

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In re Robert R. Logsdon, Director)	MOTOR CARRIER COMPLAINT
of the Nebraska Public Service)	MCC-3088
Commission Transportation)	
Department,)	
)	
Complainant,)	
vs.)	ORDER AND JUDGMENT
)	
Bruce Branigan, dba You-Call/)	
We-Haul, Lincoln, Nebraska,)	
)	
Defendant.)	ENTERED: APRIL 26, 1994

APPEARANCES: For the Complainant:
Mark A. Ludwig
Attorney-at-Law
P.O. Box 94927
Lincoln, NE 68509

BY THE COMMISSION:

The complaint in this docket was filed with the Commission on January 12, 1994. A copy of the complaint and accompanying notice of hearing was personally served upon the defendant, Bruce Branigan, on January 13, 1994. A hearing was convened in the Commission Hearing Room at Lincoln, Nebraska, on March 3, 1994. The defendant failed to appear. Upon the failure of the complainant's subpoenaed witness to appear at hearing, complainant moved for a continuance of the hearing until such time as the witness' presence could be secured. Said motion was made in writing on March 3, 1994, and granted by the Commission on March 9, 1994. Whereupon, the hearing was reconvened on April 5, 1994, after proper notice of the hearing continuance was made on defendant by personal service on March 15, 1994. The defendant failed to appear at the second hearing. Commissioner Frank Landis served as hearing officer. Commissioner Dan Urwiller was also present. The record reflects that a hand-written answer was filed to the complaint by the defendant on February 1, 1994, and will be treated as a general denial of the allegations set forth in the complaint.

OPINION AND FINDINGS

I. Summary of the evidence.

Robert R. Logsdon testified: He is the Director of Transportation at the Nebraska Public Service Commission and is the complainant in this action. Mr. Logsdon testified that the defendant has appeared in front of the Commission before on past complaints. A complaint was filed in January 1993 against the defendant in which the defendant was fined by the Commission. The defendant has no intrastate or interstate authority, as reflected by the transportation department records. The records also reveal that the defendant is not leased to any certificated carrier. The defendant has never made application to the Commission for motor carrier authority. Without such authority, or without leasing, the defendant may only conduct for-hire transportation of property in the state by operating in the city or town that he is domiciled in, including a five-mile radius around said city or town. A

copy of the Commission order and judgment entered in Motor Carrier Complaint No. 3070 was marked as Exhibit No. 2 and admitted into evidence. The order in MCC-3070 fined the defendant \$500. The defendant was also ordered to file proof of insurance with the Commission. Mr. Logsdon testified that no insurance filing existed on behalf of the defendant.

Robert W. Harrison testified: Mr. Harrison is a motor transportation inspector for the Nebraska Public Service Commission. Mr. Harrison's territory includes the City of Lincoln, wherein the defendant is based. Mr. Harrison testified that the Village of Cortland, Nebraska, is approximately 20 miles south of Lincoln. The Yellow Pages' advertisement from the Lincoln Telephone Book was marked as Exhibit No. 3 and admitted into evidence. The exhibit advertises the defendant's services and states that the defendant is insured. Mr. Harrison has had prior contacts with the defendant, including with regard to the complaint previously testified to by Mr. Logsdon. Mr. Harrison testified that he had reason to believe the defendant was operating as a for-hire carrier because Mr. Harrison called the defendant's number on the morning of the hearing date and defendant agreed to a fictitious move of Mr. Harrison's household belongings point to point within the City of Lincoln. Mr. Harrison testified that he spoke to Bruce Branigan directly when setting up the fictitious move. Mr. Harrison also testified that he has observed the defendant driving around town in his company truck on several occasions. Exhibit 4, admitted into evidence along with Exhibit 3, is the answer filed by the defendant. In said answer dated January 31, 1994, the defendant stated that he has stopped doing household moves anywhere.

Alan Sasek testified: He is the witness who failed to appear at the earlier hearing on March 3, 1994. Mr. Sasek works as an environmental specialist for the Lincoln Public School system and lives in Cortland, Nebraska. Mr. Sasek testified that the defendant moved his household goods from Lincoln to Cortland, Nebraska, on approximately September 4, 1993. Mr. Sasek or his wife contracted the services of the defendant either through a newspaper ad or the Yellow Pages. Mr. Sasek testified that he may have used the defendant's services three years earlier as well. Mr. Sasek did not lease any equipment to the defendant to make the move of household goods, nor did he provide any drivers or laborers for the defendant with which to conduct the movement. None of Mr. Sasek's household goods were moved to any storage unit in the move from Lincoln to Cortland. Mr. Sasek issued a personal check to Bruce Branigan in payment for the move. Payment was made in the amount of \$320. A copy of the check was marked as Exhibit 5 and admitted into evidence. Mr. Sasek testified that his home in Cortland is approximately 16 miles from the Lincoln city limits.

II. Analysis

From the evidence adduced in the record, we find that the defendant did perform the illegal intrastate movement of household goods as alleged in complainant's petition. The movement was performed on a for-hire basis and the transportation of goods performed outside the five-mile radial-exempt zone of the defendant's domicile in Lincoln, Nebraska.

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Neb. Rev. Stat. Section 75-309, as amended, 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.

We find the defendant did violate Section 75-309 as cited above by transporting regulated commodities in Nebraska intrastate commerce without authority from Lincoln to Cortland, Nebraska. The defendant has had previous contacts with the Commission including a complaint filed in January 1993 which also went to hearing, and wherein the defendant was subsequently fined \$500.

The evidence also shows that the defendant violated the Commission's order issued in complaint docket MCC-3070 by failing to file proof of liability insurance with the Commission as required by law under Neb. Rev. Stat. Section 75-307, as amended. Because of the defendant's previous contact with the Commission, it cannot be claimed that the defendant may be ignorant of the state's Motor Carrier Act and Commission's rules and regulations regarding the for-hire transportation of regulated commodities in Nebraska intrastate commerce.

III. Conclusion

Because the evidence sufficiently supports the complainant's allegations that the defendant violated Sections 75-307 and 75-309 of the Nebraska statutes, as amended, and because this is not the first time the defendant has been brought before this Commission on a Transportation Department complaint, we hereby conclude that a civil penalty should be assessed against the defendant pursuant to law in an amount reasonably determined by Commission Rule of Procedure 027.02B. The defendant has a history of appearing formally before this Commission, and the defendant has shown little good faith in attempting to achieve compliance after being charged and previously fined, and the defendant has continued to consistently deny outright the allegations which have been proven against him.

The amount collected by the defendant in making the movement complained of herein was \$320.00. In a previous complaint, the defendant was fined \$500.00 and made payment on the fine. Therefore, the Commission deems that the amount of fine necessary to deter future violations will be another \$500.00 fine. This amount will effectively take the profit out of the illegal movement performed by the defendant in September of 1993, and will hopefully dissuade defendant from continuing to conduct such illegal movements in the future with the knowledge that this Commission will act to remove the profit from all similar ventures on the defendant's part until our resolve to enforce our motor carrier statutes and regulations will be effectively impressed upon the defendant so as to compel ultimate compliance since it is obvious the defendant has no intention to voluntarily submit to the law.

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O R D E R

IT IS, THEREFORE, ORDERED that defendant, Bruce Branigan, dba You-Call/We-Haul be, and is hereby, assessed a civil penalty in the amount of five hundred dollars (\$500.00) for violating Neb. Rev. Stat. Sections 75-307 and 75-309, as amended, and the previous order of the Commission entered on April 19, 1993, in MCC-3070, 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 make such proof of liability insurance filing that is required by Neb. Rev. Stat. Section 75-307 if the defendant continues to operate as a motor carrier for hire in the transportation of goods in Nebraska intrastate commerce.

MADE AND ENTERED at Lincoln, Nebraska, this 26th day of April, 1994.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Daniel S. Gruwiler
Duane D. Gay

//s//Rod Johnson
//s//Frank E. Landis, Jr.

Joan Jander
Chairman

ATTEST:

Hal Haeubler
Executive Director