

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

In re Application of	)	DOCKET TV-080054
	)	
V&K DELIVERY SERVICES, LLC,	)	RESPONSE TO PETITION FOR
(THG-63200)	)	ADMINISTRATIVE REVIEW OF
	)	INITIAL ORDER IN BRIEF
	)	ADJUDICATIVE PROCEEDING
	)	
	)	
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V&K Delivery Services, LLC, (“V&K”) by and through its attorney Jeffrey A. Herbster of Winston & Cashatt, Lawyers, responds to the Petition for Administrative Review of Initial Order in Brief Adjudicative Proceeding filed by the Washington Utilities and Transportation Commission Staff (“Staff”) as follows:

1. On December 4, 2008 a hearing was held to consider the Staff’s request to cancel a temporary household goods permit THG 63200 previously issued to V&K. The hearing was over two (2) hours long and testimony was presented by the sole owner and operator of V&K, Vladimir Kirichenko, as to the mitigating circumstances which support his household goods permit application.
2. The hearing was conducted before Administrative Law Judge Marguerite E. Friedlander. On December 15, 2008, Judge Friedlander issued an Order in which she stated mitigating circumstances existed such that revocation of temporary authority was not necessary, but imposed conditions to be satisfied by V&K before permanent authority should be granted.

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3. The Order was eighteen (18) pages in total, and uncharacteristically summarized much of the written evidence and oral testimony presented in the hearing. This evidence overwhelmingly supports the presence of circumstances which mitigate against concerns of potential customers. Further, Judge Friedlander imposed conditions to be fulfilled before permanent authority could be granted, such as V&K's acquisition of a bond, satisfactory customer surveys and no negative activity for six months.
4. Included in the mitigating circumstance presented in the hearing and referred to in the Order are the following:
  - a. The crime committed by Mr. Kirichenko was an isolated event, and Vladimir has had no criminal activity prior to, or subsequent to the one occurrence. (Initial Order, at ¶¶ 35, 36.)
  - b. The incident occurred over seven and a half years ago. (Id. at ¶ 35.)
  - c. Mr. Kirichenko explained he was a former resident of the home he was accused of attempting to burglarize; it was occupied by his former girlfriend and contained his personal belongings. (Id.)
  - d. There have been no complaints regarding Mr. Kirichenko and his operation of V&K Deliveries, LLC while he has had a temporary permit. (Id.)
  - e. Staff failed to present any evidence Mr. Kirichenko presents a threat to the public or that any public interest will be harmed by allowing him to continue with his livelihood business. (Id. at ¶ 36.)
5. From the evidence presented, Judge Friedlander found the "mitigating information weighs in favor of denying Staff's request to revoke V&K's temporary permit." (Id. at ¶ 36.)
6. Staff argues the Order failed to fully consider the evidence in the record of the presence of a gun in the police report associated with Mr. Kirichenko's prior conviction. This is simply untrue, as the Order contains eight paragraphs

detailing the crime, including the presence of a gun. (Id. at ¶¶ 8-15.) Judge Friedlander clearly fully considered the details of the crime, and in fact summarized them in her Order, specifically addressing this issue at paragraph 37. (Id.)

7. Staff is requesting summary review, without identifying any error, mistake, arbitrariness, or any basis other than simply their repeated indication they disagree with what the Judge found to be mitigating circumstances. Staff specifically addresses only two mitigating circumstances: Vladimir's young age at the time of the crime and relevance of the thirteen letters of support from his business customers. However, in her Order, Judge Friedlander listed many mitigating circumstances including Vladimir's age at the time of the crime and the relevance of the letters of support. Even accepting Staff's argument that neither age nor letters of support mitigate the Commission's concern for the public interest, other mitigating circumstances still exist which provide a sufficient basis for finding circumstances mitigate against revocation of V&K's authority, and Staff fails to rebut these mitigating circumstances.
8. Staff further argues the time between the crime and conviction of the crime should not be a factor. This is not argued or stated as a mitigating factor in the Order. What is a mitigating factor is the passage of nearly eight years between commission of the crime and V&K's application; a timer period during which Vladimir has been a model citizen.

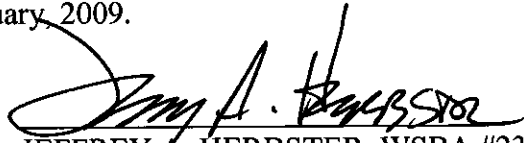
## SUMMARY

Staff clearly disagrees with Judge Friedlander's findings. However Staff presents no evidence of any error, presents no evidence the continued operation of V&K presents any threat to the public or that any public interest will be harmed by its continued operation. Staff requests a summary reversal of an Order which was established after an

over two hour hearing. Acceptance of Staff's position amounts to a conclusion that no one convicted of any crime can qualify for a household goods permit because even findings of multiple mitigating circumstances can not overcome Staff's decision that denial is proper.

The detailed and comprehensive Order is supported by the record, Judge Friedlander clearly considered all relevant factors as the Order restated all facts Staff now claims were not considered, and Judge Friedlander had the opportunity to have first-hand testimony of the parties and directly questioned Mr. Kirichenko personally, allowing her to judge his candor and character. Judge Friedlander used all the evidence and determined mitigating circumstances exist which allow Mr. Kirichenko to continue to operate his business and support his family without undue risk to public safety. Because Staff has failed to show Judge Friedlander's decision is erroneous, the Commission should adopt Judge Friedlander's Initial Order as its Final Order.

DATED this 8th day of January, 2009.



JEFFREY A. HERBSTER, WSBA #23841  
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Attorneys for V&K Delivery Services, LLC

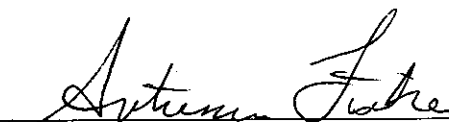
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 8th day of January, 2009, the foregoing was caused to be served on the following person(s) in the manner indicated:

Washington Utilities and Transportation Commission 1300 S. Evergreen Park Dr. S.W. Olympia, WA 98504  Three copies + 1 electronic version	VIA REGULAR MAIL <input type="checkbox"/> VIA CERTIFIED MAIL <input type="checkbox"/> HAND DELIVERED <input type="checkbox"/> BY FACSIMILE <input type="checkbox"/> VIA FEDERAL EXPRESS <input checked="" type="checkbox"/>
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 Counsel for Petitioner