

CAPTION SHEET

FILE MANAGEMENT SYSTEM

- 1. REPORT DATE: 00/00/00
- 2. BUREAU: TAS
- 3. SECTION(S):
- 5. APPROVED BY: DIRECTOR: SUPERVISOR:
- 6. PERSON IN CHARGE: RUDY
- 8. DOCKET NO: A-00112441C0402
- 4. PUBLIC MEETING DATE: 00/00/00
- 7. DATE FILED: 11/04/04
- 9. EFFECTIVE DATE: 00/00/00

PARTY/COMPLAINANT: TRANSPORTATION & SAFETY, BUREAU OF

RESPONDENT/APPLICANT: FIX, DONALD A., JR.

COMP/APP COUNTY:

UTILITY CODE: 701564

ALLEGATION OR SUBJECT

TAS COMPLAINT VS. DONALD A. FIX, JR. T/A HINDMAN MOVING & STORAGE FOR VARIOUS VIOLATIONS.

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 DEC 29 2004

ORIGINAL  
BEFORE THE

PENNSYLVANIA PUBLIC UTILITY COMMISSION

RECEIVED  
BUREAU OF TRANSPORTATION  
AND SAFETY  
DEC 21 2:48

PENNSYLVANIA PUBLIC UTILITY  
COMMISSION, BUREAU OF TRANSPORTATION  
AND SAFETY

v.

DOCKET NO. A-00112441C 0402

DONALD A FIX JR T/A HINDMAN MOVING &  
STORAGE  
106 HINDMAN LANE  
BUTLER PA 16001

RECEIVED  
BUREAU OF TRANSPORTATION  
AND SAFETY  
DEC 21 2:48

COMPLAINT

The Pennsylvania Public Utility Commission (Commission) is a duly constituted agency of the Commonwealth of Pennsylvania empowered to regulate public utilities within the Commonwealth. The Commission has delegated its authority to initiate proceedings which are prosecutory in nature to the Bureau of Transportation and Safety and other bureaus with enforcement responsibilities. Pursuant to that delegated authority and Section 701 of the Public Utility Code, the Bureau of Transportation and Safety Prosecutory Staff hereby represents as follows:

1. That Donald A. Fix, Jr., t/a Hindman Moving & Storage Co., respondent, maintains its principal place of business at 106 Hindman Lane, Butler, Pennsylvania 16001.
2. That respondent was issued a certificate of public convenience by this Commission on September 13, 1996, at Application Docket No. A-00112441.
3. That on June 25, 2004, a Household Mover Audit was performed on respondent by Enforcement Officer Charles S. Bowser, a duly authorized officer of this Commission. The information contained in this complaint was obtained during the audit.
4. That respondent, on January 3, 2004, transported household goods for Lois Faller from 63 Strawberry Lane, Wexford, Pennsylvania to Self Storage, Cranberry, Pennsylvania, for \$540.00 compensation. At that time, the following violations were found:

- (a) Respondent failed to retain an "Information for Shippers" statement. The penalty is \$100.00.
- (b) Improper estimate form used. The penalty is \$100.00.
- (c) Underestimate report not filed with the Commission as required. The penalty is \$100.00.
- (d) Respondent did not charge in accordance with its tariff on file with this Commission at Freight-Pa. P.U.C. No.1, in that respondent charged \$80.00 per job hour for 5.5 hrs. for a total of \$440.00. The proper rate for should have been \$75.00 per job hour for a total of \$412.50, an overcharge of \$27.50. Respondent undercharged for containers, specifically: respondent charged \$10.00 each for 6 mirror containers for a total charge of \$60.00. The proper rate should have been \$16.65 each for a total of \$99.90, an undercharge of \$39.90; respondent charged \$5.00 each for 4 king mattress containers for a total charge of \$20.00. The proper rate should have been \$21.85 each for a total charge of \$87.40, an undercharge of \$67.40; respondent charged \$5.00 each for 3 rolls of paper for a total charge

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of \$15.00. the proper rate for a roll of paper is \$4.60 for a total charge of \$13.80, an undercharge of \$1.20; respondent charged \$3.00 for a 1.5 cubic foot carton, the proper rate should have been \$4.40, an undercharge of \$1.40; respondent charged \$4.00 for a 3.0 cubic foot carton, the proper rate should have been \$6.35, an undercharge of \$2.35; respondent charged \$5.00 for a 4.5 cubic foot carton, the proper rate should have been \$7.55, an undercharge of \$2.55. The penalty is \$250.00.

5. That respondent, on January 29, 2004, transported household goods for Ann Kim from 101 Greenfield Drive, New Castle, Pennsylvania to 302 Fox Chapel Road, Fox Chapel, Pennsylvania, for \$850.00 compensation. At that time, the following violations were found:

- (a) Respondent failed to provide an "Information for Shippers" statement to the shipper before the order for service was prepared. The penalty is \$250.00.
- (b) Respondent failed to adhere to proper rates in tariff on file with the Commission. Respondent charged under its Under 40 Tariff at Freight-Pa. P.U.C. No. 1. The proper rate should have been from respondent's tariff at Freight-Pa. P.U.C. No. 2, for distances over 40 miles. The penalty is \$250.00.
- (c) No weight ticket retained for move over 40 miles as required. The penalty is \$100.00.
- (d) Improper estimate form used. The penalty is \$100.00.

6. That respondent, on January 30, 2004, transported household goods for Harry Strychor from 211 E. Patty Lane, Monroeville, Pennsylvania to 1106 Red Oak Drive, Harrison City, Pennsylvania, for \$550.00 compensation. At that time, the following violations were found:

- (a) Improper estimate form used. The penalty is \$100.00.
- (b) Respondent failed to provide an "Information for Shippers" statement to the shipper before the order for service was prepared. The penalty is \$250.00.
- (c) Respondent provided transportation to an unauthorized geographical area. The penalty is \$250.00.

7. That respondent, on February 25, 2004, transported a piano for Patty Watson from 112 Hone Avenue, Oil City, Pennsylvania to 835 Liberty Street, Franklin, Pennsylvania, for \$300.00 compensation. At that time, the following violations were found:

- (a) Improper estimate form used. The penalty is \$100.00.
- (b) Respondent provided transportation to an unauthorized geographical area. The penalty is \$250.00.

8. That respondent, on March 6, 2004, transported household goods for Cindy Clark from 3138 Hann Hill Road, Hermitage, Pennsylvania to 600 Ridge Avenue, Sharpsville, Pennsylvania, for \$540.00 compensation. At that time, the following violations were found:

- (a) No estimate form provided. The penalty is \$250.00.
- (b) Respondent provided transportation to an unauthorized geographical area. The penalty is \$250.00.
- (c) Respondent failed to retain an "Information for Shippers" statement. The penalty is \$100.00.

9. That respondent, on March 13, 14, and 16, 2004, transported household goods for Daniel and Laurie Allen from 105 Arabian Drive, Butler, Pennsylvania to 1064 W. Springfield Drive, Bellefonte, Pennsylvania, for \$4,807.23 compensation. At that time, the following violations were found:

- (a) Improper estimate form used. The penalty is \$100.00.
- (b) Respondent charged a higher rate than that authorized in its tariff. Respondent charged \$16.51 x 13,340 weight at 160 miles for a charge of \$2202.43. The correct rate is \$17.43 x 13,340 weight at 160 miles for a charge of \$2,325.16, an undercharge of \$122.73. Respondent charged an origin charge of \$493.58, the correct charge is \$366.85, an overcharge of \$126.73. Respondent charged a destination charge of \$133.40; respondent's tariff does not have a destination charge for Center County, an overcharge of \$133.40. Respondent charged a 5% fuel surcharge of \$110.12. Respondent does not have a fuel surcharge in its tariff, an overcharge of \$110.12.; for a total overcharge of \$370.25. The penalty is \$500.00 and respondent is ordered to refund \$370.25 to Daniel and Laurie Allen.

10. That respondent, on March 12, 13, and 16, 2004, transported household goods for Catherine E. Gyekis from 301 S. Home Avenue #206, Avalon, Pennsylvania to 39 Central Avenue, Wellsboro, Pennsylvania, for \$1,337.08 compensation. At that time, the following violations were found:

- (a) Improper estimate form used. The penalty is \$100.00.
- (b) Respondent charged a higher rate than that authorized by its tariff. Respondent charged an origin charge of \$98.42. The proper rate is \$71.50, a difference of \$26.92. Respondent charged a destination charge of \$26.60; respondent's tariff does not have a destination charge for Tioga County, an overcharge of \$26.60. Respondent charged a 5% fuel surcharge of \$39.18. Respondent does not have a fuel surcharge in its tariff, an overcharge of \$39.18; for a total overcharge of \$92.70. The penalty is \$500.00 and respondent is ordered to refund \$92.70 to Catherine Gyekis.

11. That respondent, on March 18, 19, 2004, transported household goods for Frank Pulkownik from 120 Garden Lane, Franklin, Pennsylvania to 340 Talon Drive, Irwin, Pennsylvania, for \$3,394.87 compensation. At that time the following violations were found:

- (a) Respondent charged a higher rate than that authorized in its tariff. Respondent charged \$2,445.30 for land haul transportation. The proper charge should have been \$2,638.53, an undercharge of \$193.23. Respondent charged a 5% fuel surcharge of \$122.27. Respondent does not have a fuel surcharge in its tariff, an overcharge of \$122.27. Respondent charged packing labor charges of \$30.00. The proper charge is \$35.00; an undercharge of \$5.00. Respondent charged an origin charge of \$171.00. Venango County does not have an origin charge; an overcharge of \$171.00. Respondent charged a destination charge of \$632.70. The correct charge is \$119.70; an overcharge of \$513.00. Respondent charged \$80.00 for a bulky article charge. Play sets are not included in respondents tariff; an overcharge of \$80.00. Respondent charged \$13.60 for shrink wrap. Respondent does not have a charge for shrink wrap in its tariff; an overcharge of \$13.60. The penalty is \$500.00 and respondent is ordered to pay a refund of \$701.64 to Frank Pulkownik.

12. That respondent, March 26, 2004, transported household goods for Tracy Sommers from 4190 Murfield Circle, Presto, Pennsylvania to 143 Oriole Court, Harrisburg, Pennsylvania, for \$1,710.24 compensation. At that time, the following violation was found:

- (a) Respondent provided transportation to an unauthorized geographical area. The penalty is \$250.00.

13. That respondent, on April 25 and 26, 2004, transported household goods for Jack Faryniak from 1508 Woodview Drive, Franklin Township, Pennsylvania to 1461 Douglas Court, Bethlehem, Pennsylvania, for \$\$4,165.43 compensation. At that time, the following violation was found:

- (a) Respondent charged a higher rate than that authorized in its tariff. Respondent charged \$451.40 for an origin charge. The proper charge is \$335.50; an overcharge of \$115.90. Respondent charged \$122.20 for a destination charge. The proper rate is \$164.70; an undercharge of \$42.50. Respondent charged a 5% fuel surcharge of \$132.59. Respondent does not have a fuel surcharge in its tariff; an overcharge of \$132.59. Respondent charged \$35.00 for shrink wrap. Respondent does not have shrink wrap in its tariff; an overcharge of \$35.00. Respondent charged \$30.00 for mattress bags. The total for a mattress bag, packed and unpacked is \$18.85; an overcharge of \$11.15. The penalty is \$500.00, and respondent is ordered to refund \$252.14 to Jack Faryniak.

14. That respondent, on May 6, 2004, transported household goods for Irene Paulson from 50 UP Church Street, Cook Township, Pennsylvania to 1213 Rice Court, Erie, Pennsylvania, for \$1,952.65 compensation. At that time, the following violations were found:

- (a) Respondent provided transportation to an unauthorized geographical area. The penalty is \$250.00.
- (b) Respondent failed to retain an "Information for Shippers" statement. The penalty is \$100.00.
- (c) Improper estimate form used. The penalty is \$100.00.

15. That respondent, on May 10, 2004, transported household goods for Craig Huffman from 417 Chestnut Road, Sewickley, Pennsylvania to 201 Colony Drive, New Wilmington, Pennsylvania, for \$1,295.00 compensation. At that time, the following violations were found:

- (a) Respondent provided transportation to an unauthorized geographical area. The penalty is \$250.00.
- (b) Respondent failed to retain an "Information for Shippers" statement. The penalty is \$100.00.

16. That respondent, on May 18, 2004, transported household goods for Betty DePalma from 811 Kocher, Grove City, Pennsylvania to 420 N. Chestnut, Apt. #603, Avalon, Pennsylvania, for \$900.00 compensation. At that time, the following violations were found:

- (a) Respondent failed to retain an "Information for Shippers" statement. The penalty is \$100.00.
- (b) Respondent failed to adhere to the proper tariff rates on file with this Commission. Respondent charged according to its under 40 miles tariff, when, in fact, the move was 54.6 miles. Respondent charged \$900.00 for the move; the proper charge is \$1,185.00, an undercharge of \$285.00. The penalty is \$250.00.

17. That respondent, on June 4, 2004, transported household goods for Dave Klein from 207 E. Third Street, Lewistown, Pennsylvania to 139 Hindman Road, Butler, Pennsylvania, for \$1,445.03.00 compensation. At that time, the following violations were found:

- (a) Respondent charged a higher rate than that authorized by its tariff. Respondent charged an origin charge of \$36.00. There is no origin charge for Mifflin County; an overcharge of \$36.00. Respondent charged a destination charge of \$133.20, the proper charge is \$99.00; an overcharge of \$34.20. Respondent charged \$75.00 for piano, the proper charge is \$71.00; an overcharge of \$4.00. Respondent charged a 5% fuel surcharge of \$54.47. Respondent does not have a fuel surcharge in its tariff. The total overcharge is \$128.67. The penalty is \$500.00 and respondent is ordered to refund \$128.67 to Dave Klein.

18. That respondent, by failing to furnish the shipper with an "Information for Shippers" statement prior to the preparation of an order for service, violated 52 Pa. Code §31.121(a). The penalty is \$250.00 for each violation for a total penalty of \$500.00.

19. That respondent, by failing to retain a copy of an "Information for Shippers" statement with the shipping order, violated 52 Pa. Code §31.121(b). The penalty is \$100.00 for each violation for a total penalty of \$500.00.

20. That respondent, by failing to use and complete the proper form for estimates titled "Estimated Cost of Services", violated 52 Pa. Code §31.122(2). The penalty is \$100.00 for each violation, for a total penalty of \$700.00.

21. That respondent, by failing to provide and maintain the proper form for estimates titled "Estimated Cost of Services", violated 52 Pa. Code §31.122(1) and (2). The penalty is \$250.00.

22. That respondent, by failing to file with this Commission a quarterly report, wherein charges exceed the estimate by more than 10% with an explanation of the reasons for the variances, violated 52 Code §31.124. The penalty is \$100.00.

23. That respondent, by charging an improper rate other than that specified in the tariff on file with this Commission, violated 66 Pa. C.S. §1303. The penalty is \$250.00 for each violation for a total penalty of \$750.00.

24. That respondent, by charging a rate greater rate than that specified in the tariff on file with this Commission, violated 66 Pa. C.S. §1303. The penalty is \$500.00 for each violation for a total penalty of \$2,500.00.

25. That respondent violated the Public Utility Code, 66 Pa. C.S. §1102(a)(1)(i), by rendering service within the Commonwealth of Pennsylvania to and from a different territory than that authorized by its certificate of public convenience. The penalty is \$250.00 for each violation for a total penalty of \$1,500.00.

26. That respondent, by failing to maintain weight tickets for a move over 40 miles, violated 52 Pa. Code §31.125. The penalty is \$100.00.

27. That, pursuant to 66 Pa. C.S. §1312(a), this Commission has the power and authority to require carriers to refund the amount of any excess rates paid by any person. Consequently, we will order such a refund to be paid, in addition to the imposition of a fine and the cancellation of the certificate.

Respondent has shown that it is not capable of operating a business in a responsible manner. It has consistently ignored this Commission's requirements and regulations.

During its eight (8) years of operation, respondent has had 27 complaints instituted against it. It has not even had one clean year without violations.

In 1998, a Household Good Review was performed on respondent. Its records were reviewed by an Enforcement Officer and respondent was informed of violations. It was also advised of all Household Good requirements and regulations at that time. Since then, respondent has had 23 complaints instituted against it.

An Audit was performed in April of 2001. At that time, a complaint was instituted against respondent for 12 violations of outside area, 12 violations for improper Information for Shipper form, 15 violations for improper Estimated Cost of Services form, 3 violations for improper rates and 1 violation for no weight ticket retained for move over 40 miles. The proper forms were given to respondent at the April 12, 2001 audit. A fine of \$10,600 was assessed for these violations. In the complaint, respondent was ordered to immediately comply with all rules and regulations of the Commission; several specific violations relating to Household Good carriers were listed. Respondent was advised that a follow-up Audit would be conducted by an enforcement officer and that failure to adhere to Commission regulations would result in a severe monetary penalty and cancellation of its Certificate of Public Convenience.

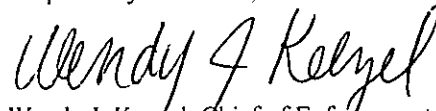
A follow-up Audit was performed on October 9, 2001. At that time, a complaint was instituted against respondent for many of the same violations as in the complaint at A-00112441C0104. The violations were 12 overcharges, 2 undercharges, 2 no Estimated Cost of Services form provided, 15 improper Information for Shippers forms used, 1 improper Estimated Cost of Services form used, and 1 operated outside of authorized territory. The proper forms were provided to respondent again (attached to the complaint). A fine of \$11,200, plus refunds and cancellation of respondent's Certificate of Public Convenience was proposed for these violations. In the complaint, respondent was ordered to immediately comply with all rules and regulations of the Commission; several specific violations relating to Household Good carriers were listed. Respondent filed an answer to the complaint. A hearing was held and the Administrative Law Judge's final Order entered January 28, 2003, ordered a fine of \$11,200, plus refunds and an audit.

An Audit was performed on June 25, 2004. This complaint is the result of that Audit. Many of the violations are the same.

Respondent has a responsibility to assure that its obligations are met. This Commission does not condone consistent infractions of regulations. A Certificate of Public Convenience is a privilege, rather than property. When that privilege is violated, the Commission may exercise its power to cancel a carrier's Certificate. Paradise v. Pa. P.U.C., 132 A.2d 754, 184 Pa. Superior Ct. 8 (1957). Respondent's flagrant disregard for Commission rules and regulations warrants the cancellation of its Certificate of Public Convenience.

WHEREFORE, the Bureau of Transportation and Safety Prosecutory Staff hereby requests that the Commission fine Donald A. Fix, Jr., t/a Hindman Moving & Storage, the sum of six thousand nine hundred dollars (\$6,900.00) for the illegal activity described in this complaint and pay a refund of three hundred, seventy dollars and twenty-five cents (\$370.25) to Daniel and Laurie Allen, direct respondent to pay a refund of ninety-two dollars and seventy cents (\$92.70) to Catherine Gyekis, pay a refund of seven hundred one dollars and sixty-four cents (\$701.64) to Frank Pulkownik, pay a refund of two hundred fifty-two dollars and fourteen cents (\$252.14) to Jack Faryniak, pay refund of one hundred twenty-eight dollars and sixty-seven cents (\$128.67) to Dave Klein, and cancel respondent's Certificate of Public Convenience at A-00112441.

Respectfully submitted,



Wendy J. Keezel, Chief of Enforcement  
Motor Carrier Services & Enforcement Division  
Bureau of Transportation and Safety  
P.O. Box 3265  
Harrisburg, PA 17105-3265

VERIFICATION

I, Wendy J. Keezel, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at any hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

Date: 11-3-04

Wendy J. Keezel  
Wendy J. Keezel



NOTICE

A. You must file an answer within twenty (20) days of the date of service of this complaint. The date of service is the mailing date as indicated at the top of the Secretarial cover letter for this complaint and notice, 52 Pa. Code §1.56(a). An answer is a written explanation of circumstances wished to be considered in determining the out come. The answer shall raise all factual and legal arguments that you wish to claim in your defense and must include the reference number of this complaint. Your answer must be verified and the original and three (3) copies sent to:

James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

B. If you fail to answer this complaint within twenty (20) days, the Bureau of Transportation and Safety will request that the Commission issue an Order imposing a penalty. Pursuant to 66 Pa. C.S. §3301(a), the penalty could include a fine of up to \$1,000 for each violation, the revocation of your Certificate of Public Convenience or other remedy as may be appropriate. Each day you continue to violate any regulation, direction, requirement, determination or order of the Commission is a separate and distinct offense, subject to additional penalties.

C. If you file an answer which admits or fails to deny the allegations of the complaint, the Bureau of Transportation and Safety will request that the Commission issue an Order imposing a penalty, which may include the cancellation of your Certificate of Public Convenience. Should the Commission cancel your Certificate of Public Convenience, it may also impose an additional fine of up to \$1,000.

D. If you file an answer which contests the complaint, the matter will be assigned to an administrative law judge for hearing and decision. The judge is not bound by the optional fine above.

E. Alternative formats of this material are available, for persons with disabilities, by contacting the Compliance Office at (717) 787-1168.

COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG PA 17105-3265

Date of Service: DECEMBER 30, 2004  
Docket Number: A-00112441C0402

DONALD A. FIX, JR.  
T/A HINDMAN MOVING & STORAGE  
106 HINDMAN LANE  
BUTLER PA 16001

**Pennsylvania Public Utility Commission Bureau of Transportation and Safety**  
v.  
**DONALD A. FIX, JR. T/A HINDMAN MOVING & STORAGE**

Dear Sir/Madam:

The Pennsylvania Public Utility Commission has delegated its authority to initiate prosecutory proceedings to several bureaus in the Commission with enforcement responsibilities.

Pursuant to this delegated authority and Section 701 of the Public Utility Code, the Bureau of Transportation and Safety Prosecutory Staff has filed the attached complaint against you.

Please refer to the Notice page at the conclusion of this complaint for detailed instructions on how to proceed. Alternative formats of this material are available for persons with disabilities.

Any questions may be directed to the Technical Review Section of the Bureau of Transportation and Safety at (717) 787-1168.

Very truly yours,

*James J. McNulty*  
James J. McNulty  
Secretary

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