

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

WASHINGTON UTILITIES AND)	DOCKET TV-060855
TRANSPORTATION COMMISSION,)	
)	
Complainant,)	ORDER O3
)	
v.)	
)	FINAL ORDER SUSPENDING
BOOTS, INC., d/b/a)	AUTHORITY AND ASSESSING
BROOKS A & A MOVING,)	PENALTIES FOR VIOLATIONS
)	OF COMMISSION RULES AND
Respondent.)	TARIFF 15-A
.....)	

1 ***Synopsis:** This is a Commission final order that reviews and amends an initial order imposing sanctions for violations of rule and law by a household goods moving company. The presiding Administrative Law Judge’s initial order would impose penalties of \$65,600 for unlawfully charging sales tax to customers and \$26,900 for other violations of Commission regulations and tariff provisions. On review, the Commission modifies the initial order by increasing the penalties by \$500, requiring refunds of illegally-assessed charges, and suspending the carrier’s permit for 90 days, beginning 30 days after entry of this final order. Boots may petition for a shortening of the suspension to 60 days if certain conditions are met.*

SUMMARY

2 **PROCEEDINGS.** The Washington Utilities and Transportation Commission (Commission), on due and proper notice, conducted a hearing in this proceeding at Olympia, Washington on July 17, 2006, before Administrative Law Judge Dennis J. Moss.

3 This proceeding concerns two complaints against Boots, Inc., d/b/a Brooks A & A Moving (Brooks) brought by the Commission on May 26, 2006. One complaint alleges numerous violations of statute and rule, as specified in Appendix A to this Order. Staff’s audit report identified 324 violations with potential penalties of \$32,400 at the maximum rate under RCW 81.04.405 of \$100 per violation. Staff recommended penalties of \$25,500. Brooks contested the allegations and argued that no penalties should be assessed.

4 The second complaint alleges repeated failures by Brooks to comply with Commission regulations and tariff provisions. The Commission ordered Brooks to

show cause why the Company's household goods carrier permit should not be cancelled for repeatedly levying a separate, illegal charge to customers for sales tax on moving services. Tariff 15-A does not allow such a charge and the Commission repeatedly informed Brooks that it must cease levying these illegal charges.

5 At the hearing, Staff asked that Brooks be required to refund to its customers the sales tax improperly charged for all intrastate residential moves performed in January, February, March, April, and June 2005, and for any other months for which the evidence shows improper sales tax collections. Staff initially recommended cancellation of Brooks' authority to provide service, but at the hearing recommended suspension of the Company's permit for up to 90 days. Staff did not recommend that the Commission, in addition, assess penalties in connection with the sales tax violations. Brooks opposed cancellation or suspension of its authority.

6 The initial order relies on WAC 480-15-150 and other Commission rules that focus on the use of penalties, and the Commission's suspension and cancellation authorities, as enforcement tools that can be used to assure future compliance by a violating household goods carrier and others in the business.¹ Finding that Brooks had complied with the governing tariff since August 2005 and appeared to be committed to continued compliance, the presiding ALJ determined that financial penalties assessed for all violations found, including the numerous sales tax violations, would be sufficient punishment to persuade Brooks and other household goods movers that the Commission will vigorously enforce the applicable statutes and rules when it finds violations.²

7 Although describing it as "a close call" under the facts presented, the presiding ALJ concluded that the public interest does not require suspension or cancellation of Brooks' operating authority.³ The initial order cautions, however, that any future violations by the Company could tilt the balance in favor of suspension or cancellation.

8 Finally, the presiding ALJ determined that it would not be practical to require Brooks to refund the sales tax charges it illegally collected from customers during the period August 2004 through August 2005.⁴

9 The Commission notified the parties pursuant to RCW 80.01.060 and WAC 480-07-825(8) that it intended to review the initial order and to "consider whether [the proposed] sanctions are appropriate in light of the factual record regarding violations

¹ Order 02 at ¶36.

² *Id.* at ¶¶37, 39, 40. The total penalties assessed under the initial order are \$92,500, including \$65,600 for the violations related to illegal sales tax charges.

³ *Id.* at ¶¶32-35, 38.

⁴ *Id.* at ¶41.

committed, or whether the sanctions should be modified in a final order.” The Commission invited parties to address the order’s application of penalties, which both parties did; Brooks in its Petition for Administrative Review and Staff in its Response to Brook’s petition.

- 10 **PARTY REPRESENTATIVES.** Assistant Attorney General Jennifer Cameron-Rulkowski, Olympia, Washington, represents the Commission’s regulatory staff (Commission Staff or Staff). William F. Tri, Attorney at Law, Everett, Washington, represents the respondent (Brooks or Respondent).

MEMORANDUM

I. Commission decision on review.

- 11 Our disagreement with the initial order relates primarily to its failure to require refunds or impose non-monetary sanctions. Our discussion focuses on the reasons for our decision and describing our requirements in detail. We adopt and incorporate by reference those parts of the initial order that are factual in nature and consistent with our determinations in this final order. We will expressly incorporate portions of the initial order as our findings of fact and conclusions of law, making modifications required to reflect our decision.
- 12 The violations of greatest concern involve Brooks’ decision to collect from its customers an unauthorized 8.9% “sales tax” on its labor services, despite knowledge that the tax does not apply to such services. Compounding the seriousness of these violations is the fact that Brooks never intended to and did not remit these “taxes” to the state.⁵
- 13 Although the number of instances is relatively small, we are also concerned that Brooks illegally assessed customers a four percent charge for processing credit card payments.
- 14 By levying these illegal charges and “taxes”, Brooks misrepresented the true nature of the costs customers were required to pay and thus deceived the public. Brooks compounded the seriousness of these violations by lying to the Commission about its activities.
- 15 The record clearly demonstrates that Brooks’ decision to impose these unlawful charges was a calculated and knowing decision implemented over a long period of

⁵ Brooks kept the revenues from the “sales tax” charge, never intending to remit them to the state. Tr. 162:16-19. Indeed, they could not lawfully be paid to the Department of Revenue, as Brooks’ transportation services are not subject to the excise tax on sales or rentals of goods. RCW 82.08.020.

time, apparently to deceive customers into thinking that Brooks' rates for service were lower than its competitors. Richard Brooks, co-owner of the Company with his wife Michelle Brooks, made clear by his testimony that the sole purpose of adding sales tax and a credit card processing fee to customers' bills was to collect labor charges greater in amount than what customers were told they would pay, thereby deceiving customers.⁶

- 16 The record also demonstrates that from the inception of its business Brooks was repeatedly informed by the Commission that it was imposing unlawful charges and that it must cease doing so. After Brooks secured provisional authority, a Commission agent discovered during informational visits that it was violating the tariff by imposing unauthorized charges for sales tax and credit card processing. He advised the Company twice to stop doing so. Later, in March 2005, a Commission audit occasioned by a customer complaint revealed that Brooks continued these unlawful practices.
- 17 The Commission then, by letter from the Executive Secretary based on the report of a Commission field agent, directed Brooks to update its forms to cease misrepresenting its charges. Michele Brooks responded by electronic mail that the Company's forms had already been changed, stating:
- We drafted new Bills and Estimates last year with the appropriate language and charges. It sounds funny to us that someone is complaining about old bills and estimates *that were changed over a year ago and maybe used for 10 customers if that.*⁷
- 18 The Administrative Law Judge found this representation to be "completely false."⁸ We accept this characterization, assailed by Respondent on review, as solidly based on extensive evidence.⁹ The record shows beyond any doubt that Brooks engaged in the same unlawful practices both before and after the date of the e-mail correspondence from Ms. Brooks to the Commission. Contrary to what Ms. Brooks told the Commission, the record shows the unlawful forms were used hundreds of times. Respondent's argument in its Petition for Administrative Review simply ignores Ms. Brooks' statement to the Commission that the forms had been changed

⁶ Order 02 at ¶¶23-26.

⁷ Exhibit No. 6 (emphasis added).

⁸ Order 02 at ¶16.

⁹ Brooks challenged other aspects of the initial order, including assessment of other penalties. We have reviewed the order, the respondent's petition for administrative review, and the cited portions of the record, and commission Staff's answer. We conclude that the order is supported by the record and deny the challenges accordingly.

for over a year when, in fact, the old forms including charges for sales tax remained in use both at the time of her statement and for many months thereafter.¹⁰

19 Putting it bluntly, Brooks lied to its customers about its charges by taking money from them in the guise of a “tax” and then pocketing that money, which it knew it was not required by law to collect for the state. Afterwards, Brooks lied to the Commission about what it had done and what it was continuing to do. Brooks’ unlawful behavior, then, is of a very different character from the “technical” violations we often see. Brooks’ behavior, if inadequately punished, threatens the very integrity and purpose of our regulation – to protect consumers against misleading and deceptive business practices.

20 We agree with the initial order that Brooks should suffer serious financial consequences for its repeated, willful violations of Commission regulations and tariff requirements. Except as to the credit card fee violations, we accept the level of penalties the initial order imposed and we adopt them in this Order. For the credit card fee violations, we revise the initial order’s decision not to assess a penalty and impose a \$100 penalty for each of five violations for a total of \$500. The fact that the number of violations is few is not a mitigating factor in the context of this case, particularly where the violations directly take money from consumers contrary to law.

21 Notwithstanding these penalties, Brooks’ violations, compounded by its dishonesty in dealing with the Commission, are so severe as to call into question its fitness to operate with a permit from this Commission.

22 RCW 81.80.280 provides in pertinent part that motor freight carrier:

Permits may be canceled, suspended, altered or amended by the commission upon complaint by any interested party, or upon the commission's own motion after notice and opportunity for hearing, when the permittee or his or its agent has repeatedly violated this chapter, the rules and regulations of the commission or the motor laws of this state or of the United States

23 Albeit tools to promote compliance, as discussed in the initial order, our rules also make clear that permit suspension and cancellation are sanctions to be imposed where, as here, the misconduct includes “fraud or misrepresentation, and...willful

¹⁰ Order 02 at ¶¶14-16.

violation of legal requirements”.¹¹ We agree with the initial order that it is proper to consider the carrier’s eventual apparent willingness and efforts to come into compliance and its apparent clean record for a period of time when determining the proper penalty. For those reasons, we do not cancel Brooks’ permit. We find, however, that suspension is necessary and appropriate as a sanction, as a method to assure future compliance and as deterrent message to other carriers about the consequences of this type of behavior.

24 Therefore, we suspend the respondent’s permit for 90 days and *will* cancel it if Brooks commits another violation involving improper charges or misrepresentation of its activities. The suspension will begin 30 days after the date of this Order to allow Brooks to assist customers in arranging alternative service during the period it is not allowed to operate. We will entertain a petition to shorten the suspension period to 60 days upon a showing of good faith efforts to comply with the other requirements of this Order.

25 The initial order finds that it would be too impractical to require Brooks to refund to customers the charges identified on bills of lading as “sales tax.” We disagree. Brooks deceived its customers. Despite the difficulties, we require Brooks to make reasonable efforts to refund to customers all improper charges for “tax” and credit card processing charges that were not authorized in its tariffs. The procedure for doing so must be agreed upon in writing with Commission Staff, and approved by the Executive Secretary within 30 days after entry of this Order. The procedure must include an acceptable method for auditing the results of the refund efforts. Amounts actually refunded to customers may be offset against penalties still owed, but not against penalties already paid.

26 The penalties imposed herein must be paid within 30 days of the date of this Order. If the Company satisfies the Executive Secretary that it cannot pay the required amounts within this time, the Secretary may approve a payment plan provided, however, that the refund process must be completed within six months of the date of this Order.

¹¹ WAC 480-15-150 states:

The commission will take administrative action for violations in a manner that it believes will best assure future compliance by the violating household goods carrier and other household goods carriers. The commission may:

(1) Assess monetary penalties under the provisions in chapter 81.04 RCW as a tool of enforcement and remediation; or

(2) Suspend or cancel the permit of a household goods carrier under circumstances in which the commission believes education and penalties have not been, or will not be, effective to secure compliance; for serious actions including fraud or misrepresentation; and for willful violation of legal requirements.

27 In sum, this Order reflects how seriously we regard Brooks' violations that involve misrepresentations to the public, the Company's lack of diligence in responding to Commission technical assistance and directives, and the Company's dishonesty in its communication with the Commission concerning these matters. It is critical to the integrity of the regulated industry that companies abide by tariff requirements, and deal honestly with the public and the Commission.

FINDINGS OF FACT

28 Having discussed above all matters material to our decision, and having reviewed the record and the initial order, we now make the following summary findings of fact. Those portions of the preceding discussion and the initial order that include findings pertaining to and consistent with our ultimate decisions are incorporated by this reference.

29 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, practices, and accounts of intrastate household goods carriers.

30 (2) Boots, Inc., d/b/a Brooks A & A Moving conducts business as a motor carrier of freight transporting household goods for compensation over the highways of this state and thus conducts a business affected with a public interest that is subject to regulation by the Commission.

31 (3) During the period August 2004 through August 2005 Brooks assessed charges for sales tax on bills of lading memorializing moves of household goods in Washington on 656 occasions. In addition, on at least five bills of lading Brooks assessed charges for processing credit card payments. Brooks was on notice from the Commission during this period that such charges were not allowed under the governing tariff, Commission Tariff 15-A.

32 (4) During the period April 2005 through July 2005 Brooks used a deficient bill of lading form when memorializing moves of household goods in Washington on 221 occasions. Brooks had express guidance from the Commission, including a detailed letter from the Commission's Executive Secretary dated March 25, 2005, specifying precisely what the Company needed to do to comply with all required contents for a bill of lading used in connection with household goods moves conducted in Washington.

33 (5) On 48 occasions during the month of June 2005 Brooks failed to complete the bill of lading form required for each of the household goods moves it performed in Washington.

- 34 (6) Brooks misrepresented to customers the cost of its services by using a bill of lading form that included unlawful charges for sales tax and credit card processing and by repeatedly levying such charges over a long period of time. As a result the cost for Brooks services may have appeared lower than that of competitors even though the actual cost was similar or perhaps higher.
- 35 (7) Brooks misled the Commission by stating falsely that it had ceased using these improper bills of lading that included illegal charges.

CONCLUSIONS OF LAW

36 Having discussed above in detail all matters material to our decision, and having stated general conclusions, the Commission now makes the following summary conclusions of law. Those portions of the preceding detailed discussion that state conclusions pertaining to the Commission's ultimate decisions are incorporated by this reference.

- 37 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of, and parties to, these proceedings.
- 38 (2) Brooks willfully violated Tariff 15-A on 656 occasions during the period August 2004 through August 2005 by charging customers for sales tax; charges the Commission informed Brooks were not lawful charges. Brooks is subject to penalties of \$65,600 under RCW 81.04.405 for these violations and penalties in that amount should be assessed. These penalties, however, may be offset by amounts Brooks refunds to customers in accordance with the terms of this Order.
- 39 (3) Brooks willfully violated Tariff 15-A on five occasions during the period August 2004 through August 2005 by charging customers for processing credit card payments, charges the Commission informed Brooks were not lawful charges. Brooks is subject to penalties of \$500 under RCW 81.04.405 for these violations and penalties in that amount should be assessed. These penalties, however, may be offset by amounts Brooks refunds to customers in accordance with the terms of this Order.
- 40 (4) Brooks should be required to refund to customers all amounts it collected from customers as "sales tax" or credit card processing fees during the period August 2004 through August 2005.
- 41 (5) Brooks willfully violated the Commission's rules that set forth the required contents for bills of lading used in connection with household goods moves in Washington during the period April 2005 through July 2005, on 221 occasions.

Brooks is subject to penalties of \$22,100 under RCW 81.04.405 for these violations and penalties in this amount should be assessed.

- 42 (6) Brooks violated the Commission's rules by failing to complete the bill of lading form required for household goods moves it performed in Washington on 48 occasions during the month of June 2005. Brooks is subject to penalties in the amount of \$4,800 for these violations and penalties in this amount should be assessed.
- 43 (7) Brooks has willfully violated legal requirements as set forth in this Order and has engaged in fraud or misrepresentation. Past education has not been effective in securing compliance. Penalties alone are an inadequate sanction.
- 44 (8) The Commission should suspend Brooks' permit authorizing it to provide household goods moving services in Washington for a period of 90 days in light of the Company's repeated, willful violations of its tariff, compounded by its dishonesty in dealing with the public and the Commission in connection with these violations.
- 45 (9) The Commission should retain jurisdiction to effectuate the terms of this Order.

ORDER

THE COMMISSION ORDERS That:

- 46 (1) Boots, Inc. d/b/a Brooks A & A Moving (Brooks') permit authorizing it to provide household goods moving services in Washington is suspended for a period of 90 days beginning 30 days after the date of this Order.
- 47 (2) Brooks must pay a penalty of \$65,600 within 30 days after the date of this Order for repeatedly and improperly charging sales tax on moving services from August 2004 through August 2005. The Company may offset its payment of this penalty by amounts refunded to customers as required by the terms of this Order.
- 48 (3) Brooks must pay a penalty of \$500 within 30 days after the date of this Order for improperly charging credit card processing fees during the period August 2004 through August 2005. The Company may offset its payment of this penalty by amounts refunded to customers as required by the terms of this Order.

- 49 (4) Brooks must refund unlawfully collected sales tax and credit card fees to affected customers to the extent reasonably practicable. The refund process must be completed within six months after the date of this Order.
- 50 (5) Brooks, in consultation with Commission Staff, must develop a procedure by which it will make the refunds required by this Order. The procedure must include a method for auditing the accuracy of the refund procedure's results. The procedure must be agreed to with Staff, reflected in a written agreement between Boots and Staff and signed by the Executive Secretary within 30 days after the date of this Order.
- 51 (6) Brooks must pay a penalty of \$22,100 within 30 days after the date of this Order for violations of Commission regulations and tariff provisions establishing the required bill of lading format to be used for household good moves in Washington.
- 52 (7) Brooks must pay a penalty of \$4,800 within 30 days after the date of this Order for violations of Commission regulations requiring complete bills of lading for household good moves performed in Washington.
- 53 (8) The Commission's Executive Secretary is authorized to approve a payment plan for Brooks to satisfy its obligations to pay penalties, if the Company demonstrates to the Executive Secretary's satisfaction an inability to pay the required amounts within the time periods specified in this Order.
- 54 (9) The Commission retains jurisdiction to effectuate the terms of this Order.

DATED at Olympia, Washington, and effective January 26, 2007.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

MARK H. SIDRAN, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner

NOTICE TO PARTIES: This is a Commission Final Order. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this Order pursuant to RCW 34.05.470 and WAC 480-07-850, or a petition for rehearing pursuant to RCW 80.04.200 and WAC 480-07-870.