

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of Determining the Proper
Carrier Classification of, and Complaint
for Penalties against:

CHERYL BALL d/b/a ACME MOVING
LABOR

In re Application of

CHERYL BALL d/b/a ACME MOVING
LABOR

for Authority to Operate as a Household
Goods Moving Company

DOCKET TV-161206

ORDER 05

DOCKET TV- 170103
(*consolidated*)

ORDER 01

INITIAL ORDER GRANTING
MOTION TO CONSOLIDATE;
APPROVING SETTLEMENT
AGREEMENT

BACKGROUND

- 1 **PROCEDURAL HISTORY.** On December 19, 2016, the Washington Utilities and Transportation Commission (Commission) entered Order 01, Order Instituting Special Proceeding; Complaint Seeking to Impose Penalties; Notice of Hearing (Order 01) in Docket TV-161206. The Commission initiated this special proceeding to determine if Cheryl Ball d/b/a Acme Moving Labor (Acme Moving Labor or Company) has engaged, and continues to engage, in business as a common carrier for the transportation of household goods without the required Commission-issued permit. Order 01 required the Company to appear before the Commission at an evidentiary hearing that was later converted to a brief adjudicative proceeding and rescheduled for March 6, 2017, at 9:30 a.m.
- 2 On February 17, 2017, Acme Moving Labor filed with the Commission an Application for Household Goods Moving Authority (Application) in Docket TV-170103. The Application names Cheryl Ball as the sole owner of Acme Moving Labor, and Kedric Jackson as its operations manager.

3 On February 28, 2017, Commission staff (Staff)¹ notified the Commission that the parties had reached a settlement in principle with respect to the issues raised in Docket TV-161206, but requested additional time to memorialize their agreement. Also on that date, the Commission issued a Notice Suspending Procedural Schedule and Notice Requiring Filing of Settlement Documents or Status Report by March 14, 2017.

4 On March 14, 2017, Staff filed on behalf of the parties a Joint Motion to Consolidate Proceedings (Joint Motion), Settlement Agreement, and Supporting Narrative.

5 Andrew J. O’Connell, Assistant Attorney General, Olympia, Washington, represents Staff. Elizabeth De Bagara Steen, Washington Business Advocates, Seattle, Washington, represents Acme Moving Labor.

6 **JOINT MOTION.** The parties request the Commission consolidate Dockets TV-161206 and TV-170103 because the cases share related facts. Specifically, the parties argue, both proceedings concern the operations of the Company: TV-160206 concerns whether the Company operated without Commission authority, and TV-170103 concerns the Company’s Application for that authority. The parties contend that consolidation will enable them to reach a settlement that resolves all issues in both dockets.

7 We agree with the parties and grant the Joint Motion. WAC 480-07-320 provides that the Commission, “in its discretion, may consolidate two or more proceedings in which the facts or principles of law are related.” Because the Commission considers a company’s compliance history when deciding whether to grant an application for household goods carrier authority, the matters presented in both dockets are inextricably related. Accordingly, we find that considering these matters concurrently will provide for the most timely and efficient resolution of all of the issues before us.

8 **SETTLEMENT AGREEMENT.** As part of the Settlement Agreement, the parties agree that the Company should be classified as a household goods carrier, subject to Commission jurisdiction.

¹ In formal proceedings such as this, the Commission’s regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners’ policy advisors do not discuss the merits of the proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

- 9 The parties agree that Acme Moving Labor qualifies for, and the Commission should grant, the Company's Application in the same manner it grants any other application for household goods carrier operating authority. The parties agree the Company's authority should be granted once the Company has satisfied the monetary obligations set out in the Settlement Agreement.
- 10 The parties agree that the Company operated in violation of Commission laws and rules, and that a penalty is warranted for the Company's conduct. The parties agree that the Company should pay a \$1,000 penalty, and that the Company should issue a \$2,000 refund to a consumer who contacted the Commission about a move the Company conducted in October 2016. The Company will provide Staff with proof of payment once the refund is made.
- 11 **SUPPORTING NARRATIVE.** The Supporting Narrative filed by the parties describes the scope of the underlying dispute, which concerns alleged violations of Commission laws and rules and the Company's Application for authority to operate as a household goods carrier.
- 12 The Supporting Narrative describes the Company's structure as follows: Ms. Ball is the Company's owner and Mr. Jackson is the Company's operations manager. In September 2016, Staff sent a letter to the Company informing it of the need to obtain authority from the Commission prior to operating as a household goods carrier and that the Company must cease and desist those operations unless and until it obtained a permit.
- 13 On September 29, 2016, the Company filed with the Commission an application for a household goods carrier permit. On October 19, the Commission issued a Notice of Intent to Deny that application along with a notice of opportunity for hearing. The Company requested a hearing then subsequently withdrew its application.
- 14 On October 28, 2016, a consumer contacted Staff about a dispute with the Company. Following a brief investigation, the Commission instituted the special proceeding in Docket TV-161206.
- 15 On February 17, 2017, the Company filed with the Commission its Application in Docket TV-170103. The Supporting Narrative explains that Staff conducted a review of the Application, which included a background check for both Ms. Ball and Mr. Jackson. Staff recommended the Commission deny the Company's first application, filed in September 2016, because Mr. Jackson had an assault conviction within five years of the

date of the application, which creates an automatic bar to obtaining a permit. Now that sufficient time has lapsed since Mr. Jackson's conviction so that it no longer automatically disqualifies the Company from obtaining a permit, Staff's recommendation has changed.

- 16 Staff finds that Mr. Jackson's criminal conviction is unrelated to, and would not likely interfere with, the proper operation of a household goods moving company. In addition, Staff finds that Mr. Jackson's other criminal convictions – which occurred between 1986 and 2009 – are also unlikely to interfere with Company's operations.
- 17 **SETTLEMENT HEARING.** On April 3, 2017, the Commission conducted a hearing on the settlement agreement before Administrative Law Judge Rayne Pearson. The purpose of the hearing was to provide an opportunity for Mr. Jackson to address his convictions and any rehabilitative efforts he has undertaken.
- 18 Mr. Jackson testified that he is a recovering addict and alcoholic, and has been clean and sober for more than five years. Following his most recent arrest in January 2011, he completed one year of chemical dependency and anger management treatment, followed by two and half years of counseling. Mr. Jackson provided certificates of completion for his chemical dependency programs and letters from counselors and other members of the community attesting to his character. Mr. Jackson noted that he is engaged to Ms. Ball, has completely turned his life around, and has not gotten into any legal trouble since his last arrest more than six years ago. Mr. Jackson further noted that all of his convictions were a direct result of his former alcohol and substance abuse, and that none were related to his work in the household goods industry.
- 19 At the hearing, Acme Moving provided voluminous documentation of the Company's operations and more than 200 online reviews of the Company's pack and load services spanning approximately seven years, which were largely positive.
- 20 Staff testified that it reviewed the Company's application in detail and recommends the Commission approve it based on several factors. First, more than five years has passed since Mr. Jackson's last conviction, which means it is within the Commission's discretion to grant the application. Second, Staff finds that his recent convictions arose from events in Mr. Jackson's personal life, and were not business related. Finally, Mr. Jackson has been successfully operating a pack and load business for several years, which is very similar to a household goods company because it requires entering people's homes and

handling their belongings. Staff noted that Mr. Jackson has received overwhelmingly positive reviews for his work.

DISCUSSION AND DECISION

21 WAC 480-07-750(1) states in part: “The commission will approve settlements when doing so is lawful, the settlement terms are supported by an appropriate record, and when the result is consistent with the public interest in light of all the information available to the commission.” Thus, the Commission considers the individual components of the Settlement Agreement under a three-part inquiry, asking:

- Whether any aspect of the proposal is contrary to law.
- Whether any aspect of the proposal offends public policy.
- Whether the evidence supports the proposed elements of the Settlement Agreement as a reasonable resolution of the issue(s) at hand.

The Commission must determine one of three possible results:

- Approve the proposed settlement without condition.
- Approve the proposed settlement subject to conditions.
- Reject the proposed settlement.

22 We approve the Settlement Agreement without condition. The parties made concessions relative to their respective litigation positions to arrive at end results that are supported by the evidence in the record. Acme Moving Labor admits that its conduct violated Commission laws and rules, that it should be classified as a household goods carrier, and that the Commission should assess a \$1,000 penalty for those violations. In addition, the Company has agreed to issue a \$2,000 refund to a consumer who contacted the Commission about a disputed bill.

23 The parties also agree that the Commission should grant the Company’s application for a household goods carrier permit, and Staff finds that the nature and extent of Mr. Jackson’s criminal history is not likely to interfere with the proper operation of a household goods company. We agree.

24 WAC 480-15-302 and -305 set out the various criteria for obtaining provisional or permanent authority to operate as a household goods company. As relevant to this matter, the rules explain that the Commission may deny an application when an applicant has

been convicted of a crime involving theft, burglary, assault, sexual misconduct, identity theft, false statements, or the manufacture, sale, or distribution of a controlled substance more than five years prior to the date of the application and the Commission determines that the nature or extent of the crime(s) will likely interfere with the proper operation of a household goods moving company.²

25 Although Mr. Jackson's background raises concerns about his fitness to operate a household goods moving company, WAC 480-15-302(8)(b) is not intended to permanently bar applicants with criminal convictions from obtaining a household goods permit. Rather, the rule allows the Commission to exercise its discretion to protect the public interest in those cases where the nature of the crime is particularly egregious or an applicant's criminal history is particularly extensive.

26 There are two previous cases in which the Commission denied an application for household goods authority based on crimes committed by an applicant more than five years prior to the date of application.³ In both of those cases, the applicants committed far more egregious or extensive crimes than those at issue in this proceeding. While we

² WAC 480-15-302(8) and WAC 480-15-305(2).

³ See *In the Matter of the Application of Ivan Ingram d/b/a AA Eagle Relocation Service for a Permit to Operate as a Motor Carrier of Household Goods*, Docket TV-120721, Order 01 (December 21, 2012). In *AA Eagle Relocation Service*, the company's owner had an extensive criminal history that included 22 felony convictions for multiple crimes, including theft, identity theft, and possession of stolen property. While the Commission recognized in its decision that the applicant had made significant progress toward personal rehabilitation, the administrative law judge was unable to determine with an acceptable level of certainty that he was sufficiently trustworthy to be granted a household goods permit. The Commission ultimately concluded that it would not be in the public interest to issue a permit to the company until a more appreciable length of time had passed without incident.

See also *In Re Application of Five Stars Moving & Storage, LLC For a Permit to Operate as a Motor Carrier of Household Goods*, Docket TV-150223, Order 02 (July 23, 2015). In *Five Stars Moving & Storage*, the application was filed in 2015 and evaluated under the Commission's current rules. The owner of Five Stars Moving & Storage, LLC was convicted of two counts of first degree child molestation in 1999 for sexually assaulting two seven-year old girls. In addition, he repeatedly violated the law following his release from prison in 2004 and was dishonest with the Commission on two occasions. The administrative law judge in *Five Stars Moving & Storage* determined that these factors, coupled with the prospect of the owner coming into contact with minor children while performing household goods moves, required the Commission to find that granting the application would not be in the public interest.

recognize there is some risk in granting the Company's application, there are several factors that substantially mitigate that risk.

27 First, following Mr. Jackson's most recent conviction, he undertook extensive rehabilitation efforts and has not reoffended in more than six years. Second, the Company has been operating successfully in the community as a pack and load business for approximately seven years without incident. Finally, the Commission's goals are best achieved by bringing the Company into compliance. The public interest is also served by the Commission retaining authority over the Company to ensure that its conduct and operations comply with Commission laws and rules. Accordingly, we agree with Staff that neither the nature nor the extent of Mr. Jackson's convictions warrant a finding that he currently poses a risk to the public, and find that the Company's application for household goods operating authority should be granted.

28 Overall, the terms of the Settlement Agreement are not contrary to law or public policy and reasonably resolve all issues in this proceeding. Given these factors, we find the Settlement Agreement is consistent with the public interest and should be approved as filed.

ORDER

THE COMMISSION ORDERS:

- 29 (1) The parties' Joint Motion to Consolidate Proceedings is GRANTED.
- 30 (2) Dockets TV-161206 and TV-170103 are consolidated.
- 31 (3) The Settlement Agreement is approved without condition, is attached as Exhibit A to, and incorporated into, this Order, and is adopted as the final resolution of the disputed issues in this docket.
- 32 (4) The Commission assesses a \$1,000 penalty against Cheryl Ball d/b/a Acme Moving Labor, which is due and payable within 10 days of the effective date of this Order.
- 33 (5) Cheryl Ball d/b/a Acme Moving Labor must issue a refund of \$2,000 to resolve an outstanding dispute with a consumer, as described in the Settlement Agreement, within 10 days of the effective date of this Order. Cheryl Ball d/b/a

Acme Moving Labor and must provide proof to Staff that the refund was issued as described in the Settlement Agreement.

- 34 (6) Upon satisfaction of the monetary obligations described in the Settlement Agreement and by this Order, Cheryl Ball d/b/a Acme Moving Labor's Application for authority to operate as a household goods carrier is APPROVED, and Staff is directed to issue a provisional household goods permit to Cheryl Ball d/b/a Acme Moving Labor in accordance with WAC 480-15-302.
- 35 (7) The Commission retains jurisdiction to effectuate the terms of this Order.

Dated at Olympia, Washington, and effective April 10, 2017.

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 480-07-825(2) provides that any party to this proceeding has twenty (20) days after the entry of this Initial Order to file a *Petition for Administrative Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-825(3). WAC 480-07-825(4) states that any party may file an *Answer* to a Petition for review within ten (10) 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.

One copy of any Petition or Answer filed must be served on each party of record with proof of service as required by WAC 480-07-150(8) and (9). An original and **five (5)** copies of any Petition or Answer must be filed by mail delivery to:

Attn: Steven V. King, Executive Director and Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, Washington 98504-7250

Exhibit A
Settlement Agreement