

[Service Date May 10, 2013]

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In re Application of) DOCKET TV-130259
)
B&Z MOVING, L.L.C.) ORDER 01
)
For a Permit to Operate as a Motor) INITIAL ORDER DENYING
Carrier of Household Goods) APPLICATION FOR PERMANENT
) AUTHORITY
.....)

- 1 **Procedural History.** On February 13, 2013, Zachary Gripp, owner of B&Z Moving, L.L.C. (B&Z Moving or Applicant) filed with the Washington Utilities and Transportation Commission (Commission) an application for authority to operate as a household goods carrier in Washington under RCW 81.80 and WAC 480-15.
- 2 **Notice of Intent to Deny Application.** On March 26, 2013, the Commission issued a Notice of Intent to Deny Application for Permanent Authority; Notice of Opportunity for Hearing in this matter based on its review and investigation of the application. The Commission alleges that the Applicant intentionally submitted a household goods permit application that contains false information to conceal the fact that a business partner, William A. Trick, is a Level II registered sex-offender, which may prohibit the company from obtaining a permit under Commission fitness standards.
- 3 On April 5, 2013, B&Z Moving filed with the Commission a Request for Hearing.
- 4 **Hearing.** Pursuant to RCW 34.05.482 and WAC 480-07-610, the Commission determined that a brief adjudicative proceeding (BAP) was appropriate for determining whether B&Z Moving's application for permanent authority should be denied for failure to meet the application requirements. On April 11, 2013, the Commission issued a Notice of Brief Adjudicative Proceeding and set May 2, 2013, at 1:30 p.m. as the time for the parties to make oral statements concerning their positions.

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- 5 **Appearances.** Michael Fassio, Assistant Attorney General, Olympia, Washington, represented Commission Staff (Staff).¹ Zachary Gripp, *pro se*, Tacoma, Washington, represented B&Z Moving.
- 6 **Applicable Law.** RCW 81.80.075(1) requires the Commission to issue a household goods permit to any qualified applicant found to be fit, willing, and able to perform the services proposed and conform to the applicable laws, requirements, rules, and regulations of the Commission. WAC 480-15-302 and -305² set out the various criteria for obtaining provisional or permanent authority to operate as a household goods company. As relevant in this matter, the rules explain that the Commission may deny applications: (a) that contain any indication of fraud, misrepresentation, or erroneous information;³ (b) when an applicant has been convicted of certain specified crimes within the past five years;⁴ or (c) when other circumstances cause the Commission to believe issuing a permit is not in the public interest.⁵
- 7 **Evidence.** At hearing, Staff presented documentary evidence and the testimony of Rayne Pearson and Sharon Wallace. Mr. Gripp testified on his own behalf and also presented documentary evidence of his company's registration with the Secretary of State's office. Mr. Billy Trick also testified on Mr. Gripp's behalf.
- 8 Staff explained that B&Z Moving came to its attention in late November 2012 as an unpermitted household goods company. Staff observed advertisements for B&Z Moving on craigslist.org that listed a "Billy" as the company contact person. On November 28, 2012, Staff sent the company an e-mail requesting a cost estimate for a

¹ In adjudications the Commission's regulatory staff participates like any other party, while the Administrative Law Judge or the Commissioners make the decision. To assure fairness, the Commissioners and the presiding administrative law judge do not discuss the merits of the proceeding with regulatory staff or any other party without giving notice and opportunity for all parties to participate. See RCW 34.05.455.

² The Commission's Notice of Intent to Deny mistakenly refers to WAC 480-15-330, which was, until June 30, 2012, the Commission's governing regulation for evaluating household goods permit applications. WAC 480-15-330 is substantially similar to the currently effective rules (WAC 480-15-302 and -305); however B&Z Moving's application must be reviewed under the rules in effect at the time of its application for authority.

³ WAC 480-15-302(2).

⁴ WAC 480-15-302(8) and WAC 480-15-305(4).

⁵ WAC 480-15-302(13) and WAC 480-15-305(10).

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local move. That same day, "Billy" responded with a quote of \$80 per hour for two men and a truck. He also provided a contact phone number of (206) 380-6463.

- 9 On February 1, 2013, Staff sent a compliance letter to B&Z Moving and to Mr. Trick instructing the company to cease and desist its operations until and unless it obtained the required permit from the Commission. Mr. Zachary Gripp promptly telephoned the Commission on February 4, 2013, and left a voicemail message acknowledging the compliance letter.
- 10 On February 13, 2013, Mr. Gripp completed, signed, and filed an application for a household goods permit. The application did not name Mr. Trick as his business partner. However, the statements of support endorsing the company used plural terminology (e.g., "both these individuals"), leading Staff to suspect Mr. Gripp was not the sole owner as stated in the application.
- 11 Staff located a website for B&Z Moving at www.bandzmoving.com. The website lists two points of contact for the company: Billy Trick at (206) 380-6463 and Zac Gripp at (253) 355-1792.
- 12 Staff located additional on-line advertising for a moving company called Better Than The Rest. That web page invited prospective customers to "Call Billy or Zac at 206-380-6463" and also provided Mr. Gripp's (253) 355-1792 number in the upper right portion of the website banner. A Facebook page for Better Than The Rest contained an e-mail address for Mr. Gripp and only the (253) 355-1792 number, but listed a Seattle address on 8th Avenue that Staff came to learn was Mr. Trick's home address.
- 13 On February 28, 2013, Staff once again sent an e-mail inquiry to B&Z Moving about the company's availability to perform a move in the third week of March 2013. Billy confirmed the previously quoted rate of \$80 per hour for two men and a truck. In response to Staff's question about who would be doing the work, Billy responded "I would be bringing my business partner Zac along to do the move!"⁶
- 14 Through further investigation, Staff learned that Mr. Trick is engaged to Mr. Gripp's sister, Ashley Gripp. Staff also learned that Ashley Gripp works at Westside Dermatology, from which the B&Z Moving application was faxed to the Commission. Staff noted that one of the company's letters of support came from Dr. James Collyer, M.D., of Westside Dermatology.

⁶ Exh. RP-7.

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- 15 Staff determined that B&Z Moving was an acronym for “Billy & Zac Moving” and that Billy Trick and Zac Gripp were business partners. Staff concluded that the application filed by Mr. Gripp contained misrepresentations because it failed to fully disclose all persons involved in the company.
- 16 As required by WAC 480-15-302(8), Staff requested a Washington State Patrol (WSP) background check on both men. On March 5, 2013, WSP provided a Washington Access to Criminal History (WATCH) report showing that Mr. Trick was arrested on July 8, 1999, on allegations of child molestation. The WATCH Report also showed that on November 22, 1999, the Kitsap County Superior Court convicted William Anthony Trick, then 22 years old, of two felony counts of first degree child molestation. As a result, Mr. Trick served time in prison until his release on May 21, 2004, and he is now a Level II registered sex offender. Mr. Trick’s registered address is the same as that on the B&Z Moving application filed by Mr. Gripp.
- 17 On March 23, 2013, Staff confirmed that despite the Commission’s cease and desist letter, both of the above-noted web sites remained active. Shortly thereafter, Staff issued the Notice of Intent to Deny Application.
- 18 Mr. Gripp testified that in late 2012, he and Mr. Trick had planned to open a moving business together. However, because Mr. Trick subsequently decided to prioritize his career options as a union construction laborer, Mr. Gripp is now pursuing the moving business as a sole proprietor. Mr. Gripp explained that he keeps his moving truck parked at Mr. Trick’s Seattle address rather than his own Tacoma residence in order to be closer to his customer base and save on fuel expenses.
- 19 According to Mr. Gripp, he and Mr. Trick initially started with the trade name Better Than The Rest. Mr. Trick hired a company called 29 Prime to create the website and publicize their venture. Mr. Gripp and Mr. Trick were not satisfied with 29 Prime’s services and stopped making payments to 29 Prime. However, Mr. Gripp has not made any specific efforts to inactivate the web site. Similarly, Mr. Gripp has not pursued modifications to the B&Z Moving website because he does not want to spend additional funds on the company only to have the Commission deny his application.
- 20 Mr. Trick admits that he continued to respond to e-mails on behalf of B&Z Moving even after deciding to back out of his business partnership with Mr. Gripp. Mr. Trick testified that Mr. Gripp did not ask him to respond to e-mail inquiries to the company. Instead, Mr. Trick explained that he felt bad about backing out of their arrangement and was trying to assist Mr. Gripp in keeping the business going.

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- 21 Mr. Trick also acknowledged that he does not want his status as a registered sex offender to prevent Mr. Gripp from moving forward with B&Z Moving. Even so, Mr. Trick testified that he successfully completed a one-year course of inpatient sex offender treatment program while incarcerated and also succeeded in a post-release period of probation and monitoring.
- 22 Staff, having heard the testimony explaining Mr. Gripp's intent with the application and Mr. Trick's prior involvement with the company, reiterated its recommendation that the Commission deny B&Z Moving's application as not in the public interest. Staff believes that Zachary Gripp intentionally submitted a household goods permit application that contained false information to conceal the fact that his business partner, William A. Trick, is a registered sex offender. Staff contends that Mr. Trick's criminal history permanently disqualifies him from being considered fit to hold a household goods permit or be employed by a permitted company.
- 23 **Discussion.** Staff seeks to deny the application of B&Z Moving for three main reasons: a) the company was performing household goods moving services without the required permit; b) the company's subsequent application was misleading; and c) Mr. Gripp's unnamed business partner is a registered sex offender. The common element to each of Staff's concerns is the issue of trust. The Commission should not grant a household goods permit to an applicant who cannot be trusted to comply with Commission rules, trusted to interact with customers in their homes, and trusted to properly handle customers' personal possessions.
- 24 *Unpermitted Operations.* Staff presented evidence of B&Z Moving's unauthorized advertising and Mr. Trick and Mr. Gripp conceded that they had provided a price quote on Staff's "undercover" solicitation to conduct a move. Mr. Gripp testified that as soon as he realized he needed a permit from the Commission, he promptly made contact with Staff and filed an application. Given the Commission's focus on bringing unpermitted household goods movers into compliance, we do not find it appropriate to now deny B&Z Moving a permit based on past transgressions alone.
- 25 *Misleading Application.* Zachary Gripp filed a household goods application with the Commission on February 13, 2013. As Mr. Gripp acknowledged at hearing, the name of the company reflects a partnership between Billy Trick and Zachary Gripp. In addition, the application listed Mr. Trick's address as the company's physical address. Nevertheless, the application lists Mr. Gripp as the sole business owner; it did not name Billy Trick as a business partner or employee anywhere in the application. On its face, the application can reasonably be seen as misleading.

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- 26 In late February 2013, Mr. Trick responded to a Staff request to arrange a move through B&Z Moving and stated that he and his “business partner Zac” would be performing the move. Additionally, several on-line advertisements list both men as points of contact for the company. Any reasonable person would conclude that Zachary Gripp and Billy Trick were in business together as movers.
- 27 Considering the totality of the circumstances, the application was misleading because it omitted important information. Mr. Gripp’s explanations at hearing suggest he was not trying to hide anything, but he failed to rebut Staff’s allegations with regard to the misleading application. The Commission concludes that Staff’s action to deny the application as misleading is legally sufficient.
- 28 Because the misleading application is sufficient grounds to deny the application, the Commission ordinarily would not reach Staff’s other reasons for denial. The Commission nevertheless will address those reasons as a means of providing additional guidance to Mr. Gripp should he decide to reapply for household goods moving authority.
- 29 *Disqualifying Criminal Record.* It is a matter of record that Mr. Trick was convicted of child molestation almost 14 years ago and completed serving the adjudged prison sentence nearly nine years ago. There is no dispute that child molestation is a matter that shocks the conscience. A person convicted of such a crime certainly carries a lifetime stigma, but the Commission’s rules no longer automatically impose a lifetime ban on sex offenders seeking work in the household goods industry.
- 30 Until June 30, 2012, the Commission’s rules allowed the Commission to reject or deny an application if the applicant had been convicted of “any crime” without regard to the passage of time between the conviction and the application.⁷ However, on July 1, 2012, the Commission implemented new rules requiring criminal background checks for each person named in an application for a household goods moving permit and for every employee that will have contact with customers or customers’ residences. In pertinent part, those rules state:

The Commission will not grant provisional authority if any named person has, *within the past five years*, been convicted of any crime involving theft, burglary, sexual misconduct, identity theft, fraud, false

⁷ WAC 480-15-330(4)(e)(ii).

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statements, or the manufacture, sale, or distribution of a controlled substance.⁸

The Commission will not grant permanent authority if any employee has, *within the past five years*, been convicted of any crime involving theft, burglary, sexual misconduct, identity theft, fraud, false statements, or the manufacture, sale, or distribution of a controlled substance.⁹

- 31 There is no ambiguity in the Commission's current rule. It bars convicted criminals guilty of specified crimes from receiving household goods permits, but only for a period of five years. Staff's argument that a sex offender is permanently ineligible to hold a household goods permit or be employed by a moving company is unsupported by the Commission's currently applicable rules.
- 32 In the case at hand, Mr. Trick's convictions date back to July 1999, nearly 14 years ago; further, he was released from prison in 2004, nearly a decade ago. Mr. Trick's convictions, by themselves, cannot be a bar to his participation in owning or working for B&Z Moving.
- 33 *Additional Considerations.* The Commission's current rules contain a "catch-all" provision that allows denial of an application when "other circumstances exist" showing that granting the permit would not be in the public interest. In this case, the Commission expressed its concern that a sex offender working for a moving company would have access to a customer's residence and potentially be around young children on some jobs. The Commission understands Staff's desire to protect the community from the potential of a known sex offender repeating his crimes, but this concern is the same as that already addressed by the rule's five year limitation on considering criminal history. Staff did not offer any additional evidence that Mr. Trick remained a danger to the community. To the contrary, Mr. Trick testified to his successful sex offender treatment and post-release probationary period of supervision.
- 34 Although Staff did not directly argue the issue of integrity, it is another circumstance that must be considered in this case. As noted above, Mr. Gripp's application stated he would be the sole owner of the moving company, his own actions and Mr. Trick's

⁸ WAC 480-15-302(8) (emphasis added).

⁹ WAC 480-15-305(4) (emphasis added).

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actions demonstrate an ongoing partnership. Mr. Trick's testimony demonstrates that he remains responsible for modifying the company's on-line presence, including its advertising. Further, Mr. Gripp's intent to continue parking the truck at Mr. Trick's address suggests an ongoing business relationship. Finally, Mr. Gripp's insistence at hearing to maintain the name "B&Z Moving" for his company into the future suggest that he and Mr. Trick may simply be trying to placate the Commission's worries without altering their behavior. Simply put, the Commission has concerns about whether Mr. Gripp can be trusted to follow through on his pledge to operate as a sole proprietorship.

- 35 The record, therefore, contains sufficient evidence that in addition to the misleading nature of the application, "other circumstances" regarding the applicant's integrity support denying the application.
- 36 **Commission Decision.** Mr. Gripp did not satisfactorily rebut the factual allegations Staff set out in the Notice of Intent to Deny Application with regard to misrepresentation. Mr. Gripp's current application is irretrievably entangled with Mr. Trick. Even viewed in a light most favorable to Mr. Gripp, the Commission finds that the inclusion of both Mr. Gripp's and Mr. Trick's names in on-line advertising, along with Mr. Trick's perhaps well-intentioned attempts to support Mr. Gripp's business endeavors, caused confusion and misled the Commission. The Commission concludes that Zachary Gripp's application was misleading. As a result, B&Z Moving's application for permanent authority to conduct intrastate moves within the state of Washington should be denied at this time.
- 37 We note that Mr. Gripp *did* satisfactorily rebut the factual allegations Staff set out in the Notice of Intent to Deny Application with regard to Mr. Trick's criminal history. More than five years have elapsed since Mr. Trick's convictions and Staff failed to introduce any "other circumstances" that would support a finding that Mr. Trick's criminal history remains a disqualifying factor under the Commission's currently effective rules. The Commission nevertheless finds that Mr. Trick's lack of credibility represents "other circumstances" that require denial of the application.
- 38 Despite finding Mr. Gripp's application misleading and lacking credible evidentiary support, the Commission will again consider granting Mr. Gripp a provisional household goods moving permit if he can make a credible showing that Mr. Trick will not have any involvement in the household goods moving business Mr. Gripp intends to operate. Again, the root issue presented in this case is one of integrity. Mr. Gripp will also need to produce sufficient evidence to convince the Commission that he and

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his employees can be trusted to enter customers' homes, interact with their families, and pack and move personal belongings with professional care, and comply with Commission rules.

39 If Mr. Gripp chooses to reapply, his revised application must make it clear that Mr. Trick will not have any involvement with the company and must accurately and credibly identify who will own the company and who will work for the company. If Mr. Gripp will be the sole owner, the application and all proposed advertising should reflect that fact, on paper and in reality. If Mr. Gripp chooses to re-file such an application within the next 45 days, no additional filing fee will be required.

40 The Commission's rules would normally prohibit a grant of provisional authority to moving companies for a six-month period after an application is denied.¹⁰ However, WAC 480-07-110 provides that the Commission may grant an exemption from or modify the application of its rules in individual cases if consistent with the public interest and the purposes of the underlying regulation:

The standard for consideration is the public interest standard. Factors the commission may consider include whether application of the rule would impose undue hardship on the requesting person, of a degree or a kind different from hardships imposed on other similarly situated persons, and whether the effect of applying the rule would be contrary to the underlying purposes of the rule.

41 In this case, the Commission will grant an exemption to its rule mandating a six-month waiting period to re-file an application. Mr. Gripp's testimony at hearing demonstrates that he has committed significant funding toward forming a moving company and is suffering financial hardship while waiting for the Commission to rule on his pending application. Further, Mr. Gripp now better understands Commission rules and solemnly pledged to strictly adhere to all applicable rules and regulations.

42 If Mr. Gripp is able to file a properly completed application that discloses all required information and can be deemed trustworthy (i.e., not contradicted by on-line advertisements or other information), it would not be in the public interest to preclude him from re-filing his application sooner than six months from the date of this order. However, until he obtains the required permit from the Commission, Mr. Gripp must refrain from operating or advertising as a household goods moving company.

¹⁰ WAC 480-15-302(10).

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THE COMMISSION ORDERS THAT:

- 43 The application filed by Zachary Gripp d/b/a B&Z Moving on February 13, 2013, for a permit to operate as a household goods carrier in the state of Washington is denied without prejudice to Mr. Gripp re-filing the application in accordance with the guidance set out in this Initial Order.

DATED at Olympia, Washington, and effective May 10, 2013.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

ADAM E. TOREM
Administrative Law Judge

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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 **seven (7)** copies of any Petition or Answer must be filed by mail delivery to:

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