



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

August 5, 2014

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Pennsylvania Public Utility Commission, Bureau of Investigation
and Enforcement v. Herbert B. Smith & Agee Copart
t/a Samuel W. Smith Moving & Storage
Docket No. _____

Dear Secretary Chiavetta:

Enclosed for filing please find the Complaint in the above referenced case on behalf of the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission. Copies have been served on the parties of record in accordance with the Certificate of Service.

Sincerely,

Stephanie M. Wimer
Prosecutor
PA Attorney ID No. 207522

Prosecutor for the Bureau of
Investigation and Enforcement

Enclosures

cc: As per Certificate of Service

NOTICE

A. You must file an Answer within 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 Letter. *See* 52 Pa. Code §1.56(a). The Answer must raise all factual and legal arguments that you wish to claim in your defense, include the docket number of this Complaint, and be verified. You may file your Answer by mailing an original to:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Or, you may eFile your Answer using the Commission's website at www.puc.pa.gov. The link to eFiling is located under the Filing & Resources tab on the homepage. If your Answer is 250 pages or less, you are not required to file a paper copy. If your Answer exceeds 250 pages, you must file a paper copy with the Secretary's Bureau.

Additionally, a copy should either be mailed to:

Wayne T. Scott, First Deputy Chief Prosecutor
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
P.O. Box 3265
Harrisburg, PA 17105-3265

Or, emailed to Mr. Scott at:

RA-PCCmplntResp@pa.gov

B. If you fail to answer this Complaint within 20 days, the Bureau of Investigation and Enforcement will request that the Commission issue an Order imposing the penalty.

C. You may elect not to contest this Complaint by paying the past due assessment and civil penalty within 20 days. Your check or money order should be payable to the Commonwealth of Pennsylvania and mailed to:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

D. If you file an Answer which either admits or fails to deny the allegations of the Complaint, the Bureau of Investigation and Enforcement will request the Commission to issue an Order imposing the penalty set forth in this Complaint.

E. 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 penalty set forth in the Complaint, and may impose additional and/or alternative penalties as appropriate.

F. If you are a corporation, you must be represented by legal counsel. 52 Pa. Code §1.21.

G. Alternative formats of this material are available for persons with disabilities by contacting the Commission's ADA Coordinator at 717-787-8714.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission :
Bureau of Investigation and Enforcement :
: **Docket No. C-2014-**
: **v.** :
: **Herbert B. Smith & Agee Copart** :
t/a Samuel W. Smith Moving & Storage :

COMPLAINT

NOW COMES the Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”), by its prosecuting attorneys, and files this Complaint against Herbert B. Smith & Agee Copart t/a Samuel W. Smith Moving & Storage (“Respondent”), pursuant to Section 701 of the Public Utility Code, 66 Pa.C.S. § 701. In support of its Complaint, I&E respectfully represents the following:

Parties and Jurisdiction

1. The Pennsylvania Public Utility Commission, with a mailing address of P.O. Box 3265, Harrisburg, PA 17105-3265, is a duly constituted agency of the Commonwealth of Pennsylvania empowered to regulate public utilities within the Commonwealth pursuant to the Public Utility Code, 66 Pa.C.S. §§ 101, *et seq.*
2. Complainant is the Commission’s Bureau of Investigation and Enforcement and is the entity established by statute to prosecute complaints against public utilities pursuant to 66 Pa.C.S. § 308.2(a)(11).
3. Complainant is represented by:

Stephanie M. Wimer
Prosecutor
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
P.O. Box 3265
Harrisburg, PA 17105-3265
717.772.8839
stwimer@pa.gov

Wayne T. Scott
First Deputy Chief Prosecutor
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
P.O. Box 3265
Harrisburg, PA 17105-3265
wascott@pa.gov

4. Respondent is Herbert B. Smith & Agee Copart t/a Samuel W. Smith Moving & Storage and maintains its principal place of business at 1728 Meadow Street, Philadelphia, PA 19124, Attention: Herbert B. Smith, Sr. and Patricia L. Agee.
5. Respondent is a “public utility” as that term is defined at 66 Pa.C.S. § 102, as it is engaged in transporting property in the Commonwealth of Pennsylvania for compensation.
6. The Commission issued Respondent a certificate of public convenience on or about May 5, 1994, at A-00111095, for household goods carrier authority and truck authority.
7. Section 501(a) of the Public Utility Code, 66 Pa.C.S. § 501(a), authorizes and obligates the Commission to execute and enforce the provisions of the Public Utility Code.
8. Section 701 of the Public Utility Code, 66 Pa.C.S. § 701, authorizes the Commission, *inter alia*, to hear and determine complaints against public utilities for a violation of any law or regulation that the Commission has jurisdiction to administer.
9. Section 3301 of the Public Utility Code, 66 Pa.C.S. § 3301, authorizes the Commission to impose civil penalties on any public utility, or any other person or corporation subject to the Commission’s authority, for violation(s) of the Public Utility Code and/or Commission regulations.
10. Respondent, in transporting property as a common carrier for compensation, is subject to the power and authority of this Commission pursuant to Section 501(c) of the Public Utility Code, 66 Pa.C.S. § 501(c), which requires a public utility to comply with Commission regulations.
11. Pursuant to the provisions of the applicable Commonwealth statutes and regulations, the Commission has jurisdiction over the subject matter of this complaint and the actions of Respondent related thereto.

Factual Background

2012-2013 Fiscal Year

12. On or about February 16, 2012, the Commission mailed to Respondent an assessment report for Respondent to report its 2011 calendar year revenues.
13. The assessment report was accompanied by a letter, which notified Respondent that the report was due on or before March 31, 2012.
14. Respondent failed to file an assessment report to show its 2011 calendar year revenues.

2013-2014 Fiscal Year

15. On or about February 7, 2013, the Commission mailed to Respondent an assessment report for Respondent to report its 2012 calendar year revenues.
16. The assessment report was accompanied by a letter, which notified Respondent that the report was due on or before March 31, 2013.
17. Respondent failed to file an assessment report to show its 2012 calendar year revenues.
18. On or about September 12, 2013, the Commission sent Respondent, through certified mail, an assessment invoice for the July 1, 2013 to June 30, 2014 Fiscal Year that was based, in part, on Respondent's estimated revenues for the 2012 calendar year. Respondent's assessment was \$1,888.
19. On September 19, 2013, Respondent signed a certified mail card, which indicated that it received an assessment invoice for the Commission's July 1, 2013 to June 30, 2014 Fiscal Year.
20. Accompanying the assessment invoice was a notice that informed Respondent that it was obligated to pay the amount listed on the assessment invoice within thirty (30) days.
21. The Commission received no objections from Respondent to the 2013-2014 Fiscal Year Assessment.
22. On November 26, 2013, the Commission credited Respondent's assessment balance in the amount of \$244.

23. On January 22, 2014, Respondent made a payment in the amount of \$1,300 towards its 2012-2013 and 2013-2014 assessment invoices.
24. Respondent failed to fully pay the amount of its 2013-2014 assessment invoice.
25. The total outstanding assessment balance for Respondent is \$1,496.

Violations

COUNTS 1-2

26. That Respondent failed to demonstrate its gross intrastate operating revenues for the 2011 and 2012 calendar years in that it did not file assessment reports for those years.

If proven, this is a violation of Section 510(b) of the Public Utility Code, 66 Pa.C.S. § 510(b). The Bureau of Investigation and Enforcement's proposed civil penalty for this violation is \$1,000 for each calendar year that Respondent failed to report its gross intrastate operating revenues or \$2,000.

COUNT 3

27. That Respondent failed to satisfy its 2013-2014 fiscal year assessment in that it did not pay the amount due within thirty (30) days of receipt of the invoice.

If proven, this is a violation of Section 510(c) of the Public Utility Code, 66 Pa. C.S. § 510(c). The Bureau of Investigation and Enforcement's proposed civil penalty for this violation is 15% of the outstanding assessment balance or \$224.

WHEREFORE, for all the foregoing reasons, the Bureau of Investigation and Enforcement of Pennsylvania Public Utility Commission respectfully requests that:

- (a) Respondent be ordered to pay a total of \$3,720, which consists of its outstanding assessment balance, which totals \$1,496 and a civil penalty of \$2,224 for the above-described violations;
- (b) Respondent be directed to file assessment reports on a going-forward basis; and
- (c) If payment of the civil penalty and assessment is not made, the Bureau of Investigation and Enforcement requests that:
 - (1) the Commission issue an Order to cancel the Certificate of Public Convenience issued to Respondent;
 - (2) this matter be referred to the Pennsylvania Office of Attorney General for appropriate action; and
 - (3) the Commission certify automobile registrations to the Pennsylvania Department of Transportation for suspension or revocation.

Respectfully submitted,



Stephanie M. Wimer
Prosecutor
PA Attorney I.D. No. 207522

Pennsylvania Public Utility Commission
Bureau of Investigation & Enforcement
P.O. Box 3265
Harrisburg, PA 17105-3265

Date: August 5, 2014

VERIFICATION

I, Mandy Freas, Accountant, Bureau of Administrative Services, Assessment Section, 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 the Bureau will 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: August 5, 2014



Mandy Freas, Accountant
Assessment Section
Bureau of Administrative Services
PA. Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

Notification by Certified Mail:

Herbert B. Smith, Sr. and Patricia L. Agee
Herbert B. Smith & Agee Copart
t/a Samuel W. Smith Moving & Storage
1728 Meadow Street
Philadelphia, PA 19124



Stephanie M. Wimer
Prosecutor
PA Attorney ID No. 207522

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
P.O. Box 3265
Harrisburg, PA 17105-3265

Dated: August 5, 2014