

LOUISIANA PUBLIC SERVICE COMMISSION

ORDER NUMBER T-28164

LOUISIANA PUBLIC SERVICE COMMISSION VERSUS S&S MOVING (GRETNA, LOUISIANA)

Docket. T-28164 In re: Alleged violation of Title 45, Chapter 4 of the Revised Statutes of 1950, Sections 163.1 through 194, as amended, by operating intrastate without LPSC authority.

(Decided at the April 20, 2005 Business and Executive Session)

Background

The Louisiana Public Service Commission's Transportation Division issued a citation to S & S Moving (the "Defendant") on September 7, 2004, directing the Defendant to show cause at a hearing on November 4, 2005 why it should not be found guilty of violating Title 45, Chapter 4 of the Revised Statutes of 1950, Sections 163.1 through 194, as amended, by operating intrastate without LPSC authority. The citation was issued following a Commission investigation of a written complaint filed with the Commission by Charlene Foto Thompson, a resident of New Orleans, Louisiana. Notice of this proceeding was published in the September 10, 2004 edition of the Commission's Official Bulletin, and a hearing was held on November 4, 2004. S & S Moving failed to appear. The Commission Staff presented the testimony of William Withers, Assistant Director of Transportation, in support of the Staff's allegations against S & S Moving.

The Administrative Law Judge issued a Proposed Recommendation in this docket on March 9, 2005. No party filed an exception to the Proposed Recommendation within the time frame prescribed in the Commission's Rules of Practice and Procedure. A Final Recommendation was issued by the Administrative Law Judge on March 30, 2005.

The Final Recommendation was considered at the Commission's Business and Executive Session held on April 20, 2005. On motion of Commissioner Blossman, seconded by Commissioner Field, and unanimously adopted, the Commission voted to accept the Administrative Law Judge's recommendation: finding S & S Moving guilty of violating La. R.S. 45:164(E) and the Commission's General Order of May 17, 2004 by conducting an intrastate move of household goods for compensation without first having registered with the Commission; and ordering S & S Moving to pay a fine in the amount of \$5,000.00, which fine must be paid to the Commission within fifteen (15) days of the issuance of this Order.

The Commission Staff's Case

The Commission Staff alleges that on July 30, 2004, S&S Moving conducted an intrastate move of household goods in the City of New Orleans and was compensated for that move by Charlene Foto Thompson. The Staff alleges that the Defendant did not have Commission authority to conduct intrastate moves of household goods on July 30, 2004; thus, the Defendant's actions constituted a violation of Louisiana law, which requires such authority. In support of its allegations, the Staff presented the testimony of Bill Withers, Assistant Director of Transportation for the Commission, and the testimony of Terry Shaffet, Assistant Secretary in the Transportation Division, together with the following exhibits: the written complaint filed with the Commission by Charlene Foto Thompson and attached moving invoice, canceled check, and page from the Bell South Yellow Pages. The Staff also submitted a certified mail return receipt as evidence of its attempts to serve the Defendant with notice of this proceeding, as well as a copy of the Commission's Order T-27260.

The Defense

S & S Moving failed to appear and present a defense at the hearing.

Applicable Law

Article 4 §21 of the Louisiana Constitution delegates to the Commission the authority to regulate common carriers in Louisiana. Louisiana statutes provide an additional delegation of authority over motor carriers to the Commission.

La. R.S. 45:164 generally provides that a motor carrier shall not operate as a common carrier without first having obtained from the Commission a certificate of public convenience and necessity, based upon a finding by the Commission that public convenience and necessity require the issuance of a certificate. La. R.S. 45:164(C) and La. R.S. 45:172(A)(4)(c) provide for exemptions to this general requirement of Commission authority - for wrecker and towing services, for limousine services, for motor carriers of salt water utilized in oil well exploration and production, and for property-carrying trucks and vehicles mainly located, operated and employed within the corporate limits of one incorporated municipality but not more than ten miles therefrom.

In 2002, the Louisiana Legislature enacted legislation which specifically addresses requirements applicable to movers of household goods. *La. R.S. 45: 164 (E)*. The new

legislation requires movers of household goods, among other things, to obtain a registration permit from the Commission, to maintain certain insurance coverage, and to maintain and register with the Commission a permanent establishment and phone number in the state.

On May 17, 2004, the Commission issued a General Order in Docket R-27734 (the "Order"). That Order specifies that its purpose is to promulgate rules and regulations necessary for the proper implementation and administration of the new legislation found at La. R.S. 45:164(E). The Order states that its purpose is also to reassert the Commission's plenary authority over common carriers in Louisiana. In accordance with these stated purposes, the Order sets out specific requirements applicable to movers of household goods in Louisiana and specifies that the 10-mile exemption provided for in La. R.S. 45:172(A)(4)(c) shall *not* be applicable to carriers of household goods.

In accordance with the Order, household goods carriers need not prove public convenience and necessity in order to operate, but must secure a registration permit from the Commission prior to operating within the state. To secure the registration permit, the applicant must, among other things, file proof of specific insurance coverage, file annual reports, register the address and telephone number of the company's permanent establishment, and be determined by the Commission to be a fit applicant. The Order further provides that its provisions shall be applicable only when a contract or agreement for moving household goods exceeds \$250.00. Finally, the Order provides that any person found guilty of violating the Order shall be fined in accordance with La. R.S. 45:171.

La. R.S. 45:171 provides that any person who violates or knowingly assists in the violation of pertinent statutory provisions or Commission orders or regulations shall be subject to a fine by the Commission of not less than one hundred dollars nor more than ten thousand dollars for each violation. This statute further provides for additional sanctions, including forfeiture of revenue derived from a violation and assessment of the actual expenses incurred in the investigation and disposition of an act found to be a violation.

Findings of Fact and Conclusions of Law:

Having considered the law and the evidence presented in this case, the Commission makes the following findings of fact and conclusions of law:

Findings of Fact

As evidenced by the written complaint and attached documents filed with the Commission by Charlene Foto Thompson and corroborated by the sworn testimony of Bill Withers, who testified that he investigated the complaint and confirmed directly with Ms. Thompson the facts concerning her complaint, we conclude the following:

1. On July 30, 2004, S & S Moving, also holding themselves out as Starving Students Movers, moved household goods for compensation by Ms. Thompson from one location in New Orleans to another location in New Orleans. The move lasted five hours, and Ms. Thompson was invoiced for charges totaling \$508.00, as evidenced by a copy of the invoice submitted into evidence. Ms. Thompson paid those charges by personal check dated July 30, 2004, as evidenced by the canceled check. Ms. Thompson's check was made out to S & S Moving, and the invoice shows the carrier's name to be S & S Moving; however, Ms. Thompson submitted with her complaint a copy of a page from the Bell South Yellow Pages bearing an ad for Starving Students Movers. Ms. Thompson contacted the moving company in reliance upon and utilizing information provided in that ad.
2. During the process of delivering the furniture to Ms. Thompson's new home, the movers damaged the house and a refrigerator. Efforts by Ms. Thompson to have the Defendant repair the damages have not been successful.
3. S & S Moving had not at the time of this move taken steps to obtain a registration permit from the Commission to conduct moves of household goods in Louisiana. As of the hearing date, the Defendant still had not taken such steps.
4. Ms. Thompson filed her complaint with the Commission on or around August 9, 2004. Based upon Mr. Withers' investigation of Ms. Thompson's complaint, the Transportation Division issued a citation to the Defendant on September 7, 2004, directing the company to appear at hearing and show cause why it should not be found guilty of violating the law by operating intrastate without authority.
5. The Commission's Transportation Division at first attempted hand delivery of the citation by one of the Commission's enforcement agents. When that proved unsuccessful, Ms. Shaffett of the Transportation Division called the telephone number provided in the Bell South Yellow Pages ad submitted by Ms. Thompson with her

complaint. (The ad does not provide an address.) The person who answered the phone refused to provide her name, but advised that S & S Moving had moved its business to an address in St. Petersburg, Florida. Ms. Shaffett used the St. Petersburg address to serve the citation on the Defendant by certified mail. The certified mail return receipt submitted into evidence by the Staff bears a stamp, which says "Unclaimed. Return to Sender."

6. The Defendant did not appear at the hearing.
7. S & S Moving has previously been found guilty by the Commission of operating intrastate in Louisiana without Commission authority. In Order T-27260, issued by the Commission on March 1, 2004, S & S Moving was fined in the amount of \$2,000 for that violation. The Order concludes that that penalty amount is appropriate in light of prior violations committed by the Defendant and established through evidence submitted into the record of the proceeding.
8. The Commission Staff seeks a penalty in this case in the amount of \$10,000 – the maximum amount allowed under La. R.S. 45:171. – in light of the Defendant's history of violations and disregard for Commission regulations. The Staff seeks no further assessments provided for in La. R.S. 45:171.

Conclusions of Law

1. The Commission Staff instituted this proceeding and has the burden of proving its allegations against the Defendant.
2. Since the Defendant did not appear at the hearing, the Staff has the additional burden of proving that the Defendant received adequate notice of the date of the hearing and of the Staff's allegations, to enable the Defendant to appear and present a defense. We find that the Commission Staff demonstrated, through testimony and evidence, that the Commission did provide adequate notice, through notice provided in the Commission's Official Bulletin and through the certified mailing of the citation to an address reasonably relied upon by the Commission.
3. Rules 7 and 10 of the Commission's Rules of Practice and Procedure provide that notice of non-criminal proceedings shall be accomplished through publication in the Commission's Official Bulletin, as well as through service by certified mail to "the last known place or address of the person entitled to receive such notice." In this

proceeding, the Commission provided notice of the date of the hearing and of the allegations against the Defendant in the Commission's Official Bulletin dated September 10, 2004. In addition, the Commission served notice on the Defendant through certified mail. The Commission called the telephone number provided in the BellSouth Yellow Pages ad, which was the basis for Ms. Thompson's original contact with the Defendant. Although the ad is for "Starving Students' Movers," the movers who appeared to conduct the move used the name S & S Moving on the moving invoice and accepted a check from Ms. Thompson made payable to S & S Moving – leading us to the conclusion that two companies utilize the same phone number or that the two companies are actually one and the same. In any event, it was reasonable for the Commission to call the number utilized by Ms. Thompson in arranging for the move, and it was reasonable for the Commission to rely upon advice provided by an individual reached at that number regarding the address at which S & S Moving could be reached.

4. Although the certified mail return receipt indicates that the citation mailed to the St. Petersburg, Florida address was not claimed by the Defendant, it does not indicate that the addressee is not located at that address. We conclude that the Defendant simply failed to claim the certified mail. Louisiana courts have repeatedly held that a litigant may not defeat service by failing to claim the certified mailing.¹
5. We further conclude that the Staff met its burden of proving that the Defendant violated the law by conducting an intrastate move of household goods for compensation without having first registered with the Commission. The Commission's General Order Of May 17, 2004 implements legislation enacted at La. R.S. 45:164(E) regarding registration requirements for movers of household goods. The Order requires all intrastate household goods carriers to register with the Commission and make certain filings. The Orders provides for only one exception to the registration requirement – and that is with regard to moves for which the contracted compensation does not exceed \$250.00. In this proceeding, the evidence shows that the Defendant conducted an intrastate move of household goods for Ms. Thompson on July 30, 2004, that the Defendant invoiced Ms. Thompson for the move

¹ See, e.g. *Thomas Organ Co. v. Universal Music Co.*, 261 So. 2d 323 (La. App. 1 Cir. 1972) and *Hardy v. The Dow Company, Inc.*, 674 So. 2d 452 (La. App. 4 Cir. 5/8/96).

and was compensated by Ms. Thompson for the move in an amount exceeding \$250, and that the Defendant had not registered with the Commission and made necessary filings with the Commission at the time of the move. Accordingly, the Defendant's actions in conducting the move for Ms. Thompson violated the Commission's General Order.

6. The Commission's General Order provides that violations of the Order's requirements are punishable in accordance with La. R.S. 45:171. That statute provides that violations shall be punishable in an amount no less than \$100 and no greater than \$10,000. The Commission Staff seeks the maximum penalty - \$10,000 - in this case. In determining an appropriate penalty, the Commission may consider the magnitude of the offense, previous violations by the carrier, any reasonable defenses, and what steps, if any, the carrier has taken to rectify the problem.
7. In this instance, the Defendant held itself out to Ms. Thompson as an authorized mover of household goods. The Defendant then failed to appear at the hearing and failed to present any defense. The record contains no evidence that the Defendant has taken any steps to register with the Commission since the date of this move. As demonstrated by the Commission Staff, the Defendant has been found guilty and penalized for intrastate violations in the past. In Docket T-27260, issued by the Commission on March 1, 2004, the Defendant was found guilty of conducting an intrastate move without authority. In that proceeding, the Commission concluded that the Defendant's owner, DeBryant McDuffie, had previously been found guilty of violating Commission Orders. Based upon that aggravating circumstance, the Commission fined the Defendant in the amount of \$2,000.00.
8. In this proceeding, Ms. Thompson's written complaint describes some damage done by the Defendant during the course of the move and Ms. Thompson's frustrations in seeking redress from the Defendant. However, the Staff did not substantiate the nature or amount of the damage at the hearing, either through testimony or evidence. Thus, we cannot conclude that the move was conducted in a particularly egregious manner.
9. From the evidence presented, we conclude that the Defendant's failure to register with the Commission as an intrastate mover of household goods prior to conducting

the move for Ms. Thompson is aggravated by its previous violations and continuing disregard for the Commission's regulations and state law. Accordingly, we conclude that a fine in the amount of \$5,000.00 is appropriate.

Conclusion

In accordance with the above findings of fact and conclusions of law, we hereby find the Defendant, S & S Moving, guilty of violating La. R.S. 45:164(E) and the Commission's General Order of May 17, 2004 by conducting an intrastate move of household goods for compensation without first having registered with the Commission. In accordance with the Commission's General Order of May 17, 2004 and La. R.S. 45:171, we ORDER the Defendant to pay a fine in the amount of \$5,000.00, which fine must be paid to the Commission within fifteen (15) days of the issuance of this Order.

IT IS SO ORDERED.

BY ORDER OF THE COMMISSION
BATON ROUGE, LOUISIANA

May 13, 2005

/S/ C. DALE SITTIG
DISTRICT IV
CHAIRMAN C. DALE SITTIG

/S/ JAMES M. FIELD
DISTRICT II
VICE CHAIRMAN JAMES M. FIELD

/S/ JACK "JAY" A. BLOSSMAN
DISTRICT I
COMMISSIONER JACK "JAY" A. BLOSSMAN

/S/ FOSTER L. CAMPBELL
DISTRICT V
COMMISSIONER FOSTER L. CAMPBELL

/S/ LAMBERT C. BOISSIERE, III
DISTRICT III
COMMISSIONER LAMBERT C. BOISSIERE, III


LAWRENCE C. ST. BLANC
SECRETARY