

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of Mark J. Breiner) APPLICATION NO. MCC-3154
Director of the Motor)
Transportation Department of the)
Nebraska Public Service)
Commission,)
Complainant,) ORDER TO CEASE AND DESIST
AND ASSESSMENT OF A CIVIL
PENALTY
v.)
Mike's Moving, Omaha)
Defendant.) ENTERED: JUNE 7, 2005

APPEARANCES:

For the Defendant:

John Green
Lake Regency Building, Suite 100
444 Regency Parkway Drive
Omaha, NE 68114

For the Commission:

Angela Melton
300 The Atrium
1200 N Street
Lincoln, Nebraska 68508

BY THE COMMISSION:

On November 1, 2004, Mark J. Breiner, Director of the Motor Transportation Department of the Nebraska Public Service Commission (Complainant) filed a Complaint against Mike's Moving (Defendant), Omaha, Nebraska, alleging that it had been providing household goods transportation services after its certificate of authority was revoked. A hearing on the Complaint was held at the Commission on March 8, 2005, and continued on March 22, 2005.

E V I D E N C E

Defendant, Mike's Moving, held authority under Certificate M-14110 as a common carrier in Nebraska intrastate commerce in the transportation of household goods between points within a 15-mile radius of the Omaha metropolitan area over irregular routes, and as a carrier in Nebraska intrastate commerce in the transportation of household goods between points in Nebraska over irregular routes. On March 2, 2004, Defendant's Certificate of Public Convenience and Necessity was revoked under a show cause order for failure to file the required proof

of cargo insurance coverage with the Commission. The show cause order was entered on January 13, 2004, and a hearing was held on February 10, 2004. Defendant did not make an appearance, but did file a request to be self-insured on February 27, 2004, which was denied. As of March 2, 2004, Defendant was still not in compliance with the Commission's rules and regulations.

On April 5, 2004, Defendant petitioned the District Court of Douglas County, Nebraska, for a review of the Commission's decision revoking Defendant's certificate. The petition was dismissed on September 13, 2004.

After Defendant's certificate had been revoked, the Commission received numerous complaints regarding Defendant's continued operations as a mover in the Omaha area. Defendant was issued a citation for violation of Neb. Rev. Stat. § 75-305; Neb. Admin. Code, Title 291, Chap. 3, § 004.03 for failure to display a Nebraska Public Service Commission plate while attempting a move on June 17, 2004. Two Commission employees witnessed the attempted move and testified to the event. The agent of the Defendant who was cited was also informed that all moves after March 2, 2004, were illegal moves.

At the hearing, Defendant owner, Richard M. Mangan, testified to receiving notice from the Commission of the Form H deficiency in January and February 2004 prior to the revocation. Defendant offered testimony that it had obtained cargo insurance on March 26, 2004, but it did not have the requisite cargo insurance prior to that time in 2004.

In addition, Mr. Mangan testified to continuing to operate his moving service in spite of his lack of authority and providing up to 30 moves per week since March 2, 2004 and after September 13, 2004.

O P I N I O N A N D F I N D I N G S

The Commission's review of this Complaint is based upon the Commission's Rules in the Neb. Admin. Code, Title 291, Chap. 1, § 013.03, in which the Commission may, after proper notice and hearing, enter a cease and desist order or any order the Commission deems just and reasonable. Additionally, under Neb. Rev. Stat. § 75-156/ Neb. Admin. Code, Title 291, Chap. 1, § 027.02, the Commission may, upon finding that the violation is proven by clear and convincing evidence, assess a civil penalty of up to ten thousand dollars per day against any person for each violation. Accordingly, the Commission has reviewed the evidence in light of this standard.

Pursuant Neb. Rev. Stat. § 75-309, it is illegal to operate any common carrier transportation service without a grant of authority from the Commission. Defendant violated § 75-309 when it continued to operate as a common carrier of household goods in the state of Nebraska after March 2, 2004. Defendant admitted to operating as a household goods mover in Nebraska despite the Commission's revocation of its Certificate of Public Convenience and Necessity.

Furthermore, the Defendant violated Neb. Rev. Stat. § 75-117 when it continued to operate despite the revocation of its authority to operate as common carrier. The Defendant's testimony regarding continued moves after its revocation through at least March 8, 2005, was an admission to these charges.

As a matter of law, each day that Defendant violated chapter 75-309, the Commission's orders, and rules and regulations constitutes a separate offense. Upon review of the record, the Commission finds that the evidence supports the finding that a violation of § 75-117 and 75-309 occurred by clear and convincing evidence. In determining a civil assessment, the Commission must weigh the severity and gravity of the offense as well as the good faith attempts of the violator to achieve compliance after notice of the violation. Upon consideration of these factors, the Commission finds Defendant should be assessed a fine in the amount of One Thousand dollars (\$1,000.00).

Further, Defendant is ordered to immediately cease and desist any and all operations as a common carrier in the transportation of household goods in Nebraska.

O R D E R

IT IS, THEREFORE, ORDERED by the Nebraska Public Service Commission that Mike's Moving, Inc., Omaha, Nebraska, be, and it is hereby ordered to immediately cease and desist in all operations as a common carrier in the transportation of household goods in the State of Nebraska.

IT IS FURTHER ORDERED that Mike's Moving, Inc., has violated Neb. Rev. Stat. §§ 75-117 and 75-309.

IT IS FINALLY ORDERED that Mike's Moving, Inc., be, and is hereby assessed a civil penalty in the amount of One Thousand dollars (\$1,000.00) for violation of foregoing statutes.

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

Application No. MCC-3154

PAGE 4

MADE AND ENTERED at Lincoln, Nebraska, this 7th day of June, 2005.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Lowell Johnson

Frank E. Landis

Gerald L. Vap

//s// Frank E. Landis

//s// Gerald L. Vap

Chairman

Gerald L. Vap

ATTEST:

And J Pollack

Executive Director