

# LOUISIANA PUBLIC SERVICE COMMISSION

ORDER NUMBER T-27926

LOUISIANA PUBLIC SERVICE COMMISSION  
V.  
S&S MOVING SERVICES

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*Docket No. T-27926 In re: Alleged violation of Title 45, Chapter 4 of the Revised Statutes of 1950, Sections 163.1 through 194, as amended, for operating intrastate without LPSC authority.*

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(Decided at the September 29, 2004 Business and Executive Session)

## ***Background***

On April 29, 2004 Louisiana Public Service Commission Enforcement Agent Kelvin Jordan stopped a truck being operated by S&S Moving Services (the "Defendant") on S. Carrollton Avenue in New Orleans allegedly en route to conduct a move of household goods for hire from Covington, Louisiana to Mandeville, Louisiana. Agent Jordan issued Violation Ticket No. V-67731 to the Defendant for operating intrastate without LPSC authority. The fine was to be determined by the Commission. The Commission issued a citation on May 13, 2004 commanding the Defendant to appear at a hearing on July 7, 2004 to show cause why the Defendant should not be found guilty of Violation Ticket No. V-67731. It was published in the bulletin on May 21, 2004. At the July 7, 2004 hearing, the case was called and no one appeared on behalf of the Defendant. Agent Jordan and Mr. William Withers appeared on behalf of the Commission Staff.

The Administrative Law Judge issued a Proposed Recommendation on August 12, 2004 recommending that the Defendant be found guilty and fined in the amount of \$10,000. No exceptions to the Proposed Recommendation were filed and the Administrative Law Judge filed a Final Recommendation on August 30, 2004 reiterating the findings contained in the Proposed Recommendation.

The Final Recommendation was considered at the Commission's Business and Executive Session held on September 29, 2004. On motion of Commissioner Blossman, seconded by Commissioner Field, and unanimously adopted, the Commission voted to accept the Administrative Law Judge's recommendation and find S&S Moving Services guilty and ordered it to pay a fine in the amount of \$10,000 to be paid within fifteen (15) days of the date of the Order.

### *Commission Staff's Allegations*

Agent Jordan testified at the hearing that he was familiar with the Defendant because the Commission had cited the Defendant on previous occasions and he cited the Defendant on April 29, 2004. Agent Jordan testified that on that date, he and Agent Seal spotted the Defendant's truck. Agents Seal and Jordan stopped the truck and as they spoke to the driver, another truck belonging to the Defendant passed by. Agent Jordan remained with the stopped truck and Agent Seal left to pursue the passing truck. Agent Jordan further testified that at the time of the stop, he requested all of the paperwork that was in the vehicle. Agent Jordan stated that a review of the paperwork in the vehicle indicated that the Defendant was en route to conduct a move from Covington to either Mandeville or Madisonville. The truck was empty at the time of the stop.

Agent Jordan averred that ultimately the original driver of the truck got out of the truck and was replaced by Courtney Jones. Mr. Jones threatened Agent Jordan, saying that he would run over him if he did not get out of the way. Agent Jordan removed himself from the path of the truck and Mr. Jones drove away in the truck that Agents Jordan and Seal had stopped.

The Commission Staff attorney presented Agent Jordan with documents that Agent Jordan identified as the paperwork that was in the vehicle at the time of the stop. Commission Staff admitted a copy of the vehicle application, vehicle lease agreement between Your Budget Movers, Inc. and S&S Moving, vehicle registration (showing Defendant's address as 1110 Central Ave., Metairie, Louisiana), Your Budget Movers, Inc. self-insurance certificate and the order for the move to be conducted as Staff Exhibit #1, in globo. After reviewing the paperwork at the time of the stop, Agent Jordan issued Violation Ticket No. V-67731 to the Defendant for operating intrastate without LPSC authority. Agent Jordan identified a copy of Violation Ticket No. V-67731 and it was admitted as Staff Exhibit #2. Staff Exhibit #3 is a copy of the first page of the citation issued by the Commission showing that the address to which the citation was mailed was 1110 Central Avenue, Metairie, Louisiana 70001. Staff Exhibit #4 is a copy of the certified mail return receipt identified with the citation marked by the post office as "Addressee Unknown." Agent Jordan testified that he attempted to hand deliver a copy of the citation, but was unable to do so.

The Commission Staff also called Mr. William Withers, Assistant Director of Enforcement, who asked that if the Defendant is found guilty of the alleged violations, that the Defendant be fined the maximum amount because of the conduct of Courtney Jones and the

individuals representing the Defendant at the time of the stop. Mr. Withers testified that the individuals representing the Defendant were uncooperative and used their vehicles to block Commission enforcement vehicles. He further testified that Courtney Jones attempted to run over Commission agents with vehicles and he assaulted a Commission enforcement agent.

***S&S Moving Service's Defense***

No one made an appearance or offered a defense on behalf of S&S Moving Services.

***Applicable Law***

The Commission exercises jurisdiction in this proceeding pursuant to Article IV, Sec. 21 of the Louisiana Constitution:

**La. Const. Art. IV, Sec. 21 provides in pertinent part:**

The Commission shall regulate all common carriers and public utilities and have such other regulatory authority as provided by law. It shall adopt and enforce reasonable rules, regulations, and procedures necessary for the discharge of its duties, and perform other duties as provided by law.

**La. R.S. 45:164(A):**

Except as provided by Subsection C of this Section, no motor carrier shall operate as a common carrier without first having obtained from the commission a certificate of public convenience and necessity, which shall be issued only after a written application made and filed, a public hearing, due notice given to applicant and all competing common carriers, and a finding by the commission that public convenience and necessity require the issuance of a certificate. No new or additional certificate shall be granted over a route where there is an existing certificate, unless it be clearly shown that a public convenience and necessity would be materially promoted thereby.

**La. R.S. 45:171 (C)**

Whoever violates this Chapter shall be fined by the commission at open hearing not less than one hundred dollars nor more than ten thousand dollars for each violation. The commission in its discretion may assess and impose as costs any actual expenses incurred in the investigation and disposition of an act found to be a violation. This assessment shall be limited to no more than the amount of any monetary fine levied by the commission. Such expenses may include transportation, lodging, or other costs necessary to conduct a hearing on the act or acts in question. As an additional sanction, the commission in its discretion may order the recovery and forfeiture to the state treasurer of all revenue derived by any person, as defined in this Section, from any violation of the provisions of this Chapter.

### ***Findings of Fact and Conclusions of Law***

Having considered the law and the evidence presented at the hearing, the Commission makes the following findings of fact and conclusions of law:

#### **Findings of Fact**

1. On April 29, 2004, Commission Enforcement Agents Kelvin Jordan and Kendall Seal stopped a truck being operated by the Defendant in New Orleans, Louisiana.
2. At the time of the stop, the Defendant was en route to conduct a move for hire from Covington, Louisiana to either Madisonville or Mandeville (it is unclear from the spelling on the order for the move which says "Maddiville").
3. The Defendant did not have intrastate authority from Commission to move household goods for hire.
4. Violation Ticket No. V-67731 was issued to the Defendant for operating intrastate without Commission authority.
5. No bond was posted.
6. The individuals representing the Defendant were uncooperative and attempted to thwart Agent Jordan in carrying out his duties. Courtney Jones went so far as to threaten to run over Agent Jordan with a truck.
7. No one made an appearance at the hearing or offered a defense for the Defendant.
8. No evidence of previous violations was submitted.

#### **Conclusions of Law**

1. The Commission Staff has the initial burden of proving that a violation ticket was appropriately issued and that the defendant is guilty of the alleged violation. Upon Staff's demonstration that the evidence reasonably available to the enforcement agent at the time of the stop indicates a violation, the burden of proof shifts to the defendant to present evidence to rebut Staff's presumption.
2. The Commission Staff met its burden of proving that the Defendant was operating intrastate without Commission authority. The Defendant failed to appear and present a defense.
3. The Defendant is subject to a fine of not less than \$100 nor more than \$10,000 pursuant to La. R.S. 45:171.
4. The conduct of Courtney Jones and others representing the Defendant at the time of the stop warrants the maximum penalty under the law, a \$10,000 fine.

#### **Conclusion**

In accordance with the findings of fact and conclusions of law stated above, we hereby find S&S Moving Services guilty of violating La. R.S. 163.1 through 194 for operating intrastate without Commission authority.

IT IS THEREFORE ORDERED that S&S Moving Services be, and hereby is, found guilty of violating La. R.S. 163.1 through 194 for operating intrastate without Commission authority.

IT IS FURTHER ORDERED that S&S Moving Services be, and hereby is, fined in the amount of \$10,000 to be paid within fifteen (15) days of the date of this Order.

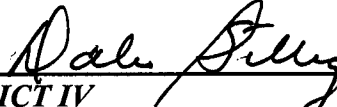
BY ORDER OF THE COMMISSION  
BATON ROUGE, LOUISIANA

November 8, 2004



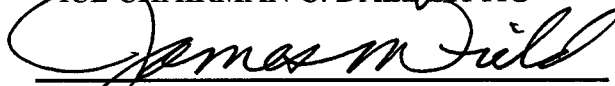
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**DISTRICT III**  
CHAIRMAN IRMA MUSE DIXON



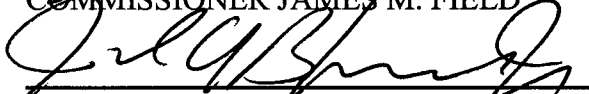
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**DISTRICT IV**  
VICE CHAIRMAN C. DALE SITTIG



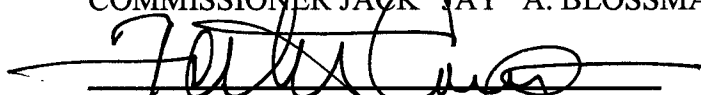
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**DISTRICT II**  
COMMISSIONER JAMES M. FIELD



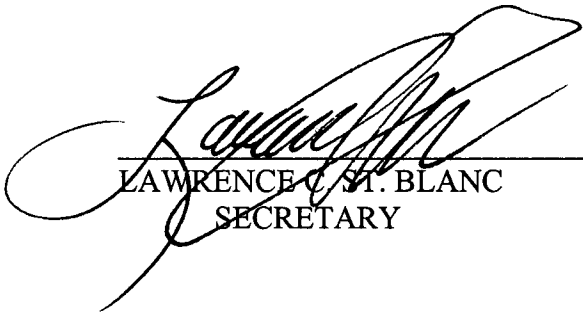
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**DISTRICT I**  
COMMISSIONER JACK "JAY" A. BLOSSMAN



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**DISTRICT V**  
COMMISSIONER FOSTER L. CAMPBELL



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LAWRENCE C. ST. BLANC  
SECRETARY