

COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION

ORIGINAL

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Leslye and Dwight Herrmann v. : Docket No.
M. F. Rockey Moving Co. Damage Dispute. : ~~A-00078455C0301~~
: A-00087455C0301
Initial hearing. :
----- x

Pages 1 through 12 Hearing Room 2
Keystone Office Building
Harrisburg, Pennsylvania

Tuesday, May 4, 2004

Met, pursuant to notice, at 10:09 a.m.

BEFORE:

SUSAN D. COLWELL, Administrative Law Judge

APPEARANCES:

JAMES D. CAMPBELL, JR., Esquire
Caldwell & Kerns
3631 North Front Street
Harrisburg, Pennsylvania 17110
(For Respondent M. F. Rockey Mowing Co.)

J. M. r

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WITNESS INDEX

<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Gary L. Hinline (By Mr. Campbell)	6	--	--	--

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FORM 2

EXHIBIT INDEX

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<u>NUMBER</u>	<u>FOR IDENTIFICATION</u>	<u>IN EVIDENCE</u>
<u>Respondent</u>		
R-1 (Settlement Letter)	7	12
R-2 (Settlement Authorization Letter)	8	12
R-3 (Cancelled check Listing)	9	12

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FORM 2

P R O C E E D I N G S

1
2 ADMINISTRATIVE LAW JUDGE SUSAN D. COLWELL: This is
3 the time and the place set for the hearing in the case of
4 Leslye and Dwight Herrmann versus M. F. Rockey Moving
5 company, PUC Docket No. A-00078455C0301.

6 We're in Hearing Room 2 in the Commonwealth
7 Keystone Building.

8 I am Administrative Law Judge Susan D. Colwell,
9 appointed by the Commission to preside in this matter.

10 I note for the record the appearance of James A.
11 Campbell for M. F. Rockey Moving Company.

12 There is no appearance for Leslye and Dwight
13 Herrmann, the Complainants, neither are they present in the
14 Courtroom today.

15 Complainants filed their formal complaint on
16 January 3, 2003. It was set for hearing originally by
17 notice issued October 29, 2003, for Thursday, January 8,
18 2004. That date was changed by notice issued January 17,
19 2004, and the hearing was set for today at this time in
20 this room.

21 After that time, a Judge Change Notice was also
22 issued, which also listed the day and time of the hearing
23 and the place, right here, right now.

24 The Complainants had ample opportunity to either
25 show up or ask for a continuance. There has been no

1 contact from the Complainants.

2 Okay, Mr. Campbell, would you like to put something
3 on the record?

4 MR. CAMPBELL: Your Honor, I respectfully move to
5 dismiss the complaint for lack of prosecution.

6 The Complainants bear the burden of proof in this
7 proceeding and must show by a preponderance of the evidence
8 that the Respondent has violated the Public Utility Code.
9 I believe that by their failure to appear and prosecute the
10 complaint, that that is justification for dismissal.

11 In the event Your Honor disagrees with me, I'd
12 certainly be prepared to put Mr. Hinline on the witness
13 stand to testify with respect to the issues that we believe
14 were presented by the Complainants and subsequent
15 negotiations between the parties.

16 JUDGE COLWELL: Although I cannot disagree with
17 you, I think the Commission might like to hear some of
18 that.

19 MR. CAMPBELL: Certainly, Your Honor.

20 JUDGE COLWELL: Okay.

21 MR. CAMPBELL: Your Honor, we call Mr. Hinline?

22 JUDGE COLWELL: Mr. Hinline, would you please take
23 the stand?

24 Whereupon,

25 GARY L. HINLINE

1 was duly sworn, and testified as follows:

2 JUDGE COLWELL: Thank you.

3 Please be seated.

4 THE WITNESS: Thank you.

5 MR. CAMPBELL: May I stand over here? I'm a little
6 bit hard of hearing.

7 JUDGE COLWELL: Absolutely.

8 MR. CAMPBELL: And the acoustics are not the
9 greatest in these rooms.

10 JUDGE COLWELL: They certainly are not.

11 MR. CAMPBELL: Thank you.

12 DIRECT EXAMINATION

13 BY MR. CAMPBELL:

14 Q. Mr. Hinline, please state your name and your
15 business address for the record?

16 A. Carl L. Hinline. My business is M. F. Rockey
17 Moving Company, at 160 Lamont Street, New Cumberland,
18 Pennsylvania.

19 Q. And are you the President and Chief Operating
20 Officer of M. F. Rockey Moving Company?

21 A. Yes.

22 Q. You're familiar with the complaint that was
23 filed by Mr. and Mrs. Herrmann asking for damages in the
24 amount of \$780.94?

25 A. Yes.

1 MR. CAMPBELL: Your Honor, may we have marked for
2 identification Exhibit R-1, which is a letter from M. F.
3 Rockey Moving Company to Mr. and Mrs. Herrmann from Gary L.
4 Hinline?

5 (Counsel Campbell handing documents.)

6 JUDGE COLWELL: Yes.

7 (Whereupon, the document was
8 marked as Respondent Exhibit
9 No. R-1 for identification.)

10 BY MR. CAMPBELL:

11 Q. Mr. Hinline, the amount of the claim for
12 damages was approximately \$780; did you make an offer of
13 settlement by means of a letter that's been identified as
14 Exhibit R-1, which totaled approximately \$330.94?

15 A. Yes, I did.

16 Q. And was that letter sent by regular mail to
17 Mr. and Mrs. Herrmann?

18 A. I believe I may have sent it certified; I
19 believe it was by certified mail.

20 Q. What is the reason that you didn't agree to
21 pay the full \$780.94 that was claimed in the complaint?

22 A. There was one item, a wooden dresser that's
23 indicated as Item Number 5, that we didn't feel we were
24 responsible for what was being claimed, and we had sent a
25 person out to look at it, who was sent away.

1 We just wanted to have someone come out and
2 verify the damages, because we didn't feel we were
3 responsible for them, and we were refused the opportunity
4 to do so.

5 Q. Now, during the period of time subsequent to
6 the filing of the complaint, did you have occasion to have
7 dealings with Mr. Bruce Bigelow of the Commission?

8 A. That's correct.

9 MR. CAMPBELL: Your Honor, may we have marked for
10 identification a subsequent letter dated February 11th as
11 Respondent's Exhibit 2?

12 (Counsel Campbell handing documents.)

13 JUDGE COLWELL: Certainly.

14 (Whereupon, the document was
15 marked as Respondent Exhibit
16 No. R-2 for identification.)

17 BY MR. CAMPBELL:

18 Q. Mr. Hinline, was this also a letter sent by
19 you to the Complainants in this case?

20 A. That is correct.

21 Q. And I call your attention to a notation in
22 handwriting at the bottom right corner of this letter, and
23 if I'm reading it correct, it says, "Carl, she will accept
24 \$580 for settlement for PUC. Thanks, Gary."

25 A. Right.

FORM 2

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Q. Explain to me who is Carl?

Is this a copy of a letter that you sent over to Carl?

A. Yes.

Q. What was the purpose of this?

A. Carl is the Treasurer in M. F. Rockey/George Weaver Moving Companies, and I was negotiating with, through Mr. Bruce Bigelow for -- through the Herrmanns', and they -- to keep from having this set for hearing, she agreed with Mr. Bigelow that she would accept \$580 just to settle our dispute, to which we agreed to, and the note on here is to have Carl send the Herrmanns' a check for \$580 to settle the matter.

MR. CAMPBELL: Your Honor, may we have marked for identification as Exhibit R-3 a document which consists of two pages, showing a number of checks on the first page, and a single check, front and back, on the second page?

(Counsel Campbell indicating.)

JUDGE COLWELL: So marked.

(Whereupon, the document was marked as Respondent Exhibit No. R-3 for identification.)

BY MR. CAMPBELL:

Q. Subsequent to your discussion with Mr. Bigelow and your sending a note to Carl, and a copy of that letter,

FORM 2

1 did you cause a check to be forwarded to them which you
2 understood to be in accordance with their offer of
3 settlement?

4 A. Yes, I did.

5 Q. And I show you a document that's been marked
6 for identification as Exhibit R-3 --

7 (Document handed to Witness.)

8 Q. And I ask you if you would, first of all, tell
9 us what is the first page of that exhibit? Is that from a
10 bank statement?

11 A. Yes, a list of checks from our bank, three
12 months of paper.

13 Q. And is the top left check the check that was
14 payable to Mr. Herrmann, if I read it --

15 A. Check 1586, yes.

16 Q. And is that the check that is reproduced in
17 better detail on the second page?

18 (Witness perusing document.)

19 A. Yes, it is.

20 Q. And who is the signer on that check?

21 A. Dwight Herrmann.

22 Q. No, no -- the signer?

23 A. Oh, the signer?

24 Q. Yes?

25 A. Carl Smith signed the check, and it's endorsed

1 by Dwight Herrmann.

2 Q. Dwight Herrmann is the payee, and that appears
3 to be his endorsement on the back of the check?

4 A. Yes, sir.

5 Q. And the Carl you sent the message to send the
6 check?

7 A. Carl Smith, yes.

8 Q. And am I correct, then, in understanding, from
9 the Exhibit R-3, that Mr. Herrmann accepted the check and
10 deposited it into their account?

11 A. Yes.

12 Q. And did you understand that with the issuance
13 and the negotiation of that check, that this matter was
14 concluded?

15 A. That was my understanding.

16 MR. CAMPBELL: I have nothing further, Your Honor.

17 JUDGE COLWELL: All right.

18 Thank you, sir.

19 THE WITNESS: Thank you.

20 (Whereupon, the Witness was excused.)

21 MR. CAMPBELL: I move admission of Exhibits R-1
22 through R-3 into evidence?

23 JUDGE COLWELL: They'll be admitted.

24 (Whereupon, the documents marked
25 as Respondent Exhibits Nos. R-1

thru R-3 were received in
evidence.)

JUDGE COLWELL: Well, it looks like you gentlemen
did everything right, and it's just a matter of how long it
takes me to write this decision in your favor.

Thank you for your patience today, and for
appearing.

MR. CAMPBELL: Thank you, Your Honor.

JUDGE COLWELL: We're off the record.

(Whereupon, at 10:17 a.m., the hearing was
adjourned.)

* * *

CERTIFICATION

I hereby certify that the proceedings and
evidence taken by me in the within matter are fully and
accurately indicated in my notes of testimony and that this
is true and correct transcript of same.

Arthur Stafford
Arthur Stafford, CVR, CM
Court Reporter

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