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BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

In re Application of) DOCKET NO. TV-080054
)
V&K DELIVERY SERVICES, LLC,) Volume I
(THG-63200)) Pages 1 to 54
_____)

A hearing in the above matter was held on
Thursday, December 4, 2008, from 9:30 a.m to 11:40 a.m.,
at 1300 South Evergreen Park Drive Southwest, Room 108,
Olympia, Washington, before Administrative Law Judge
MARGUERITE FRIEDLANDER.

The parties were present as follows:

THE COMMISSION, by MICHAEL FASSIO, Assistant
Attorney General, 1400 South Evergreen Park Drive
Southwest, Post Office Box 40128, Olympia, Washington
98504, Telephone (360) 664-1192, Fax (360) 586-5522,
E-Mail mfassio@wutc.wa.gov.

V&K DELIVERY SERVICES, LLC, via bridge line
by JEFFREY HERBSTER, Attorney at Law, Winston & Cashatt,
West 601 Riverside, Suite 1900, Spokane, Washington
99201, Telephone (509) 838-6131, Fax (509) 838-1416,
E-mail jah@winstoncashatt.com

Joan E. Kinn, CCR, RPR
Court Reporter

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VLADIMIR A. KIRICHENKO

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1 7 Notice of Temporary Operating Authority
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3 8 Temporary Permit Household Goods Carrier
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13 16 Letter to Commission from Jeffrey A. Herbster,
14 Esq., on behalf of Vladimir Kirichenko, notice
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17 17 Statement of Position of Vladimir Kirichenko,
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19 18 Attachment A to Statement of Position, Letter
20 of Recommendation from Serpro Logistics, dated
21 September 5, 2008
22 19 Attachment B to Statement of Position, Letter
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24 20 Attachment C to Statement of Position, Comment
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1 21 Attachment D to Statement of Position, Letter
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3 22 Attachment E to Statement of Position, Letter
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17 27 Attachment J to Statement of Position, Letter
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1 P R O C E E D I N G S

2 JUDGE FRIEDLANDER: Good morning, everybody,
3 this is Marguerite Friedlander, the Administrative Law
4 Judge for this proceeding. I am the Administrative Law
5 Judge presiding over the household goods license
6 revocation proceeding. We are here before the
7 Washington Utilities and Transportation Commission on
8 Thursday, December 4th, 2008, to begin a hearing in
9 Docket TV-080054 to address Commission Staff's request
10 to revoke the temporary operating authority of V&K
11 Delivery Services, LLC, under permit number THG-63200
12 and to deny the application of V&K for permanent
13 authority.

14 So before we get too far afield, I'm going to
15 go ahead and administer an oath to our interpreter, and
16 I want to just let everybody know, as I did off the
17 record, that we would appreciate it if you can for the
18 ease of the interpreter and the court reporter speak
19 slowly and clearly one at a time and pause so that you
20 can give the interpreter time to catch up, and then you
21 can speak again once the interpreter is finished.

22 So if you will go ahead and stand and raise
23 your right hand.

24 (Interpreter ANDREY VEXILOV was sworn.)

25 JUDGE FRIEDLANDER: Okay, thank you, you can

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1 sit down.

2 So the purpose of the hearing today is to
3 take testimony and evidence from both parties on the
4 issues in this proceeding. My plan today is to take the
5 appearances of the parties, address any preliminary
6 matters that the attorneys may have, we'll do opening
7 remarks after that, and then we'll turn to the
8 testimonies of Mr. Pratt and Mr. Kirichenko, and finally
9 we'll end with closing remarks.

10 So let's go ahead and begin with the
11 appearances of the parties, and since this is our first
12 meeting we'll need to have everybody give full
13 appearances, and for that we'll need full names,
14 spelling of the last name, business address, telephone
15 number, fax number, and E-mail. So let's go ahead and
16 begin with Staff, Mr. Fassio.

17 MR. FASSIO: Good morning, Your Honor,
18 present on behalf of Commission Staff, Michael Fassio,
19 Assistant Attorney General, my address is 1400 South
20 Evergreen Park Drive Southwest.

21 THE INTERPRETER: Do I need to interpret this
22 all as well?

23 JUDGE FRIEDLANDER: You know, it might be a
24 good idea just to have it for Mr. Kirichenko as well.

25 THE INTERPRETER: Could you repeat it,

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1 please.

2 MR. FASSIO: Certainly. My address is 1400
3 South Evergreen Park Drive Southwest, P.O. Box 40128,
4 Olympia, Washington 98504. My telephone number is (360)
5 664-1192, and my fax number is (360) 586-5522, and my
6 E-mail address is mfassio@wutc.wa.gov.

7 And sitting with me is David Pratt of
8 Commission Staff.

9 JUDGE FRIEDLANDER: And appearing on behalf
10 of V&K today.

11 MR. HERBSTER: I'm Jeffrey Herbster appearing
12 on behalf of V&K Delivery Services, LLC, last name
13 Herbster, H-E-R-B-S-T-E-R. My address is West 601
14 Riverside, Suite 1900, Spokane, Washington 99201,
15 telephone number is (509) 838-6131, fax number is (509)
16 838-1416, my E-mail is jah@winstoncashatt.com,
17 W-I-N-S-T-O-N-C-A-S-H-A-T-T.

18 JUDGE FRIEDLANDER: Great, thank you. And
19 just for the record, Mr. Kirichenko is also appearing
20 with you?

21 MR. HERBSTER: Yes, Mr. Kirichenko is in the
22 room with me right now.

23 JUDGE FRIEDLANDER: Okay, great.

24 Is there anybody else on the bridge line who
25 would like to enter an appearance today?

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1 Hearing nothing and there is no one else in
2 the room to indicate that they would wish to make an
3 appearance today, let's go to the administrative issues.
4 Are there any preliminary matters that we need to
5 discuss before we get into opening remarks?

6 MR. HERBSTER: I have none.

7 MR. FASSIO: Staff has none.

8 JUDGE FRIEDLANDER: Okay, great.

9 And I would note that prior to going on the
10 record I had sent via electronic mail an exhibit list to
11 all of the parties, and the parties have indicated that
12 the exhibit list is fine and that there are no additions
13 or modifications.

14 So if there is no other preliminary matters,
15 let's go ahead and go into opening statements, and let's
16 go ahead and begin with Staff today.

17 MR. FASSIO: Good morning, Your Honor.

18 JUDGE FRIEDLANDER: Good morning.

19 MR. FASSIO: You have all the exhibits with
20 you and Staff's statement of position and Mr. Pratt's
21 declaration, so I won't belabor going through all the
22 details of that, you have those in front of you.

23 I do apologize, and please do stop me if I'm
24 going too fast, I will try to be slow.

25 THE INTERPRETER: Okay.

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1 MR. FASSIO: Staff's position is that the
2 Commission cancel a temporary operating authority of V&K
3 Delivery Services and deny its application for permanent
4 authority. Staff finds that while the -- I should take
5 a couple of -- one minute to just go over the rules that
6 apply here.

7 RCW 81.80.070(1) requires that a common
8 carrier, contract carrier, or temporary carrier shall
9 not operate for the transportation of property for
10 compensation in this state without first obtaining from
11 the Commission a permit for such operation. RCW
12 81.80.070(1)(a) states that the Commission shall not
13 issue a common carrier permit -- shall issue a common
14 carrier permit if the applicant is found fit, willing,
15 and able to perform the service and conform to the
16 provisions of the chapter of the rules and regulations
17 of the Commission.

18 As of January 27th of this year, the
19 Commission revised its household goods rules setting
20 forth the conditions that the Commission may consider in
21 determining whether to cancel a temporary household
22 goods permit and the conditions under which the
23 Commission can reject or deny permanent authority.
24 Under WAC 480-15-320, the Commission has the discretion
25 to cancel a temporary permit if the carrier has been

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1 convicted of any crime and also sets forth several other
2 conditions including that other circumstances exist that
3 cause the Commission to believe that canceling the
4 permit is in the public interest. Washington regulation
5 WAC 480-15-330 sets forth similar conditions for the
6 rejection or denial of permit authority.

7 Staff believes that the evidence presented
8 here today will establish that the applicant,
9 Mr. Kirichenko, has committed the crime of attempted
10 residential burglary prior to his application. Indeed,
11 the applicant has admitted on his application that he
12 has been convicted of this crime, and certified court
13 records also establish this fact.

14 Staff believes that the current household
15 goods rules apply to this case because the applicant's
16 permit was granted under the new rules, the notice has
17 been issued under the new rules, and this hearing is
18 being conducted under the new rules. So Staff disagrees
19 with the applicant's statement in its statement of
20 position that the earlier now revised rules should apply
21 here.

22 In addition, the Staff believes that the
23 rules as applied in this case are not unconstitutional.
24 The State is charged with regulating household goods
25 carriers in the public interest, which includes the

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1 authority to issue, deny, and cancel permits to
2 transport household goods.

3 The rules which provide conditions including
4 prior convictions of crimes and a carrier's compliance
5 with state law is rationally related to whether a
6 carrier is fit to receive a household goods permit, and
7 the applicant is appropriately given due process of
8 Commission's intention to cancel permit by this notice
9 and an opportunity to request a hearing. The statute
10 being discretionary overly broadens the Commission's
11 discretion to look at individual crimes and determine
12 whether actions should be taken. And as such, the
13 Commission should apply the facts and circumstances of
14 this crime to the statutes and is not being asked to
15 apply other crimes such as jay walking as mentioned in
16 the applicant's statement.

17 As Staff has already stated in its position
18 and Mr. Pratt has declared, Staff believes that this
19 crime of attempted residential burglary is very related
20 to the issue of household goods because the moving
21 public entrusts the security of their home and property
22 to carriers they select.

23 THE INTERPRETER: Can you repeat it one more
24 time.

25 MR. FASSIO: Staff believes the crime of

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1 attempted residential burglary is particularly relevant
2 to the issue of whether a carrier is fit to have permit
3 because the moving public entrusts the security of their
4 homes and property to carriers they select. The
5 Commission is particularly concerned with public safety
6 and consumer protection. A criminal conviction, and
7 particularly for crimes of burglary and when they
8 involve a weapon --

9 MR. HERBSTER: Your Honor, this is Jack
10 Herbster.

11 JUDGE FRIEDLANDER: Sure.

12 MR. HERBSTER: May I enter an objection?

13 JUDGE FRIEDLANDER: Based on?

14 MR. HERBSTER: Based on the fact there was no
15 conviction related to a weapon.

16 JUDGE FRIEDLANDER: Any reply, Mr. Fassio?

17 MR. FASSIO: Okay, let me rephrase that.

18 JUDGE FRIEDLANDER: Okay.

19 MR. HERBSTER: Thank you.

20 MR. FASSIO: Sure.

21 A criminal conviction, particularly for
22 crimes of burglary, certainly impacts public safety and
23 consumer protection. The applicant has admitted on his
24 application that there was a weapon involved, and the
25 court records indicate a weapon was involved. This

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1 further concerns Staff, but Staff's position is that
2 this carrier because of the conviction of attempted
3 residential burglary should be denied permanent
4 authority, and therefore Staff recommends that the
5 Commission cancel temporary authority and deny permanent
6 authority to this carrier.

7 Thank you.

8 JUDGE FRIEDLANDER: Okay, thank you.

9 And, Mr. Herbster, would you like to make an
10 opening statement?

11 MR. HERBSTER: Yes, thank you.

12 JUDGE FRIEDLANDER: Sure.

13 MR. HERBSTER: What the State in today's
14 hearing is determining whether Vladimir can maintain his
15 sole means of support.

16 THE INTERPRETER: Can you repeat it, please.

17 MR. HERBSTER: I will try.

18 What the State in today's hearing is
19 determining Vladimir's means of support for his family
20 from this business. Vladimir and his wife of nearly 5
21 years sole source of income is this business, for which
22 they support their 3 kids. And although there's no
23 evidence he has any current public threat, his business
24 is being taken away for a mistake he made nearly 8 years
25 ago at the age of 20 years old for which he has assumed

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1 all responsibility.

2 Vladimir has the opportunity today to show
3 sufficient mitigating circumstances allowing him to
4 continue to run his business and support his family.
5 The sufficient mitigating circumstances are that he
6 poses no current threat. The attempted second degree
7 burglary can be explained as a isolated occurrence
8 related to a personal situation in which Vladimir was
9 trying to get into a residence he previously lived in to
10 return his own personal property. The means he chose
11 were wrong and unjustified and can be written off to
12 youthful indiscretion of 8 years ago. In the past 8
13 years, Vladimir has been a law abiding citizen and run
14 his business successfully, as demonstrated by over 13
15 affidavits submitted by his customers. There is no
16 evidence to show he has any potential threat to the
17 public today. Vladimir made full disclosure of this in
18 his application, was granted temporary authority, and
19 operated his business for eight months before being
20 notified of revocation of his license.

21 In addition to showing he poses no threat and
22 has had no other criminal activity in his lifetime and
23 there being absolutely no evidence to indicate Vladimir
24 poses a threat, there are both substantive and
25 procedural due process issues with this action. As

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1 stated in our statement of position, the rules
2 substantially substantively changed after Vladimir
3 applied for his license, Vladimir justifiably relied for
4 eight months on the temporary permit, and finally the
5 current rule is facially unconstitutional, is vague, and
6 overly broad. Vladimir should be able to continue his
7 business as he has in a safe, responsible manner in the
8 community.

9 Thank you.

10 JUDGE FRIEDLANDER: Thank you.

11 At this point, I would like to go ahead and
12 go into the witness testimony and questioning, and we'll
13 go ahead and begin with Staff.

14 MR. FASSIO: I have a question before we go
15 through and do that.

16 JUDGE FRIEDLANDER: Sure.

17 MR. FASSIO: Should we introduce the exhibits
18 then through Staff that way because I have my witness
19 with me.

20 JUDGE FRIEDLANDER: Definitely.

21 MR. FASSIO: And because he already has a
22 declaration, we will not reread those into the record.

23 JUDGE FRIEDLANDER: Understandable, yeah.

24 MR. FASSIO: Okay.

25 JUDGE FRIEDLANDER: That's perfectly fine,

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1 and at the end we'll just go ahead and admit, you know,
2 somebody can pose the request to admit the evidence at
3 that time. I will allow each of the counsel to go ahead
4 and present the exhibits for themselves.

5 So why don't we go ahead and begin with your
6 witness.

7 And before we do that, I assume since we're
8 in the room together that your witness is Mr. Pratt.

9 MR. FASSIO: Yes.

10 JUDGE FRIEDLANDER: I'm going to go ahead and
11 swear Mr. Pratt in.

12 (Witness DAVID PRATT was sworn.)

13 JUDGE FRIEDLANDER: You may proceed.

14

15 Whereupon,

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DAVID PRATT,

17 having been first duly sworn, was called as a witness
18 herein and was examined and testified as follows:

19

20 D I R E C T E X A M I N A T I O N

21 BY MR. FASSIO:

22 Q. Good morning, Mr. Pratt. Can you please
23 state your name for the record, spelling your last name.

24 A. My name is David Pratt, P-R-A-T-T.

25 Q. And what is your position with the

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1 Commission?

2 A. I'm currently the Assistant Director for
3 Transportation Safety.

4 Q. And did you prepare the declaration that is
5 marked as Exhibit 2 in this hearing?

6 A. Yes, I did.

7 Q. And did you also prepare attached to that
8 declaration the Exhibits marked 3, 4, 5, and 6?

9 A. Yes, I did.

10 Q. And are those exhibits true and correct to
11 the best of your knowledge?

12 A. Yes.

13 Q. Before I ask you any other questions, do you
14 have any specific changes that you would like to make to
15 that declaration?

16 A. Yes, I do. I believe under, this is just
17 probably a typo on my part, but on paragraph 3 on my
18 declaration the incorrect WAC is cited. It should be
19 WAC 480-15-280(1).

20 That's it.

21 MR. FASSIO: Okay, I think at this point I
22 would just like to offer the exhibits, the declaration
23 and Staff's exhibits to that declaration, into evidence.

24 JUDGE FRIEDLANDER: Thank you.

25 And is there any objection to admission of

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1 these exhibits into evidence?

2 MR. HERBSTER: No, Your Honor.

3 JUDGE FRIEDLANDER: Okay, they are admitted.

4 BY MR. FASSIO:

5 Q. Mr. Pratt, have you read the applicant's
6 statement of position?

7 A. Yes, I have.

8 Q. And have you read the exhibits that are
9 attached to it?

10 A. Yes.

11 Q. And you have heard the opening statement
12 today of Mr. Herbster. Having read that applicant's
13 statement of position and hearing that opening
14 statement, does that change your recommendation in this
15 case in any way?

16 THE INTERPRETER: Say that again.

17 Q. Does that change the recommendation that you
18 made in this case?

19 A. No, it does not.

20 Q. And can you explain a little bit why not?

21 A. Sure. I guess I believe as I stated in my
22 declaration that this -- my reasoning is based solely
23 upon the crime of attempted residential burglary and
24 Mr. Kirichenko's statement on his application that it
25 was attempted residential burglary with a weapon. And I

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1 believe it is my duty -- part of my duty is to maintain
2 the public interest. And again as stated in my
3 declaration, what that means to me is ensuring that
4 people -- when we issue a permit here, I believe that
5 means we basically endorse. And I don't believe it's in
6 the public interest for us to endorse issuing a permit
7 for somebody to move household goods and be in a
8 position of entering and having possession of people and
9 having their trust in their homes when they've been
10 convicted of such a crime. And while initially just the
11 crime of attempted residential burglary was troubling,
12 as stated on page 4 of Mr. Kirichenko's application, the
13 fifth question, I'm sorry, sixth question, that he had
14 admitted he was convicted of second degree burglary with
15 weapons in 2001 in King County. And in my review of the
16 police reports and the arresting officer's reports that
17 are part of the exhibits, that there was a weapon found
18 on Mr. Kirichenko, so those are the circumstances for
19 me.

20 And I guess just to respond to one of the
21 statements made in the opening statement about that he
22 was entering his residence just to return his -- his
23 previous residence just to get some of his property, I
24 have a hard time understanding why he felt he needed a
25 weapon to do so.

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1 That's it.

2 Q. Thank you.

3 Can you clarify exactly how many months now
4 Mr. Kirichenko has held a temporary permit?

5 A. Sure. I believe he was issued the temporary
6 permit on March 25th, 2008, and in August, on August
7 26th, we issued a notice of the intent to cancel, almost
8 five months.

9 Q. And you've testified already that you
10 reviewed his application after the grant of temporary
11 authority?

12 A. Correct.

13 Q. And that you said that this was not noticed
14 by licensing staff preliminarily?

15 A. That's correct as well. This was an
16 oversight on licensing staff when they processed the
17 application, and they're aware of these rules, and what
18 they should have done is brought this to my attention at
19 that time before they issued the provisional permit.
20 What I would have done at that time is I probably would
21 have done the same research I did after I learned about
22 it later, and then I would have requested the court
23 records as I did, and I would have reviewed the case
24 before making the decision on issuing the provisional
25 permit, and I believe at that time I would have denied

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1 the provisional permit.

2 Q. And just also to clarify for the record that
3 the rules under which the Staff would have made these
4 considerations would have been the current rules?

5 A. Yes.

6 Q. And when do you understand those current
7 rules came into effect?

8 A. Early January of '08.

9 Q. But after the applicant had submitted his
10 application?

11 A. Yes.

12 Q. And as of the effective date of the new
13 rules, is it your understanding that all permitted
14 carriers and the Commission should apply those rules?

15 A. Yes.

16 MR. FASSIO: Thank you, I don't believe I
17 have any more questions for Mr. Pratt.

18 JUDGE FRIEDLANDER: Okay, thank you.

19 Mr. Herbster, do you have any cross for
20 Mr. Pratt?

21 MR. HERBSTER: Yes, I would like to ask a few
22 questions.

23 JUDGE FRIEDLANDER: Okay, go ahead.

24

25

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1 C R O S S - E X A M I N A T I O N

2 BY MR. HERBSTER:

3 Q. Mr. Pratt, I understand the revocation of the
4 license is in your discretion, correct?

5 A. That's correct.

6 Q. When you look at a revocation because of
7 criminal activity, what factors do you look at?

8 A. I would start with looking at the type of
9 permit that was being requested for issue, and then I
10 would look at the factors or the crime in this case that
11 was committed, and then whether that crime had a direct
12 impact on the type of business or permit that was being
13 requested.

14 Q. Would you consider the factor of any other
15 criminal activity by the applicant?

16 A. Certainly, any criminal activity that was
17 brought to my attention would be considered.

18 Q. So the fact there's no other criminal
19 activity would also be considered?

20 A. Yes.

21 Q. Do you know of any other criminal activity by
22 Vladimir?

23 A. I'm not aware of any, no.

24 Q. Would you consider the time period since the
25 crime was committed and the application?

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1 A. Yes, I would.

2 Q. Rather than me asking you a bunch of specific
3 questions, could you expand on that?

4 A. I'm not sure exactly how you want me to
5 answer the question. I guess my stand is --

6 Q. I will go back. At what point would
7 Vladimir's application and his criminal activity would
8 you consider him for a business license, a
9 transportation license?

10 A. I'm not sure I can give you an exact date or
11 number of years. I just know that when I looked at it,
12 I looked at the data, and it said a crime, it showed a
13 crime in 2001 and a conviction in 2003, and again
14 because of the nature of the crime I didn't feel that
15 had been a long enough time to not consider it.

16 Q. So that was 8 years ago, would 16 years ago
17 maybe change your mind?

18 A. Maybe.

19 Q. Would you consider the age of the applicant
20 at the time they committed the crime?

21 A. I guess I would have looked at that, but I
22 don't think it would have weighed heavily in my
23 decision.

24 Q. Did you know that Vladimir at one time lived
25 in that residence?

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1 A. Yes, I did.

2 Q. And did that affect your decision?

3 A. Well, partially yes. I say it affected my
4 decision when I read the fact that he had a weapon
5 trying to go back into his former residence. It made me
6 wonder why, if it was his former residence, if he was
7 just trying to get his belongings, he needed a weapon.
8 It indicated to me intent to do harm.

9 Q. And I understand the gravity of the
10 circumstance, but besides the event of May 2001, are
11 there any other factors you are considering that
12 Vladimir poses a threat to the public?

13 A. I would say no.

14 Q. Besides the event of May 2001, is there
15 anything that makes you believe that Vladimir currently
16 poses a threat?

17 A. No.

18 MR. HERBSTER: Thank you.

19 JUDGE FRIEDLANDER: Mr. Herbster, did you
20 have any further questions?

21 MR. HERBSTER: I have no further questions,
22 thank you.

23 JUDGE FRIEDLANDER: Okay, thank you.

24 And do you have any redirect?

25 MR. FASSIO: I think just one.

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1 R E D I R E C T E X A M I N A T I O N

2 BY MR. FASSIO:

3 Q. Just to clarify your last statement,
4 Mr. Pratt, do you believe that the evidence provided in
5 this case about the previous crime is sufficient
6 evidence for you to conclude that the applicant is not
7 fit for carrier authority and that public interest
8 requires the Commission to reject permanent authority
9 and cancel authority on that basis alone?

10 A. Yes.

11 Q. And do you also believe that the event was
12 sufficiently recent in time that that also indicates
13 that it is not in the public interest?

14 A. Yes.

15 MR. FASSIO: I think that's all, thank you.

16 JUDGE FRIEDLANDER: Okay, thank you.

17 And, Mr. Herbster, on that one point, did you
18 have any recross at all?

19 MR. HERBSTER: No, Your Honor.

20 JUDGE FRIEDLANDER: Okay, thank you.

21 Mr. Pratt, you are dismissed from the witness
22 stand.

23 THE WITNESS: Thank you.

24 JUDGE FRIEDLANDER: And counsel for Staff,
25 did you have any other witnesses?

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1 MR. FASSIO: No.

2 JUDGE FRIEDLANDER: Okay.

3 Actually, you know, I'm going to go ahead and
4 -- I take it back, you're not dismissed. You're still
5 under oath, I will remind you of that, but I had just a
6 couple of questions from the opening statements as well
7 as the questioning.

8

9 E X A M I N A T I O N

10 BY JUDGE FRIEDLANDER:

11 Q. Has the Commission received any complaints
12 against Mr. Kirichenko in the five months since he
13 received notice of Commission intent to cancel?

14 A. None that I'm aware of, no.

15 Q. How about in the eight months since he's had
16 the temporary?

17 A. No.

18 Q. And also, and I certainly understand
19 Mr. Herbster's point, what makes Staff believe that this
20 was not an isolated incident?

21 A. Well, without trying to make this too long of
22 an answer, when I reviewed the court papers and the
23 arresting officer's reports, it indicated that
24 Mr. Kirichenko was found with burglary tools and a
25 weapon. And so it just made me question if he was

0030

1 trying to return to a previous residence which he had
2 keys to why he needed burglary tools and a weapon to do
3 so, and it made me wonder, so I'm not convinced that it
4 might have just been an isolated incident.

5 Q. Okay, thank you.

6 The last question I had, and you detailed the
7 process that Staff goes through in reviewing an
8 application for a permit, has Staff completed I guess
9 any ancillary investigation such as the requisite safety
10 inspections or anything of that nature?

11 A. I believe if I understand your question
12 right, have we done any other inspections?

13 Q. Exactly.

14 A. No, not at this point.

15 Q. Okay. Because I know that Staff is also
16 recommending denial of the permanent application, and
17 that would be something that under the WAC I believe
18 Staff would be conducting safety inspections.

19 A. Yes. Part of the criteria for obtaining a
20 permanent license is that you have your vehicles
21 inspected for safety before that's done. I also
22 supervise the motor carrier safety inspection staff, and
23 when I made the decision to issue this order denying or
24 canceling the temporary and denying the permanent, I put
25 a hold on the vehicle inspections. Because we normally

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1 would do those by the sixth month of the provisional,
2 which would have been last month.

3 JUDGE FRIEDLANDER: Okay, thank you so much,
4 and now you're dismissed.

5 Mr. Herbster, I understand that you also have
6 Mr. Kirichenko for testimony and oral statement; is that
7 correct?

8 MR. HERBSTER: Yes.

9 JUDGE FRIEDLANDER: Okay, I'm going to swear
10 Mr. Kirichenko in.

11 (Witness VLADIMIR A. KIRICHENKO was sworn.)

12 JUDGE FRIEDLANDER: Okay, Mr. Herbster, you
13 may proceed.

14 MR. HERBSTER: Have we gotten Vladimir's
15 information yet, or do I need to start with that?

16 JUDGE FRIEDLANDER: Why don't you go ahead
17 and start with that.

18

19 Whereupon,

20 VLADIMIR A. KIRICHENKO,
21 having been first duly sworn, was called as a witness
22 herein and was examined and testified as follows:

23

24 D I R E C T E X A M I N A T I O N

25 BY MR. HERBSTER:

0032

1 Q. Would you please state your full name,
2 Vladimir, spelling your name, and your current address?

3 A. My name is Vladimir, V-L-A-D-I-M-I-R, last
4 name Kirichenko, K-I-R-I-C-H-E-N-K-O.

5 JUDGE FRIEDLANDER: You can continue.

6 A. Home address 18714 --

7 JUDGE FRIEDLANDER: We just need his business
8 address.

9 A. It's the same address as home.

10 JUDGE FRIEDLANDER: Okay, that's fine.

11 A. 18714 Seventh Avenue Court East, Spanaway,
12 Washington, 98387, (253) 534-5737 is the business phone,
13 fax number (253) 301-2127, E-mail address
14 z2007vkyk@Yahoo.com.

15 JUDGE FRIEDLANDER: You can proceed,
16 Mr. Herbster.

17 MR. HERBSTER: I'm sorry, I get a little
18 confused with all this.

19 JUDGE FRIEDLANDER: It's okay, we're just
20 taking our time, it's fine.

21 MR. HERBSTER: Okay.

22 BY MR. HERBSTER:

23 Q. Vladimir, you were convicted of second degree
24 burglary which was committed in May of 2001, correct?

25 A. Yes, but I came to pick up my things.

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1 Q. So this was a house you resided in?

2 A. Yes.

3 Q. So why did you have to break into the house?

4 A. I did not need to break into the home, I had
5 the keys.

6 Q. So explain why, Vladimir, you did not get
7 into the house and why you ended up getting convicted of
8 burglary.

9 THE INTERPRETER: Can you repeat that,
10 please, I'm sorry.

11 Q. Vladimir, can you explain why you ended up
12 being convicted of burglary?

13 A. My girlfriend called me to come and pick up
14 my things, and I came to pick up my things. I had the
15 keys, I did not have the need to break anything.

16 Q. You did plead guilty to second degree
17 burglary though?

18 A. Yes.

19 Q. Why did you do that?

20 A. Because I needed to do that, it was something
21 that needed to be done.

22 Q. What was your sentence for the conviction?

23 A. I didn't understand the question, can you
24 restate the question?

25 Q. What were the consequences of the crime, how

0034

1 much time did you have to spend in jail?

2 A. I don't remember exactly. I think if your
3 behavior is good two months, if your behavior is not
4 good three months in jail.

5 Q. So how long were you in jail, Vladimir?

6 A. I came in there 13th of February, and I was
7 released on the 11th of April, that is two months.

8 Q. What did you do after you got out of jail?

9 A. I tried to work.

10 Q. Have you started your own business since you
11 got out of jail?

12 A. No, I started to work for a company and then
13 I opened my business.

14 Q. How long did you work for the company?

15 A. All that time until I opened my business.

16 Q. Have you since married?

17 A. I got married in 2004, 28th of February.

18 Q. What does your wife do?

19 A. Right now she helps me with my job. This is
20 the only source of income business we have.

21 Q. How many children do you have?

22 A. Three children. We had a child on the 17th
23 of September we had last child. The third child was
24 born on 17th of September.

25 Q. Besides the attempted burglary, have you ever

0035

1 been convicted of any other crime?

2 A. No, I don't even have any tickets, speeding
3 tickets or anything like that, I haven't even ever been
4 stopped for speeding.

5 Q. Did you ever have any crimes prior to the May
6 2001 attempted burglary?

7 A. No, I did not have.

8 Q. What kind of customers do you have now,
9 Vladimir?

10 A. I work with a company that works with Home
11 Depot. I carry, I deliver appliances in apartments.

12 Q. Do you have repeat customers?

13 A. Yes, I have clients that come more than once,
14 come back more than one time.

15 Q. Have you had any complaints from any of your
16 clients?

17 A. No, I don't have any complaints, I only have
18 positive recommendations.

19 Q. Vladimir, I asked you to find some statements
20 from your customers, did you talk to your customers
21 about that?

22 A. What exactly?

23 Q. Vladimir, in preparing your defense of this
24 hearing, I asked you to get some statements from your
25 customers.

0036

1 A. Yes.

2 Q. Did you have any problems getting affirmative
3 statements from customers?

4 A. No, I did not have any problem.

5 Q. Did any customer refuse to give you a
6 statement?

7 A. No. They even said that if there is a need
8 for more recommendation, they would be willing to give
9 it.

10 Q. And do you live in a house or an apartment
11 now?

12 A. I rent a home.

13 Q. And how long have you been in that home?

14 A. I think soon it's going to be two years.

15 JUDGE FRIEDLANDER: Mr. Herbster, did you
16 have any other questions to ask?

17 MR. HERBSTER: I was just reviewing my notes,
18 and I'm going to say no, I have no other questions.

19 JUDGE FRIEDLANDER: Okay, thank you.

20 Mr. Fassio, do you have any
21 cross-examination?

22 MR. FASSIO: I do have a few questions, just
23 give me a moment, please.

24 JUDGE FRIEDLANDER: Sure.

25

0037

1 C R O S S - E X A M I N A T I O N

2 BY MR. FASSIO:

3 Q. Mr. Kirichenko, if you could just clarify for
4 the record that you are the owner of V&K Delivery; is
5 that correct?

6 A. Yes.

7 Q. And you are the operator and manager?

8 A. Yes. Not only me, but my wife helps me out
9 also.

10 Q. Okay. Let's see, and you have several
11 supporting statements here, and you also testified that
12 you used to work for another company; is that company
13 Diamond Floor Coverings?

14 A. No.

15 Q. Mr. Kirichenko, if you could tell us what
16 type of business were you in previously?

17 A. Worked for a cement company. They were
18 making the rails for the trains.

19 Q. And several of these supporting statements
20 that accompanied your statement of position, did they
21 relate to business that was not involved with household
22 goods moving or other moving of furniture?

23 THE INTERPRETER: Can you repeat it.

24 Q. Several of the supporting statements that you
25 provided, and I will refer specifically to I believe

0038

1 what's marked as Exhibit D, E, F, G, and H, and I
2 believe I, these are supporting statements, but they're
3 not specifically related to the moving of furniture and
4 other goods?

5 A. No.

6 JUDGE FRIEDLANDER: Wait, no they are not, or
7 no they are?

8 A. No, these are other jobs where I worked, I
9 took recommendation from them also.

10 JUDGE FRIEDLANDER: Okay, thank you.

11 Q. But Exhibits A, B, and C, those do relate to
12 your business as V&K Delivery Services for various
13 customers?

14 A. Yes.

15 Q. Thank you.

16 Mr. Kirichenko, are you aware that there are
17 many operations that do not require permit from the
18 Commission, such as moving of commercial or office goods
19 that are not part of residential household goods moving
20 or -- and specifically I guess I would refer to there's
21 a regulation WAC 480-15-181 --

22 THE INTERPRETER: Can you repeat the number.

23 Q. 480-15-181 that you may wish to refer to.

24 A. No.

25 Q. Okay.

0039

1 MR. HERBSTER: Can you clarify what the
2 question was, please.

3 Q. Yes, my question was, is Mr. Kirichenko aware
4 that there are several operations involving the moving
5 and transporting of various goods that do not require a
6 Commission permit?

7 A. No, I did not know. I thought it was needed
8 for everything, for all kinds of moving.

9 Q. And so you were not aware for example that
10 when you move goods for a commercial mover or a
11 commercial company such as America the Beautiful Dreamer
12 in Exhibit B that that type of operation does not
13 require a permit?

14 A. No, I did not know.

15 Q. And were you aware that you could move -- you
16 could just transport -- let's see, that you could pack
17 and load goods for a customer but not transport their
18 belongings under Commission rules without a permit
19 required?

20 THE INTERPRETER: Can you repeat that.

21 Q. Were you aware that you could pack and load
22 goods for a customer but not transport those goods
23 without a Commission permit?

24 A. Yes, I know, I was told that I need the
25 permit, and that's it.

0040

1 Q. Okay. And again, I can refer you or your
2 attorney may be able to refer you to WAC 480-15-181 for
3 these kinds of things, and I do want to ask were you
4 also aware that you could move a residential customer's
5 household goods from Washington state to a different
6 state?

7 THE INTERPRETER: You could or could not?

8 Q. That you may move customers' household goods
9 from Washington state to a different state without a
10 permit required, without a state issued Washington State
11 permit?

12 THE INTERPRETER: Without a state permit?

13 Q. Without a permit issued by the Utilities and
14 Transportation Commission.

15 A. No, I didn't know, I did not know. I was
16 told that I need the permit, so I did not argue with
17 them since they told me that I need the permit, and
18 that's what I know.

19 Q. And just were you aware that you would also
20 if you did move goods interstate that the U.S.
21 Department of Transportation regulates that activity?

22 A. Yes.

23 Q. And do you foresee that in your business that
24 you may continue to move goods for business customers
25 such as, and I'm sorry if I -- was it Home -- it may

0041

1 have been Home Depot, I apologize if that wasn't, and
2 companies such as that that you've gotten statements
3 from, do you foresee that your business may move those
4 types of goods?

5 A. Yes, if I will have this client, yes.

6 Q. Do you currently have those kind of clients?

7 A. Yes.

8 Q. And do you foresee that perhaps you might
9 have customers who would be moving goods between
10 Washington state and another state?

11 A. No, I do not foresee that right now in terms
12 of transferring goods between states.

13 Q. Do you foresee that in your business you may
14 load goods or pack goods for customers but not
15 necessarily transport them for them?

16 A. No, this is just impossible. The client
17 wants us to pack and transport the goods.

18 Q. Okay. But you do foresee that you would
19 perhaps be moving commercial or office goods for
20 companies?

21 A. Yes, if I have them it's possible, but
22 there's less work everywhere.

23 Q. And you're aware that on your application you
24 have to be complete on your application; isn't that
25 right?

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1 A. Yes.

2 Q. And that you have to be -- you have to
3 represent everything truthfully?

4 A. Yes, of course.

5 Q. And you did state on your application that
6 you were convicted of second degree burglary with
7 weapon?

8 A. Yes, everything that happened was written
9 down.

10 Q. And you acknowledge that everything that was
11 written down, that you did have tools and that gun with
12 you as it's stated in all those -- in the court papers?

13 MR. HERBSTER: I object, I'm not sure exactly
14 what your question is first of all. Second of all, he
15 admitted to second degree attempted burglary period. If
16 you're asking him to verify the accuracy and truth of
17 the 60 page police report, I will object.

18 MR. FASSIO: I will withdraw the question.

19 I don't have any more questions at this time,
20 thank you, Mr. Kirichenko.

21 THE WITNESS: Thank you.

22 JUDGE FRIEDLANDER: Thank you.

23 And, Mr. Herbster, do you have any redirect?

24 MR. HERBSTER: I do not, thank you, Your
25 Honor.

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1 JUDGE FRIEDLANDER: Okay. I do have some
2 questions, clarification questions that I would like to
3 ask.

4

5 E X A M I N A T I O N

6 BY JUDGE FRIEDLANDER:

7 Q. Staff has correctly pointed out that in order
8 for people to hire household goods carriers, a level of
9 trust has to exist with the carrier, so I need to ask a
10 few more details about the conviction. You stated,
11 Mr. Kirichenko, that you used to live in the dwelling
12 that you pled guilty to attempting to enter. When did
13 you vacate the dwelling?

14 A. I do not remember exactly. I did not move
15 out of it when we broke up with my girlfriend, I just
16 left.

17 Q. And you left your things behind?

18 A. Yes.

19 Q. It doesn't have to be exact, it can be an
20 approximation, but how long before your arrest, a day, a
21 week?

22 A. I think I believe about a month, maybe a
23 little bit more, a little bit less. I tried to contact
24 her, and she would not pick up the phone. But then she
25 called, and I came. I was trying to contact her.

0044

1 Q. So she called you?

2 A. Yes.

3 Q. And you were responding to her phone call?

4 A. Yes, because I needed my things, because I
5 was -- that is why I was calling her before that, but
6 she would not pick up the phone. Then she called back,
7 and I picked up the phone.

8 Q. I see.

9 Just one second, Mr. Kirichenko.

10 Mr. Kirichenko, I would like your version of
11 the events leading up to your arrest. I don't expect
12 you to verify the -- strike that.

13 I don't expect that you can represent whether
14 or not the arresting officer's report is true. However,
15 I would like to hear in your own words what happened,
16 because the weapon does bother me as well.

17 A. What exactly, I did not understand question
18 completely.

19 Q. Sure, I will try and rephrase it.

20 Obviously as I said before, people hiring
21 movers and household goods carriers put a lot of trust
22 in the people that they hire. This has been explained
23 by your counsel, this conviction has been explained by
24 your counsel as an isolated incident. What troubles me
25 most is the presence of a weapon involved. The police

0045

1 report is sketchy as far as where the weapon was found,
2 however, the prosecuting attorney found probable cause
3 that you were in possession of the weapon. And on your
4 application, you indicated the crime involved a weapon.
5 Did the crime involve a weapon? And this is really
6 where I would like your explanation in your own words.

7 MR. HERBSTER: You have to answer, go ahead
8 and answer.

9 A. I think those bad and stupid days. That's
10 all I get for explain this case.

11 Q. If you just wanted your stuff back, why would
12 a weapon be necessary?

13 MR. HERBSTER: Go ahead.

14 A. I guess that's young days, stupid, that's it.

15 Q. So the weapon was yours?

16 MR. HERBSTER: Vladimir is thinking, he's
17 shaking his head no right now and unhappy. I mean just
18 he's concerned here, but he is thinking. I will ask him
19 to answer the question here, so.

20 JUDGE FRIEDLANDER: Thank you, I appreciate
21 it.

22 And I would just note the Commission has no
23 criminal authority over Mr. Kirichenko with regards to
24 this prior event. This hearing is solely for the taking
25 up evidence regarding Staff's request. But for the

0046

1 purposes of my rendering a decision, I need to know
2 whether or not the gun was Mr. Kirichenko's.

3 A. No.

4 BY JUDGE FRIEDLANDER:

5 Q. You were with another gentleman that evening
6 as well; is that correct?

7 A. Yes.

8 Q. Do you have any further contact with this
9 gentleman?

10 A. What do you mean, did not understand the
11 question?

12 Q. The gentleman that you were with that evening
13 according to the police report, and I'm just locating
14 the police report with his particular name, I believe
15 it's Vizitiv.

16 A. Vizitiv.

17 Q. Vizitiv, do you have any contact with him
18 currently?

19 A. No.

20 Q. Do you know, if the gun was not yours, do you
21 know whose the gun was?

22 A. No.

23 Q. Okay. Do you currently own any firearms
24 personally?

25 A. No.

0047

1 Q. You stated that your wife also helps you with
2 the business, does she own any firearms?

3 A. No.

4 Q. Do you have any other employees working for
5 you in the business?

6 A. No.

7 Q. In the plea agreement, there was a no-contact
8 order that you were not to contact I believe it's Angel
9 Yim; have you complied with that?

10 A. No, of course, they gave me probation, and I
11 never seen him or her from that day on.

12 Q. Okay, thank you.

13 Going back into a topic that staff raised,
14 you stated that prior to applying for the permit you
15 were employed by a cement company. When did you leave
16 the cement company?

17 A. I said that I worked for a cement company
18 before I started my business, so before I worked, I
19 started my business, my own business, I was also working
20 laying tile, and then before that I worked for the
21 cement company.

22 Q. I see. So when did you leave the, well, let
23 me rephrase that.

24 You applied for the permit in January of
25 2008, correct; were you working for the tile company

0048

1 prior to that?

2 A. Before I started this business, yes.

3 Q. Okay.

4 A. But I also worked as a janitor cleaning up.

5 Q. Okay.

6 A. I cleaned up stores, clinics, and banks.

7 JUDGE FRIEDLANDER: Okay, that's all the
8 questions I have. Mr. Kirichenko, I appreciate your
9 honesty and cooperation.

10 I'm going to go ahead and dismiss

11 Mr. Kirichenko as a witness.

12 Mr. Herbster, would you like to request that
13 your exhibits be admitted?

14 MR. HERBSTER: Oh, yes, thank you, Your
15 Honor.

16 JUDGE FRIEDLANDER: Certainly, you can go
17 ahead.

18 I assume that's Exhibits 16 through 27?

19 MR. HERBSTER: Yeah, I'm trying to figure out
20 -- so yeah, we have on the exhibit list Exhibits 16
21 through 27, which were attached to the statement of
22 position, and assuming there's no objection, I would ask
23 those to be admitted.

24 JUDGE FRIEDLANDER: And is there any
25 objection?

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1 MR. FASSIO: No objection.

2 JUDGE FRIEDLANDER: Okay, the Commission will
3 admit Exhibits 16 through 27 on behalf of
4 Mr. Kirichenko.

5 And I would note that the Staff exhibits that
6 have been admitted are 1 through 10 with a corrected
7 Exhibit Number 2, which is the declaration of David
8 Pratt.

9 And, Mr. Herbster, did you have any other
10 witnesses which you would like to present?

11 MR. HERBSTER: No, I did not.

12 JUDGE FRIEDLANDER: Okay, thank you.

13 I'm going to go ahead and allow counsel to
14 present closing arguments unless somebody needs to take
15 a break, because we've been going at this for a while.

16 Okay, hearing no objection, I will go ahead
17 and allow Staff to present closing argument.

18 MR. FASSIO: Thank you, just one moment, Your
19 Honor.

20 The evidence before you establishes that the
21 applicant, Mr. Kirichenko, did commit the crime of
22 attempted residential burglary in King County prior to
23 his application for household goods authority. The
24 applicant truthfully admitted this on his application,
25 and he also indicated on his application that it was

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1 with a weapon or weapons. You have the certified court
2 records of the judgment and sentence and his plea of
3 guilty, and that guilty plea incorporates other court
4 records such as the information, probable cause, and
5 police report, and those court records speak for
6 themselves.

7 The Commission rules WAC 480-15-320, states
8 that the Commission may cancel a temporary permit if it
9 determines that the carrier has been convicted of any
10 crime, and it also allows the Commission the discretion
11 to cancel a temporary permit even if other circumstances
12 cause the Commission to believe canceling the permit is
13 in the public interest.

14 Similarly, the Commission rule WAC 480-15-330
15 states that the Commission may deny or reject permanent
16 authority if it determines the carrier has been
17 convicted of a crime and also states the Commission may
18 cancel, or I'm sorry, may deny permanent authority even
19 if other circumstances exist causing the Commission to
20 believe denial is in the public interest.

21 Staff has testified here that it has done a
22 thorough evaluation of the application, and its
23 determination is that not only does the existence of
24 this crime allow the Commission to cancel and deny
25 authority, but this particular crime of residential

0051

1 burglary and attempted residential burglary is
2 particularly pertinent to the Commission's determination
3 with respect to the moving of residential household
4 goods.

5 As Staff has testified, the carrier-customer
6 relationship is a position of trust. Customers entrust
7 the security of their homes and their property to the
8 carriers that they select. Customers should expect that
9 the carriers they select and those who have been
10 permitted by the Commission do not have a criminal
11 history of violating that trust with anyone in the
12 public.

13 The applicant's past criminal conduct, even
14 if it occurred only once as evidenced in the record,
15 demonstrates the applicant has violated or attempted to
16 violate the security of another's home in violation of
17 state law. And according to his application and the
18 certified court records, but at least his application,
19 he had a weapon during the commission of that crime.
20 Staff strongly believes that an important policy goal of
21 this Commission with respect to the regulation of
22 household goods is consumer protection and public
23 safety.

24 Staff believes this is a crime which has an
25 impact upon public safety and consumer protection

0052

1 issues. And as such, Staff believes it is not in the
2 public interest to grant the authority to a carrier with
3 this history of a crime for attempted residential
4 burglary.

5 And Staff would like to note that it is
6 apparent that the applicant may be able to conduct other
7 operations that are not regulated by the Commission and
8 regardless of the Commission's action today can
9 undertake -- can do certain operations that do not
10 require a permit. And as an example, some of these
11 operations are detailed in WAC 480-15-181. For example,
12 the applicant may be able to move commercial or office
13 goods that are not part of household goods moves between
14 residences.

15 And returning back to Staff's recommendation,
16 it is Staff's recommendation that on the basis of the
17 commission of the crime detailed in this case, the
18 Commission should cancel temporary authority and deny
19 permanent authority to the V&K Delivery services.

20 Thank you.

21 JUDGE FRIEDLANDER: Thank you.

22 Mr. Herbster, a closing statement?

23 MR. HERBSTER: Thank you, Your Honor.

24 Again, what is at stake today is Vladimir's
25 support for him and his family. The Commission has the

0053

1 right and responsibility to protect the public interest,
2 but not without consideration of the costs. We are here
3 today to show there is sufficient mitigating
4 circumstances to allow Vladimir to continue with his
5 business. The Commission's decision to revoke his
6 license is based solely on one isolated event. Vladimir
7 was 20 years old 8 years ago when he committed second
8 degree attempted burglary. He acknowledged the crime
9 then, he disclosed the crime on his application, and
10 actually on the application indicated there were weapons
11 involved when the conviction didn't actually provide
12 weapons. In a sense, he's here for maybe disclosing too
13 much. There has been no evidence submitted today
14 showing the public interest will be harmed by Vladimir
15 continuing his business. And to suspend his business
16 and the livelihood of his wife and his kids when there
17 is no evidence it will serve the public in any way is
18 unfair and wrong. Vladimir has demonstrated he's
19 responsible, honest, hard working, and well liked by his
20 customers. We've demonstrated sufficient mitigating
21 circumstances for him to maintain his business, and the
22 Commission has not demonstrated there's any threat to
23 the public by him continuing to operate. Please allow
24 him to continue with his business.

25 Thank you, Your Honor.

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1 JUDGE FRIEDLANDER: Thank you.

2 Do any of the parties have anything else that
3 they wish to address at this hearing?

4 MR. FASSIO: No, Your Honor.

5 MR. HERBSTER: No, Your Honor.

6 JUDGE FRIEDLANDER: Okay, thank you.

7 This matter will be taken under advisement.

8 I would remind all the parties that this is a brief
9 adjudicative proceeding, and I will draft an initial
10 order within 10 days, and this will be sent to all the
11 parties.

12 So if there's nothing further, this hearing
13 is adjourned, thank you.

14 (Hearing adjourned at 11:40 a.m.)

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