

1 BEFORE

2
3 THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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7 In re: A-00108005 Roland T. Barry, t/d/b/a ABC-EZ Moving
8 Co. For the right to transport, as a common
9 carrier, (1) as a Class B carrier, household goods,
10 office furnishings and store equipment, in use,
11 between points in the 27th Ward of the City of
12 Pittsburgh, *** and (3) household goods and office
13 furniture, between points in the County of Allegheny;
14 which is to be a transfer of the rights authorized
15 under the certificate issued at A-00092431 to Robert
16 N. Fink, t/d/b/a Frank J. Irvin. Initial hearing.
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19 Pittsburgh, Pennsylvania
20 September 7, 1988

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BEFORE
THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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In re: A-00108005 Roland T. Barry, t/d/b/a ABC-EZ Moving Co. For the right to transport, as a common carrier, (1) as a Class B carrier, household goods, office furnishings and store equipment, in use, between points in the 27th Ward of the City of Pittsburgh, *** and (3) household goods and office furniture, between points in the County of Allegheny; which is to be a transfer of the rights authorized under the certificate issued at A-00092431 to Robert N. Fink, t/d/b/a Frank J. Irvin. Initial hearing.

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Stenographic report of hearing held at the State Office Building, 300 Liberty Avenue, Pittsburgh, Pennsylvania

Wednesday,
September 7, 1988
10:15 a.m.

BEFORE
RICHARD HERSKOVITZ, ADMINISTRATIVE LAW JUDGE

APPEARANCES:

ROLAND T. BARRY
451 Orchard Avenue
Pittsburgh, Pennsylvania 15202
Appearing pro se

DAVID M. O'BOYLE, ESQUIRE
1450 Two Chatham Center
Pittsburgh, Pennsylvania 15219
Appearing on behalf of Patrick Kissel, Sr.,
Protestant

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PROTESTANT

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1 JUDGE HERSKOVITZ: This is the time and place set for
2 hearing in the matter of the application of Roland T. Barry,
3 trading and doing business as ABC-EZ Moving Company, and this
4 is an application for transfer of rights held by Fink, trading
5 and doing business as Irvin, I-r-v-i-n, at application
6 00092431. This is for the transportation of household goods.

7 I note that Mr. Barry is representing himself in this
8 proceeding, and the protestant Patrick Kissel is being
9 represented by David M. O'Boyle, Esquire.

10 As I mentioned, this is an application for the transfer
11 of the rights to transport household goods, and the protest
12 was filed -- a timely protest was filed by Mr. Kissel. Mr.
13 Barry is not represented by counsel, and prior to going on the
14 record I explained briefly what all is involved in this
15 proceeding.

16 At this point I'll just ask if there's any comments
17 anybody would like to put on the record before we beginn.

18 MR. O'BOYLE: Your Honor, just as a preliminary matter,
19 and to restate what I said off the record, was that by letter
20 dated August 26, 1988, I requested that Mr. Barry provide me
21 with the names of witnesses who would be testifying at the
22 hearing today, and sent that letter by certified mail which he
23 received on August 29th. I believe on that same date, on or
24 about August 29th, he called me and --- to inform me that he
25 did not intend to present any witnesses at the hearing, that

1 he was to show up for purposes to see if the Commission would
2 grant him the operating rights.

3 JUDGE HERSKOVITZ: Thank you, Mr. O'Boyle. Any comments
4 or response, Mr. Barry?

5 MR. BARRY: No.

6 JUDGE HERSKOVITZ: And you do basically agree with the
7 comments that Mr. O'Boyle just made, as far as what has
8 happened the last two weeks?

9 MR. BARRY: Yes, sir.

10 MR. O'BOYLE: Your Honor, if I may.

11 JUDGE HERSKOVITZ: Yes.

12 MR. O'BOYLE: Given the fact that I had requested the
13 names of witnesses, as well as the nature of their testimony,
14 for Mr. Barry at this point in time now to proceed I think is
15 not in accord with the Commission's rules. We should have
16 been notified as to what the nature of this case was. Maybe
17 due to a lack of knowledge on his part he didn't do so, but at
18 the same time, he is not abiding by the Commission's rules on
19 that issue.

20 JUDGE HERSKOVITZ: Yes, and that may be so, but we are
21 dealing with someone here who is not represented by counsel.
22 We can be a little more liberal in that regard, even though
23 there's still no excuse for not following the Commission's
24 regulations. Do you feel as though you're prejudiced in any
25 manner, Mr. O'Boyle, by having Mr. Barry proceed at this time?

1 MR. O'BOYLE: Your Honor, my problem is I don't know
2 what he's going to say. I can't really say -- of course, the
3 general position would be, yes, I am because I didn't have
4 sufficient time to prepare. If he is going to challenge the
5 fitness aspect of it, that would be one thing. If he's going
6 to present evidence as to the nature of operations, I just
7 don't know what he's going to say.

8 JUDGE HERSKOVITZ: Well, let's -- I'll overrule your
9 objection, or your motion, however you characterize it, at
10 this point. Let's hear what Mr. Barry has to say. If you
11 feel you've been prejudiced, you can raise that again after
12 Mr. Barry puts his case in. Anything further?

13 MR. BARRY: No.

14 JUDGE HERSKOVITZ: Okay. Mr. Barry, I'm going to swear
15 you in now and then you can testify as to -- in support of
16 your application. Please raise your right hand.

17 RONALD T. BARRY, having been duly sworn, was examined
18 and testified as follows:

19 JUDGE HERSKOVITZ: Be seated.

20 DIRECT EXAMINATION

21 BY JUDGE HERSKOVITZ:

22 Q Please state your name and address.

23 A My name is Roland Thomas Barry. I live at 451
24 Orchard Avenue. That's Pittsburgh, 15202.

25 Q And Mr. Barry, what I'd like you to do at this point

1 is to explain the nature of your application, what all's
2 involved, what technical expertise you have to perform the
3 duties that go along with the rights that you may acquire, and
4 how you're financially able to conduct this business as well,
5 and any other matter that you feel may be appropriate.

6 A Okay. Can I start with this letter and a final
7 statement, or could I read this letter?

8 MR. O'BOYLE: Is this the letter you're referring to
9 that was a recommendation or reference?

10 THE WITNESS: It's a former employer who knows my
11 character for the past 40 years. I was employed by them for
12 32 years.

13 JUDGE HERSKOVITZ: Would you like to look at it, Mr.
14 O'Boyle?

15 THE WITNESS: I made copies.

16 JUDGE HERSKOVITZ: Can I have a copy of that also?

17 THE WITNESS: Mr. Kissel, would you like a copy?

18 MR. KISSEL: Yes.

19 BY JUDGE HERSKOVITZ:

20 Q Before we get to this letter, why don't you just
21 briefly state the background as to you filing this
22 application, and exactly what the terms were and how we got to
23 this point right here, just for background purposes.

24 A Oh, February 2nd, I believe it was, I applied for the
25 rights and agreed to pay Robert Fink \$10,000.00. I gave him

1 8,000 down payment and signed a promissory note to pay \$90.46
2 a month for the -- until that 2,000 is satisfied. You know,
3 it was my understanding that there would be no complication or
4 problem, that transfers go through and, you know, I wasn't
5 concerned about paying that much money out, but I was advised
6 that this is the only way it would go through, and so I gave
7 the man my money.

8 Q Well, I guess you're aware now that the other
9 carriers have a right to protest an application --

10 A Yes.

11 Q -- that's filed?

12 A I only thought they protested new applicants, and
13 that to apply for a new PUC would be futile because the
14 current movers would protest and actually try to keep
15 competition out of their market, which I feel that is all
16 that's trying to be achieved here, is that they're hoping that
17 if the application doesn't go through to me, that maybe Mr.
18 Kissel will just give up and let his rights expire, or
19 whatever happens to them whenever they're not transferred.

20 Q Do you want to explain a little bit about your own
21 expertise to exercise the rights you're requesting?

22 A Yes. This former employer is Hamburg Brothers, a
23 wholesale distributor in the tri-state area. They have a
24 warehouse here in Pittsburgh and I've been associated -- or I
25 was associated with them for 32 years in the capacity of

1 warehouse man, warehouse manager, shipper, receiver, office
2 manager, sales administrative manager, field sales manager,
3 and I feel that I've functioned in every capacity that could
4 more than qualify me to manage a moving company.

5 Q Do you have any equipment?

6 A Yes. I have a truck with -- or I have two trucks
7 with 1,000 cubic feet cargo space and 18,000 pound capacity.

8 Q Can you give -- what were those dimensions again?
9 You have two trucks?

10 A Two trucks. A thousand cubic feet cargo space.

11 Q Are those owned by you?

12 A Yes.

13 Q In your name? Are they paid for?

14 A Yes.

15 Q What year and model are the trucks, do you know?

16 A Yes. The big truck is a 1967 Ford, but it has
17 remanufactured engines and parts. Very sturdy piece of
18 equipment.

19 Q What's the other vehicle?

20 A 1980 Ford Econoline Van.

21 Q Do you have anybody -- are you going to be driving
22 these yourself?

23 A Yes, initially, until we can see what the potential
24 is.

25 Q Where will your office be located, at the same

1 address you've stated before?

2 A For the time being, yes.

3 Q What was that address again?

4 A 451 Orchard Avenue, Pittsburgh, 15202. I might also
5 like to mention that I'm mainly interested in the small jobs
6 that a lot of the movers don't get because they have a minimum
7 of maybe 150, \$200.00. I'm interested in the small jobs of
8 maybe \$100.00, \$125.00.

9 Q But you do know that the rights you're requesting
10 really doesn't limit you to --

11 A No. I just want to --

12 Q -- the size?

13 A -- maybe fill a niche that isn't being filled by a
14 lot of the big movers who are more interested in the big jobs.

15 Q Now, you're going to drive the vehicle and you will
16 do the actual moving yourself, the moving of --

17 A Some of it.

18 Q -- goods?

19 A I enjoy being active physically. I've been settled
20 to a desk for a number of years and I find that I'm much
21 happier when I'm active physically. So, yes, I would be an
22 active party.

23 Q How old are you sir?

24 A Fifty-seven. Just had a birthday.

25 Q Now, with regard to your financial affairs, you said

1 you do have a financial statement?

2 A Yes.

3 Q Do you have copies of that?

4 A Yes, I made copies.

5 JUDGE HERSKOVITZ: We need -- I need a copy. We need
6 two for the court reporter and one for Mr. O'Boyle. Let's
7 mark this as applicant's Exhibit 1.

8 THE WITNESS: I'm afraid I'm short one copy.

9 (Applicant's Exhibit No. 1 was produced and
10 marked for identification.)

11 BY JUDGE HERSKOVITZ:

12 Q Mr. Barry, did anyone suggest that you get an
13 attorney to represent you in this proceeding?

14 A No. I didn't really feel it was necessary, being it
15 was a transfer.

16 Q I notice even after the protest you didn't feel it
17 was necessary, after you received the protest from Kissel.
18 Well, it's obvious you didn't feel it was necessary. You
19 don't have one here. But before we proceed, I have a
20 question. In looking through some of the documents, there was
21 another name, Fair, F-a-i-r, David W. Fair, transportation
22 Consultant from Allison Park. That appeared on some of the
23 documents in my file that were related to you.

24 A Yes.

25 Q Can you explain who he is?

1 A I hired him as an expert to, you know, help me have
2 these rights transferred, and as it turned out, I paid him
3 \$600.00 and all he did was fill out the application forms,
4 which if I hadn't seen him before I hired him, I certainly
5 could have filled them out my own.

6 Q Did you say \$600.00?

7 A He -- \$600.00, and that was the only function he
8 served. And when I got the notice, the letter from Mr.
9 O'Boyle initially about the protest, and I called him and he
10 gave me the PUC numbers in Harrisburg, to call them, and
11 that's as much as he's done, so I think I've been a victim of
12 an advisor consultant.

13 Q So he was just -- you just talked to him during the
14 application stage of this proceeding?

15 A Yes, and that was all he did, was -- and he
16 misspelled my name on the application initially. It had to be
17 corrected before we could send it in.

18 Q Do you have any comments you want to make with regard
19 to your financial statement that's marked as applicant's
20 Exhibit 1?

21 A No. Just that I feel that if my present equipment
22 isn't adequate, there is no problem for me to go out and buy
23 whatever equipment is adequate. But I feel this equipment is
24 adequate to take up where Mr. Fink left off and do the kind of
25 business he was doing the last three years.

1 Q Was Mr. Fink still active in the business when you
2 agreed to purchase these rights?

3 A He said he had a voluntary suspension of rights from
4 the previous August, I believe.

5 Q When you say voluntary suspension, what did that
6 involve, do you know?

7 A I'm just quoting him.

8 Q That's just what he told you?

9 A Also, when I called the PUC in Harrisburg and
10 inquired about the voluntary suspension, they said yes, that
11 they do that.

12 (Brief pause.)

13 BY JUDGE HERSKOVITZ:

14 Q You're not incorporated, is that correct?

15 A That's correct.

16 Q Let's talk about this letter now that you have. Do
17 you have two more copies? We'll at least mark it as an
18 exhibit at this point. Whether that will be admitted, we'll
19 see shortly.

20 A No. I guess that's all the copies I have. Oh, no.
21 I have one more copy.

22 JUDGE HERSKOVITZ: Let's mark that as applicant's
23 Exhibit 2.

24 (Applicant's Exhibit No. 2 was produced and
25 marked for identification.)

1 MR. O'BOYLE: Your Honor, I don't want to cut off any
2 discussion concerning the circumstances under which this
3 letter may have been given, but I do want to voice the
4 objection, certainly as far as the content of the letter
5 itself, that it is inadmissible on the grounds of being
6 hearsay, very clearly.

7 JUDGE HERSKOVITZ: Yes. I do have to agree with you,
8 Mr. O'Boyle, because we're dealing with someone who's
9 unrepresented here. I think I should mention to Mr. Barry
10 what hearsay is.

11 BY JUDGE HERSKOVITZ:

12 Q Do you know what hearsay is? You probably heard the
13 term.

14 A In a general sense, yeah.

15 Q Well, basically, what's involved here is you have
16 statements that you want to introduce into evidence made by
17 somebody who is not here to be cross examined --

18 A Oh, I see.

19 Q -- as to the truth of these statements.

20 A I understand.

21 Q Now, I assume you're -- I don't want to get into any
22 technical distinction between what is hearsay and what isn't,
23 but I assume that the purpose of this letter is to prove the
24 truth of what's said in it, is that correct?

25 A Yes.

1 Q It says here Roland is a man of impeccable integrity.
2 I mean, that is -- you want me to take that as being true, is
3 that correct?

4 A Well, hopefully it can give you some insight into who
5 I am and what I've been doing. But this wouldn't have been
6 possible. This gentleman passed on just last month.

7 Q Okay.

8 A But I'm sure if I had asked, if I had asked him, he
9 would have come as a witness.

10 Q Well, unfortunately, we cannot --

11 MR. O'BOYLE: Probably a dead man's rule in there as
12 well.

13 JUDGE HERSKOVITZ: Yeah. I'm trying to think of that.
14 Unfortunately, it is hearsay and it's --

15 THE WITNESS: I thought it sounded better than me
16 sitting here telling you how wonderful I am.

17 JUDGE HERSKOVITZ: You can still do that.

18 THE WITNESS: I worked hard for a lot of years and I was
19 very highly thought of by my employers, and I want to be my
20 own boss from here on out. I thought it was time that I let
21 my employer go because I don't really need an employer
22 anymore.

23 JUDGE HERSKOVITZ: Mr. O'Boyle, you are objecting to
24 Exhibit 2 on the grounds of hearsay, is that correct?

25 MR. O'BOYLE: That is correct, Your Honor.

1 JUDGE HERSKOVITZ: Do you have any objection to Exhibit
2 1?

3 MR. O'BOYLE: Other than the fact that I assume that Mr.
4 Barry is the person who actually prepared this statement, and
5 I want to be sure that that was you that prepared it?

6 THE WITNESS: Yes.

7 JUDGE HERSKOVITZ: Maybe I should have qualified it.

8 THE WITNESS: I put this together.

9 MR. O'BOYLE: I have no objection to applicant's Exhibit
10 1.

11 JUDGE HERSKOVITZ: Well, I am going to admit Exhibit 1,
12 and as far as Exhibit 2 is concerned, it is definitely
13 hearsay. I will admit it, although I will say up front that
14 hearsay is -- I cannot base a decision on hearsay.

15 THE WITNESS: I understand how --

16 JUDGE HERSKOVITZ: I really can't give it any weight,
17 but I will keep it in the record at any rate.

18 MR. O'BOYLE: Your Honor, I voice a strong objection to
19 that. You've already said it's hearsay, and that, in and of
20 itself, negates the admissibility of the evidence.

21 JUDGE HERSKOVITZ: Again, we're not bound by the
22 technical rules of evidence here. We can admit hearsay. We
23 cannot rely on hearsay in our decisions, but it is admissible,
24 and in certain cases can be used as a basis of a finding of
25 fact if it's corroborated. We have no corroboration here, but

1 I'm going to let it in. (See tr. pg. 46)

2 MR. O'BOYLE: I'd only point out, Your Honor, that the
3 Commission regulations do authorize hearsay under certain
4 circumstances, such as request for service testimony.
5 However, this violates our constitutional rights to cross
6 examination, to be perfectly frank, if you want to go to the
7 heart of the matter, and there are -- I just voice my
8 objection as to even the admissibility of this document.

9 JUDGE HERSKOVITZ: Your objection is noted. Do you have
10 anything else, Mr. Barry, to say?

11 MR. BARRY: No. Just that I'm physically, financially
12 experienced-wise fit to handle a moving business, to operate a
13 moving business.

14 JUDGE HERSKOVITZ: Cross examination, Mr. O'Boyle.

15 MR. O'BOYLE: Mr. Barry, let me preface my remarks and
16 my questions by stating this: As far as your own personal
17 integrity, we are not in any way, shape or form attacking that
18 or questioning that here. Under the Commission's rules and
19 regulations, an applicant must prove that it is fit, and by
20 fit, there are certain requirements that you have to meet, and
21 so far as your personal integrity is concerned, that, in and
22 of itself, we don't consider to be at issue. So please don't
23 take anything we say here in terms of personally and take as
24 against you. In representing my client, he has certain
25 business interests which are adverse to yours.

CROSS EXAMINATION1
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BY MR. O'BOYLE:

Q I'd like to go back and take a look at the application that you filed in this case. Do you have that in front of you?

A Yes, sir.

Q First page, under Paragraph 3, you indicated that the trade name of ABC-EZ Moving Company was registered as a fictitious name with the Secretary of the Commonwealth on February 19th, 1988, is that true?

A That's true.

Q That's the date it was actually registered?

A Yes.

Q Do you have any type of confirmation of that?

A Yes.

(Brief pause.)

THE WITNESS: This is it.

BY MR. O'BOYLE:

Q Mr. Barry, you've shown me what is the form that's filed with the Corporation Bureau, which is captioned fictitious name registration, and this is the form that you filed that you sent in to Harrisburg, correct?

A Yes.

Q There's a date that's stamped down here, above where it says Secretary of the Commonwealth which is February 26,

1 1988, is that right?

2 A That's right.

3 Q Would February 19th have been the date that you
4 actually mailed it to the Corporation Bureau, do you know?

5 A Effective date filed.

6 Q The other document you just showed me appears to be a
7 cover letter from the Corporation Bureau, sending back this
8 fictitious name registration with the stamped date of February
9 26th on it, is that right?

10 A That's right.

11 Q In the bottom lefthand corner there's David W. Fare's
12 name. Again, did he file this for you?

13 A Yes.

14 Q Do you know whether this fictitious name, notice of
15 this fictitious name was ever published in any newspaper or
16 legal -- either legal newspaper or paper of general
17 circulation?

18 A Not to my knowledge.

19 Q If you turn to page 3 of the application form, there
20 is at the top of the form the signature of both you and, I
21 believe, Mr. Fink, the transferor.

22 A Yes.

23 Q What is the date that that application was signed?

24 A February 19th, 1988.

25 Q Does that say February 19th?

1 A No. Wait. I'm sorry. Signed 18th day of February,
2 1988.

3 Q So you signed it on the 18th, but you said that you
4 sent it to the -- the fictitious name was registered with the
5 Corporation Bureau on the 19th. Can you explain that?

6 A No, I can't explain it, unless somebody made a
7 mistake.

8 Q Let's turn to page 2 of the application form. Under
9 Paragraph 8 there's a list of assets and liabilities. This is
10 the second page of the application form, up there at the top.

11 A Oh, yeah. Assets and liabilities.

12 Q Paragraph 8, assets and liabilities. Now, the first
13 asset is listed as being real estate of \$80,000.00. Is that
14 real estate jointly owned by you and your wife?

15 A Yes.

16 Q Is there anybody else's name on the title to the
17 property, or just you and your wife?

18 A Just my wife and I.

19 Q If you switch for a moment to your financial
20 statement you prepared, applicant's Exhibit No. 1 --

21 A Yes.

22 Q -- there is real estate on there of \$95,000.00
23 listed, is that right?

24 A Yeah, but it's, you know, market value, judgmental
25 thing.

1 Q So it is the same real estate we're talking about?

2 A It's the same real estate, yes. I rethought it and
3 thought 95 might be more realistic, but a conservative figure
4 would be 80.

5 Q Now, the value of your personal property is listed on
6 the application form as \$30,000. What personal property are
7 you referring to there?

8 A Well, I hadn't considered my securities, my portfolio
9 at all. I was just considering cash on hand and U.S.
10 government security.

11 Q So that was just liquid assets, is that what you're
12 referring to, close to the \$27,000.00 on applicant's Exhibit
13 1, as the cash on hand?

14 A Yeah, and the U.S. government security 1,022.

15 Q Okay. Going through the application, just so there's
16 some logic to my questions here --

17 A Yes, sir.

18 Q -- on Paragraph 14 of the application you indicated,
19 as you have testified here today, that the amount of
20 consideration for the rights is \$10,000.00?

21 A Correct.

22 Q That's the lump sum that you're to pay to Mr. Fink
23 for these operating rights?

24 A Correct.

25 Q And I believe you already indicated that you have

1 paid him \$8,000.00?

2 A Yes.

3 Q Was that in cash or by check?

4 A Cash.

5 Q Does the assets listed on your Exhibit 1 include the
6 \$8,000.00 or not?

7 A It does not.

8 Q Does not, okay. So that's net after the \$8,000.00?

9 A Yes.

10 Q When did you pay that 10 -- excuse me -- that
11 \$8,000.00 to him?

12 A The night that we signed this application, which was
13 either the 18th or the 19th. I can't explain the difference
14 of those dates.

15 Q If, for some reason, the Commission doesn't approve
16 the transfer of these rights, what happens to this \$8,000.00?

17 A I might have to hire you to help me get my money back
18 from Mr. Fink.

19 Q Is it your understanding that that \$8,000.00 is to be
20 returned to you?

21 A Yes. There's wording in here that I've gone over a
22 number of times to comfort my mind that I'm going to get my
23 money back.

24 Q With respect to the note -- and attached to your
25 application I believe there is an installment judgment note --

1 A Yes. I have a copy of that.

2 Q -- for the \$2,000.00. And the amount of the monthly
3 payment is \$90.46?

4 A Correct.

5 Q Are you making payments on that note at the present
6 time?

7 A Yes. I've made six payments to date.

8 Q So that would have been starting what, March through
9 the present there would have been six payments made?

10 A Yeah. My first payment was March 30th.

11 JUDGE HERSKOVITZ: By the way, Mr. Barry, in case you're
12 getting a little nervous, your sales agreement attached to
13 your application does say the sale is contingent upon approval
14 of the transfer by the Pennsylvania Public Utility Commission.

15 THE WITNESS: Yeah, that's what I was looking for. I've
16 been reading that to comfort my mind a little. Yeah, sale is
17 contingent upon the approval of the transfer.

18 BY MR. O'BOYLE:

19 Q Mr. Barry, I want to next ask you questions
20 concerning the nature of the operating rights that you want
21 transferred to you from Mr. Fink. Attached to the application
22 is a summary of those rights. By chance, would you have a
23 copy of the original certificate that was issued by the
24 Commission to Mr. Fink?

25 A No.

1 Q Under the first paragraph of that summary of rights,
2 if you would turn to that page and Attachment No. 1 at the
3 top.

4 A Okay.

5 Q First, where is the 27th Ward of Pittsburgh located?

6 A I don't know.

7 Q Do you know what -- it says here to transport, as a
8 Class B carrier, household goods, office furniture and store
9 equipment in use. Do you know what a Class B carrier is?

10 A A mover -- what Robert Fink has been doing for the
11 past 20 years, moving household goods.

12 Q Do you know --

13 A Within Allegheny County.

14 Q Do you know that there's a distinction between
15 different types of household movers, depending upon the nature
16 of the rights that they have as to what they can do? In other
17 words, a Class B carrier is different than a Class D carrier.
18 Do you know that there's different classes of operating rights
19 issued by the PUC?

20 A Yes.

21 Q You do. Can you tell me what the distinction is
22 between a Class B operating authority and a Class D operating
23 authority?

24 A No. I expect all that information to be available to
25 me upon receiving my rights.

1 Q Okay. But you haven't researched it at this point in
2 time and don't really know what a Class B carrier can do?

3 A No. I thought I would acquire the rights and then be
4 given the rules and regulations and I would proceed from
5 there. I didn't --

6 Q Well, under the first paragraph of your operating
7 authority there, of the authority to be transferred, can you
8 explain for me, then, what you can do, what you think you can
9 do under those rights?

10 A Well, first of all, Mr. Fink is available to me as an
11 advisor. I would do just what he's been doing for the past 20
12 years and what his uncle Mr. Irvin was doing for the previous
13 20 years, that we would move household goods within Allegheny
14 County.

15 Q Okay. Would that be within all of Allegheny County?
16 You're saying -- is there any point in Allegheny County you
17 could not move household goods from or to?

18 A Mr. Fink is available to me as an advisor. I'm not
19 clear on that point yet.

20 Q I see. So you don't know, under these rights,
21 whether there is any borough or city or township that you
22 would not be able to serve in Allegheny County, is that right?

23 A At this point. But I would -- I would know once the
24 rights were granted to me. And as I say, Mr. Fink is
25 available to me as an advisor. That's part of our deal.

1 Q All right. What do you consider to be the types of
2 commodities, we refer to them as household goods, that you
3 would be able to haul? What would you describe household
4 goods as being?

5 A A small apartment, furniture, bedroom set, living
6 room set, dining room set, kitchen appliances.

7 Q Would you be able to, under these rights, move that
8 type of furniture, let's say, from a store that the customer
9 had bought the furniture, to their apartment? Could you
10 handle that as well?

11 A I'm not clear on that. I would assume it to mean
12 household goods that are in use, not new items from the store.

13 Q So that you could not handle those, is that what
14 you're saying?

15 A I'm not sure about that. That would be something
16 that I would seek advice from Mr. Fink about, but it's my
17 understanding that that would be a common carrier, like we had
18 in the warehouse business. They would come in and pick up
19 warehouse products and transfer them from one warehouse to
20 another, and my rights wouldn't include that. I understand
21 that part.

22 Q That you could not transfer household goods from a
23 warehouse to another warehouse, is that what you're saying?

24 A Yes.

25 Q Let me ask you this: Would you be able to transport,

1 let's say, some type of high tech computer machinery that is
2 being used in an office from one location to another location
3 where the office is moving to?

4 A I'm not positive about that. I would seek advice
5 from Mr. Fink.

6 Q Do you intend to operate only within Allegheny
7 County, or do you intend to operate outside of Allegheny
8 County as well?

9 A Only within Allegheny County. That's as much
10 territory as I would require to make a living.

11 Q If you would look at the second paragraph of the
12 summary of rights in your Attachment No. 1 to the application,
13 it refers to service territory of 75 miles by the usually
14 traveled highways of the City County Building of the City of
15 Pittsburgh. Do you see that?

16 A Yes.

17 Q Now, what that means is that these rights would force
18 you to go 75 miles, highway miles, from that City Building --
19 City County Building?

20 A Yes, that being the starting point.

21 Q But you don't intend to do anything outside of
22 Allegheny County, so you would not use those rights, is that
23 right?

24 A I wouldn't say I would never use them. I wouldn't
25 particularly seek that kind of business. I would prefer

1 closer, local. I would prefer North Hill moves. I would
2 prefer an area within 25 miles, if I can make a living. If I
3 can, you know, make the figures.

4 Q Let's assume that the Commission grants this transfer
5 application, a customer calls you up and says that I have a
6 shipment that has to be moved from Pittsburgh, say Shadyside
7 for instance, to Greensburg, which I believe would be within
8 that 75 mile range. Would you be willing to provide that
9 service?

10 A Yes, as long as it's within my rights.

11 Q So you would take a piece of equipment, dispatch it
12 to the home of that person and then travel out to Greensburg,
13 unload it and then return empty, is that right?

14 A That's right.

15 Q Do you know whether these rights authorize you to
16 pick anything up in Greensburg and haul it back?

17 A At this point, I don't know that. I would certainly
18 find that out, if I had the rights, but I would think the
19 feasibility of it is very remote, that you'd be able to find
20 something in Greensburg and bring it back.

21 Q You mentioned you'd prefer to limit the scope of your
22 operations to the North Hills?

23 A Well, as far as advertising is concerned, if I can
24 make a living advertising, you know, in those areas, fine, if
25 I can get figures to cover my expenses and come out with a

1 profit. But whether it takes within Allegheny -- whatever it
2 takes within Allegheny County, that's what I'll do to make the
3 business a success.

4 Q Is your home located in North Hills?

5 A Yes.

6 Q What township is that?

7 A Bellevue.

8 Q In the Exhibit C to your application, the sales
9 agreement refers to the \$10,000.00 as being only for the PUC
10 operating rights of Mr. Fink. So there's no equipment
11 involved in this transaction?

12 A Correct, but it's available if I decide that I need
13 it for the business.

14 Q That his equipment is available to you?

15 A Yes.

16 Q And would you buy it, or what would you do?

17 A Yes. If I find that my present equipment is not
18 adequate to do the job, I would buy his equipment. It would
19 be my next option.

20 JUDGE HERSKOVITZ: Let me interject a second here. Mr.
21 Barry, you're 1967 Ford truck and 1980 Ford Econoline Van,
22 where do you keep that equipment right now?

23 THE WITNESS: On my property.

24 JUDGE HERSKOVITZ: When you say on your property, you
25 have a garage there?

1 THE WITNESS: Yes. I have a two car garage. I have a
2 concrete pad outside the garage and then I have parking space
3 alongside.

4 JUDGE HERSKOVITZ: Thank you.

5 BY MR. O'BOYLE:

6 Q Exhibit D to the application there's an indication
7 that Mr. Fink does not have any unpaid business debts, and I
8 assume that you don't have firsthand knowledge of that, that
9 he responded to that question?

10 A Correct.

11 Q You're not in any type of partnership arrangement
12 with Mr. Fink, are you, have any other business dealings with
13 him?

14 A No.

15 Q And prior to this, you did not have any such dealings
16 with him?

17 A No. He approached me and asked if I would be
18 interested.

19 Q When did he approach you?

20 A I think it was November, December of '87, I guess.

21 Q How did he get your name? How did he know that you
22 might be interested in this kind of business, if you know?

23 A I'm not sure.

24 Q Exhibit E to your application purports to be the
25 operating revenues that Mr. Fink received over 1985, 1986 and

1 1987. And I assume, there again, that he is the one that
2 provided that information concerning those operations?

3 A Yes.

4 Q As to the installment judgment note that's also
5 attached, that is signed solely by you, is that correct, and
6 not by your wife?

7 A That's correct.

8 Q And the rights that you're applying for, you're
9 asking the Commission to issue the rights in your name only
10 and not in the name of you and your wife?

11 A Correct.

12 Q Let's turn to Schedule C of the application, which is
13 is a statement of financial condition. It should be toward
14 the last page of the application form. It's your assets and
15 liabilities.

16 A Yeah. I thought I had that on the second page here.
17 Assets and liabilities.

18 JUDGE HERSKOVITZ: It's the schedule that's attached on
19 the back, the last page. It's on the back of --

20 THE WITNESS: Schedule A and B?

21 JUDGE HERSKOVITZ: It's on the back of that.

22 THE WITNESS: I don't have that copy.

23 MR. O'BOYLE: Your Honor, is Schedule C attached to the
24 application of the Commission's file?

25 JUDGE HERSKOVITZ: Pardon?

1 MR. O'BOYLE: Is Schedule C attached to the application?

2 JUDGE HERSKOVITZ: Yes, it's attached to mine.

3 BY MR. O'BOYLE:

4 Q Mr. Barry, let me review with you Schedule C, my copy
5 of it. The first asset is motor vehicle equipment that has a
6 value of \$3,500.00?

7 A Right.

8 Q Now, is that both trucks that you referred to before?

9 A No. That's just the one truck.

10 Q Which truck would that be?

11 A That's the '67.

12 Q Is that the fair market value, or is that the book
13 value? What is that figure?

14 A That is what I paid.

15 Q When did you buy that?

16 A January or February.

17 JUDGE HERSKOVITZ: Of this year, 1988?

18 THE WITNESS: Of 1988.

19 BY MR. O'BOYLE:

20 Q When did you buy the Econoline Van?

21 A Just recently, in August. But prior to that, I had
22 an older Econoline Van.

23 Q And you traded that in for this newer one?

24 A Yeah.

25 Q Buildings and structures we briefly talked about

1 before. \$80,000.00, that would be your house?

2 A My house.

3 Q Other property is listed as stocks of \$20,000.00?

4 A Right.

5 Q Cash is listed as \$15,000.00. You don't have any
6 accounts receivable and no notes receivable. Materials and
7 supplies is \$500.00. What would that be?

8 A Pads, dollies, things like that.

9 Q Pads and dollies?

10 A Yep.

11 Q Are these pads that are used in connection with --

12 A Furniture pads, yeah.

13 Q Furniture. Okay. When did you buy those?

14 A It was February.

15 Q 1988?

16 A '88.

17 Q And the only liabilities you have listed is that
18 promissory note with Mr. Fink --

19 A Right.

20 Q -- for \$2,000.00? Mr. Barry, when were you last
21 employed by Hamburg Brothers?

22 A I think it was in 1980.

23 Q 1980 was the last year that you worked for Hamburg
24 Brothers?

25 A Yes.

1 Q Since 1980 -- after that. Let's qualify that. After
2 working for them, what did you do next?

3 A I've been retired. I had a couple of income
4 properties and I was maintaining them and following tenants to
5 collect rents and taking the chance of spending more time with
6 my wife and four children. All of a sudden we're all grown up
7 and I looked around and didn't know how they got so big, and I
8 was always so busy.

9 Q Since 1980, you have not worked for anyone else, is
10 that right?

11 A That's correct, I'm proud to say.

12 Q Well, what did you do with this 1967 Ford vehicle?
13 What do you do with that now?

14 A I offer it for rent. People that want to move, they
15 can use it for two hours for \$47.00.

16 Q I see. Is that also true for the Econoline Van?

17 A Yeah. For \$37.00 for the Econoline Van.

18 Q Let me ask you this: As far as leasing equipment,
19 how long have you been in that business? When did you start?

20 A I think I started that in '87.

21 Q Approximately when in '87? Any idea?

22 A January, February '87.

23 Q So for over a year and a half you have been leasing
24 equipment to anyone in the public who is interested in?

25 A Yes.

1 Q And how do you -- how do you make your services
2 known?

3 A Run an ad in the newspaper. I've used the Press,
4 Penny Saver.

5 Q That's the Pittsburgh Press?

6 A Yes.

7 Q And what does the ad say?

8 A Better deal move.

9 JUDGE HERSKOVITZ: Pardon?

10 THE WITNESS: A better deal move.

11 BY MR. O'BOYLE:

12 Q So if I see this ad in the paper and I call you up
13 and say I'm moving, what do you tell me?

14 A I have a truck that you can use for moving, it has
15 pads and a dolly, and get it for two hours for \$47.00.

16 Q So that you lease equipment to anyone at all who
17 calls and says that I need a truck?

18 A Yes.

19 Q Does anyone ever call you up and say I not only need
20 a truck, but I also need a driver?

21 A (Witness nods head.)

22 JUDGE HERSKOVITZ: Is that a yes?

23 THE WITNESS: Yes.

24 BY MR. O'BOYLE:

25 Q So if someone were to call up, say I'm moving, I need

1 a truck and driver, plus the pad and the dollies, will you
2 provide them with that?

3 A Not with a driver, no.

4 Q You do not provide drivers?

5 A Right.

6 Q You yourself have never driven the truck on any move?

7 A Yes, I have.

8 Q And when have you done --

9 A I wasn't aware that I wasn't supposed to.

10 Q I see. And when would you have done that? When was
11 the first time you would have done that?

12 A Early '87.

13 Q Early of '87, someone called you up and you would
14 lease both the equipment to them, as well as driver services
15 for a flat, hourly rate?

16 A Yeah. I would take the truck over and drive it and
17 bring it back.

18 Q This is, again, you yourself who was doing this?

19 A Yes.

20 Q When you took the truck over, did you help them
21 load --

22 A No.

23 Q -- the furniture on the vehicle?

24 A No.

25 Q Your services were strictly to operate the Ford --

1 A As a truck rental, yeah.

2 Q How many times in 1987 would you say that that had
3 occurred?

4 A That I drove the truck?

5 Q Right.

6 A Fifteen, 20 times.

7 Q Would you invoice the customer separately for the
8 truck and separately for your driver services, or is it all
9 one lump sum?

10 A It was all the same. \$47.00 whether they drove or
11 whether I drove.

12 Q So it didn't --

13 A I would stay with the truck, with the equipment and
14 bring it back.

15 Q I'm sorry. I didn't hear you.

16 A I would stay with the truck, with the equipment and
17 bring it back. You know, make sure my pads were all there and
18 my dolly was still there. So whether I drove or they drove, I
19 stayed with the truck.

20 Q You just road along in the passenger's seat to be
21 sure the truck wasn't abused?

22 A Yes. So they knew how to handle the stick shift,
23 that they were capable to drive safely.

24 Q Now, you've indicated that you have since learned
25 that there's something wrong in doing that?

1 A Yes.

2 Q Okay. What is your understanding, as far as what is
3 wrong in doing that?

4 A That you can't provide a driver with a rental truck.
5 You can rent the truck, but the customer has to drive the
6 truck.

7 Q Who told you that?

8 A I called the PUC office.

9 Q When was this?

10 A Early in '87, I would guess. March, April.

11 Q So March or April you found out from the PUC that you
12 could lease equipment, but you could not lease equipment with
13 a driver?

14 A Yes.

15 Q Since March or April of '87, have you leased
16 equipment with a driver?

17 A No.

18 Q If someone calls you up and responds to your ad for
19 the vehicle, you don't, in any way, shape or form, offer them
20 any driver services?

21 A No.

22 Q If I were to call up, who's going to answer the
23 phone?

24 A Me, my wife.

25 Q And what phone number is listed in the newspaper,

1 your home phone number?

2 A Home phone number.

3 Q So it's either you or your wife would answer the
4 phone and respond to a request for equipment?

5 A Yes.

6 Q And that has been true since April or March of 1987?

7 A Right.

8 Q Someone calls you up and says I have a house to move,
9 do you ask them how many pieces of furniture you have -- that
10 they have, excuse me?

11 A No.

12 Q You don't get involved -- you don't ask any questions
13 as to the nature of the furniture, the nature of what's
14 involved? You just say if you want this equipment you can
15 have it for whatever, for whatever purpose?

16 A Yeah, for moving.

17 Q Now, you mentioned you have advertised in the Penny
18 Saver on occasion?

19 A Yes, sir.

20 Q Do you do that regularly?

21 A Yes, sir.

22 MR. O'BOYLE: Your Honor, I don't have copies of these
23 documents. I'll have to have copies made at the break. Let's
24 have marked as exhibit -- that will be one exhibit. This is
25 the Penny Saver ad of March 28th, 1988.

1 JUDGE HERSKOVITZ: Okay.

2 MR. O'BOYLE: And also the Penny Saver ad of August 29,
3 1988.

4 JUDGE HERSKOVITZ: Let's mark this as protestant Exhibit
5 1, which would be the ad of March 28th, 1988, and protestant
6 Exhibit 2 will be the Penny Saver ad of August 29th, 1988.

7 MR. O'BOYLE: Thank you.

8 (Protestant's Exhibit Nos. 1 and 2 were produced
9 and marked for identification.)

10 BY MR. O'BOYLE:

11 Q Mr. Barry, here is what's been marked as protestant's
12 Exhibit 1, the March 28th, 1988 ad which was published in the
13 Penny Saver. At the bottom of the page there's an ad, moving,
14 question mark, are you moving, question mark, for a better
15 deal call 734-5478 or 766-3026. Is that the ad that you had
16 published?

17 A Yes.

18 Q The 734-5478 number, whose number is that?

19 A That's my son's number in case I'm not home.

20 Q Does your son get involved in the business with you,
21 in terms of the truck rental?

22 A Yes.

23 Q What does he do?

24 A If I'm not able, he'll take the truck over to the
25 people, stay with it, bring it back.

1 Q Now, when you say take the truck over, you mean you
2 get in the truck to wherever they're moving from?

3 A Yes.

4 Q Where they're loading up?

5 A Um-hum.

6 Q And you stay in the truck. Whoever it is provides a
7 driver, they drive it to the destination, you accompany them?

8 A Yes.

9 Q They're done and then you take the truck and drive it
10 back to your home --

11 A Yes.

12 Q -- is that correct? Okay. Now, on the protestant's
13 Exhibit No. 2, the Penny Saver ad for August 29, 1988, this is
14 a slightly different ad. It has moving -- reasonable moving,
15 call 734-5478, or for a better deal call 766-3026, truck
16 rental, is that right?

17 A (Witness nods head.)

18 JUDGE HERSKOVITZ: Mr. Barry, please answer either yes
19 or no, rather than shaking your head because the court
20 reporter can't pick up the shakes of the head.

21 THE WITNESS: Yeah, that's right.

22 BY MR. O'BOYLE:

23 Q If someone were moving their house and looked at
24 protestant's Exhibit 1, as far as the ad is concerned, there's
25 nothing in there to suggest this is only a truck rental, is

1 there?

2 A No. That's what they told us at the Penny Saver.

3 Q Penny Saver, then, objected to you having this ad in
4 there without a reference to truck rental?

5 A Yes.

6 Q Why is that, do you know?

7 A Because of the notice about the PUC, for moving ads.

8 Q Is that notice you're referring to that anyone who
9 advertises for motor carrier service must have a PUC number to
10 advertise their service?

11 A Yes. So they required truck rental.

12 Q You inserted truck rental in response to the Penny
13 Saver's requirements?

14 A Yes.

15 Q Again, the rate that you would have charged, let's
16 say early in 1987, when you provided driving services, was the
17 same rate than if you had not provided the driving services,
18 is that right?

19 A Correct.

20 Q And it's your testimony that you have never suggested
21 since, let's say March or April, I believe you stated, when
22 you found out about the PUC's regulations, that since that
23 time you have never suggested to anyone calling in for a piece
24 of equipment that you would provide a driver, is that right?

25 A Right.

1 Q Since February 18th or February 19th of this year,
2 when you signed the agreement of sale with Mr. Fink, has the
3 nature of your operations changed at all?

4 A No.

5 Q So presently, you're not providing any service in
6 relation to Mr. Fink's operation, or whatever his operation
7 was?

8 A No.

9 Q You're not holding yourself out as a common carrier
10 presently, is that right?

11 A That's right.

12 Q Do you have any type of financial statement which
13 would indicate the amount of revenues that you have received
14 in either 1987 or 1988, for this truck rental operation?

15 A Not with me.

16 Q I assume that if these rights are transferred to you,
17 that you will continue to operate out of your home and that
18 you will continue to park your vehicles at your residence?

19 A Not necessarily. I will be looking into some space
20 that Mr. Fink was using.

21 Q Does he own that space, or did he lease it?

22 A He leased it.

23 Q But you haven't entered into any type of contract or
24 lease agreement at this point?

25 A No.

1 Q Now, you mentioned that Mr. Fink told you that the
2 operating rights -- his operating rights were suspended by the
3 PUC in August of 1987?

4 A A voluntary suspension at his request. He didn't
5 want to work them anymore and he wanted to find a buyer, and
6 he told the PUC this and they says they can give him a
7 voluntary suspension.

8 Q Do you know if that voluntary suspension is still in
9 effect?

10 A Yes. I talked to the PUC in Harrisburg, and I says
11 there's been a protest and I'm worried that maybe the
12 voluntary suspension will run out before we have the hearing,
13 and they says no, no, the hearing will have to be decided
14 first and then you'll have a chance to sell these rights to
15 somebody else.

16 Q You don't have -- or you didn't see from Mr. Fink the
17 PUC's notice of the suspension, did you?

18 A No.

19 Q But as far as you know, since at least August of
20 1987, Mr. Fink has not conducted any operations under his PUC
21 certificate, is that right?

22 A Correct.

23 Q And I assume since that period of time that he has
24 not undertaken to advertise his services in any type of
25 newspaper or telephone directory or anything like that for the

1 past year?

2 A Not to my knowledge.

3 Q Mr. Barry, let me ask you, how do you perceive the
4 operations under Mr. Fink's operating rights to differ from
5 what you're doing right now? Will it be that you will be
6 offering driver services, as well as the equipment?

7 A Yes, yes. I would like to do that, to make it
8 available for some low budget people that, you know, won't
9 have trouble scraping up \$47.00 to move, and if they do their
10 own labor, they could do it for \$47.00.

11 Q What you're saying here is that under these operating
12 rights, one type of service that you will be rendering is that
13 you will simply offer a truck with a driver and allow the
14 consumer to provide his own labor in moving the goods from the
15 house onto the truck and from the truck back to wherever
16 they're moving to, is that right?

17 A Yes.

18 Q So that you would not get involved in picking up any
19 merchandise from this type of consumer?

20 A Right.

21 Q Do you also intend to provide a service where you
22 would load the goods as well?

23 A Oh, yes. Yes, that mainly.

24 Q That would be your primary --

25 A Yes.

1 Q -- interest?

2 A That would be my primary interest.

3 Q If someone calls you up after you have these -- if
4 these rights are approved, in terms of the transfer, and asks
5 you just for a piece of equipment, would you be willing to
6 provide them just the equipment without the driver services?

7 A No.

8 Q All right. So it could only be driver service with
9 the equipment, but without the labor in terms of loading the
10 goods, is that correct?

11 A Correct.

12 Q Or it would be a full service, in that you would
13 provide driver equipment and the labor to make the move?

14 A Yes.

15 Q Mr. Barry, are you at all familiar with what the PUC
16 requires in regard to publishing or filing your rates with the
17 Commission?

18 A Yes. There's a tariff that Mr. Fink used and I will
19 follow the same tariff.

20 Q You would use the same rates that he used in that
21 tariff?

22 A Yes.

23 Q Do you know when that tariff was issued?

24 A No. I must have a copy of it. I don't have it in my
25 files.

1 JUDGE HERSKOVITZ: Let me ask at this point, do you know
2 when his certificate was originally issued?

3 THE WITNESS: No.

4 JUDGE HERSKOVITZ: Thank you. By the way, Mr. Barry,
5 you don't send your mortgage payments to the Mr. Kissel that's
6 sitting over here, do you? I noticed on your financial
7 statement here it's PNB, in care of The Kissel Company.

8 THE WITNESS: Yes. I noted that same --

9 JUDGE HERSKOVITZ: Just for clarification, it is not the
10 same Mr. Kissel across the aisle from you?

11 THE WITNESS: No, it is not.

12 JUDGE HERSKOVITZ: Okay. Let's, at this time, take a
13 break, but before we go off the record, I have re-read, again,
14 applicant's Exhibit 2. I do not intend to use it in my
15 decision for anything, and I will reverse my decision and
16 exclude it. It is not admitted as evidence. It is hearsay,
17 Mr. Barry, and even though there are times when we do admit
18 hearsay, I see no reason for me to use that in any decision
19 that I may have, so I will exclude it. Let's take a ten
20 minute break.

21 (A brief recess was taken.)

22 JUDGE HERSKOVITZ: On the record.

23 BY MR. O'BOYLE:

24 Q Mr. Barry, I just have a few more questions. We
25 mentioned the 1980 Econoline van that you had purchased just

1 recently. I'm not sure if I asked you how much you paid for
2 that. What was the purchase price?

3 A \$2,000.00.

4 Q And is that equipment titled in your name only?

5 A No.

6 Q How is it titled?

7 A In my son's name.

8 Q So the Econoline Van is titled in your son's name.
9 He owns that piece of equipment?

10 A Yeah. I pay for it, but --

11 Q What about the 1967 Ford, who owns that?

12 A That's in my name.

13 Q That is titled in your name, your name only?

14 A Yes.

15 Q So your wife's name is not on the title to that at
16 all?

17 A No.

18 Q In looking through your financial statement on
19 applicant's Exhibit 1, am I correct that all of the stocks and
20 bonds are owned jointly by you and your wife?

21 A That's correct.

22 Q And isn't it true that except for that 1967 Ford,
23 that all of your other personal assets or personal property
24 are owned jointly by you and your wife?

25 A That's correct.

1 Q Mr. Barry, do you know if any complaints have ever
2 been filed against you by any individuals with the PUC?

3 A To my knowledge, none.

4 JUDGE HERSKOVITZ: Excuse me a minute, Mr. O'Boyle. Did
5 you say the 1967 Ford truck is also jointly owned by you and
6 your wife?

7 THE WITNESS: No, it is not.

8 JUDGE HERSKOVITZ: That is just in your name?

9 THE WITNESS: That is in my name only, same as my
10 personal automobile.

11 JUDGE HERSKOVITZ: Okay. Thank you. Sorry I
12 interrupted. You may continue.

13 BY MR. O'BOYLE:

14 Q You've stated that there's been no complaints filed
15 against you, as far as you know?

16 A That's correct.

17 Q That includes any complaints issued by the PUC, as
18 well as any individual filing a complaint, is that right?

19 A Yes, sir.

20 Q Mr. Barry, are you familiar with the safety
21 regulations for operating motor vehicles?

22 A Yes.

23 Q And what is your understanding with respect to, for
24 instance, drivers operating the vehicles? How long can they
25 operate a vehicle? Do you have any idea what those

1 regulations are?

2 JUDGE HERSKOVITZ: Excuse me. Mr. O'Boyle, when you say
3 safety regulations, are you talking about the PUC's safety
4 regulations, or some other --

5 MR. O'BOYLE: The Department of Transportation safety
6 regulations, Your Honor.

7 JUDGE HERSKOVITZ: Okay. Thank you.

8 THE WITNESS: Well, when I said I understood them, I
9 maybe don't understand any specific, you know, regulation. I
10 understand general safety regulations for having vehicles
11 inspected and equipment-wise, you know, brakes and things like
12 that and all the other driver safety regulations.

13 BY MR. O'BOYLE:

14 Q What other driver safety regulations are you
15 referring to?

16 A Stop at red lights, stop at --

17 Q I see. You're talking following the rules of the
18 road?

19 A Yes. I'm familiar with those safety regulations.

20 Q But, for instance, you do not know how long a driver
21 can be on duty in terms of providing service?

22 A No. That situation has never come up for me. I've
23 never had to be on the road for any period of time, so --

24 Q With respect to inspections of vehicles, what's your
25 understanding as to that? How often must a vehicle be

1 inspected?

2 A Whenever the sticker expires and it requires a new
3 inspection sticker.

4 Q So you're referring to just sticker inspections, is
5 that right?

6 A Yes.

7 Q Do you have any knowledge of what is required with
8 respect to safety checks of the vehicle -- not inspections,
9 but safety checks of the vehicle -- how often that should be
10 done?

11 A No. But I'm sure that Mr. Fink would advise me if
12 there are any special checks of equipment once I'm involved in
13 the business. As I say, he's available to me as an advisor.

14 Q Your agreement of sale with Mr. Fink doesn't require
15 him in any way to render any services for any length of time,
16 does it?

17 A No. It's just a gentleman's agreement. He seems
18 like an honorable man.

19 Q What about screening of drivers? Do you know what's
20 required in terms of when you do hire a driver?

21 A I, again, would learn that when I come to that point.
22 I'm not, you know, anticipating that in the new future.

23 Q So except for your knowledge of a sticker having to
24 be placed on the vehicle and the vehicle inspected on a yearly
25 basis, you don't have any specific knowledge of any of the

1 safety regulations that a motor carrier would be subject to,
2 is that right?

3 A No. That's right. I haven't been -- haven't had
4 need of any of that information.

5 MR. O'BOYLE: That's all the questions I have. Thank
6 you, sir.

7 JUDGE HERSKOVITZ: Mr. Barry, do you have anything you
8 want to clarify or add to what you've just testified to?

9 THE WITNESS: No. I think I stated everything to the
10 best of my knowledge.

11 JUDGE HERSKOVITZ: Do you have any copies of the -- your
12 registration under -- for a fictitious name?

13 THE WITNESS: Just the one copy.

14 MR. O'BOYLE: Your Honor, that's the signed original
15 that would be submitted to the Corporation Bureau. It's
16 stamped and then returned to the applicant.

17 JUDGE HERSKOVITZ: I'd like to see that. I think we
18 should make this an exhibit, just for record purposes.

19 THE WITNESS: Maybe this letter should go with it. It
20 states that no certificate is issued, and then they just
21 stamped it on the bottom.

22 JUDGE HERSKOVITZ: We'll mark this as applicant
23 Exhibit 3.

24 (Applicant's Exhibit No. 3 was produced and
25 marked for identification.)

1 JUDGE HERSKOVITZ: Do you have any objection to the
2 admission of this document, Mr. O'Boyle?

3 MR. O'BOYLE: No, Your Honor, none whatsoever.

4 JUDGE HERSKOVITZ: We'll admit that as well, and
5 following the hearing, we'll have copies made. Nothing
6 further, Mr. Barry?

7 THE WITNESS: No.

8 JUDGE HERSKOVITZ: Okay. Mr. O'Boyle.

9 MR. O'BOYLE: Your Honor, I'd like to call to the stand
10 Mr. Patrick Kissel.

11 JUDGE HERSKOVITZ: Mr. Kissel, you can just stay there.
12 Please rise, though.

13 PATRICK KISSEL, having been duly sworn, was examined
14 and testified as follows:

15 JUDGE HERSKOVITZ: Be seated. Please speak a little
16 louder so the court reporter can hear you.

17 THE WITNESS: Yes, sir.

18 MR. O'BOYLE: Your Honor, as a preliminary matter, I
19 just want to inform Mr. Barry that you will have a chance to
20 ask Mr. Kissel any questions further clarifying any of his
21 testimony, just like I asked you questions about your
22 testimony.

23 JUDGE HERSKOVITZ: You may want to take notes. You
24 don't have to. I'm just saying if there's anything, any
25 question that you want answered during the course of his

1 testimony, just make a note of it and then you'll get your
2 opportunity following his testimony.

3 MR. BARRY: I see.

4 DIRECT EXAMINATION

5 BY MR. O'BOYLE:

6 Q Mr. Kissel, would you state your name and business
7 address, please?

8 A Patrick Kissel, Sr., 3741 Colby Street,
9 Pittsburgh, 14.

10 Q Mr. Kissel, are you a certificated motor carrier?

11 A Yes, sir.

12 Q And what is the docket number that you have been
13 assigned by the PUC?

14 A A-99886.

15 MR. O'BOYLE: Your Honor, I'd like to have marked as
16 protestant's Exhibit No. 3 a two page document.

17 JUDGE HERSKOVITZ: That will be so marked.

18 (Protestant's Exhibit No. 3 was produced and
19 marked for identification.)

20 BY MR. O'BOYLE:

21 Q Before we get to protestant's Exhibit 3, Mr. Kissel,
22 I want you to explain for us basically your history involving
23 the house moving industry. How long have you been involved in
24 that industry?

25 A I've been employed since 1957. I've been in business

1 since 1976, licensed on my own.

2 Q As far as the licensing, are you referring to the
3 operating rights you received from the PUC?

4 A Yes, sir.

5 Q If you look at what's been marked as protestant's
6 Exhibit 3, would you describe what that document is?

7 A This is a copy of my operating authority.

8 Q Is this taken from the tariff that you have on file
9 with the PUC?

10 A Yes, sir.

11 Q And when were these operating rights issued to you?

12 A 1976.

13 Q Since 1976, have you been operating under these
14 rights?

15 A Yes, sir.

16 Q Would you describe briefly for us the nature and
17 extent and the scope of these rights; that is, as far as what
18 you can do?

19 A We're a household good carrier, office furniture. We
20 have property rights. The household goods extend between
21 points in Allegheny County to points in Pennsylvania. The
22 property rights are ten miles from the Courthouse. We have
23 rights for Action Industries, all Kraft Cheese.

24 Q Am I correct that the bulk of your business involves
25 the household goods?

1 A Yes, sir.

2 Q And do you operate within Allegheny County pursuant
3 to these rights?

4 A Yes, sir.

5 Q Do you go outside of Allegheny County as well?

6 A Yes, sir.

7 Q Mr. Kissel, where are your facilities located?

8 A We have two warehouses.

9 Q Where are they?

10 A One's 2100 East Ohio Street, Millvale Industrial
11 Park.

12 Q What type of facility is that?

13 A Warehouse and storage.

14 Q How big?

15 A Around 8,000 square feet.

16 Q Where is the other one?

17 A It's 200 Lincoln Avenue, Millvale again. It's about
18 7,000 square feet.

19 Q And what do you do with these warehouses?

20 A Store household goods and office furnishings.

21 Q With respect to the type of equipment you operate,
22 how many vehicles do you operate?

23 A We have two, Mercedes Benz and an '88 Ford van.

24 Q What year is the Mercedes Benz?

25 A The oldest one is an '87 -- I'm sorry -- '86, and the

1 newest one is an '87.

2 Q So you have two Mercedes Benz, is that right?

3 A Yes, sir.

4 Q What size of equipment is the 1986?

5 A 26 foot, 2,000 cubic feet each.

6 Q Do you own this equipment?

7 A Yes, sir.

8 Q Is it titled in your own individual name?

9 A Patrick A. Kissel, Sr.

10 Q How many employees do you have?

11 A It varies from four to 30.

12 Q And why does it vary?

13 A We have government contracts.

14 Q You do work for the government as well?

15 A Yes, sir.

16 Q So that depending upon the amount of business that
17 you have at any one time would determine how many employees
18 are on your payroll?

19 A Yes, sir.

20 JUDGE HERSKOVITZ: Off the record.

21 (A discussion was held off the record.)

22 JUDGE HERSKOVITZ: On the record.

23 BY MR. O'BOYLE:

24 Q Mr. Kissel, as far as your operating authority is
25 concerned, is it presently in effect?

1 A Yes, sir.

2 Q There's been no suspension, voluntary or otherwise?

3 A No, sir.

4 Q And do you actively hold yourself out for business
5 under your operating authority?

6 A Yes, sir.

7 Q With respect to the applicant in this proceeding,
8 could you explain for us what contact, if any, you have had
9 with the applicant?

10 A I made several phone calls within the last week of
11 last month.

12 Q All right. Let's stop there. From what date? Just
13 use approximate dates.

14 A The last whole -- the last week of the month.

15 Q Okay. So from the last week, let's say, August, the
16 last week in August you're referring to?

17 A Yes, sir.

18 Q You made several phone calls. What prompted these
19 phone calls?

20 A Illegal advertising.

21 Q What do you mean by that?

22 A Well --

23 JUDGE HERSKOVITZ: Well, let's just -- I don't know if
24 you can say illegal. But just on the record, that's your
25 impression that it is illegal, is that correct?

1 THE WITNESS: All right. Yes, sir.

2 JUDGE HERSKOVITZ: Okay. With that in mind, you may
3 continue.

4 THE WITNESS: Okay.

5 BY MR. O'BOYLE:

6 Q What prompted the phone calls?

7 A We check out all advertisers who are not using a PUC
8 number.

9 Q And why is that?

10 A Because I represent a bunch of local movers and we
11 have been working on Penn-Del, Rueben Donnelly, the Penny
12 Saver, Green Sheet. We're trying to force them to put the PUC
13 number in. It's a new ruling that came out and we try to
14 force them into using it.

15 Q All right. Now, when you say you check out these
16 newspapers, you mean do you specifically look for ads
17 involving household goods?

18 A Yes, sir.

19 Q All right. So anytime you see an ad involving
20 household goods and a motor carrier and that company
21 advertising doesn't have a PUC, what do you do?

22 A File a complaint.

23 Q File a complaint with who?

24 A Public Utilities Commission.

25 JUDGE HERSKOVITZ: Did you say it was a new ruling by

1 the PUC that they have to advertise their PUC number? Is that
2 what you're saying?

3 THE WITNESS: Yes, sir. Yes, sir.

4 JUDGE HERSKOVITZ: Thank you.

5 BY MR. O'BOYLE:

6 Q So it's your understanding that any common carrier
7 which advertises its services, or anyone who advertises its
8 services to haul household goods, must include its PUC number
9 in its advertisement?

10 A All common -- offering themselves out as a common
11 carrier must display the number.

12 Q Okay. You mentioned that you filed complaints. Have
13 you filed complaints against other carriers?

14 A Yes, sir.

15 Q And have you ever filed a complaint against Mr. Barry
16 or ABC-EZ Moving?

17 A Yes, sir.

18 MR. O'BOYLE: Your Honor, I don't really intend to mark
19 this as an exhibit because I don't think it's necessary. Mr.
20 Barry, you're welcome to take a look at it. This is what Mr.
21 Kissel discussed about the complaint he filed.

22 JUDGE HERSKOVITZ: Off the record.

23 (A discussion was held off the record.)

24 BY MR. O'BOYLE:

25 Q Mr. Kissel, I'll show you what appears to be a letter

1 from you to the PUC. Was this the letter that you sent to the
2 PUC in connection with the complaint?

3 A Yes, sir.

4 Q Just very briefly, what was the complaint about? Who
5 was named in the complaint? Let's address that issue first.

6 A There were several carriers. Four carriers exactly.

7 Q All right. Which one of those carriers would be
8 involved here?

9 A B, Moving Are You.

10 Q So where did you get that name from?

11 A Penny Saver.

12 Q I show you what's been marked as protestant's Exhibit
13 1 and the ad there that we discussed with Mr. Barry at the
14 bottom of the page is Moving Are You. Is that where you got
15 that name from --

16 A Yes, sir.

17 Q -- from that ad? So as far as you know, that was the
18 name of the company that was offering that service?

19 A Yes, sir.

20 Q And that's why you named it in the complaint?

21 A Exactly.

22 Q What was your complaint? For what were you
23 complaining about?

24 A Illegal advertising without a PUC number, or
25 operating without an authority.

1 Q When was that complaint filed with the PUC?

2 A It was filed in March.

3 Q This year?

4 A And it was lost, yes, sir.

5 JUDGE HERSKOVITZ: Just for clarification, this
6 complaint, it was not -- was this a formal complaint?

7 THE WITNESS: Yes, sir, on behalf, I think, of eight
8 carriers and myself.

9 JUDGE HERSKOVITZ: And it was done in complaint form?

10 THE WITNESS: Yes, sir.

11 JUDGE HERSKOVITZ: Is that correct?

12 THE WITNESS: Yes, sir, and it was lost.

13 JUDGE HERSKOVITZ: The complaint was lost?

14 THE WITNESS: Jerry Rich's office in Harrisburg signed
15 for it, but they lost it.

16 BY MR. O'BOYLE:

17 Q Do you have the signed receipt for that complaint?

18 A Yes, sir.

19 Q What happened when you checked on the status of the
20 complaint?

21 A They couldn't find it so I had to redo it and had Tom
22 Craft -- or -- yeah, he signed it. He received it again, a
23 month later.

24 Q So nothing has happened in respect to that complaint
25 since then, is that right?

1 A Never heard from them.

2 JUDGE HERSKOVITZ: What were the dates again?

3 THE WITNESS: March 20th of '88, was the first one, and
4 then 4/21/88 again.

5 JUDGE HERSKOVITZ: Thank you.

6 BY MR. O'BOYLE:

7 Q There's been no docket number assigned to any of
8 those complaints?

9 A Not to my knowledge.

10 Q Now, we started talking about phone calls that you
11 had made to the complainant since the end of August of this
12 year.

13 A Yes, sir.

14 Q I'd like you to explain a little bit about the nature
15 of those phone calls and why you made them.

16 A I wanted to see just what the operation was. The
17 Penny Saver found a way of getting around -- how did they say
18 it. As long as they can put truck rental in, they do not have
19 to put a PUC number in the ad, and I just wanted to check and
20 see what was going on.

21 Q That's the Penny Saver has the truck rental?

22 A They're sales, sir. That's how they get around
23 listing the number.

24 Q So you saw the ad in the Penny Saver indicating truck
25 rental. For instance, the one I believe was in August 29th,

1 last week in August for this year, which is marked
2 protestant's Exhibit 2. You saw that ad and what did you do?

3 A I called them up and quizzed them.

4 Q Who did you call?

5 A Mr. Barry.

6 Q What number did you call?

7 A 766 number.

8 Q Would you read that number for me, please?

9 A You'll have to excuse me. I have a hell of a hard
10 time -- hard time seeing with these glasses. I can't make out
11 the second part.

12 Q You called that 766 exchange number that's in that
13 ad?

14 A Yes, sir.

15 Q Who answered the phone?

16 A Mr. Barry.

17 Q How do you know it was Mr. Barry?

18 A I asked him as the conversation went on who am I
19 speaking to and he told me.

20 Q What did you ask him for? What was the nature of the
21 conversation?

22 A I wanted to know his hourly rates for moving, and he
23 told me he had -- name the items I had in the house and he
24 could tell me what it costs, and I said don't you have a
25 tariff or an hourly rate. He said no, he could tell me

1 exactly what it costs. I said don't you come out. He said
2 no. Come out to give an estimate.

3 Q Did he indicate to you he was only going to provide
4 the equipment for you to do the moving yourself?

5 A No, sir. This is one of several phone calls. My son
6 made some, my wife made some. As far as the truck rental
7 thing goes, he said we could have a truck with the driver --
8 this wasn't my conversation. This was one of my family's. We
9 could either have the truck with driver or without the driver,
10 but he prefers he could do the move because he is
11 professional.

12 Q Let's stick to this first conversation that you had
13 with him. Did he ever give you an hourly rate as far as how
14 much it would cost?

15 A No, sir.

16 Q Did he say anything to you, again, about you either
17 providing a driver or about providing the labor to do the
18 moving yourself?

19 A No, sir.

20 Q He wanted to know how many pieces of furniture there
21 were to be moved, is that right?

22 A Yes, sir, and he could give me a fixed price.

23 Q So it would be a lump sum figure?

24 A Yes, sir.

25 JUDGE HERSKOVITZ: Approximately when did you make this

1 call?

2 THE WITNESS: Right toward the end of the month, sir.

3 JUDGE HERSKOVITZ: The end of August?

4 THE WITNESS: Yes, sir.

5 BY MR. O'BOYLE:

6 Q That was the first call you made to him. What
7 transpired on the second call?

8 A That was the truck rental thing. My son quizzed him
9 on that.

10 Q Your son called him pursuant to your instructions?

11 A Yes, sir.

12 Q Does your son work in your business?

13 A Yes, sir.

14 Q What is his name?

15 A William.

16 Q And what is his role in the company?

17 A He's driver. He's chief cook and bottle washer.

18 Q But he called this ad again pursuant to your
19 instructions?

20 A Yes, sir.

21 Q What was the nature of the conversation there?

22 A He was insisting on renting a truck. Mr. Barry said
23 he could have it with the driver or without the driver. That
24 -- he told him that he has professional people, it would be
25 better for him to do the move. My son acted like he was a

1 little leery of even driving a truck.

2 Q So that -- was it Mr. Barry he talked to or someone
3 else?

4 A Mr. Barry.

5 Q Mr. Barry represented to him that it would be better
6 if Mr. Barry provided the driver for the truck?

7 A Yes, sir.

8 Q Did he give him any type of hourly rate?

9 A No. He just told him he'd have to book in advance
10 because he was very busy.

11 Q Were there any other phone conversations between you
12 or members of your operation and Mr. Barry?

13 A My wife made a couple calls, but I don't really
14 recall exactly what was said. It was more or less to see if
15 he was performing household moves. It was probably the same
16 feedback that I got.

17 Q Is this type of advertising, where you do not have a
18 PUC number or a PUC number is not listed in the advertisement,
19 is that common in your industry?

20 A Would you repeat that again?

21 Q Is advertising to haul household goods without a PUC
22 number common in your industry? Do you see many ads like
23 that?

24 A We're weeding away a lot of them. We're getting rid
25 of a lot, now that we have Donnelley Directory going along

1 with us and Penn-Del. We're working on the Pittsburgh
2 Catholic, a few other small publications.

3 Q Do you lose business to those type of operators?

4 A Absolutely.

5 Q And is that one of the reasons why you're opposing
6 this application?

7 A Well, on -- yes, yes.

8 Q Do you feel that Mr. Barry's actions in holding
9 services out in such a way violates the PUC's regulations?

10 A Absolutely.

11 Q And is it also not your position that that reflects
12 upon his fitness to be granted the operating rights to be
13 involved in this proceeding?

14 A Yes, sir.

15 JUDGE HERSKOVITZ: Well, I think we're dealing with a
16 few legal conclusions here, but --

17 MR. O'BOYLE: Well, Your Honor, I just wanted to have
18 him state it on the record.

19 JUDGE HERSKOVITZ: That's okay. I'll sort it out. I'm
20 a little unclear. You say you're protesting this application
21 because -- and this is where I'm not clear -- because of ads
22 like this of people, movers who are not certificated. Is that
23 the reason you're protesting this specific application? Maybe
24 you can expand on that for me. I'm unclear as to your reason.

25 THE WITNESS: Well, for one thing, this fella is right

1 in my backyard and I feel that it is impossible to compete
2 against him when he has no rules, no tariff, nothing to go by.

3 JUDGE HERSKOVITZ: Okay.

4 THE WITNESS: I have to live by my tariff. Therefore, I
5 can't compete at all. He can cut any kind of deal he wants
6 and I'm stuck.

7 JUDGE HERSKOVITZ: I mean, under that reasoning, isn't
8 your remedy to issue a complaint against him, rather than to
9 -- with that reason in mind because he's -- you feel he's
10 operating illegally, shouldn't it have been a complaint,
11 rather than opposing his application?

12 MR. O'BOYLE: Well, Your Honor, I think you're also
13 asking for legal conclusions as well, and I can better speak
14 for Mr. Kissel in terms of what legal conclusions or legal
15 position he would be in, in terms of opposing the application.

16 JUDGE HERSKOVITZ: What he said was that -- because of
17 the illegal -- well, quote, illegal operation of Mr. Barry and
18 others, and especially Mr. Barry's in his backyard, Mr. Barry
19 is competing against Mr. Kissel without -- meaning Mr. Barry
20 doesn't have a PUC certificate and no tariff, therefore,
21 competition to Mr. Kissel.

22 So I'm just trying to see if there are other reasons
23 besides that one. I mean, to me, and again this will be a
24 legal matter, to me I get the impression that that isn't
25 necessarily a reason to oppose somebody who's going to become,

1 quote, legal, just because he's operating -- he was operating
2 illegally.

3 MR. O'BOYLE: Your Honor, if I may, I think it does go
4 to the issue of fitness.

5 JUDGE HERSKOVITZ: It goes to the issue of fitness.
6 Yes, it does go to the issue of fitness. It's just the way it
7 came across to me was that he was just -- because he's
8 competing with me and he's illegal, well then, I'm going to
9 oppose his application. Almost as though, well, I'm going to
10 teach him a lesson type of thing. I mean, that's the way it
11 came across to me.

12 THE WITNESS: No, sir. If I may explain. A group of
13 movers got together because these guys were coming out of the
14 woodwork and they represented me to be kind of the loud mouth
15 of the bunch, and I would follow up on their complaints. We
16 filed many, many of them and we've been very successful. Not
17 just Mr. Barry. We're trying to get rid of some of these
18 illegal operators. There's nothing personal to this man at
19 all. I've never met him in my life.

20 JUDGE HERSKOVITZ: I understand what you're saying.

21 THE WITNESS: The thing is, when I transferred my
22 rights, I didn't advertise. I didn't move. I sat there like
23 a little angel till everything was through because I
24 researched and I knew what the law was. I figure ignorance is
25 no excuse of the law.

1 JUDGE HERSKOVITZ: I understand what you're saying. I
2 just was thinking out loud.

3 THE WITNESS: You kind of thought it was a personal --

4 JUDGE HERSKOVITZ: Well, no, I didn't think it was
5 personal. It's just -- yes, operating illegally goes to the
6 issue of fitness in an application procedure. I mean, there's
7 no question about that. It's just that it came across to me
8 as being, I just want to stop him from operating illegally.
9 That's the impression I got and that's why I said, well then,
10 you should file a complaint. I mean, now he wants to operate
11 legally. If you just wanted him to stop operating illegally,
12 then you shouldn't be protesting his application.

13 THE WITNESS: No, sir. I feel he is unfit and would
14 continue to be unfit if he was granted the authority.

15 JUDGE HERSKOVITZ: Maybe I'm off base, but that's the
16 way it came across.

17 THE WITNESS: I'm sorry it came across that way.

18 JUDGE HERSKOVITZ: Okay. Let's continue.

19 BY MR. O'BOYLE:

20 Q Mr. Kissel, assuming that Mr. Barry's testimony with
21 respect to the suspension of Mr. Fink's operating rights is
22 correct, and that's the only evidence that we have here in
23 this proceeding, isn't it true that if these rights are
24 granted, that there's going to be one additional competitor in
25 the marketplace who presently does not exist or is presently

1 not operating?

2 A Absolutely.

3 Q What would you say the nature of the competition is
4 in the household moving industry right now?

5 A We have too many of them.

6 MR. O'BOYLE: That's all the questions I have.

7 JUDGE HERSKOVITZ: Mr. Barry, do you have any questions?

8 MR. BARRY: No. Just that I commend Mr. Kissel for his
9 efforts to get the gypsies out of the Green Sheet. That's one
10 of the things that prompted my decision to get into the
11 business, because with that kind of competition out of the
12 way, I think we can all make some money legally, and that's my
13 interest, making money legally, not being a gypsy or
14 undercutting somebody that's in my market.

15 JUDGE HERSKOVITZ: You have no questions, then, for --

16 MR. BARRY: No. Other than that.

17 JUDGE HERSKOVITZ: Okay. Thank you, Mr. Kissel. You're
18 excused.

19 THE WITNESS: Did you want to look at this?

20 JUDGE HERSKOVITZ: No.

21 MR. O'BOYLE: Your Honor, I move for the admission of
22 protestant's Exhibits 1, 2 and 3.

23 JUDGE HERSKOVITZ: Do you have any objections, Mr.
24 Barry, to the admission of protestant's exhibits, which were
25 your two ads and Mr. Kissel's operating authority from the

1 PUC?

2 MR. BARRY: No.

3 JUDGE HERSKOVITZ: Okay. They're so admitted. Anything
4 else, Mr. O'Boyle?

5 MR. O'BOYLE: No, Your Honor, that's all.

6 JUDGE HERSKOVITZ: Do you have anything further to say,
7 Mr. Barry?

8 MR. BARRY: No. Just that I have no knowledge of those
9 phone calls that Mr. Kissel refers to.

10 JUDGE HERSKOVITZ: You don't recall speaking to Mr.
11 Kissel?

12 MR. BARRY: No, not to him, his son or his wife, or
13 anyone in that nature.

14 JUDGE HERSKOVITZ: Let me ask you, Mr. Barry, have you
15 had any calls for your service? If you're approved by the
16 PUC, are there potential customers for your service?

17 MR. BARRY: Just, you know, whatever business is out
18 there. I feel that I could get a share of it, yes. As Mr.
19 Kissel --

20 JUDGE HERSKOVITZ: You haven't had any specific calls
21 from people -- or not calls, but contacts with anybody saying
22 I'd use your service if you had --

23 MR. BARRY: No, I haven't solicited anyone.

24 JUDGE HERSKOVITZ: Okay. Anything else, then, Mr.
25 O'Boyle?

1 MR. O'BOYLE: No, Your Honor, that's all.

2 JUDGE HERSKOVITZ: Does anybody want to make any final
3 statements before we adjourn?

4 MR. BARRY: No.

5 MR. O'BOYLE: Your Honor, just briefly, I think we've
6 already discussed the fitness issue. I think another real
7 issue here is dormancy as well. The uncontroverted testimony
8 of Mr. Barry himself is that these operating rights have not
9 been used for at least a year, and there is absolutely no
10 evidence to indicate how long it has been since Mr. Fink has,
11 in fact, conducted operations under those operating rights.
12 We certainly cannot prove it negative. He would have been the
13 proper witness to be here to testify as to the extent of his
14 past operations, as well as any operations up through the
15 present. So I think there's a dormancy issue also to be
16 addressed, in addition to the fitness issue which we've
17 already discussed.

18 JUDGE HERSKOVITZ: Do either of you want to file a brief
19 on this? It's up to you. I mean, I'm not requiring one. I
20 don't know, Mr. Barry, if you know what a brief is.

21 MR. BARRY: Not exactly in this regard, no.

22 JUDGE HERSKOVITZ: Some of the things we discussed here,
23 such as your fitness, whether you've been operating, quote,
24 legally or illegally, those are the things that you argue.
25 It's argument in a brief. It's just, basically, your argument

1 on why you should -- you should get the authority that you
2 request, and it is based on legal principles. Now, I don't --
3 you know, it's up to you whether you want to. Mr. O'Boyle, do
4 you want to file a brief? I leave that up to you.

5 MR. O'BOYLE: I'd have to discuss it with my client,
6 Your Honor. I'm not right now in a position to be able to say
7 yes or no.

8 JUDGE HERSKOVITZ: Okay. Why don't I do this: After we
9 get the transcript back, why don't I just issue a briefing
10 schedule. If you don't intend to file a brief, send a letter
11 to me, and the same applies to you, Mr. Barry. You'll get a
12 letter from me giving a date when briefs are to be filed. It
13 will also indicate in that letter what sections of the Public
14 Utility Commission regulations you should look at as to what
15 the contents of a brief -- what's in a brief. Notify me one
16 way or the other, whether you're going to file a brief after
17 you get my letter.

18 Or let's put it this way: If you don't notify me, I'll
19 assume that a brief will be coming within the time period that
20 I set, and if you don't want to file one, please notify me as
21 soon as possible.

22 MR. O'BOYLE: Very good.

23 JUDGE HERSKOVITZ: Any further questions, then?

24 MR. BARRY: No.

25 JUDGE HERSKOVITZ: Okay. Thank you very much.

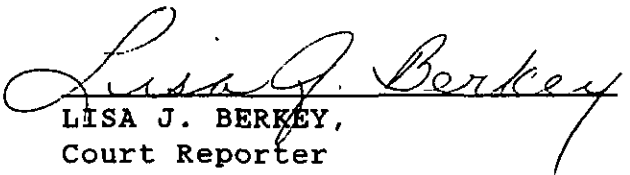
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MR. O'BOYLE: Thank you, Your Honor.

JUDGE HERSKOVITZ: This hearing is adjourned.

(The hearing adjourned at 12:30 o'clock p.m.)

I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me during the hearing of the within cause, and that this is a true and correct transcript of the same.


LISA J. BERKEY,
Court Reporter

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