



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

IN REPLY PLEASE  
REFER TO OUR FILE

ISSUED: August 10, 2006

A-00108084 F0001 AMA

JOSEPH SPARACINO MOVERS INC  
NO 6 SOUTH KEYSER AVENUE  
TAYLOR PA 18517

Application of Joseph Sparacino Movers, Inc.

TO WHOM IT MAY CONCERN:

Enclosed is a copy of the Initial Decision of Administrative Law Judge Ember S. Jandebaur. This decision is being issued and mailed to all parties on the above specified date.

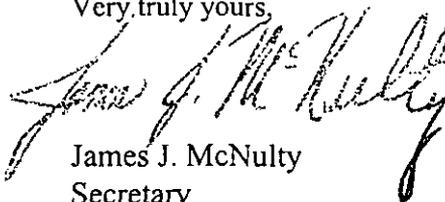
If you do not agree with any part of this decision, you may send written comments (called Exceptions) to the Commission. Specifically, an original and nine (9) copies of your signed exceptions **MUST BE FILED WITH THE SECRETARY OF THE COMMISSION 2<sup>ND</sup> FLOOR, KEYSTONE BUILDING, 400 NORTH STREET, HARRISBURG, PA OR MAILED TO P.O. BOX 3265, HARRISBURG, PA 17105-3265, within twenty (20) days** of the issuance date of this letter. The signed exceptions will be deemed filed on the date actually received by the Secretary of the Commission or on the date deposited in the mail as shown on U.S. Postal Service Form 3817 certificate of mailing attached to the cover of the original document (52 Pa. Code §1.11(a)) or on the date deposited with an overnight express package delivery service (52 Pa. Code 1.11(a)(2), (b)). If your exceptions are sent by mail, please use the address shown at the top of this letter. A copy of your exceptions must also be served on each party of record. 52 Pa. Code §1.56(b) cannot be used to extend the prescribed period for the filing of exceptions/reply exceptions. A certificate of service shall be attached to the filed exceptions.

If you receive exceptions from other parties, you may submit written replies to those exceptions in the manner described above within **ten (10) days** of the date that the exceptions are due.

Exceptions and reply exceptions shall obey 52 Pa. Code 5.533 and 5.535 particularly the 40-page limit for exceptions and the 25-page limit for replies to exceptions. Exceptions should clearly be labeled as "EXCEPTIONS OF (name of party) - (protestant, complainant, staff, etc.)".

If no exceptions are received within **twenty (20) days**, the decision of the Administrative Law Judge may become final without further Commission action. You will receive written notification if this occurs.

Very truly yours,



James J. McNulty  
Secretary

Encls.  
Certified Mail  
Receipt Requested  
MH

See attached list for additional parties of record.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Joseph Sparacino Movers, Inc. :

A-00108084F0001AMA

**INITIAL DECISION**

Before  
Ember S. Jandebeur  
Administrative Law Judge

**HISTORY OF THE PROCEEDINGS**

On or about November 15, 2005, Joseph Sparacino Movers, Inc. (JSM) filed an "Application for Approval of Transfer and Exercise of Common Carrier or Contract Rights" (Application) with the Public Utility Commission (PUC or Commission). JSM is a Pennsylvania corporation registered with the Pennsylvania Department of State since January 13, 1986. JSM's Application seeks approval to transfer the rights to operate as a common carrier from Sparacino Brothers, Inc. (SBI), found at Docket Number A-00104113, to themselves. The reason given for the requested transfer is that David Sparacino, sole owner of SBI, intends to cease the operation of SBI as a common carrier. Joseph Sparacino of JSM, proposes to acquire all of SBI's operating rights. In light of the fact that JSM already has such rights (since January 4, 1989, at A-00108084 as a common carrier) pursuant to its own certificate of public convenience, realistically, only SBI's certificate at paragraphs 5, 6, 7 and 8 relating to movement of household goods augment JSM's current authority. Therefore, the transfer of rights granted in paragraphs 5, 6, 7 and 8 in SBI's certificate is all that usefully can be challenged.

On February 11, 2006, a corrected Notice of the application for transfer was published in the Pennsylvania Bulletin.

On February 17, 2006, LaBuda Trucking, Inc. (LaBuda) filed a protest against the application.

On February 18, 2006, LaBuda filed an amendment to ¶3 of their earlier filed protest.

On March 1, 2006, Pottsville Moving and Storage Company, Inc. (Pottsville) filed a protest against the application.

On June 20, 2006, a Hearing Notice was issued scheduling a hearing for August 24, 2006.

#### FINDINGS OF FACT

1. SBI holds a certificate of public convenience at Docket Number A-0104113.
2. JSM holds a certificate of public convenience at Docket Number A-0108084.
3. Two protests, one by LaBuda and the other by Pottsville, were filed against JSM's application to transfer SBI's rights at A-00104113 to JSM at A-00108084.
4. LaBuda protested the transfer alleging "there is no need for additional granting of rights".
5. The JSM application for transfer of SBI's operating rights to JSM is not an "additional granting of right."
6. Pottsville protested the transfer alleging that it (Pottsville) holds operating rights which conflict with the JSM application.

7. The Pottsville operating rights and SBI operating rights are currently in conflict, transferring SBI rights to JSM does not create any new or different conflict than the one already in existence.

8. The JSM application neither augments nor extinguishes any pre-existing conflicts between SBI, LaBuda, Pottsville and JSM.

9. Neither LaBuda nor Pottsville alleged a lack of continuity of need.

### DISCUSSION

This Application is a request to transfer the certificate of public convenience of Sparacino Brothers, Inc. (SBI) to Joseph Sparacino Movers, Inc. (JSM). In accordance with the regulations found at 52 Pa. Code §3.381 a request for transfer must be approved by the PUC. 52 Pa. Code §3.381(a)(9)(i). However, transfer applications do not require proof of public demand or need for the proposed service, because there is a presumption of continuing necessity.<sup>1</sup> South Mills Movers, Inc. v. PA PUC, 601 A 2d 1308, 1310 (1991) citing In re Byerly, 440 Pa. 521, 270 A 2d 186 (1970). Continuing necessity, *when raised*, as an issue can be rebutted by an applicant. *Id.* It was not raised in either of these protests.

There are two protestants to this application; they are from Pottsville Moving and Storage Company, Inc. (Pottsville) and LaBuda Trucking, Inc. (LaBuda).

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<sup>1</sup> Continuity of fitness is also presumed and as with need, it is a rebuttable presumption. Lack of fitness was not raised at all in either of these protests.

LaBuda's protest states there is "no need for additional granting of rights" and that they are "now operating in a shrinking market and will suffer adverse financial impact."<sup>2</sup> Neither of LaBuda's allegations challenges continuity of need. Moreover, through SBI, the service already exists. Therefore, clearly this transfer does not involve any "additional granting of rights" it is merely a transfer of pre-existing rights. Clearly, through SBI, the rights already exist therefore, any adverse financial impact is already occurring. LaBuda did not openly request that SBI's rights be eliminated in favor of their own, but essentially, by asking that JSM be denied the transfer that would be the effect. I find no legal basis for eliminating SBI's operating authority in favor of LaBuda's. LaBuda raised no other issues. Because this is a transfer application, and LaBuda raised no challenge to the presumption of continuing fitness or need, there is nothing for the Applicant to rebut. Therefore, there appears to be no need for a hearing on the merits.

Pottsville raises one issue,<sup>3</sup> averring that its own operating rights conflict with JSM's Application. As stated, SBI already holds the authority complained of. This transfer does not alter the conflict that already exists. The transfer would neither augment nor eliminate Pottsville's pre-existing conflict with SBI. In fact, the conflict remains the same, the operating authority simply moves from SBI to JSM. Pottsville raised no other issues. Because this is a transfer application, and Pottsville raised no challenge to the continuity of fitness or need, there is nothing for the Applicant to rebut. Therefore, there appears to be no need for a hearing on the merits.

Neither Protestant raised any other issue.

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<sup>2</sup> LaBuda's protest is as follows: At ¶4 – "The Applicant's proposed operating rights will infringe upon the right of the Protestant. The Protestant's area of business is already saturated, and there is no need for additional granting of rights of [to?] the Applicant, or an amendment to his existing certificate of public convenience, which would approve the operation of motor vehicles as common carriers for the transportation of household goods as described under the application, for any such competing services, The Protestant is now operating in a shrinking market and will suffer adverse financial impact." At ¶ 5 – "Restriction or amendment of the application would require excluding the Applicant from operating in the Protestant's area of authority."

<sup>3</sup> Pottsville's protest is as follows: At ¶5 – "Protestant avers that it holds operating rights, which conflict with the recent application of Joseph Sparacino Movers, Inc."

After a review of both protests, I find that there is no justiciable issue. Neither raised any challenges to JSM's fitness, and neither raised any challenges to continuity of need. LaBuda challenges "additional granting" of authority. This is not an additional granting of authority. Pottsville simply states the transfer will conflict with their own authority, and as already explained SBI's current authority is the conflict, this transfer would not alter the conflict, and I see no legal basis for removing SBI's existing authority. Therefore, there is nothing for the Applicant to rebut and no justiciable issue. A hearing on the merits would be a waste of time and effort by all. These protests should be dismissed.

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter pursuant to 66 Pa. C.S. §§701, 1101, and 1103.
2. Protests to applications must set forth "*any* adverse impact which approval of the application can be expected to have on the protestant." 52 Pa. Code §3.381 (c)(1)(i)(IV). (Emphasis added.)
3. Protests to applications must set forth "a statement of any restrictions to the application which would protect the protestant's interest." 52 Pa. Code §3.381 (c)(1)(i)(VI).
4. Transfer applications do not require proof of public demand or need for the proposed service, because there is a presumption of continuing necessity. South Mills Movers, Inc. v. PA PUC, 601 A 2d 1308, 1310 (1991).
5. Neither protest challenged continuity of fitness or need. There is nothing for the Applicant to rebut and thus no need for presentation of evidence. Based upon the protests, there is no justiciable issue. No public interest need would be satisfied by a hearing on the merits. 66 Pa. C.S. §703.

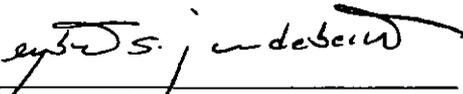
ORDER

THEREFORE,

IT IS ORDERED:

1. The protests of LaBuda Trucking, Inc. and Pottsville Trucking and Storage Company, Inc. against the application for transfer of rights at Docket No. A-00108084F0001AMA are dismissed.
2. The hearing scheduled for August 24, 2006 is hereby cancelled.
3. This matter is referred to the Bureau of Transportation and Safety.

Date: July 21, 2006

  
\_\_\_\_\_  
Ember S. Jandebour  
Administrative Law Judge

A-00108084F0001AMA APPLICATION OF JOSEPH SPARACINO MOVERS, INC.,  
A CORPORATION OF THE COMMONWEALTH OF PENNSYLVANIA

JOSEPH SPARACINO MOVERS INC  
NO 6 SOUTH KEYSER AVENUE  
TAYLOR PA 18517

WILLIAM A GRAY ESQUIRE  
VUONO & GRAY LLC  
2310 GRANT BUILDING  
PITTSBURGH PA 15219-2383

DAVID SPARACINO  
SPARACINO BROTHERS INC  
1449 MEYLERT AVENUE  
SCRANTON PA 18509

FREDERICK J FANELLI ESQUIRE  
RILEY AND FANELLI PC  
THE NECHO ALLEN  
NO 1 MAHANTONGO STREET  
POTTSVILLE PA 17901

GINO L ANDREUZZI ESQUIRE  
85 DRASHER ROAD  
SUITE II  
DRUMS PA 18222

*JR 20/10*

AUG 09 2006

2. Article Number



7160 3901 9843 1288 1117

3. Service Type **CERTIFIED MAIL**

4. Restricted Delivery? (Extra Fee)  Yes

1. Article Addressed to:

A-00108084 F0001A MA ILD

William A. Gray Esq.

PS Form 3811, March 2005

Domestic Return Receipt

**COMPLETE THIS SECTION ON DELIVERY**

A. Received by (Please Print Clearly) *[Signature]* B. Date of Delivery *9/14*

C. Signature *[Signature]*  Agent  Addressee

D. Is delivery address different from item 1?  Yes  No  
If YES, enter delivery address below:

2. Article Number



7160 3901 9843 1288 1117

3. Service Type **CERTIFIED MAIL**

4. Restricted Delivery? (Extra Fee)  Yes  No

1. Article Addressed to:

A-00108084 F0001A MA ILD

Joseph Sparacino Novak

PS Form 3811, March 2005

Domestic Return Receipt

**COMPLETE THIS SECTION ON DELIVERY**

A. Received by (Please Print Clearly) *[Signature]* B. Date of Delivery *3-14*

C. Signature *[Signature]*  Agent  Addressee

D. Is delivery address different from item 1?  Yes  No  
If YES, enter delivery address below:

12 MID 2005 SMD 41

PS Form 3811, March 2005

Act 294

Case Identification:

A-00108084F00001AMA; Application of Joseph Sparacino Movers, Inc.

RECEIVED  
2006 AUG 24 PM 3:55  
SECRETARY'S BUREAU

Initial Decision By:

ALJ Ember S. Jandebaur

Deadline for Return to OSA:

August 24, 2006

This decision has not been reviewed by OSA.

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\* \* \* \* \*

I want full Commission review of this decision.

\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
Date

I do not want full Commission review of this decision.

Dendall J. Spill  
Commissioner

AUG 18 2006  
Date

DOCUMENT  
FOLDER

DOCKETED  
AUG 25 2006

Act 294

Case Identification:

A-00108084F00001AMA; Application of Joseph Sparacino Movers, Inc.

Initial Decision By:

ALJ Ember S. Jandebour

Deadline for Return to OSA:

August 24, 2006

This decision has not been reviewed by OSA.

RECEIVED  
2006 AUG 24 AM 10:49  
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Commissioner

\_\_\_\_\_  
Date

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James H. Cawley  
Commissioner

8/24/06  
Date



Act 294

Case Identification:

A-00108084F00001AMA; Application of Joseph Sparacino Movers, Inc.

Initial Decision By:

ALJ Ember S. Jandebour

Deadline for Return to OSA:

August 24, 2006

This decision has not been reviewed by OSA.

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Commissioner

\_\_\_\_\_  
Date

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*Kim Fitzgerald*  
\_\_\_\_\_  
Commissioner

8-23-06  
\_\_\_\_\_  
Date

Act 294

Case Identification:

A-00108084F00001AMA; Application of Joseph Sparacino Movers, Inc.

Initial Decision By:

ALJ Ember S. Jandebaur

Deadline for Return to OSA:

August 24, 2006

This decision has not been reviewed by OSA.

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Commissioner

\_\_\_\_\_  
Date

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*Terrence J. Fitzgerald*  
\_\_\_\_\_  
Commissioner

8-14-06  
\_\_\_\_\_  
Date