

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In re Application of 1 ST CHOICE MOVERS LLC For a permit to operate as a motor carrier of household goods.	DOCKET TV-180911 ORDER 01 DENYING REQUEST FOR EXEMPTION; DENYING APPLICATION FOR HOUSEHOLD GOODS PERMIT
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BACKGROUND

- 1 On November 8, 2018, 1st Choice Movers LLC (1st Choice Movers or Company) filed with the Washington Utilities and Transportation Commission (Commission) an application for authority to operate as a household goods carrier in the state of Washington (Application). Matthew Comella signed the Application and included with it a business license number, USDOT number, registration with the Department of Labor and Industries, registration with the Employment Security Department, and proof of insurance.
- 2 On November 29, 2018, the Commission issued a Notice of Intent to Deny Application for Permanent Authority; Notice of Opportunity for Hearing (Notice) based on Commission staff's (Staff) review and investigation of the Application. The Notice alleged that Mr. Comella was convicted of nine crimes in Brevard County, Florida, between 2001 and 2016. The Notice further alleged that Mr. Comella violated his parole in 2005 and 2010.
- 3 Staff recommended that the Commission deny the Application because Mr. Comella was convicted of Petit Theft within five years of the date of the Application. The Notice provided Mr. Comella an opportunity to request a hearing to contest the allegations by December 28, 2018.
- 4 On December 10, 2018, Mr. Comella filed with the Commission a Request for Hearing. The Commission noticed the matter as a brief adjudicative proceeding and convened a hearing before Administrative Law Judge Rayne Pearson on January 9, 2019.
- 5 At the hearing, Staff presented evidence that Mr. Comella was convicted of the following crimes:

- Battery Domestic Violence on April 9, 2001¹
- Retail Petit Theft on November 19, 2009²
- Grand Theft of a Motor Vehicle on January 26, 2010³
- Grand Theft on July 5, 2012⁴
- Petit Theft on July 5, 2012⁵
- Petit Theft on August 7, 2012⁶
- Petit Theft on February 23, 2016⁷

6 Mr. Comella stipulated to the facts alleged in the Notice and acknowledged each of the convictions and parole violations. Because his most recent conviction occurred in February 2016, Mr. Comella requested an exemption from WAC 480-15-302(8), which bars the Commission from granting provisional authority if any person named in the application, within the past five years, has been convicted of any crime involving theft, burglary, assault, sexual misconduct, identity theft, fraud, false statements, or the manufacture, sale, or distribution of a controlled substance.⁸

7 Mr. Comella testified that he moved from Ft. Lauderdale, Florida, to the Seattle area in April 2017. Mr. Comella stated that he accepts full responsibility for each of the convictions, and explained that he was homeless and addicted to heroin when he committed each of the crimes. Mr. Comella explained that he has been clean and sober since August 2013, and that he has not engaged in any criminal activity since that time. After successfully completing a residential treatment program, Mr. Comella began working in the moving industry as an estimator and moving coordinator. Mr. Comella testified that he was arrested on an outstanding warrant for Petit Theft when he picked up a client up from jail while working as a court liaison for a chemical dependency treatment center. The February 23, 2016, conviction stemmed from an arrest that occurred on May 17, 2013, while Mr. Comella was still actively addicted to drugs.

¹ Exh. MD-1.

² Exh. MD-3.

³ Exh. MD-4.

⁴ Exh. MD-5.

⁵ Exh. MD-7.

⁶ Exh. MD-6.

⁷ Exh. MD-8.

⁸ Pursuant to WAC 480-07-110, the Commission, on its own initiative, waived the application of WAC 480-15-035, which requires companies to file with the Commission a written request for an exemption from a Commission rule. Staff did not object to waiving the rule to allow Mr. Comella to present testimony and evidence in support of his request for exemption from 480-15-302.

8 Mr. Comella provided as exhibits six character reference letters,⁹ a certificate of graduation from a residential treatment program, and a copy of his resume. Mr. Comella further testified that he receives therapy through Catholic Community Services, attends 12-step meetings, works with a sponsor, and is partnered with a business mentor through the small business administration.

9 On cross-examination, Mr. Comella conceded that he did not disclose his criminal history on his Application, but claims he misunderstood the question and believed he was only required to disclose crimes – rather than convictions – that occurred in the last five years. Mr. Comella testified that he was aware Staff would conduct a background check, and explained that he has been transparent with Staff throughout the application process.

10 Jeff Roberson, Assistant Attorney General, Olympia, Washington, represents Commission Staff. Matthew Comella, Owner, Seattle, Washington, represents 1st Choice Movers.

DISCUSSION

11 We deny Mr. Comella’s request for an exemption from WAC 480-15-302, and thus deny the Application, for the reasons discussed below.

12 WAC 480-15-302 lists the Commission’s criteria for granting authority to engage in business as a household goods carrier. As relevant to this proceeding, WAC 480-15-302(8) provides that the Commission will not grant provisional authority if any named person has, within the past five years, been convicted of any crime involving theft. In this case, Mr. Comella was convicted of Petit Theft in 2016, which is a “crime involving theft.” Therefore, the Commission may not approve Mr. Comella’s Application unless the Commission grants an exemption from the rule.

13 WAC 480-07-110 provides that the Commission “may grant an exemption from, or modify the application of, any of its rules in individual circumstances if the exemption or modification is consistent with the public interest, the purposes underlying regulation, and applicable statutes.”¹⁰

⁹ Mr. Comella provided letters from a vocational rehabilitation counselor; his father; a business consultant who works with Mr. Comella through the Department of Social and Health Services Division of Vocational Rehabilitation; a Catholic Community Services counselor; a Catholic Community Services employee; and a volunteer business mentor from Greater Seattle SCORE. See Exh. MC-1.

¹⁰ See also WAC 480-15-035.

- 14 Under WAC 480-07-110(2)(c), we first consider whether the rule imposes an undue hardship on Mr. Comella to a degree “different from the hardships imposed on other similarly situated persons.” We conclude that it does not. Under the rule, all persons with theft convictions are equally affected. Like Mr. Comella, each is barred from the industry until five years has passed from the date of their most recent conviction. As such, the hardship imposed by the application of the rule to Mr. Comella is no different than that imposed on similarly situated persons.
- 15 Next, we consider whether the effect of applying the rule to the requesting person is contrary to the underlying purposes of the rule and the public interest. Prior to 2012, Commission household goods rules provided a discretionary standard with regard to an applicant’s criminal history. In 2012, the Commission adopted a bright line test for specific convictions that occurred within five years prior to the date of an application. The purpose of WAC 480-15-302(8) is “to allow qualified companies to operate, and at the same time, protect the public from unscrupulous, unsafe, or unfit household goods moving companies.”¹¹
- 16 Enacting the bright line rule was one of many changes made to the household goods entry standards to ensure public safety. We conclude that granting an exemption from the bright line rule in WAC 480-15-302(8) is inconsistent with the Commission’s decision to move away from the discretionary standard in favor of creating an absolute bar for certain crimes, and thus would be inconsistent with the underlying purposes of the rule. For these reasons, we conclude that granting an exemption is not in the public interest and deny Mr. Comella’s request to waive the application of WAC 480-15-302. Accordingly, we deny the Application.
- 17 We note, however, that our decision to deny the Application today does not preclude Mr. Comella from re-applying once the requisite time period has passed. We commend Mr. Comella for the positive steps he has taken to change his life. We also appreciate Mr. Comella’s candor, transparency, and willingness to accept personal responsibility for his past actions. Mr. Comella may re-apply for a household goods permit once the five year period from the date of his last conviction has expired. Accordingly, the Application is denied without prejudice.

FINDINGS AND CONCLUSIONS

- 18 (1) The Commission is an agency of the State of Washington vested by statute with the authority to regulate the rates, rules, regulations, practices, accounts and

¹¹ Docket TV-111493, Preproposal statement of inquiry.

affiliated interests of public service companies, including household goods companies.

- 19 (2) On February 23, 2016, Mr. Comella was convicted of felony Petit Theft in Brevard County, Florida.
- 20 (3) On November 8, 2018, Mr. Comella filed an Application with the Commission for authority to operate as a household goods carrier in the state of Washington.
- 21 (4) On November 29, 2018, the Commission issued a Notice of Intent to Deny Application for Certificate and Notice of Opportunity for Hearing (Notice) resulting from Commission staff's (Staff) review and investigation of the Application.
- 22 (5) On December 10, 2018, Mr. Comella filed with the Commission a Request for Hearing. The Commission noticed the matter as a brief adjudicative proceeding, and convened the hearing before Administrative Law Judge Rayne Pearson on January 9, 2019.
- 23 (6) Under WAC 480-15-302, "the Commission will not grant provisional authority if any named person has, within the past five years, been convicted of any crime involving theft."
- 24 (7) Mr. Comella was convicted of Petit Theft in 2016, which is a "crime involving theft." Therefore, the Commission may not grant the Applicant provisional authority under WAC 480-15-302 unless the Commission first grants an exemption from the rule.
- 25 (8) Under WAC 480-07-110, the Commission may grant an exemption from the provisions of any rule in WAC 480-15 if doing so is consistent with the public interest, the purposes underlying regulation, and applicable statutes. See also WAC 480-15-035.
- 26 (9) Mr. Comella failed to demonstrate that WAC 480-15-302 imposes on him an undue hardship of a degree or a kind different from hardships imposed on other similarly situated persons.
- 27 (10) The Commission finds that the Applicant's request for an exemption from WAC 480-15-302 is not in the public interest and should be denied.

- 28 (11) The Commission should deny Mr. Comella's Application for authority to operate as a household goods carrier without prejudice.

ORDER

THE COMMISSION ORDERS:

- 29 (1) 1st Choice Movers LLC's request for an exemption from WAC 480-15-302 is denied.
- 30 (2) 1st Choice Movers LLC's Application for authority to operate as a household goods carrier is denied without prejudice.

DATED at Olympia, Washington, and effective January 23, 2019.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

RAYNE PEARSON
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 480-07-610(7) provides that any party to this proceeding has twenty-one (21) days after the entry of this Initial Order to file a *Petition for Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-610(7)(b). WAC 480-07-610(7)(c) states that any party may file a *Response* to a Petition for review within seven (7) 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 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).