

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of Mark J.)	Application No. MCC-3162
Breiner, Director of the)	
Motor Transportation)	
Department of the Nebraska)	
Public Service Commission,)	
Complainant)	
)	
v.)	ORDER
)	
SDG Transportation, Inc.,)	
)	
Omaha)	
)	
Defendant.)	ENTERED: MAY 12, 2010

APPEARANCES:

Commission Staff:

Mark Breiner
1200 N Street
Suite 300
Lincoln, NE 68508

BY THE COMMISSION:

This matter came before the Commission by Complaint filed by Mark Breiner, Director of the Motor Transportation Department, against SDG Transportation. This matter was set for hearing in March of 2008, and was continued on Motion by the defendant. The matter was rescheduled for hearing on November 5, 2009. Notice of the hearing was personally served on Mr. Joseph Higgins on August 25, 2009.

PRELIMINARY MATTERS

Joseph Higgins, president of SDG Transportation, Inc., appeared pro se before the Commission. Mr. Higgins requested a continuance of the hearing so that legal counsel could be present for the hearing. The Hearing Officer denied the Motion to Continue. Mr. Higgins further moved for an order discharging this matter as it is out time. The Hearing Officer denied that Motion. The Hearing

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Officer requested that the history of the case progression be entered into the record.

Mark Breiner stated for the record that this complaint was filed in August of 2007. Mr. Higgins, after receiving service of the complaint, requested time to contact legal counsel. The matter was first set for hearing in March of 2008. The day before that hearing was scheduled. Mr. Higgins requested a continuance citing that he had just retained legal counsel. The Motion to Continue was granted. Subsequent to that continuance, Mr. Higgins failed to finalize his retention of an attorney. Further, Mr. Higgins became unavailable for contact to reset the matter for hearing until August of 2009. Mr. Higgins was served with notice of the hearing by personal delivery on August 25, 2009. It is on the basis of the time frames set forth above and Mr. Higgins failure to retain legal counsel despite more than a month of being notified of the hearing that the Motions were denied.

COMPLAINANT'S EVIDENCE

Robert Harrison testified first for the Complainant. Mr. Harrison is an investigator for the Commission. He has held his position for approximately twenty years. Mr. Harrison testified that he personally served a copy of the Notice of Hearing to Mr. Higgins on August 25, 2009.

David Kelley was called next by the Complainant. He is an individual who lives in Gretna. On or about August 21, 2007, Mr. Kelley, along with an individual named Tim, made arrangements through Joe Higgins for SDG Transportation to provide limousine transportation in west Omaha. The service was to run from 7:30 p.m. until 10:30 p.m. that evening. At around 8:00 p.m., Mr. Kelley and some friends were picked up by Mr. Higgins and driven from Tavern on the Q to various locations in west Omaha. The trip ended at the Tavern at the Q right around 10:30. At that time, Mr. Kelley paid Mr. Higgins \$200 for the trip and received a receipt for that amount. The trip did not leave west Omaha at any time and remained entirely in the state of Nebraska.

The Complainant requested that the Commission take administrative notice of its files regarding the lack of a

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certificate of authority currently or at any time subject to this complaint being held by either SGD Transportation or by Mr. Higgins. Mr. Higgins did state upon questioning by Commissioner Boyle that he held at the time of the incident involved in this matter an Iowa operating authority as well as US DOT interstate authority.

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

Under Nebraska Revised Statute §75-309, an individual or other entity must have in place either a certificate of authority or a permit as a contract carrier to engage in any intrastate operations on any public highway in the state as issued by the Commission. The allegation in this matter is that the defendant, SDG Transportation, Inc., operated in Nebraska in intrastate operations without either a certificate or a permit.

Upon review of the record, the Commission finds that clear and convincing evidence supports the finding that defendant in this matter conducted his operations in violation of Neb. Rev. Stat. §75-309. The defendant did provide service in west Omaha, received payment for those services, and never left the state of Nebraska. The Commission finds that a civil assessment must be made against the defendant.

In determining a civil assessment, the Commission must weigh the severity and gravity of the offense. Upon consideration of these factors, the Commission finds Defendant should be assessed a fine in the amount of one thousand (\$1,000.00) dollars.

O R D E R

IT IS, THEREFORE, ORDERED by the Nebraska Public Service Commission that Motor Carrier Complaint No. MCC-3162 filed against SDG Transportation be, and it is hereby, sustained.

IT IS FINALLY ORDERED that SDG Transportation be, and is hereby assessed a civil penalty in the amount of one thousand dollars (\$1,000.00) for its operations on Nebraska intrastate highways.

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IT IS FURTHER ORDERED that SDG Transportation immediately cease and desist all operations in the state of Nebraska until such time as the applicant has been properly certificated by the Commission.

MADE AND ENTERED at Lincoln, Nebraska, this 12th day of May, 2010.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Red. Jensen
Anne Boyle
Tim Schram

//s// Frank E. Landis
//s// Gerald L. Vap

ATTEST:

Chairman

Gerald L. Vap

Michael J. Goss

Executive Director