

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

Regarding Cancellation of Household Goods
Permit No. THG-63200 and Dismissal of
Application for Permanent Authority filed
by

V&K DELIVERY SERVICES, LLC.

DOCKET TV-080054

PETITION FOR
ADMINISTRATIVE REVIEW OF
INITIAL ORDER IN BRIEF
ADJUDICATIVE PROCEEDING

I. INTRODUCTION

1 Pursuant to WAC 480-07-610(7), Washington Utilities and Transportation
Commission Staff (Staff) respectfully petitions for Commission review of the
Administrative Law Judge’s Initial Order 01 (“Initial Order” or “Order”) in this brief
adjudicative proceeding, entered in the above entitled case on December 15, 2008. In her
Initial Order, the Administrative Law Judge declined to revoke the temporary authority of
V&K Delivery Services, LLC (V&K) to move household goods.

II. ARGUMENT

2 It is Staff’s position that the decision declining to revoke V&K’s temporary
authority, and holding a decision on permanent authority in abeyance, is incorrect. Staff
requests review of this decision, and asks the Commission to cancel V&K’s temporary
permit, and deny permanent authority.

A. It is not in the Public Interest for the Commission to Grant, or Decline to Revoke, a Household Goods Permit to V&K, the Owner of which has a Prior Conviction for Attempted Residential Burglary.

3 Staff argues that, because of V&K's owner's prior conviction for attempted residential burglary, it is not in the public interest to grant V&K operating authority, and for that reason, the Commission should cancel the temporary permit, and deny permanent authority. Staff's position is amply supported by the record, evidence and testimony.

4 Staff's witness, David Pratt, the Commission's Assistant Director of Transportation Safety, testified at hearing, that it is Staff's duty when reviewing household goods applications, to protect the public interest.¹ He testified that the Commission's issuance of a household goods permit amounts to an endorsement of the carrier.² V&K's conviction for attempted residential burglary, a felony, is undisputed. Based on that fact, the Commission should reasonably conclude that the public safety would be at risk if V&K were to remain a permitted carrier. As Mr. Pratt stated in his declaration:

“the moving public entrusts the security of their homes and property to the carrier they select. Consumers have a reasonable right to expect that the mover they select does not have a history of violating the security of another's home. The conviction of attempted residential burglary charges by this carrier demonstrates a history of a crime against persons and property...I do not believe it is in the public interest to grant this carrier permit authority.”³

At hearing, Mr. Pratt testified that it is “*not* in the public interest for us [the Commission] to endorse issuing a permit for somebody to move household goods...when they've been convicted of such a crime.”⁴

5 In addition, the Administrative Law Judge accepts, in reaching her decision, Mr. Kirichenko's argument, and limited testimony, about why he came to be convicted of

¹ Pratt, TR 22:1-2.

² Pratt, TR 22:1-3.

³ Exhibit 2, ¶ 8.

⁴ Pratt, TR 21:11-19, and 22:2-10.

attempted residential burglary; but V&K’s arguments and explanation fall far short of explaining the troubling facts contained in the court record. Although Mr. Kirichenko testified that he was at the residence because he was responding to a call from his girlfriend, who allegedly told him to come and pick up his things,⁵ the evidence in the court record shows, for example: (a) that the former girlfriend did not live at the house at the time;⁶ (b) the resident of the house, who dialed 911 to report the incident in progress, did so after recognizing Mr. Kirichenko and locking herself in the bathroom, apparently out of fear;⁷ (c) an individual flagged detectives down and reported a “suspicious” car parked two blocks away;⁸ (d) walkie-talkies that worked in conjunction were found on both Mr. Kirichenko and the associate who was with the car;⁹ (e) a semi-automatic handgun was found near the driveway;¹⁰ (f) the police found 20 to 30 rounds of ammunition, of a caliber matching the gun, in a bag that the officer witnessed Mr. Kirichenko throw into the brambles.¹¹ The Administrative Law Judge minimized or dismissed entirely the significance of the facts of this case that are part of the court record.

6 The Initial Order correctly finds that, whether the Commission applies the 2007 edition or the current edition of the household goods rules, it has sufficient discretion to consider an applicant’s conviction for attempted residential burglary when deciding whether to deny or cancel temporary authority, or deny permanent authority.¹² In fact, the 2007 edition of the rules allows for the Commission to deny an application for temporary

⁵ Kirichenko, TR 33:13-15., and 43:22 – 44:7.

⁶ Exhibit 6, Certification For Determination of Probable Cause, at page 1.

⁷ *Id.*

⁸ *Id.*, Certification at 2.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*, Certification at 2.

¹² See Initial Order, ¶¶34, 55.

authority if the applicant had been convicted of a Class A or B felony.¹³ Staff notes that the importance the Commission places on this factor has been expressed by amendment to the household goods rules in January 2008, which specify that the term “commission of a crime” is a factor to consider when canceling or denying permit authority. Furthermore, a single conviction, particularly one involving the violation of the security of a home, with the facts involved, is sufficient to make this determination; multiple similar convictions need not have occurred. The position advocated by Staff is supported by the evidence, in the best interests of the public, and consistent with Commission rules. The Commission should exercise its discretion here, and cancel the carrier’s temporary authority.

B. The Presence of a Gun During the Crime is an Important Factor Supporting the Conclusion that V&K’s Temporary Permit should be Cancelled, and Permanent Authority Denied.

7 The Order, in arriving at its decision declining to revoke authority, fails to fully consider the evidence in the record that a gun was present during the crime. Rather, the Order concludes, that this factor “proves awkward” such that conditions should be attached to the consideration of permanent authority.¹⁴ More so than this, Staff testified that the circumstance of the gun, *in addition to* the conviction itself, is evidence that *justifies* its recommendation that V&K’s temporary authority be cancelled.¹⁵

8 The admission on V&K’s application that the crime occurred “with weapons” is corroborated by the accounts of the crime contained in the Exhibits, which were admitted without objection.¹⁶ Regarding Staff’s position, Mr. Pratt testified regarding the circumstances that: “it affected my decision when I read the fact that he had a weapon trying

¹³ See 2007 Edition of WAC 480-15-280(3)(b).

¹⁴ Initial Order, at ¶ 37.

¹⁵ Pratt, TR 22:10-25, and Exhibit 2, ¶ 10.

¹⁶ See Exhibit 3, page 3 (Application); See Exhibit 6, *Certification for Determination of Probable Cause*.

to go back to his former residence. It made me wonder why, if it was his former residence, he needed a weapon. It indicated to me an intent to do harm.”¹⁷

9 Mr. Kirichenko offered only limited direct testimony at hearing describing what occurred, and did not specifically rebut details from the court records. He was asked to explain, in his own words, the events leading up to his arrest, and account for the weapon. His explanation to the Administrative Law Judge came reluctantly, with multiple promptings from his attorney to answer, and was remarkably brief (“I think those bad and stupid days. That’s all I get for explain[ing] this case.”)¹⁸ In essence, despite what the Initial Order characterizes as his “forthright disclosure of his conviction on his permit application,”¹⁹ the record reflects that, when under oath at hearing, he failed to address the disclosure that he had made on his application regarding the weapon. Staff’s concerns remain, and the conditions the Order attaches, apparently to address the circumstances, do not alleviate Staff’s concerns.

10 In Staff’s view, the evidence, when looked at as a whole in conjunction with the witness’s testimony at hearing, both weaken the Initial Order’s conclusions that “forthright disclosure of the conviction on his permit as well as his admission at hearing...demonstrate sincerity,” and do not support the decision declining to revoke authority. The Commission should review the full body of evidence in the case and find that it supports Staff’s position. The Commission should then revoke V&K’s temporary authority, and deny it permanent authority.

¹⁷Pratt, TR 27:3-8.

¹⁸ Kirichenko, TR 45:9-14.

¹⁹Initial Order, at ¶ 56.

C. The Applicant's Age, and the Length of Time Since the Crime was Committed do not Mitigate the Harm to the Public Interest.

11 The Initial Order discusses, in paragraph 35, that the attempted residential burglary occurred “seven and a half years ago...in Mr. Kirichenko’s adolescence,” and cites in Conclusion of Law 6 that his age is a mitigating factor justifying the Initial Order’s decision to decline to revoke V&K’s permit authority.²⁰ Staff disagrees with this conclusion, and asks for review of this evidence in support of the decision.

12 The evidence shows that Mr. Kirichenko was not an adolescent at the time of the crime; he was a 20 year old adult.²¹ A reasonable person of 20 should be considered responsible enough to understand the nature and consequences of his actions. In addition, Mr. Pratt testified that the age of a person when the crime was committed would not weigh heavily in Staff’s recommendations concerning permit authority.²² For these reasons, age itself should not be a mitigating factor in the decision.

13 Also, Mr. Pratt testified that he reviewed the length of time since the 2001 crime and 2003 conviction, and, in his opinion, it was not long enough ago to consider a different recommendation, given the nature of the crime and Mr. Kirichenko’s chosen line of work.²³ The Order, in paragraph 35 incorrectly infers that it is, without explanation. The Commission should review the Order and find that Mr. Kirichenko’s age at the time of the crime, and length of time since the crime, do not mitigate against revocation of the carrier’s permit, and denial of permanent authority.

²⁰Initial Order, at ¶ 57.

²¹See Exhibit 6, page 1.

²²Pratt, TR, 26: 21-23.

²³Pratt, TR, 26:10-15.

D. The “Letters of Support” Submitted by V&K do not Mitigate against Revocation and Denial of V&K’s Permit Authority.

14 The Initial Order, Conclusion of Law 6, cites 13 customer “letters of support” filed by V&K with both its initial application and Statement of Position, in support of the decision not to revoke the temporary permit or deny permanent authority.²⁴ Contrary to the conclusion in the Initial Order, the letters, as a whole, are of limited mitigating value. They neither clearly pertain to operations under permit authority, or specifically support the applicant’s fitness to operate as a carrier of household goods.

15 First, the evidence shows that only one of the statements dates from the time V&K was granted temporary authority.²⁵ The rest appear to pre-date V&K’s application, going back to 2004. This belies V&K’s assertion at hearing that letters were solicited and received, in preparation for the hearing, or even that most of them were written with the customers’ knowledge that V&K had, or was seeking household goods operating authority.²⁶

16 In fact, the majority of the statements relate to work done previously by Mr. Kirichenko that the Commission does not regulate.²⁷ Exhibit 20 is from a customer who apparently utilized V&K to move a commercial freezer through four doorways, but it is not clear that this was a household goods move. In fact, the record may not have any letters from individual customers claiming to have contracted with V&K to move their own residential household goods, and describing their personal experience with these moves. Finally, Staff notes for clarification that two of the 13 statements contained in the record are from the same business customer.²⁸

²⁴Initial Order, at ¶57.

²⁵Exhibit 18 (Dated September 5, 2008). V&K was granted temporary authority on March 28, 2008. The Commission’s Notice in this docket was issued August 27, 2008. It is not clear from the Exhibit, from Serpro Logistics, that it pertains to V&K’s operations under its temporary permit.

²⁶Kirichenko, TR 35:23-14.

²⁷Kirichenko, TR 37:19–13. For example, Exhibit 21, 23, 24, and 27 appear to refer to tile work. Exhibit 22 appears to refer to refers to flooring work. Exhibit 25 appears to refer to painting work. Exhibit 26 appears to

17 Finally, and importantly, Staff testified at hearing that its position concerning
cancellation was unchanged even after review of V&K's filings in preparation for hearing,
which included these statements.²⁹

III. CONCLUSION

18 For the reasons stated above, Staff respectfully requests that the Commission grant
this Petition for Review of Initial Order 01 in this Brief Adjudicative Proceeding, and
reconsider the Initial Order's decision Declining to Revoke Temporary Authority and
Imposing Conditions.

DATED this 5th day of January, 2009.

Respectfully submitted,

ROBERT M. MCKENNA
Attorney General

MICHAEL A. FASSIO
Assistant Attorney General Counsel for
Washington Utilities and
Transportation Commission Staff

refer to janitorial services. Also, Exhibits 18, 19, and 20 appear to be from commercial customers.
²⁸See Exhibit 19, and Exhibit 3, Attachment A, Statement of Support (America the Beautiful Dreamer).
²⁹Pratt, TR 21:11-19.