

ALJ Exh. No. 1

ORIGINAL

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

DOCKETED

PENNSYLVANIA PUBLIC UTILITY COMMISSION, BUREAU OF TRANSPORTATION AND SAFETY

OCT 09 2002

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v.

DOCKET NO. A-00107168C01 07

Donald Fix, t/a Don Farr Moving Company

COMPLAINT

The Pennsylvania Public Utility Commission (Commission) is a duly constituted agency of the Commonwealth of Pennsylvania empowered to regulate public utilities within the Commonwealth. The Commission has delegated its authority to initiate proceedings which are prosecutory in nature to the Bureau of Transportation and Safety and other bureaus with enforcement responsibilities. Pursuant to that delegated authority and Section 702 of the Public Utility Code, the Bureau of Transportation and Safety Prosecutory Staff hereby represents as follows:

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1. That Donald Fix, t/a Don Farr Moving Company, respondent, maintains his principal place business at 4920 Buttermilk Hollow Road, West Mifflin, PA 15122.
2. That respondent was issued a certificate of public convenience by this Commission on June 3, 1987, at Application Docket No. A-00107168.
3. That, on July 18 & 19, 2001, a Household Mover Audit was performed on respondent by Enforcement Officer Paul Caliani, a duly authorized officer of this Commission. The information contained in this complaint was obtained during the review.
4. That respondent, on October 23, 2000, transported household goods for Anne Walker between points in Mt. Pleasant, Westmoreland County, Pennsylvania for \$560.00 compensation. At that time, the following violations were disclosed:
 - (a) Outside geographic area.
 - (b) No written estimate given to shipper.
 - (c) Information for shipper not given prior to order for service and proper form was not used (correct form attached).
5. That respondent, on October 23, 2000, transported household goods for Evie Cameron from New Brighton, Beaver County, Pennsylvania to N. Versailles, Allegheny County, Pennsylvania for \$720.00 compensation. At that time, the following violations were disclosed:
 - (a) Outside geographic area.
 - (b) No written estimate given to shipper.
 - (c) Information for shipper not given prior to order for service and proper form was not used (correct form attached).

6. That respondent, on October 30, 2000, transported household goods for Delores Hughes from Pittsburgh, Allegheny County, Pennsylvania to Mt. Lebanon, Allegheny County, Pennsylvania for \$404.00 compensation. At that time, the following violations were disclosed:

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- (a) Charged a greater rate than that specified in his tariff on file with this Commission. The correct charge should have been \$374.00 resulting in a \$30.00 overcharge.
- (b) Improper form used for estimate (correct form attached).
- (c) Information for shipper not retained in respondent's file and not given to shipper prior to order for service.

7. That respondent, on October 30, 2000, transported household goods for Cheryl Collins from Bridgeville, Allegheny County, Pennsylvania to Cannonsburg, Washington County, Pennsylvania for \$457.80 compensation. At that time, the following violations were disclosed:

- (a) No written Estimated Cost of Services form given to shipper.
- (b) Charged a greater rate than that specified in his tariff on file with this Commission. The correct charge should have been \$341.50 resulting in a \$116.30 overcharge.
- (c) Information for shipper not retained in respondent's file and not given to shipper prior to order for service.

8. That respondent, on October 31, 2000, transported household goods for Pamela Goecke from Imperial, Allegheny County, Pennsylvania to Sewickley, Allegheny County, Pennsylvania for \$400.00 compensation. At that time, the following violations were disclosed:

- (a) Failed to provide a written Estimated Cost of Services form.
- (b) Information for shipper not retained in respondent's file and not given to shipper prior to order for service.

9. That respondent, on November 12, 2000, transported household goods for Harvey Baughman from Greensburg, Westmoreland County, Pennsylvania to Derry, Westmoreland County, Pennsylvania for \$220.00 compensation. At that time, the following violations were disclosed:

- (a) Outside geographic area.
- (b) Failed to provide a written Estimated Cost of Services form.
- (c) Information for shipper not retained in respondent's file and not given to shipper prior to order for service.

10. That respondent, on November 27, 2000, transported household goods for Amy Marmic from Bridgeville, Allegheny County, Pennsylvania to Bethel Park, Allegheny County, Pennsylvania for \$720.00 compensation. At that time, the following violations were disclosed:

- (a) Not charging in accordance with his tariff on file with this Commission at Freight Pa. P.U.C. No. 2.
- (b) Improper written Estimated Cost of Services form.
- (c) Information for shipper not given prior to order for service and proper form was not used (correct form attached).

11. That respondent, on December 19, 2000, transported household goods for Richard Wisser from Munhall, Allegheny County, Pennsylvania to White Oak, Allegheny County, Pennsylvania for \$200.00 compensation. At that time, the following violations were disclosed:

- (a) No Estimated Cost of Services form given to shipper.
- (b) Not charging in accordance with his tariff on file with this Commission at Freight Pa. P.U.C. No. 2.

- (c) Information for shipper form not retained in respondent's file and not given to shipper prior to order for service.

12. That respondent, on December 19, 2000, transported household goods for Joseph Mayernik from Monesson, Westmoreland County, Pennsylvania to Baldwin, Allegheny County, Pennsylvania for \$240.00 compensation. At that time, the following violations were disclosed:

- (a) No Estimated Cost of Services form given to shipper.
- (b) Information for shipper not given prior to order for service and proper form was not used (correct form attached).

13. That respondent, on December 23, 2000, transported household goods for Barb Greco from Donora, Washington County, Pennsylvania to New Alexandria, Westmoreland County, Pennsylvania for \$1,687.50 compensation. At that time, the following violations were disclosed:

- (a) Outside geographic area.
- (b) Improper written Estimated Cost of Services form.
- (c) Information for shipper not retained in respondent's file.
- (d) No quarterly report of underestimates filed.

14. That respondent, on February 11, 2001, transported household goods for Darcy Kish from Beaver Falls, Beaver County, Pennsylvania to South Park, Allegheny County, Pennsylvania for \$300.00 compensation. At that time, the following violations were disclosed:

- (a) No Estimated Cost of Services form given to shipper.
- (b) Information for shipper not given prior to order for service and proper form was not used (correct form attached).

15. That respondent, on March 25, 2001, transported household goods for Tracey Harasyn from Carrick, Allegheny County, Pennsylvania to Beechview, Allegheny County, Pennsylvania for \$405.00 compensation. At that time, the following violations were disclosed:

- (a) Not charging in accordance with his tariff on file with this Commission at Freight Pa. P.U.C. No. 2.
- (b) No Estimated Cost of Services form given to shipper.
- (c) Information for shipper not retained in respondent's file and not given to shipper prior to order for service.

16. That respondent, on March 26 & 28, 2001, transported household goods for Mr. & Mrs. Pless from Regent Square, Allegheny County, Pennsylvania to Point Breeze, Allegheny County, Pennsylvania for \$4,491.40 compensation. At that time, the following violations were disclosed:

- (a) Not charging in accordance with his tariff on file with this Commission at Freight Pa. P.U.C. No. 2.
- (b) Improper written Estimated Cost of Services form.
- (c) Improper information for shipper form used (correct form attached).

17. That respondent, on March 28 & 29, 2001, transported household goods for Gino Satore from Pleasant Hills, Allegheny County, Pennsylvania to Bethel Park, Allegheny County, Pennsylvania for \$4,597.06 compensation. At that time, the following violations were disclosed:

- (a) Not charging in accordance with his tariff on file with this Commission at Freight Pa. P.U.C. No. 2.

- (b) Improper written Estimated Cost of Services form.
- (c) Information for shipper not given prior to order for service and proper form was not used (correct form attached).

18. That respondent, on March 30, 2001, transported household goods for Ron Safran from Clinton, Allegheny County, Pennsylvania to Hopewell Township, Beaver County, Pennsylvania for \$1,265.00 compensation. At that time, the following violations were disclosed:

- (a) Outside geographic area.
- (b) Improper written Estimated Cost of Services form.
- (c) Information for shippers not given prior to order for service and proper form was not used (correct form attached).
- (d) No quarterly report of underestimates filed.

19. That respondent, by charging an improper rate other than that specified in the tariff on file with this Commission, violated 66 Pa. C.S. §1303. The penalty is \$250.00 per violation for a total penalty of \$1,250.00.

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

21. That respondent, by failing to use and complete the proper form for estimates of charges titled "Estimated Cost of Services", violated 52 Pa. Code §31.122(2). The penalty is \$100.00 per violation for improper written Estimated Cost of Services form and \$250.00 per violation for failure to provide a written Estimated Cost of Services form for a total penalty of \$2,850.00.

22. That respondent, by failing to furnish the shipper with "Information for Shippers" statement prior to the preparation of an order for service, violated 52 Pa. Code §31.121(a). The penalty is \$100.00 per violation for a total penalty of \$1,500.00.

23. That respondent, by failing to file with this Commission a quarterly report, wherein charges exceed the estimate by more than 10% with an explanation of the reasons for the variances, violated 52 Pa. Code §31.124. The penalty is \$100.00 per violation for a total penalty of \$200.00.

24. That respondent, by charging a greater rate than that specified in the tariff on file with this Commission, violated 66 Pa. C.S. §1303. The penalty is \$500.00 per violation for a total penalty of \$1,000.00.

You must immediately comply with all rules and regulations of this Commission, specifically,

66 Pa. C.S. §1303, charge in accordance with an officially filed tariff

66 Pa. C.S. §1102, provide transportation only in authorized geographical areas

66 Pa. C.S. §1501, furnish and maintain adequate, efficient, safe, and reasonable service and facilities for the accommodation, convenience, and safety of the public

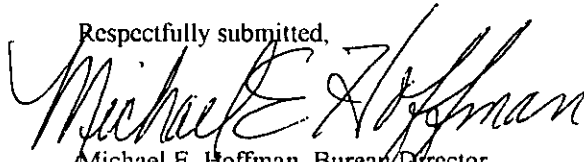
52 Pa. Code §31.121, provide an "Information for Shippers" statement to shippers before the order for service is prepared

52 Pa. Code §31.16, act promptly upon communications from a shipper of a damage claim and do not deny claims without reasonable explanations or investigations

You will be contacted and revisited for a follow-up Audit by a Commission Enforcement Officer. Failure to adhere to Commission regulations will result in a severe monetary penalty and the possible cancellation of your Certificate of Public Convenience.

WHEREFORE, the Bureau of Transportation and Safety Prosecutory Staff hereby requests that the Commission fine Donald Fix, t/a Don Farr Moving Company the sum of eight thousand fifty dollars (\$8,050.00) for the illegal activity described in this complaint, direct respondent to refund thirty dollars (\$30.00) to Delores Hughes, 423 Abbeyville Road, Mt. Lebanon, PA 15228, refund one hundred sixteen dollars and thirty cents (\$116.30) to Cheryl Collins, 622 Eagle Point Drive, South Point, PA 15342 and order such other remedy as the Commission may deem to be appropriate.

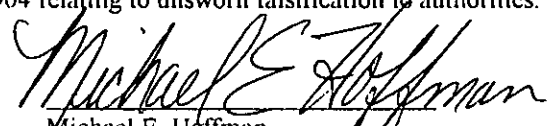
Respectfully submitted,


Michael E. Hoffman, Bureau Director
Bureau of Transportation and Safety
P.O. Box 3265
Harrisburg, PA 17105-3265

VERIFICATION

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

Date: 11/7/01


Michael E. Hoffman

NOTICE

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

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

B. If you fail to answer this complaint within twenty (20) days, the Bureau of Transportation and Safety will request that the Commission issue a Secretarial Letter imposing a penalty. The penalty could include a fine, the suspension or revocation of your certificate of public convenience or other remedy.

C. You may elect not to contest this complaint by paying the fine proposed in this complaint by certified check or money order. Payment must be made to the Pennsylvania Public Utility Commission, P.O. Box 3265, Harrisburg, PA 17105-3265. Your payment is an admission that you committed the alleged violation and an agreement to cease and desist from further violations. Should you elect not to contest this complaint, you are also directed to refund thirty dollars (\$30.00) to Delores Hughes and refund one hundred sixteen dollars and thirty cents (\$116.30) to Cheryl Collins within twenty (20) days from the date on which this complaint is served. You must obtain an affidavit, executed by Delores Hughes and Cheryl Collins, respectively, stating that such a refund has been paid; such affidavit must be filed with the Secretary of this Commission at the time the fine is paid. Upon payment of the fine and receipt by this Commission of the required affidavit, the record in this proceeding shall be closed.

D. If you file an answer which admits or fails to deny the allegations of the complaint, the Bureau of Transportation and Safety will request that the Commission issue a Secretarial Letter imposing a penalty (see B).

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

F. Alternative formats of this material are available, for persons with disabilities, by contacting the Technical Unit at (717) 783-5945.

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ALW Ewh No. 2

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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PENNSYLVANIA PUBLIC UTILITY COMMISSION, BUREAU OF TRANSPORTATION AND SAFETY,

) Docket No. A-00107168C0107

v.

DONALD FIX, T/A DON FARR MOVING COMPANY,

)))))

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ANSWER

DOCKETED

OCT 09 2002

AND NOW, comes Donald Fix, t/a Don Farr Moving Company, and files the within Answer

to the Complaint as filed by the Commission and in support thereof avers as follows:

- 1. Admitted.
2. Admitted.
3. After reasonable investigation, Respondent is without knowledge sufficient to

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form a belief as to the truth of all the averments contained in Paragraph 3 of the Commission's Complaint and, therefore, specifically denies the same and demands specific proof thereof at the time and place set forth for trial.

4. Admitted in part and denied in part. It is admitted that the move of Anne Walker did take place on or about October 23, 2000, however, all subparagraphs of Paragraph 4 are specifically denied. To the contrary, the Respondent, at all times, acted within the guidelines as set forth by the Commission and by the Statutes of the Commonwealth of Pennsylvania.

5. Admitted in part and denied in part. It is admitted that on or about October 23, 2000, a move took place for Evie Cameron, however, all subparagraphs of Paragraph 5 are specifically denied. To the contrary, the Respondent, at all times, acted within the guidelines as set forth by the Commission and by the Statutes of the Commonwealth of Pennsylvania.

6. Admitted in part and denied in part. It is admitted that on or about October 30, 2000, a move took place for Delores Hughes, however, all subparagraphs of Paragraph 6 are specifically denied. To the contrary, the Respondent, at all times, acted within the guidelines as set forth by the Commission and by the Statutes of the Commonwealth of Pennsylvania.

7. Admitted in part and denied in part. It is admitted that on or about October 30, 2000, a move took place for Cheryl Collins, however, all subparagraphs of Paragraph 7 are specifically denied. To the contrary, the Respondent, at all times, acted within the guidelines as set forth by the Commission and by the Statutes of the Commonwealth of Pennsylvania.

8. Admitted in part and denied in part. It is admitted that on or about October 31, 2000, a move took place for Pamela Goecke, however, all subparagraphs of Paragraph 8 are specifically denied. To the contrary, the Respondent, at all times, acted within the guidelines as set forth by the Commission and by the Statutes of the Commonwealth of Pennsylvania.

9. Admitted in part and denied in part. It is admitted that on or about November 12, 2000, a move took place for Harvey Baughman, however, all subparagraphs of Paragraph 9 are specifically denied. To the contrary, the Respondent, at all times, acted within the guidelines as set forth by the Commission and by the Statutes of the Commonwealth of Pennsylvania.

10. Admitted in part and denied in part. It is admitted that on or about November 27, 2000, a move took place for Amy Marmie, however, all subparagraphs of Paragraph 10 are specifically denied. To the contrary, the Respondent, at all times, acted within the guidelines as set forth by the Commission and by the Statutes of the Commonwealth of Pennsylvania.

11. Admitted in part and denied in part. It is admitted that on or about December 19, 2000, a move took place for Richard Wisser, however, all subparagraphs of Paragraph 11 are specifically denied. To the contrary, the Respondent, at all times, acted within the guidelines as set

forth by the Commission and by the Statutes of the Commonwealth of Pennsylvania.

12. Admitted in part and denied in part. It is admitted that on or about December 19, 2000, a move took place for Joseph Mayernik, however, all subparagraphs of Paragraph 12 are specifically denied. To the contrary, the Respondent, at all times, acted within the guidelines as set forth by the Commission and by the Statutes of the Commonwealth of Pennsylvania.

13. Admitted in part and denied in part. It is admitted that on or about December 23, 2000, a move took place for Barb Greco, however, all subparagraphs of Paragraph 13 are specifically denied. To the contrary, the Respondent, at all times, acted within the guidelines as set forth by the Commission and by the Statutes of the Commonwealth of Pennsylvania.

14. Admitted in part and denied in part. It is admitted that on or about February 11, 2001, a move took place for Darcy Kish, however, all subparagraphs of Paragraph 14 are specifically denied. To the contrary, the Respondent, at all times, acted within the guidelines as set forth by the Commission and by the Statutes of the Commonwealth of Pennsylvania.

15. Admitted in part and denied in part. It is admitted that on or about March 25, 2001, a move took place for Tracey Harasyn, however, all subparagraphs of Paragraph 15 are specifically denied. To the contrary, the Respondent, at all times, acted within the guidelines as set forth by the Commission and by the Statutes of the Commonwealth of Pennsylvania.

16. Admitted in part and denied in part. It is admitted that on or about March 26 & 28, 2001, a move took place for Mr. & Mrs. Pless, however, all subparagraphs of Paragraph 16 are specifically denied. To the contrary, the Respondent, at all times, acted within the guidelines as set forth by the Commission and by the Statutes of the Commonwealth of Pennsylvania.

17. Admitted in part and denied in part. It is admitted that on or about March 28 & 29, 2001, a move took place for Gino Satore, however, all subparagraphs of Paragraph 17 are

specifically denied. To the contrary, the Respondent, at all times, acted within the guidelines as set forth by the Commission and by the Statutes of the Commonwealth of Pennsylvania.

18. Admitted in part and denied in part. It is admitted that on or about March 30, 2001, a move took place for Ron Safran, however, all subparagraphs of Paragraph 18 are specifically denied. To the contrary, the Respondent, at all times, acted within the guidelines as set forth by the Commission and by the Statutes of the Commonwealth of Pennsylvania.

19. Paragraph 19 of the Commission's Complaint is a conclusion of law to which no response is required.

20. Paragraph 20 of the Commission's Complaint is a conclusion of law to which no response is required.

21. Paragraph 21 of the Commission's Complaint is a conclusion of law to which no response is required.

22. Paragraph 22 of the Commission's Complaint is a conclusion of law to which no response is required.

23. Paragraph 23 of the Commission's Complaint is a conclusion of law to which no response is required.

24. Paragraph 24 of the Commission's Complaint is a conclusion of law to which no response is required.

WHEREFORE, the Respondent respectfully requests that the fine as issued by the Commission and subsequent refunds be deemed inappropriate and that judgment be rendered in favor of the Respondent.

Respectfully submitted,

LOUIS W. EMMI, ESQUIRE
Counsel for the Respondent
Donald Fix, t/a
Don Farr Moving Company

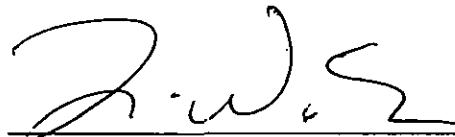
PA I.D. No. 47518

201 Lebanon Shops
300 Mt. Lebanon Boulevard
Pittsburgh, PA 15234
(412) 341-8477

VERIFICATION

I, LOUIS W. EMMI, ESQUIRE, being duly sworn according to law deposes and states that he is authorized on behalf of the Respondent, Donald Fix, t/a Don Farr Moving Company, and that the facts set forth in the foregoing Answer are true and correct to the best of his knowledge, information and belief. I understand that false statements herein made are subject to the penalties of 18 Pa. Cons. Stat. Section 4904, relating to unsworn falsification to authorities.

DATE: 11-16-01



LOUIS W. EMMI, ESQUIRE
Counsel for the Respondent