

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

MOTOR CARRIER COMPLAINT
MCC-3070

ORDER AND JUDGMENT

Defendant.

ENTERED: APRIL 19, 1993

Mark A. Ludwig
Attorney-at-Law
P.O. Box 94927
Lincoln, NE 68509

Bruce Branigan
1224 West Park Avenue
Lincoln, NE 68522
(Pro se)

On March 22, 1993, pursuant to proper notice, hearing was had in the Commission Hearing Room at Lincoln on the complaint filed herein with the Commission on January 15, 1993, and served on defendant by certified mail. The defendant filed his answer to the complaint on January 22, 1993, denying the complainant's allegations. Commissioner Duane Gay served as hearing officer and Commissioner Daniel Urwiller and Commission Counsel Hal Hasselbalch were also present. The defendant appeared without counsel.

I. Summary of the evidence.

Ram Dhanwada testified that he contracted the services of defendant to move his household goods on December 31, 1992, from Lincoln to Omaha. He paid for the moving services with three different checks. All the checks were written to Bruce Branigan and were endorsed by him, cleared and paid through Mr. Dhanwada's bank. Defendant was personally present during the loading of Mr. Dhanwada's furniture, and defendant was the only person that Mr. Dhanwada dealt with during the move. He found the defendant's name and phone number

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in the yellow pages of the Lincoln telephone book. At no time did the defendant indicate that his company could not make the movement from Lincoln to Omaha.

On cross examination by the defendant, the witness clarified that he issued three checks in the amounts of \$50, \$150, and \$150 to the defendant for a total of \$350, Exhibits 2 and 3. Exhibit 4 consisted of a copy of a page from the yellow pages of the Lincoln telephone book displaying the defendant's advertisement.

Vernon Nelsen testified: He is employed by the defendant's company and has been employed by defendant's company for one and one half years. He was also employed by defendant on or about December 31, 1992, when the movement in question took place. He was the driver of the truck and was dispatched to the moving site by the defendant. He had never met Mr. Dhanwada before the time in which he arrived at Mr. Dhanwada's Lincoln apartment. He was paid for his labor by Bruce Branigan who was on location during the loading of the truck and supervised the loading to make sure the truck was packed correctly. He was stopped by a PSC inspector in Eagle while en route to Omaha and told the inspector that he worked for You-Call/We-Haul, Bruce Branigan.

Robert Harrison testified: He is a PSC Motor Carrier Inspector. He investigated the movement complained of. Upon receiving a tip that the defendant may be conducting a movement from Lincoln to Omaha on December 31, 1992, he proceeded to the address given him in Lincoln. He observed a truck with the name "Adjustable Beds of Fremont, Nebraska" on the side of the truck being loaded at the apartment house at the location in question. He stayed at the site for approximately three hours and, during that time, observed the defendant participating in the loading operation. Harrison did not make contact with the loading crew until such time as he could follow the truck outside of Lincoln where he stopped it near Eagle, 15 miles outside of Lincoln. Upon stopping the truck, he approached the driver, whom he identified as Vernon Nelsen. Mr. Nelsen stated that he did not work for Adjustable Beds of Fremont, but rather worked for You-Call/We-Haul, which was Bruce Branigan's company. Nelsen informed the inspector that he was taking the load to an address in Omaha by way of Highways 34 and 50. The vehicle did not have a regular vehicle registration; however, he ran the vehicle identification number through the Department of Motor Vehicles' computer records and secured a printout that showed the truck was owned by Bruce Branigan. The truck was not placarded in any way to indicate ownership by Bruce Branigan or You-Call/We-Haul. His only previous contact with the defendant was in approximately February of 1991 when a courtesy visit was paid to Mr. Branigan at which time he was informed of the five-mile radial limit within which he could legally operate his transportation service.

On cross examination: He had no knowledge of any previous illegal movements made by the defendant. Other than the December 31, 1992, movement, no prior investigations had been made into the activities of the defendant or the defendant's company.

II. Analysis

From the evidence adduced at hearing, it is clear the defendant did perform the intrastate movement of household goods complained of and that he and/or his company, You-Call/We-Haul, did so on a for-hire basis. The defendant, having no certificate of authority from this Commission, may only make movements of household goods in the City of Lincoln or within a five-mile radius based on the situs of defendant's company in Lincoln. The evidence is clear that the violation complained of in complainant's petition was a movement that required a certificate or permit of authority from this Commission pursuant to Neb. Rev. Stat. Section 75-309 (1990 Reissue), which reads as follows:

It shall be unlawful for any common or contract carrier by motor vehicle subject to the provisions of Chapter 75, articles 1 and 2, and sections 75-301 to 75-322.04 to engage in any intrastate operations on any public highway in Nebraska unless there is in force with respect to such common carrier a certificate of public convenience and necessity, or a permit to such contract carrier, issued by the commission authorizing such operations.

Exhibits 2 and 3 indicate that payment was made directly to Bruce Branigan, and the checks appear to be endorsed by Bruce Branigan personally. The driver of the truck, Vernon Nelsen, testified that he worked for Bruce Branigan, dba You-Call/We-Haul, and did not even meet or speak with Mr. Dhanwada until the day he arrived at Mr. Dhanwada's apartment to load his furniture. The evidence shows that the movement was made from Lincoln to Omaha, and this Commission will take judicial notice that Omaha is well outside the five-mile radius of the corporate limits of the City of Lincoln. In his statement to the Commission, the defendant does not deny that his truck went to Omaha, but as a defense alleges he rented the truck to Mr. Dhanwada and merely brokered the labor. However, the evidence is quite clear that the truck was not rented by Mr. Dhanwada. No rental agreement or lease was offered in evidence, nor did Mr. Dhanwada pay the moving crew for their labor. Ownership of the truck is in the defendant; the payments were made to defendant; the driver of the truck admitted to being employed by the defendant; and the defendant was even at the moving site supervising the loading of the vehicle. Further, the defendant was contacted by Mr. Dhanwada through his Yellow Pages advertisement in the movers section of the Lincoln telephone book. The defendant, therefore, holds himself out to the public as a mover of household goods. Finally, the defendant negotiated all the arrangements for the move directly with the moving client.

III. Conclusion

Because the evidence offered at hearing sufficiently supports complainant's allegations that the defendant violated Section 75-309 of the Nebraska statutes as cited herein, we hereby conclude that a civil penalty should be assessed against the defendant pursuant to law in an amount reasonably determined by Rule 027.02B of the Commission's Rules of Procedure. The basis for such penalty determination includes, but is not limited to, the defendant's history or non-history of previous

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violations, the gravity of the violation, and the amount of the fine necessary to deter future violations. Because the defendant was initially contacted in February 1991 by an agent of this Commission and was at that time apprised of the law restricting for-hire transportation outside the five-mile radius of the city within which the defendant resides, we find that the requested penalty of \$500.00 in the complainant's prayer is fair and reasonable and should accordingly be assessed against the defendant.

O R D E R

IT IS, THEREFORE, ORDERED that defendant, Bruce Branigan, dba You-Call/We-Haul, be, and he is hereby, assessed a civil penalty in the amount of five hundred dollars (\$500.00) for violating Neb. Rev. Stat. Section 75-309, as amended, said penalty to made payable to the Treasurer of the State of Nebraska and remitted by cashier's check or money order to this Commission not later than thirty (30) days from the date this order is mailed to the defendant.

IT IS FURTHER ORDERED that the defendant cease and desist from all further operations in the intrastate transportation of property for hire without authority outside the exception provided under Neb. Rev. Stat. Section 75-303(4), as amended, under penalty of further action by this Commission in the Lancaster County District Court as provided for by law under Neb. Rev. Stat. Section 75-140 et seq.

IT IS FURTHER ORDERED that the defendant file proof of insurance with this Commission as is required under Neb. Rev. Stat. Section 75-307.

MADE AND ENTERED at Lincoln, Nebraska, this 19th day of April, 1993.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Daniel H. Knivill
Duane D. Gay

//s//Rod Johnson
//s//Frank E. Landis, Jr.
//s//James F. Munnely

Frank E. Landis, Jr.
Chairman

ATTEST:

John R. King
Executive Director