

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND)	DOCKET TV-132030
TRANSPORTATION COMMISSION,)	
)	
Complainant,)	ORDER 03
)	
v.)	
)	
BEST MOVING AND DELIVERY,)	FINAL ORDER MODIFYING
LLC,)	INITIAL ORDER
)	
Respondent.)	
.....)	

BACKGROUND

- 1 On September 14, 2014, the Washington Utilities and Transportation Commission (Commission) through its regulatory staff (Staff)¹ filed a complaint against Best Moving and Delivery, LLC (Best Moving or Company). The complaint alleged a total of 205 violations of Commission rules, statutes, and Tariff 15-C. Staff recommended that the Commission assess penalties of \$14,000 for those violations and cancel the Company’s permit for repeated violations of its regulatory obligations.

- 2 The Commission convened a brief adjudicative proceeding before Administrative Law Judge (ALJ) Marguerite Friedlander, including an evidentiary hearing, on March 9, 2015, to address the allegations in the complaint.

- 3 On April 10, 2015, the ALJ entered Order 02, Initial Order Imposing Penalties and Revoking Household Goods Permit (Order 02). That order assessed a penalty of \$13,700 for 204 violations of Commission rules and requirements and cancelled Best

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 and accounting 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.

Moving's household goods carrier permit for repeated violations and falsification of records.

4 On April 29, 2015, Best Moving filed a timely petition for administrative review of Order 02 (Petition). The Company contends that it has corrected many of the violations on which the penalties were based and will be working with Staff to ensure compliance with applicable Commission requirements. Toward that end, Best Moving represents that it will voluntarily attend the next Commission training session for household goods carriers.

5 The Company denies that it falsified any records. Rather, the owner, Ivan A. Ratko, asserts that he prepared an estimate for each of the 31 customers identified in the complaint prior to the move date based on information the customers provided over the telephone or in an email. None of those customers requested a copy of the estimate, according to Best Moving, so the Company did not present a written copy to the customer or obtain the customer's signature.

6 Best Moving represents that it has received no complaints from customers about its practices and that the Company provides great value and customer service. Best Moving also claims that as a small business in a slow economy, it cannot afford to pay the penalties assessed in Order 02.

7 On May 7, 2015, Staff timely filed its Answer to the Petition. Staff argues that the Commission should not consider the Petition because it fails to comply with the procedural requirements of a petition for administrative review. In addition, Staff contends that the Petition states facts that are inconsistent with the record evidence, and that the record fully supports the findings and conclusions in Order 02.

8 Brad Shearer, Assistant Attorney General, Olympia, Washington, represents Staff. Ivan Ratko, owner, *pro se*, Federal Way, Washington, represents Best Moving.

DISCUSSION AND DECISION

9 The Commission will review initial orders entered in brief adjudicative proceedings upon the filing of a written petition for review.² "The commission may adopt, modify, reject, or remand the initial order for further proceedings consistent with the

² WAC 480-07-610(7)(a). The standards for such a petition are more relaxed than petitions for administrative review under WAC 480-07-825(3). *See* WAC 480-07-610(7)(b). Accordingly, we overrule Staff's procedural objection and will consider the Petition.

terms of its final order.”³ Here, we agree that Best Moving committed 204 violations of Commission regulations but modify the remedy in Order 02 for those violations.

10 With the exception of falsifying documents, Best Moving conceded the violations alleged in the complaint and found in Order 02. The Company does not dispute these violations in its Petition, but maintains that it has corrected or is willing to correct them. Best Moving’s subsequent partial compliance and promise to fully comply with the regulations are factors the Commission will consider when assessing the amount of a penalty, but we agree with Staff that they do not in any way excuse the Company’s past violations.

11 With respect to the cause of action for falsification of documents, we also agree that the record evidence supports the finding that the seven estimates Best Moving produced were not created prior to the moves in question as described in Order 02.⁴ The uniformity of ink, handwriting, and dates cannot be dismissed as coincidence, particularly in the absence of customer signatures or any other indicia that the documents were created when the Company claims they were. We also give substantial weight to the ALJ’s findings on this issue because she heard the testimony and is in the best position to assess its credibility. Best Moving’s unsupported statements in its petition for review do not outweigh this evidence, and we do not find those statements any more credible than the ALJ did.

12 We therefore agree with and adopt the findings and conclusions in Order 02 that Best Moving is liable for 204 violations of Commission rules, statutes, and Tariff 15-C. However, we modify the remedies for those violations.

13 We share Staff’s and the ALJ’s concerns with the Company’s repeated violations of the same legal obligations but do not believe that this conduct warrants cancellation of Best Moving’s household goods moving permit. The Commission may cancel a permit when a carrier “has repeatedly violated this chapter, the rules and regulations of the commission, or the motor laws of this state or of the United States, or the household goods carrier has made unlawful rebates or has not conducted its operation in accordance with the permit.”⁵ Cancellation of a household goods moving company’s authority to provide regulated service, however, is a drastic measure that should be reserved for circumstances in which that company’s operations have

³ WAC 480-07-610(8).

⁴ Order 02 ¶¶ 10-11.

⁵ RCW 81.80.280(1).

caused, or pose a substantial risk of causing, significant harm to the public or in which those operations demonstrate a willful disregard of Commission rules and regulations that is likely to continue as long as the company remains in business.

- 14 We do not find such circumstances in this case. The rules and regulations the Company violated are designed to protect consumers, but the record does not reflect that any of the Company's customers suffered any direct harm or even complained about the service they received. Best Moving has a track record of failing to comply with the same regulatory requirements despite technical assistance from Staff, which could support a finding that the repeated violations were willful and intentional, particularly in light of the falsification of required estimates. We nevertheless believe that the Company's recent efforts to comply, in part, with its regulatory obligations and its representation of full compliance merits affording Best Moving one more chance to bring its operations into compliance before terminating the Company's authority to provide household goods moving service. Accordingly, we do not adopt the conclusion in Order 02 that the Commission should cancel Best Moving's permit.
- 15 We also agree with the Company that the penalty amount in Order 02 is too high. We weigh various factors in determining the appropriate penalty amount. Many of the violations here are based on the same set of facts and are the same violations Best Moving has committed previously. While we are very concerned about such conduct, neither the Commission nor the Company received any complaints about the moves at issue from the affected customers, none of those customers were harmed, and Best Moving is a small company. We therefore reduce the assessed penalty to \$7,000, which is approximately one half of the penalty assessed in Order 02.
- 16 We want the companies we regulate to succeed in operating a viable business that provides safe, affordable, and effective service to customers consistent with Commission rules and regulations. The primary purpose of penalties is to provide an incentive to correct past violations of those rules and regulations and to ensure future compliance. Accordingly, we suspend \$5,000 of the penalty amount on condition that Best Moving promptly brings its operations into compliance with the legal requirements underlying the 204 violations at issue in this docket and remains in compliance for six months. The Company apparently has already made some efforts in that regard and should work with Staff to complete that process.
- 17 We impose two additional conditions. First, Best Moving must pay the \$2,000 portion of the penalty that is not suspended within 10 days from the date of this Order. Second, Mr. Ratko, Best Moving's owner, must work cooperatively and

respectfully with Staff. Staff is responsible for investigating regulatory compliance with the laws and rules governing household goods movers, assisting companies with their compliance efforts, and safeguarding consumers who hire such carriers to move their household goods. Uncooperative and disrespectful behavior in working with Staff indicates a substantial likelihood of similar treatment of consumers. Such behavior is never acceptable.

- 18 Staff must investigate Best Moving's operations after six months, and the Company must cooperate with that investigation. Staff must then provide the Commission with an investigation report on whether Best Moving has complied with the conditions in this Order. We will reconsider whether to cancel the Company's permit if Best Moving has not met those conditions, including promptly bringing its operations into compliance with the rules and regulations underlying the violations at issue in this proceeding and maintaining that compliance for six months, timely paying the \$2000 portion of the penalty that is not suspended, and demonstrating respectful cooperation with Staff.

ORDER

THE COMMISSION ORDERS That

- 19 (1) The Commission assesses a penalty on Best Moving and Delivery, LLC of \$7,000 for 204 violations of the Commission's rules and regulations, \$5,000 of which is suspended on condition that Best Moving and Delivery, LLC timely pays the \$2,000 that is not suspended, promptly corrects its non-compliance with the rules and regulations at issue in this docket in respectful cooperation with Commission Staff, and complies with those rules and regulations for six months from the date of this Order.
- 20 (2) Commission Staff shall investigate the operations of Best Moving and Delivery, LLC after six months to determine whether it has complied with the conditions in this Order. If Best Moving and Delivery, LLC, has complied with these conditions, the Commission will waive the suspended portion of the penalty. If Best Moving and Delivery, LLC, has not complied with the conditions, the \$5,000 portion of the penalty that has been suspended will be due and payable, and the Commission will reconsider whether to cancel the Company's household goods moving permit.

- 21 (3) The \$2,000 portion of the penalty that is not suspended is due and payable within 10 days of the date of this Order. If Best Moving and Delivery, LLC, does not pay this amount within that time, the \$5,000 suspended portion of the penalty will be immediately due and payable without further order from the Commission.

DATED at Olympia, Washington, and effective May 8, 2015.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chairman

PHILIP B. JONES, Commissioner

ANN E. RENDAHL, Commissioner

NOTICE TO PARTIES: This is a final order of the Commission. No further Commission review is available. Parties may seek judicial review pursuant to RCW 34.04.542.