matter, Ms. Taut, selected All My Sons, respondent, to perform a move of her household goods. It provided an estimate on October 24, 2001, for its services in moving her goods to its warehouse for

permanent storage. The estimate did not provide a time frame after which it would be invalid.

9 Ms. Taut called All My Sons on March 21, 2002, asking for service on the following day. All My Sons arrived, repacked boxes that Ms. Taut had packed, offered a supplemental estimate substantially larger than the original, and moved her goods into storage.

10 Ms. Taut disagrees with the supplemental estimate and the charge for moving, and disagrees with the charge for storage.

11 **The initial order.** The initial order resolved disputed facts with findings based on the record and the credibility of the evidence:

12 First, it found that respondent failed to provide Ms. Taut with a copy of consumer information at the time of its initial estimate in October, 2002, in violation of WAC 48-480-15-620.

13 Second, the order found that All My Sons overcharged Ms. Taut for packing, moving, and storage, in violation of WAC 480-15-690(1), and that it knew or should have known that the storage in its warehouse was to be storage in transit.

14 The initial order found that Ms. Taut interfered with All My Son's ability to comply with WAC 480-15-710, *et seq.*, relating to the requirement for a bill of lading signed by carrier and shipper, and that consequently no violation could be found.

15 The initial order proposed that Ms. Taut's liability for the move from her dwelling to storage in transit be limited to the amount of the initial estimate, and that storage charges be limited to the prorated tariffed rate for storage in transit beginning with the date of a Commission final order. The order noted that it

remained Ms. Taut's responsibility to move her goods from storage to her present dwelling.

16 **Post-order pleadings.** All parties submitted post-order pleadings. Complainant and respondent submitted comments on the initial order, and Commission Staff answered those comments. We will address the issues raised in the comments and the answer, and state our rulings.

17 **Additional evidence.** All My Sons commented on the initial order, stating that it did not object to the result. It asked to add more information to the record about its activities and about its willingness to comply with laws and regulations. Commission Staff responded that the Commission should reject the offer, as a state Supreme Court decision prohibits agencies from receiving additional evidence after the close of the record in a proceeding in which an administrative law judge presided.

18 The Commission rejects the proposed evidence. The Commission understands concerns of All My Sons, but emphasizes that no action may be taken in this docket against it beyond resolving the issues framed by the complaint. All My Sons suffers no harm as a result of the ruling.

19 **Charges for storage.** Ms. Taut states concern that the initial order does not set a charge for storage. Commission Staff responds that the storage charges established in the order are appropriate and will be assessed according to Tariff 15-A, item 100, prorated by the day from the date of the final Commission's final order. The instructions on billing are detailed and provide the means to calculate a specific amount, but the tariff provides a maximum and minimum amount for storage in transit. All My Sons should state its charges within that range. All My Sons should also state its charges, if any, for warehouse handling that will apply.

20 The Commission accepts the result of the initial order. Instead of specifying a dollar amount, the order directs that storage be charged according to the tariffed

rate. Here, the tariff sets a maximum and a minimum, and the record does not disclose the rate that respondent has established under the tariff for storage in transit. Respondent should be directed to provide a statement for all of its charges, pursuant to the order, for services for Ms. Taut, within four business days after service of this order.

21 Commission Staff notes, and the Commission reaffirms, that the initial order makes it clear that it is Ms. Taut's responsibility to arrange and to pay for the move from storage to her current dwelling.

22 **Damages under RCW 81.04.440:** Ms. Taut asks that the Commission award her damages for the inconvenience she has suffered with her possessions in storage for an extended period. The Staff responds that the Commission has no jurisdiction to grant damages of the sort requested. All penalties assessed by the Commission must be paid into the state treasury, and are not for distribution to individuals. Ms. Taut must take this matter to a court having jurisdiction if she wishes to pursue it.

23 The Commission agrees with Staff that it has no jurisdiction to award damages to litigants before it. *RCW 81.04.440; Turk v. Dept. of Licensing, 123 Wn.2d 120, 124-125, 864 P.2d 1382 (1994)*. If Ms. Taut wishes to pursue an award of damages, she must do so in a court with jurisdiction to hear the matter.

24 **Hearing and request to cancel operating authority.** Ms. Taut asks the Commission to cancel All My Son's operating authority. Commission Staff responds that the issue of cancellation goes beyond the issues in this proceeding. Staff contends that Ms. Taut's "complaint" does not comply with minimum requirements for complaints and that her request for cancellation should not be considered.

25 The Commission denies Ms. Taut's request for an additional hearing and for cancellation of All My Son's operating authority. Her requests are beyond the

scope of this proceeding. We think that it is necessary to conclude this matter to provide a prompt resolution of parties' original issues and will not amend the original notice of hearing or schedule additional hearings. If Ms. Taut wishes to pursue additional claims for relief, she must file a separate claim for relief and bear the burden of supporting them in a separate hearing. If Commission Staff wishes to pursue the matter, it may demonstrate probable cause for doing so and ask the Commission to file its own complaint.

26 **Billing and payment requirements.** The initial order provided that All My Sons must pay for moving, packing, storage, and property protection after entry of a final order and prior to moving the goods out of storage. However, the initial order did not provide for billing to the complainant at the proper rates.

27 This order will direct the All My Sons to prepare and present to Ms. Taut a statement of charges due for services within three business days after service of this order. It must state the carrier's rates for storage in transit as a charge per month and per day and state the carrier's rate for property protection. Payment will be due for moving, packing and property protection within five days after presentation of the statement. Payment for storage and warehouse labor charges authorized by Tariff 15-A must be made in accordance with the carrier's standard practices, and all such charges must be paid prior to release of the shipment.

28 Based on the entire record, including post-hearing comments and answers, the Commission finds that the result of the initial order is appropriate under the circumstances, that it is properly based on the record and within the pertinent requirements of law. Therefore, the Commission affirms and adopts the initial order as its own for purposes of this proceeding.

FINDINGS OF FACT

29 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington having jurisdiction over businesses engaged in

moving household goods for the public for compensation over the highways of the state of Washington.

- 30 (2) All My Sons Moving and Storage (“All My Sons”), respondent in this matter, holds authority from the Commission, and holds itself out to the public, to transport household goods in the state of Washington for members of the public for compensation.
- 31 (3) Ms. Gertrude Taut, complainant in this matter, a resident of Tacoma, Washington, selected All My Sons to perform a move of her household goods.
- 32 (4) All My Sons Moving and Storage issued a written nonbinding estimate to Ms. Taut on October 24, 2001. The October Estimate does not indicate whether Ms. Taut was given a copy of the Commission’s Rights and Responsibilities Guide, which is required by WAC 480-15-620(1) at the time of a nonbinding estimate. Ms. Taut’s demeanor and clear recollection credibly support a finding that she did not receive a copy of the guide along with the October Estimate.
- 33 (5) All My Sons Moving gave Ms. Taut a copy of the Rights and Responsibilities Guide on March 26, 2002, the date of her move.
- 34 (6) The October Estimate makes no reference to an effective term, and there is no evidence that Ms. Taut was informed prior to March 26, 2002, that the October Estimate would be void after a given period of time.
- 35 (7) There is no evidence that the five-month period between the date of the October Estimate and the date of the move is an unreasonable length of time for Ms. Taut to rely on the October Estimate for her cost of moving.

- 36 (8) The October Estimate was a valid nonbinding written estimate on March 26, 2002.
- 37 (9) WAC 480-15-660 allows a carrier to provide a written supplemental estimate if the customer has been given a written estimate and the circumstances surrounding the move change in any way to cause the estimated charges to increase.
- 38 (10) All My Sons Moving and Ms. Taut agreed at the time the October Estimate was performed that she would continue packing the empty boxes that were in her garage. The October Estimate does not state the extent to which the total estimated cost depended on Ms. Taut packing her own household goods. The October Estimate does state that boxes packed by Ms. Taut prior to that estimate must be repacked.
- 39 (11) The packing performed by Ms. Taut before March 26, 2002, and the repacking performed by All My Sons Moving during the move are consistent with written remarks on the October Estimate.
- 40 (12) Circumstances surrounding the move did not change in any material way to cause the estimated charges to increase prior to March 26, 2002.
- 41 (13) The written estimate performed by All My Sons Moving using the Bill of Lading on March 26, 2002, does not comply with WAC 480-15-660. The March Estimate is not a valid supplemental estimate.
- 42 (14) WAC 480-15-660 requires that the customer sign a supplemental estimate or the additional work cannot be performed.
- 43 (15) All My Sons Moving did not obtain Ms. Taut's signature on the Supplemental Estimate performed on March 27, 2002, prior to performing the additional work. The Supplemental Estimate performed on March 27,

2002, does not comply with WAC 480-15-660. The Supplemental Estimate performed on March 27, 2002, is not a valid supplemental estimate.

- 44 (16) Under WAC 480-15-690(1) and the facts of this case All My Sons Moving may not charge more than twenty-five percent above the October Estimate for time charges nor charge more than fifteen percent above the October Estimate for packing services.
- 45 (17) 125% of the October Estimate's moving costs of \$1,313.40 equals \$1,751.20. 115% of the October Estimate's packing costs of \$974.76 equals \$1,146.78. All My Sons may not lawfully charge more than the total sum of \$2,897.98 for packing and moving Ms. Taut's household goods to storage.
- 46 (18) All My Sons Moving sought to impose packing and moving charges substantially greater than those allowed under WAC 480-15-690(1).
- 47 (19) Ms. Taut's testimony that All My Sons Moving inadvertently left paperwork at her residence is contradicted by her testimony that the documents were given to her. Mr. Bergstrom's testimony that Ms. Taut removed the paperwork from the company's possession on March 27, 2002, because she wanted to possess original documents is consistent with statements that Ms. Taut made to Commission Staff regarding the validity of copies of documents. Mr. Bergstrom's was informed of the incident at the time it occurred. Mr. Bergstrom's demeanor and testimony are credible.
- 48 (20) Ms. Taut partially filled out the original converted Bill of Lading – also referred to as the March Estimate – on March 26, 2002, and returned the document to All My Sons Moving before work was performed. The ultimate destination of the shipment was a major unknown aspect of the move at the time that the moving crew arrived at the origin, and the crew

had numerous contacts with All My Sons Moving management during the move.

- 49 (21) Ms. Taut initialed the Bill of Lading to indicate that the shipment destination was storage in transit. All My Sons Moving knew – or should have known – that the shipment destination storage in transit was storage in transit prior to the time that Ms. Taut took possession of the paperwork.
- 50 (22) WAC 480-15-710, *et seq.*, requires that a carrier prepare and submit a signed Bill of Lading to the shipper.
- 51 (23) When Ms. Taut took possession of the paperwork near the conclusion of the her move, she substantially interfered with All My Sons Moving’s ability to comply fully with WAC 480-15-710, *et seq.*, because her goods had already been placed onto trucks for delivery to storage. Ms. Taut’s conduct reasonably necessitated that All My Sons Moving reconstruct the Bill of Lading after her household goods were delivered to storage. However, Ms. Taut’s conduct did not prevent All My Sons Moving from determining or confirming the storage status of the shipment.
- 52 (24) All My Sons Moving unilaterally determined that Ms. Taut’s shipment was permanent storage and charged her permanent storage rates after delivering the shipment to storage. Commission Tariff 15-A, Item 100, states minimum and maximum rates to be charged for SIT. All My Sons Moving permanent storage charges exceeded the maximum allowable SIT rates. The October Estimate states that All My Sons Moving will “pro-rate storage to the day.”
- 53 (25) Ms. Taut secured a residence and alternative storage and was able to receive the goods out of storage within 90 days of her household goods being delivered to storage.

- 54 (26) All My Sons Moving request for payment substantially exceeding the amounts to which it was entitled created an unreasonable financial barrier to Ms. Taut's ability to make payment in full and secure release of the shipment within 90 days of her household goods being delivered to storage. All My Sons Moving should not be allowed to collect storage fees for the period preceding a final order by the Commission because the excessive rates it sought for packing, moving, and storage prevented Ms. Taut from making payment and receiving the goods consistent with the shipment's status as SIT.
- 55 (27) Commission Tariff 15-A provides that carriers remain liable for physical loss of, or damage to, any article from external cause while being packed, unpacked, loaded, unloaded, carried, or held in SIT, including breakage, if articles are packed by the carrier and/or if the breakage results from the negligence of the carrier. Thus, Tariff 15-A does not require that All My Sons Moving perform packing services in order for the company to be liable for breakage resulting from its negligence.
- 56 (28) Tariff 15-A states that a carrier's maximum liability shall be determined based on the valuation option selected by the customer. Tariff 15-A, Item 95, states that "Depreciated Value Protection" is the default option if the customer fails to indicate a choice. Further, Tariff 15-A states that the customer will be liable for charges applying to the Depreciated Value Protection option if the customer fails to indicate a choice and the shipment valuation therefore defaults to that protection level. Tariff 15-A, Item 90, states the minimum and maximum fees for valuation of goods while in SIT for Depreciated Value Protection.
- 57 (29) Ms. Taut failed to indicate a choice of a valuation option for her shipment on the March Estimate. Ms. Taut is liable to All My Sons Moving for

charges applying to the Depreciated Value Protection option for SIT, consistent with the provisions of Tariff 15-A.

CONCLUSIONS OF LAW

- 58 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of this proceeding and all parties to this proceeding.
- 59 (2) All My Sons Moving is a public service company as defined in RCW 81.04.010.
- 60 (3) All My Sons Moving violated WAC 480-15-620 by failing to give Ms. Taut a copy of the commission brochure, "*Your Rights and Responsibilities as a Moving Company Customer*" at the time the company issued a written nonbinding estimate on October 24, 2001.
- 61 (4) All My Sons Moving violated WAC 480-15-690(1) by charging Ms. Taut more for packing and moving services, and for storage, than authorized by pertinent tariffs.
- 62 (5) All My Sons did not violate WAC 480-15-710, et seq., relating to bills of lading, because Ms. Taut substantially interfered with its ability to comply with the regulation.
- 63 (6) In accordance with WAC 480-15-690, All My Sons Moving may charge no more than \$2,897.98 for packing and moving Ms. Taut's household goods to storage. Payment in full should be due within 5 days of the presentation of a final bill by the carrier.

- 64 (7) All My Sons Moving should be required to impose fees for the Depreciated Value Protection Option for valuation of goods while in SIT in accordance with Tariff 15-A, Item 90. Payment of charges should be due within 5 days of the presentation of a final bill by the carrier.
- 65 (8) All My Sons Moving should be required to assess charges for storage-in-transit in accordance with Commission Tariff 15-A. Charges for SIT should begin to accrue on the date of the entry of a final order by the Commission. All My Sons Moving should pro-rate storage charges to the day. Payment of charges should be made in accordance with the carrier's standard practices and all such charges should be paid prior to release of the shipment.
- 66 (9) Respondent should be required to present a statement to complainant within three business days after entry of this final order itemizing a) the charges authorized for packing and moving her goods; b) the charges for storage in transit respondent assesses under the tariff, and the per-day pro rata amount to be charged for each day; and c) the fee for Depreciated Value Protection.
- 67 (10) Ms. Taut should be required to pay the costs of moving her shipment out of storage.

ORDER

THE COMMISSION ORDERS That

68 The Commission has jurisdiction over the subject matter of and the parties to this proceeding.

69 All My Sons Moving and Storage must charge no more than the total sum of \$2,897.98 for packing and moving Ms. Taut's household goods to storage.

- 70 All My Sons Moving and Storage must assess charges for storage-in-transit in accordance with Commission Tariff 15-A. Charges for SIT begin to accrue on the date of the entry of a final order by the Commission. All My Sons Moving must pro-rate storage charges to the day.
- 71 All My Sons Moving must impose fees for the Depreciated Value Protection Option for valuation of goods while in SIT in accordance with Tariff 15-A, Item 90.
- 72 All My Sons Moving and Storage must present a statement to complainant within three business days after entry of this final order itemizing a) the charges authorized for packing and moving her goods; b) the charges for storage in transit respondent assesses under the tariff, and the per-day pro rata amount to be charged for each day; and the fee for Depreciated Value Protection.
- 73 Payment in full of the charges for packing, moving, and Depreciated Value Protection is due within 5 days after All My Sons presents a statement of charges to the complainant as specified herein. Payment of charges for storage in transit and payment for storage and warehouse labor charges authorized by Tariff 15-A must be made in accordance with the carrier's standard practices, and all such charges must be paid.
- 74 Ms. Taut must make arrangements for moving her shipment out of storage and pay the costs of doing so.
- 75 The Commission retains jurisdiction to effectuate the terms of this order.

Dated at Olympia, Washington and effective this ____ day of January, 2003.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner

NOTICE TO THE PARTIES: This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-09-810, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-09-820(1).