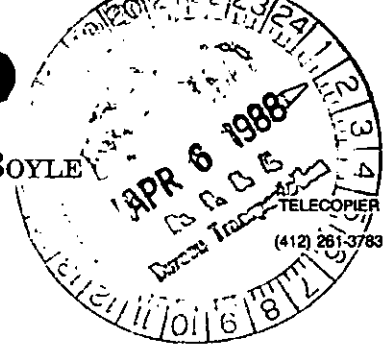


LAW OFFICES

WICK, STREIFF, MEYER, METZ & O'BOYLE

1450 TWO CHATHAM CENTER
PITTSBURGH, PA 15219
(412) 765-1600

HENRY M. WICK, JR.
CHARLES J. STREIFF
CARL F. MEYER
LEROY L. METZ, II
DAVID M. O'BOYLE
VINCENT P. SZELOGO
LUCILLE N. WICK
PATRICIA LIPTAK-McGRAIL



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APR 4 1988

SECRETARY'S OFFICE
Public Utility Commission

April 4, 1988

Re: Roland T. Barry,
t/d/b/a ABC-EZ Moving Co.
Docket No. A-00108005
Our File 3793.501

CERTIFICATE OF MAILING

Mr. Jerry Rich, Secretary
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17120

FILE

Dear Mr. Rich:

We enclose for filing with the Commission the signed original of Protest on behalf of Patrick Kissel, Sr. in opposition to the above-captioned application. A copy of this Protest has been served upon applicant.

There is also enclosed United States Postage Form 3817 Certificate of Mailing. Pursuant to Section 1.11 of the Rules of Administrative Practice and Procedure (52 Pa. Code §1.11), this Protest is deemed to be filed on the date deposited in the United States Mail.

Please acknowledge receipt of the enclosed on the duplicate copy of this letter of transmittal and return it to the undersigned in the stamped, self-addressed envelope provided for that purpose.

Sincerely yours,

WICK, STREIFF, MEYER, METZ & O'BOYLE

David M. O'Boyle

vr

Enclosures

cc: Mr. Roland T. Barry (w/encl.)
ABC-EZ Moving Co.
451 Orchard Avenue
Bellvue, PA 15202

Mr. Patrick Kissel, Sr. (w/encl.)

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION



ROLAND T. BARRY, t/d/b/a ABC-EZ MOVING CO.

DOCKET NO. A-00108005

APR 4 1988

PROTEST ON BEHALF OF
PATRICK KISSEL, SR.

SECRETARY'S OFFICE
Public Utility Commission

AND NOW, comes Patrick Kissel, Sr. (Protestant) and protests the above application and in support thereof states as follows:

1. The name, business address and telephone number of the Protestant are as follows:

Patrick Kissel, Sr.
3741 Colby Street
Pittsburgh, PA 15214

FILE

2. The name, business address and telephone number of Protestant's attorney are as follows:

David M. O'Boyle, Esquire
WICK, STREIFF, MEYER, METZ & O'BOYLE
1450 Two Chatham Center
Pittsburgh, PA 15219
412-765-1600

3. Protestant holds authority in conflict with this transfer application and the relevant portion of Protestant's authority is summarized in Appendix "A" attached hereto.

4. Protestant submits that applicant Roland T. Barry has willfully and intentionally violated the Commission's regulations repeatedly by committing the following acts:

A. Conducting for-hire motor carrier operations in transporting household goods and other commodities without obtaining the required operating rights.

B. Advertising to provide for-hire motor carrier operations under fictitious names, such as "Moving Are You," "Better Deal Move," without including in the advertisement a reference to the PUC operating rights authorizing him to provide for-hire motor carrier service.

5. Protestant has filed a formal Complaint against Applicant in regard to these illegal activities, and this Complaint is presently pending before the Commission.

6. Applicant is not fit operationally, financially or otherwise to be certificated as a motor common carrier, and Protestant submits that approval of this transfer application would not be in the public interest.

7. Protestant is not aware of any restriction at this time which would satisfy its interests in opposing this transfer application.

8. Pursuant to Section 333(c) of the Public Utility Code (66 Pa. C.S.A. §333(c)), Protestant hereby requests a list of the witnesses expected to testify in the above-entitled proceeding together with the subject matter of their anticipated testimony.

Respectfully submitted,

WICK, STREIFF, MEYER, METZ & O'BOYLE



David M. O'Boyle
1450 Two Chatham Center
Pittsburgh, PA 15219
(412)765-1600

Attorneys for Protestant
Patrick Kissel, Sr.

APPENDIX A

ROLAND T. BARRY, t/d/b/a ABC-EZ MOVING CO.

DOCKET NO. A-00108005

Protestant Patrick Kissel, Sr. holds common carrier authority from the Commission at Docket No. A. 99886 which authorizes him into provide the following service:

1. To transport, as a Class B carrier, property between points in the city of Pittsburgh, Allegheny County;
2. To transport, as a Class C carrier, property from the city of Pittsburgh, Allegheny County, to points within 10 miles by the usually traveled highways of the City-County Building in said city;

Provided that Paragraphs 1 and 2 above are subject to the following condition:

That no right, power or privilege is granted to transport any property except household goods in use, to or from points on Route 8, Mt. Royal Boulevard and Route 19.

3. To transport, as a Class D carrier, household goods and used furniture between points in the county of Allegheny;
4. To transport, as a Class D carrier, household goods and used furniture from points in the county of Allegheny to other points in Pennsylvania, and vice versa;

Provided that Paragraphs 3 and 4 above are subject to certain conditions.

PENNSYLVANIA PUBLIC UTILITY COMMISSION



RECEIPT

The addressee named hereunder has paid Pennsylvania Public Utility Commission for the following bill, subject to final collection of check or money order tendered for such payment.

Roland T. Barry, t/a
ABC - EZ Moving Co.
451 Orchard Ave.
Bellevue, PA 15202

Date April 5, 1988

CR 128311 A

DOCUMENT
FOLDER

In re application of Roland T. Barry, t/a
ABC - EZ Moving Co.
A-00108005.....\$125.00

DOCKETED
APR 6 1988

Revenue account 001780-017601-102 (ck)
ck 7283276 \$125.00
Checks _____ Currency _____
Utility account 50:26

C. Joseph Meisinger
For Department of Revenue

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17120
July 21, 1988

In Re: A-00108005

(See attached list)

Application of 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.

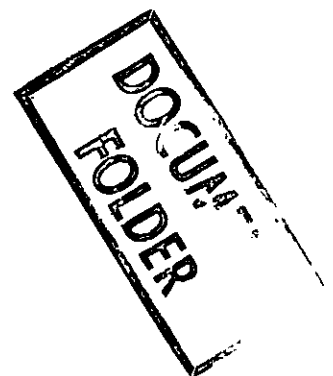
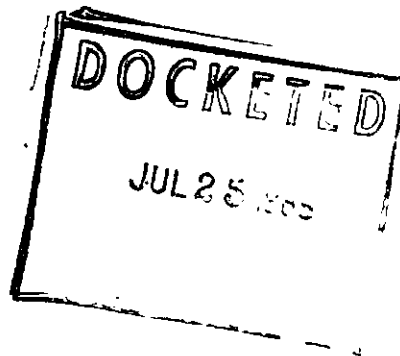
NOTICE

This is to inform you that an initial hearing on the above captioned case will be held Wednesday, September 7, 1988, at 10:00 a.m., in the 11th Floor Hearing Room, Pittsburgh State Office Building, 300 Liberty Avenue, Pittsburgh, Pennsylvania.

The presiding officer in this proceeding will be Administrative Law Judge Richard Herskovitz. Judge Herskovitz can be contacted at 1103 Pittsburgh State Office Building, 300 Liberty Avenue, Pittsburgh, Pennsylvania 15222; telephone (412) 565-3550.

If you intend to file exhibits, please be advised that two copies of all hearing exhibits to be presented into evidence must be submitted to the Reporter and an additional copy should be furnished to the presiding officer and each party of record.

cc: Judge Herskovitz
Mrs. Pappas
Mrs. Howell
Mr. Bramson
File Room



David W. Fair
Transportation Consultant
8984 Eastview Drive
Allison Park, PA 15101

Roland T. Barry, t/a
ABC - EZ Moving Co.
451 Orchard Avenue
Bellvue, PA 15202

David M. O'Boyle, Esquire
Wick, Streiff, Meyer, Metz & O'Boyle
1450 Two Chatham Center
Pittsburgh, PA 15219

APPEARANCE SHEET

ALJ HEARING REPORT

DOCKET NO. A-00108005

CASE NAME Roland T. Barry, t/d/b/a

ABC - EZ Moving Co.

HEARING LOCATION Pittsburgh, PA.

HEARING DATE September 7, 1988

ALJ Herskovitz

CHECK THOSE BLOCKS WHICH APPLY:

Hearing held YES NO

Testimony taken YES NO

Hearing concluded YES NO

Further hearing needed YES NO

Estimated add'l days _____

RECORD CLOSED YES _____ NO

Date _____

Briefs to be filed YES NO

Date _____

BENCH DECISION YES _____ NO

REMARKS: Briefing schedule to be issued

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SEP 08 1988

Office of A. L. J.
Public Utility Commission

DOCUMENT FOLDER

DOCKETED

SEP 13 1988

NAMES, ADDRESSES AND TELEPHONE NUMBERS OF PARTIES OR COUNSEL OF RECORD
PLEASE PRINT CLEARLY
INCOMPLETE INFORMATION MAY RESULT IN DELAY OF PROCESS

NAME and TELEPHONE NUMBER	ADDRESS	APPEARING FOR
<i>Roland T. Barry</i> Telephone No. (412) 766-3026	451 ORCHARD AVE. City: <i>PGH.</i> State: <i>PA.</i> Zip: <i>15202</i>	ROLAND T. BARRY, T/A ABC-EZ MOVING CO. 451 ORCHARD AVE. BELLEVUE, PA. 15202
<i>David M. J. Boyle</i> Telephone No. (412) 765-1600	1450 Two Chatham Center City: <i>Pittsburgh</i> State: <i>PA</i> Zip: <i>15219</i>	Patrick Kissel, Sr. Protestant
Telephone No. ()	City State Zip	

CHECK THIS BOX IF ADDITIONAL PARTIES OR COUNSEL OF RECORD APPEAR ON BACK.

Livia J. Berkey
Reporter



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
PITTSBURGH STATE OFFICE BUILDING
300 LIBERTY AVENUE
PITTSBURGH, PENNSYLVANIA 15222

RECEIVED

October 4, 1988

OCT 05 1988

REPLY PLEASE
REFER TO OUR FILE

Office of A. L. J.
Public Utility Commission

RECEIVED

TO ALL PARTIES OF RECORD

In re: A-108005

OCT 6 1988

Application of Roland T. Barry, t/d/b/a ABC-EZ Moving
SECRETARYS OFFICE
Public Utility Commission

The transcript of testimony taken in the above entitled proceeding indicates that the parties will file briefs.

In accordance with the Commission's Rules of Practice, main briefs shall be filed on or before November 3, 1988. Reply briefs, if any, shall be filed on or before November 23, 1988. If briefs are not received within the allotted time, they shall not be accepted for filing, except by special permission of the presiding officer. Your main briefs should be concise and must comply with 52 Pa. Code §5.501.

An original and nine (9) copies of each main and reply brief must be filed with the Commission in accordance with 52 Pa. Code §1.4 and in care of the New Filing Section, Room B-18. Also, one copy must be served on the presiding Administrative Law Judge and two copies on each party of record.

Very truly yours,

RS Herskovitz
Richard S. Herskovitz
Administrative Law Judge

RECEIVED
OCT 07 1988

RSH:rjg

cc: Annette Shelly

PARTIES OF RECORD

Roland T. Barry
451 Orchard Avenue
Pittsburgh, PA 15202

David M. O'Boyle, Esquire
Wick, Streiff, Meyer,
& O'Boyle
1450 Two Chatham Center
Pittsburgh, PA 15219-2327

**DO NOT
FOLDER**

PILLAR AND MULROY, P.C.

ATTORNEYS-AT-LAW

SUITE 700

312 BOULEVARD OF THE ALLIES
PITTSBURGH, PA 15222

TELEPHONE (412) 471-3300

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OCT 31 1988

JOHN A. PILLAR
THOMAS M. MULROY

October 27, 1988

**SECRETARYS OFFICE
Public Utility Commission**

Re: Roland T. Barry, t/d/b/a
ABC-EZ Moving Co.
Docket No. A-00108005
File No. 1118

Jerry Rich, Secretary
Pennsylvania Public Utility
Commission
P. O. Box 3265
Harrisburg, PA 17120

Dear Sir:

Enclosed herewith is a notice of our appearance as attorney for the applicant in the above proceeding. A copy has been served on counsel for the sole protestant and the Administrative Law Judge. The applicant intends to file a brief in connection with this matter on or before November 3, 1988. Counsel for the protestant has been notified.

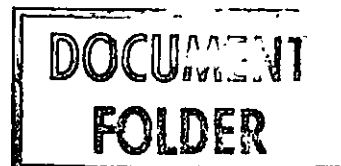
Very truly yours,


JOHN A. PILLAR

sw

Enclosure

cc: Hon. Richard S. Herskovitz
David M. O'Boyle, Esq.
Roland T. Barry



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OCT 31 1988

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

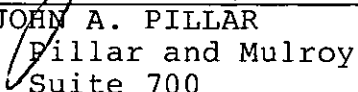
SECRETARYS OFFICE
Public Utility Commission

Application of
ROLAND T. BARRY, t/d/b/a
ABC-EZ MOVING CO.

Docket No. A-00108005

PRAECIPE FOR APPEARANCE

Please enter my appearance on behalf of the applicant,
ROLAND T. BARRY, t/d/b/a ABC-EZ MOVING CO., in the above-
docketed proceeding.



JOHN A. PILLAR
Pillar and Mulroy, P.C.
Suite 700
312 Boulevard of the Allies
Pittsburgh, PA 15222

Dated: October 27, 1988

DOCKETED
NOV 01 1988

DOCUMENT
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ORIGINAL

PILLAR AND MULROY, P.C.

ATTORNEYS-AT-LAW

SUITE 700

312 BOULEVARD OF THE ALLIES

PITTSBURGH, PA 15222

TELEPHONE (412) 471-3300

JOHN A. PILLAR
THOMAS M. MULROY

November 1, 1988

Re: Roland T. Barry, t/d/b/a
ABC-EZ Moving Co.
Docket No. A.108005
File No. 1118

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SECRETARY'S OFFICE
Public Utility Commission

Jerry Rich, Secretary
Pennsylvania Public Utility
Commission
P. O. Box 3265
Harrisburg, PA 17120

Dear Sir:

Enclosed for filing are the original and nine copies of Brief For Applicant in connection with the above proceeding. Copies have been served on counsel for protestant and the Administrative Law Judge.

Please acknowledge receipt of the enclosures on the duplicate of this letter of transmittal and return it in the stamped, self-addressed envelope provided.

Very truly yours,


JOHN A. PILLAR

SW
Enclosures
cc: David M. O'Boyle, Esq.
Hon. Richard S. Herskovitz

DOCUMENT
FOLDER

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of
ROLAND T. BARRY, t/d/b/a
ABC-EZ MOVING CO.

Docket No. A-108005

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NOV- 3 1988
SECRETARY'S OFFICE
Public Utility Commission

BRIEF FOR APPLICANT

DOCKETED
NOV 0 4 1988

JOHN A. PILLAR, ESQ.
Attorney for
ROLAND T. BARRY, t/d/b/a
ABC-EZ MOVING CO.,
Applicant

PILLAR AND MULROY, P.C.
Suite 700
312 Boulevard of the Allies
Pittsburgh, PA 15222

Due Date: November 3, 1988

JOHN A. PILLAR
FOLDER

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of
ROLAND T. BARRY, t/d/b/a
ABC-EZ MOVING CO.

Docket No. A-108005

I. INTRODUCTION

By this application, Roland T. Barry, t/d/b/a ABC-EZ Moving Co. (Barry or applicant) seeks approval of its application to acquire by purchase the operating rights of Robert N. Fink, t/d/b/a Frank J. Irvin (Fink or transferor). A protest to the application was filed by Patrick Kissel, Sr. A hearing was held on September 7, 1988. Applicant appeared at the hearing without an attorney. Protestant Kissel was represented by David M. O'Boyle, Esq., of Pittsburgh, PA.

Barry testified in support of the application and sponsored Exhibit Nos. 1 and 3 which were admitted into evidence. Patrick Kissel testified in opposition to the application and sponsored three exhibits, all of which were admitted.

Counsel for protestant indicated that the basis of Kissel's opposition to the application is (1) the fitness of the applicant, and (2) the dormancy of the certificate being transferred. These issues will be addressed in this brief.

II. REQUESTED FINDINGS OF FACT

Applicant respectfully requests that the following findings of fact be made by the Administrative Law Judge:

1. Roland Barry entered into a contract with Robert Fink to purchase the Fink operating rights, issued by the PUC to Fink at Docket No. A-92431, for a consideration of \$10,000.00; \$8,000.00 was paid as a downpayment and a promissory note in the amount of \$2,000.00 was issued to Fink requiring the payment of \$90.46 a month until the balance is paid in full (6-7).

2. Barry was formerly employed by Hamburg Brothers, a wholesale distributor, as a warehouseman, warehouse manager, shipper, receiver, office manager, sales administrative manager, and field sales manager; he was employed by Hamburg Brothers for 32 years (7-8).

3. Barry is 57 years old; applicant's Exhibit 1 indicates that Barry has total assets of \$255,789.00 and no debts, other than the balance of the \$2,000.00 consideration due Fink (9-10).

4. Fink's PUC rights were placed in voluntary suspension in August, 1987, and continue to be in that status (12). (See Appendix 1 to this brief.)

5. Applicant's fictitious name, ABC-EZ Moving Co., was registered as a fictitious name with the Secretary of the

Commonwealth of Pennsylvania on February 19, 1988 (17; Applicant's Exh. 3).

6. Fink has been engaged, for the past 20 years, in moving household goods within Allegheny County (23). Fink's operating revenues for the past three years were as follows: 1985 - \$47,180.00; 1986 - \$42,066.00; and 1987 (through August) - \$20,272.00 (29-30).

7. Although Barry did not understand the distinction between a Class B and a Class D carrier, he knows that Fink did engage in the transportation of household goods generally within Allegheny County for the past 20 years, and that Fink would be available to consult with Barry if this transaction is approved in order to familiarize Barry with specific PUC rules and regulations (23-24); Barry intends to operate within Allegheny County, although he may operate under the rights authorizing transportation from specified areas in Allegheny County to points within 75 miles, by the usually traveled highways of the City-County Building in the City of Pittsburgh (26-27).

8. Barry owns a 1967 Ford which has a remanufactured engine and parts and is "a very sturdy piece of equipment" (8); he also owns a 1980 Ford Econoline van, which was purchased in August, 1988, and which replaced an older Econoline van that was traded in (31).

9. The 1967 Ford truck was purchased by Barry in February,

1988 (31); Barry will purchase the equipment of Fink if it is needed to meet the demands made on Fink for service if this application is granted (28).

10. Barry also owns various pads, dollies, and other materials used to transport household goods (32).

11. Barry has been retired since 1980, and has been renting personal and real property since that time; he is married and has four children (33).

12. Barry has offered his motor vehicle equipment for rent since 1987, without a driver (33). In the past, Barry also provided an operator for the truck that was rented out but, in March or April, 1987, he was informed by the PUC that he could not operate the truck which was rented; since that time, he only rents the truck without a driver (35-37).

13. Barry has advertised his truck rental in the Penney-saver (39; Protestant's Exhibits 1 and 2).

14. Barry intends to look for an office from which the business will be conducted if this transaction is approved (42).

15. Fink requested a voluntary suspension of his rights because he did not want to continue to engage in the household goods moving business and he wanted to find a buyer (43).

16. Fink was advised by the PUC that the voluntary suspension will not expire prior to the PUC's issuing a decision in this transaction (43). (See Appendix 1 to this brief.)

17. Barry intends to specialize in moving families with low income (44).

18. Barry intends to adopt the tariff of Fink (45).

19. No complaints have been filed against Barry by the PUC or by any competitor (48).

20. Barry understands that the equipment must comply with PUC and DOT safety regulations and he intends to comply with those regulations (49-50).

21. Patrick Kissel is a certificated motor carrier operating pursuant to PUC rights issued at Docket A-99886 (53; Protestant's Exhibit 3).

22. Kissel has held operating rights from the PUC since 1976 and is engaged in moving household goods and office furniture within Allegheny County, and from points in Allegheny County to points in Pennsylvania (54).

23. Kissel has two warehouses located in the Millvale Industrial Park; he operates two vehicles in the moving business (55-56).

24. Kissel employs anywhere from 4 to 30 persons, depending on how much work is available (56).

25. Kissel believes that Barry has advertised in the Penneysaver illegally and he called the applicant to find out what service applicant proposes (57).

26. Kissel understands that anybody who advertises moving services in the Penneysaver must hold a PUC certificate and,

therefore, Kissel filed a complaint with the Penneysaver about Barry's advertisement (59).

27. Kissel complained to the PUC about several carriers advertising in the Penneysaver, but the complaint was lost by the PUC (60-61).

28. Kissel filed his complaint letter with the PUC in March, 1988 (61).

29. When Kissel talked to Barry about his ad in the Penneysaver, Barry did not offer to provide a driver (64).

30. Kissel believes that he has lost business to operators such as Barry who advertise in the Penneysaver (67).

31. Kissel believes it would be impossible to compete with Barry since "he has no rules, no tariff, nothing to go by" (68).

32. Barry commends Kissel for his efforts to get the "gypsies" out of the Penneysaver, since it is Barry's intention to operate legally and not to undercut Kissel's prices (71).

33. Barry has no recollection of ever speaking to Kissel about his advertisement in the Penneysaver (72).

III. ARGUMENT

This Commission, since Grimm's Application, 17 Pa. P.U.C. 25 (1937), has applied the doctrine of "presumption of continuing necessity" in applications for transfer of certificates. Under this presumption, the transferor and transferee need not show that the underlying service authorized by the certificate being transferred is necessary or proper for the convenience of the public. The presumption is a rebuttable one, but the burden of proof is on the protestant to demonstrate that there is no continuing necessity. This doctrine has been reviewed and approved by the appellate courts. Byerly v. Pa. P.U.C., 440 Pa. 521, 270 A.2d 186 (1970); Morgan Driveaway, Inc. v. Pa. P.U.C., 6 Pa. Cmwlth.Ct. 229, 293 A.2d 894 (1972). In the Byerly case, the Supreme Court of Pennsylvania stated (440 Pa. at 525):

In transfer of certificate cases, the principle has evolved that it is not necessary for the transferor or transferee to show that the certificate under review is necessary for the public convenience ... it is presumed that the convenience once found continues until the contrary is shown.

The burden of proving abandonment is also on the protestant. Protestant must prove that the transferor actually intended to abandon the rights in question. Abandonment necessarily implies the voluntary or intentional act of the transferor, with external or overt acts which clearly indicate that the rights were not intended to be preserved for future uses. For example, in Samuel J. Lansberry, Inc., Docket No. A-99642, F.1, Am-E (order entered April 14, 1978), Lansberry

applied for authority to purchase the operating rights of Harry S. Dillon. Six protests were filed to this application, all raising the issue of abandonment. In its order approving the application, the Commission held:

A review of the record in the instant case reveals, however, that there has been no abandonment by the transferor. In order to have an abandonment, there must be an intention to abandon, together with external acts by which the intention is carried into effect. Here, the maintenance of a tariff and insurance by the transferor, as well as the filing of an Annual Report with the Commission, indicates that Dillon did not intend to abandon his rights. (Emphasis added)

Significantly, the facts in the Lansberry case were that the transferor was not even aware that he held the operating rights in question for many years. Obviously, as a result, he conducted no service whatsoever and was never requested to provide service. The Commission's order was affirmed by the Commonwealth Court of Pennsylvania at Docket No. 870 C.D. 1978 (unreported).

As stated previously, the burden of proof is also on the protestant to rebut the presumption of continuing necessity. This presumption may not be rebutted simply by virtue of the fact that the transferor renders no service, assuming that such was the case. In Byerly, the Supreme Court held (440 Pa. at 526-527):

The fact that a carrier has not transported the certificated product and the fact that he has not been requested to do so does not rebut the presumption of continuing necessity.

In this case, the evidence is clear that Fink has always maintained a tariff on file with the PUC and has filed his Annual Reports with the Commission. The evidence shows that he had over \$20,000.00 in transportation revenues reportable to the PUC in 1987, before his rights were placed in suspension at his request due to his desire to sell his PUC rights. Moreover, the transferor has equipment which he has maintained so that, if his rights were reactivated, he would be in a position to provide service as he has for the past 20 years. Clearly, there has been no abandonment by Fink in this case. Protestant has failed to meet its burden of proof. The Commission should conclude that the operating rights of Fink are properly transferable to Barry.

Barry has also clearly demonstrated his fitness to be granted a certificate by this Commission. Barry is financially fit. He has no liabilities, other than the modest debt owed to Fink on which he is making regular payments. Barry has substantial assets, even though they are jointly held with his wife. Barry has the right to use his jointly owned assets for his business. He owns the 1967 Ford truck in his own name and he purchased the 1980 Econoline van for his son, which will also be used in the moving business.

There is no evidence that Barry is either unable or unwilling to comply with the rules and regulations of this Commission and the Department of Transportation. Barry testi-

fied that he intends to comply with the Commission's rules and regulations. Although, in 1987, he was not clear about his ability to drive a truck that was rented by a customer, he did contact the PUC on his own and, upon learning that it was not proper for him to drive a vehicle that was leased to a customer, he discontinued the practice. This is hardly indicative of an individual who is not willing or able to comply with the Commission's rules and regulations. Barry testified that he intends to offer a service that is primarily directed to low budget moves and submits that this is a service that would be clearly in the public interest. Any technical aspects of the business that he does not presently understand will be explained to him by Fink, the transferor, who Barry intends to rely on for a time once this application is approved. This also indicates Barry's intention to comply with the Commission's rules and regulations.

IV. REQUESTED CONCLUSIONS

Applicant respectfully requests that the Administrative Law Judge make the following conclusions of law:

1. There has been no abandonment of the operating rights held by Fink.

2. The presumption of continuing necessity for the transportation authorized to Fink has not been rebutted.

3. Barry is fit, willing and able to provide the transportation service here involved.

4. Approval of the application will be in the public interest.

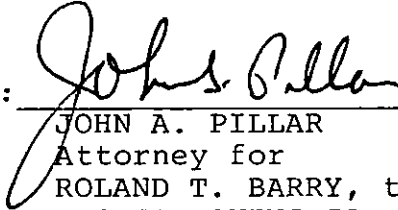
5. The application should be granted.

On the basis of the foregoing findings of fact and requested conclusions of law, applicant respectfully requests that this transaction be approved.

Respectfully submitted,

PILLAR AND MULROY, P.C.

By:



JOHN A. PILLAR
Attorney for
ROLAND T. BARRY, t/d/b/a
ABC-EZ MOVING CO.

PILLAR AND MULROY, P.C.
Suite 700
312 Boulevard of the Allies
Pittsburgh, PA 15222

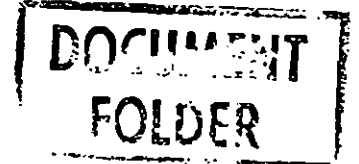
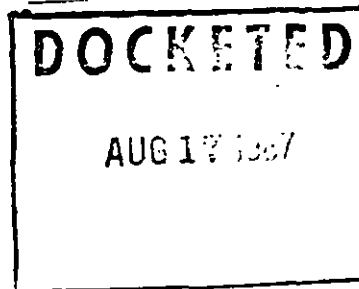


COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P. O. BOX 3265, HARRISBURG, Pa. 17120

August 12, 1987

IN REPLY PLEASE
REFER TO OUR FILE

Robert N. Fink
177 Greenwood Avenue
Pittsburgh, PA 15202



file
In re: A-00092431 - Application of Robert N. Fink, t/d/b/a Frank J. Irvin

Dear Mr. Fink:

This will acknowledge receipt of your letter of July 20, 1987 requesting a voluntary suspension of your certificate of public convenience. This suspension is granted.

Please be advised that this voluntary suspension will be effective for a period not to exceed one year from the date of your request, July 20, 1988. If you have not submitted renewed proof of insurance to the Commission on or before July 20, 1988 or an application for approval of the transfer of your authority a complaint proceeding will be instituted against you for failure to comply with the insurance requirements of the Commission.

Be further advised that this voluntary suspension does not relieve you from the responsibility of filing the annual report or paying any assessments due.

We will send you under separate cover the necessary application blanks for the purpose of having your authority transferred.

Very truly yours,

James J. McCarthy, Chief
Insurance Section
Bureau of Transportation

JJM:11

Appendix 1

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Brief on the following parties, by first-class mail, postage prepaid, this 1st day of November, 1988:

Hon. Richard S. Herskovitz
Administrative Law Judge
Pennsylvania Public Utility Commission
1103 Pittsburgh State Office Building
300 Liberty Avenue
Pittsburgh, PA 15222

David M. O'Boyle, Esq.
1450 Two Chatham Center
Pittsburgh, PA 15219



JOHN A. PILLAR, ESQ.