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STATE OF WASHINGTON
UTILITIES AND TRANSPORTATION
COMMISSION

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BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION,)	DOCKET TV-060855
Complainant,)	ORDER 02
v.)	
BOOTS, INC., d/b/a BROOKS A & A MOVING,)	RESPONDENT'S PETITION FOR ADMINISTRATIVE REVIEW
Respondent)	

Respondent, Boots, Inc., d/b/a Brooks A & A Moving, submits this Petition for Administrative Review pursuant to WAC 480-07-825 of the Initial Order Assessing Penalties for Violations of Commission Rules and Tariff 15-A issued by Administrative Law Judge Dennis J. Moss on August 30, 2006 as follows:

1. Respondent challenges the Administrative Law Judge's findings with respect to the sales tax issue (paragraphs 22-41 of the Initial Order and Findings of Fact No. (3) (Paragraph No. 65)). Specifically, Respondent challenges the Administrative Law Judge's findings contained in paragraph 30 that Mrs. Brooks made misrepresentations to the commission about charging sales tax which were meant to conceal the company's continuing practices in defiance of express direction from the commission. Exhibit No. 13 sets forth Respondent's audit

RESPONDENT'S PETITION FOR ADMINISTRATIVE
REVIEW - 1

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1 response, and at page 11-12 of this exhibit Mrs. Brooks' written response to the
2 sales tax issue is set forth in detail. In that response Mrs. Brooks states her
3 understanding from the Department of Revenue that it was allowable to itemize
4 expenses as a business, including passing on a tax although it increases the
5 gross. Mrs. Brooks clearly stated her understanding that it was allowable to
6 itemize the tax owing to the Department of Revenue as an expense of the
7 business even though it increased the gross so long as the itemized expenses
8 were still under the maximum allowed rate of the tariff. Mrs. Brooks also stated
9 that just as it took the commission eight months to complete its audit, it took
10 Respondent more time than anticipated to complete their response and the sales
11 tax and Bill of Lading forms related to same were corrected as of August 1, 2005
12 (not April 2005 as Administrative Law Judge Moss found) which was about 8-10
13 weeks off schedule but it was completed. Respondent also informed the
14 commission of these changes and offered revised Bill of Lading forms for review
15 but the investigating officer declined.

16 Accordingly, Respondent challenges the conclusion (Conclusions of Law
17 No. (2)(Paragraph No. 70)) made by Administrative Law Judge that Respondent's
18 charging of sales tax was a willful violation.

19 2. Respondent's also challenge paragraph 40 of the Initial Order and
20 Order No. (1) (Paragraph No. 74) which assesses the maximum penalty under
21 RCW 81.04.405 of \$65,600 at \$100 per violation, which assessment was based
22 upon Administrative Law Judge Moss' determination that Respondent's violation
23

1 of Tariff 15-A regarding collection of sales tax were willful violations that involved
2 misrepresentation to the public and misrepresentation to the commission. Again,
3 Respondent contests that it made any misrepresentation to the public or the
4 commission and, accordingly, an assessment of a maximum penalty for the sales
5 tax violation should not be made. At the very least, Respondent suggests that an
6 appropriate penalty for this violation is the amount of the sales tax collected, which
7 amounts to \$27,307.85.

8 3. Respondent challenges the findings made by Administrative Law
9 Judge with respect to deficient form of Bill of Lading (Paragraphs 42-50 of the
10 Initial Order and Findings of Fact No. (4)(Paragraph No. 66)). Specifically,
11 Respondent challenges the findings contained in Paragraphs 47 and 48 that
12 Respondent did not make any changes to its Bill of Lading forms after
13 communication with commission staff regarding this issue in December 2004 and
14 again in March 2005. Exhibit 15 contains clear evidence that Respondent did
15 change its Bill of Lading form. Administrative Law Judge characterizes the
16 changes in the Bill of Lading forms as "insignificant" (footnote 17) but the fact
17 remains that changes were made to Respondent's Bill of Lading forms. It is
18 apparent from the Initial Order that Administrative Law Judge Moss' biggest
19 problem with the Bill of Lading forms used by Respondent after contact with the
20 commission was the continued listing on the form for a tax. It seems unfair and
21 inappropriate to assess the maximum penalty against Respondent for improperly
22 collecting sales tax and again re-fine them a maximum amount for the form used

1 which itemized the tax.

2 4. Respondent challenges the conclusions (Conclusions of Law No.
3 (3)(Paragraph No. 71)) made by Administrative Law Judge Moss that the
4 violations of Respondent with respect to the Bill of Lading forms was willful.
5 Again, the only aspect of the forms that could be considered willful have to do with
6 the insertion of tax on the form, which as discussed above, was an issue being
7 addressed by Respondent and eventually changed in August 2005. All other
8 aspects of the Bill of Lading form are relatively minor and, when compared to the
9 sample form provided by the commission in Tariff 15-A, the commission's
10 proposed sample form has the same or similar minor violations contained in
11 Respondent's Bill of Lading forms. Therefore, it cannot be reasonably concluded
12 that the Respondent's violation of the Bill of Lading form was willful and the
13 determination made by Administrative Law Judge to assess maximum penalty of
14 \$22,100 should be reversed. Respondent instead asserts that its violations with
15 respect to the Bill of Lading forms were not willful and no penalty should be
16 assessed for technical violations found with its forms.

17 5. Respondent challenges the findings made of Administrative Law
18 Judge Moss with respect to Respondent's failure to complete Bills of Lading
19 (Paragraphs 51-56 and Findings of Fact No. (5)(Paragraph No. 67)). In particular,
20 Respondent challenges the findings and/or conclusions set forth in Paragraph 55
21 to the extent that a significant number of the incomplete Bill of Ladings are for
22 moves that required only 3-5 hours in the early part of the day. This finding fails to
23

1 consider that after a 3-5 hour move on one day, the same movers completed
2 another move of nearly the same length of time later on in the same day.
3 Furthermore, as noted by Administrative Law Judge Moss (footnote 20), many of
4 the occasional errors made on the Bill of Lading forms by Respondent's movers
5 would also have been made had Respondent's movers been using the sample Bill
6 of Lading published at original Page No. 36 of Tariff 15-A. Respondent therefore
7 contends that the deficiencies found with respect to filling out the Bill of Ladings
8 forms should not give rise to the penalties assessed by Administrative Law Judge
9 of \$4,800 (Conclusion of Law No. (4)(Paragraph No. 73)). Respondent requests
10 that no penalties be assessed for these violations.

11 WHEREFORE, Respondent requests the commission to modify the initial
12 order assessing penalties for violations of Commission Rules and Tariff 15-A
13 entered by Administrative Law Judge Dennis J. Moss on August 30, 2006 as
14 requested hereinabove and specifically find that any violations of the Respondent
15 with respect to collection of a tax, deficient form of Bill of Lading, and/or failure to
16 complete Bills of Lading were not willful. Respondent also request the
17 commission to reduce and/or eliminate the amount of the monetary
18 fines/sanctions imposed upon Respondent by Administrative Law Judge Moss.

19 Dated this 27 day of September, 2006.

20 JELSING TRI WEST & ANDRUS, PLLC.

21 

22 William F. Tri, WSBA 14688
23 Attorney for the Respondent Boots, Inc.
d/b/a Brooks A & A Moving

24 RESPONDENT'S PETITION FOR ADMINISTRATIVE
25 REVIEW - 5

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