

COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION

ORIGINAL

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:
Application of Valentino DiGiacomo, t/a :
Stars Moving Company : Docket No.
For the right to begin to transport, as : A-00112531
a common carrier, by motor vehicle, :
household goods in use, between points :
in the counties of Monroe and Pike, and :
from points in the said counties, to :
points in Pennsylvania, and vice versa. :
:

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:
Pennsylvania Public Utility Commission v. :
Valentino DiGiacomo, t/a Stars Moving : Docket No.
Company : A-00112531C9601
Complaint against Stars Moving Company. :
:

----- x
:
Pennsylvania Public Utility Commission v. :
Stars Moving Company : Docket No.
Various Violations. : C-00957264
:

Telephone Prehearing Conference on Remand

DOCKETED
AUG 29 1997

Pages 72 through 84

Room G-8A
North Office Building
Harrisburg, Pennsylvania

Monday, August 4, 1997

Met, pursuant to notice, at 10:00 a.m.

BEFORE:

GEORGE M. KASHI, Administrative Law Judge

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C O N T E N T S

WITNESS

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(None.)

E X H I B I T S

NUMBER

FOR IDENTIFICATION IN EVIDENCE

(None.)

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P R O C E E D I N G S

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2 ADMINISTRATIVE LAW JUDGE GEORGE KASHI: This is the
3 time and place set for a prehearing conference in the matter
4 of the application of Valentino DiGiacomo, trading as Stars
5 Moving Company, which matter was remanded to me by
6 Commission decision of May 28, 1997.

7 And the purpose of said remand as per the decision of
8 the Commission was that we were going to allow the applicant
9 a chance to establish by probative, competent, admissible
10 evidence, subject to objection and cross-examination by
11 protestant, that there is a need for his service in the area
12 of the application.

13 Now, there are a couple of procedural matters. This
14 matter was scheduled for a hearing today and there are some
15 procedural matters that I wanted to consider, and so
16 therefore I switched it to a prehearing conference.

17 Primarily of concern to me was the appeal that was
18 filed or the petition to review that was filed by the
19 protestant.

20 I want to note for the record that while the
21 Commission on its hearing notice noted that Rhonda Daviston
22 from the Law Bureau was to be part of this particular
23 proceeding, Ms. Daviston, on the basis that the matter is on
24 appeal, determined or it was determined for her that her
25 particular Bureau should have no part in this particular

1 matter.

2 We thought that she was connected with the Bureau of
3 Transportation and Safety by virtue of the complaint cases
4 that the Commission decided to consolidate with this
5 application, however that is not the case. She is handling
6 the appeal.

7 Now, Mr. Jennings, sir, I noticed that you did not
8 ask for a stay in your petition for review. Is that
9 correct, sir?

10 MR. JENNINGS: That's correct.

11 JUDGE KASHI: And therefore, not asking for a stay of
12 this Commission proceeding, you are prepared to go forward
13 while the appeal is pending in Commonwealth Court; is that
14 correct, sir?

15 MR. JENNINGS: Well, I am certainly prepared to go
16 forward while the appeal is pending in Commonwealth Court,
17 but I'd like to have a stay, yes, because we may end up
18 doing this twice.

19 JUDGE KASHI: Let me go back. When I asked you, did
20 you ask for a stay, I was asking, did you ask the
21 Commonwealth Court for a stay, sir?

22 MR. JENNINGS: I did not.

23 JUDGE KASHI: Okay. Mr. Haynes?

24 MR. HAYNES: Yes. I believe his appeal is premature.
25 I wanted to speak to the Law Bureau. I was expecting the

1 Law Bureau to be here to provide some guidance on that just
2 from the appeal side of it.

3 I talked to you about raising the issue of the
4 Commission's present jurisdiction. That was my concern. My
5 experience is that the Commission does lose jurisdiction
6 during the appeal.

7 JUDGE KASHI: Are you telling me that I've got an
8 automatic stay from Commonwealth Court?

9 MR. HAYNES: Well, the problem is that we didn't have
10 a final Commission order. There is no final order out there
11 to appeal. It was remanding back, and that by definition is
12 not a final order subject to appeal.

13 JUDGE KASHI: And so therefore, there would be no --

14 MR. HAYNES: The procedure is for the Law Bureau to
15 file a motion to quash and get rid of the appeal.

16 JUDGE KASHI: All right. So at the present time,
17 there's no automatic stay by virtue of the fact that it's an
18 interim order, and you're anticipating, Mr. Haynes, that the
19 Law Bureau intends to file a motion to quash? Is that it?

20 MR. HAYNES: I can't speak for them. I was expecting
21 Ms. Daviston to be on, so I just wasn't sure.

22 JUDGE KASHI: All right. Why don't we let the Law
23 Bureau go ahead and do what they want to do, and in the
24 meantime let's schedule this matter and get the discovery
25 taken care of and put it down for hearing.

1 MR. HAYNES: That would be fine with the applicant.

2 JUDGE KASHI: All right. The one thing is that there
3 was a request by Mr. Haynes directed to the Prothonotary's
4 office that the matter be heard in Monroeville.

5 MR. HAYNES: Monroe County.

6 JUDGE KASHI: Monroe County. That request is denied.

7 The Commission does not have the resources to go running
8 from county to county holding hearings.

9 Would that it did; I'm sure that that would please a
10 lot of lawyers in the various counties, but it's just
11 something that's not possible given the budgetary
12 constraints that we have. So I will set it for Scranton.

13 Mr. Haynes, given that the DiGiacomos have been given
14 an opportunity to put in evidence on this matter, do you
15 have a set of witnesses that you're prepared to go forward
16 with and you're going to exchange those with Mr. Jennings?

17 MR. HAYNES: Yes. I have received a handwritten copy
18 from my clients. I will type them up and get them to
19 Mr. Jennings this week.

20 JUDGE KASHI: This week.

21 I don't see us being able to have a hearing before
22 the end of August. I'm talking about sometime in the
23 beginning of September. What do your calendars look like?

24 MR. JENNINGS: Judge, just excuse me for a second.

25 (Pause.)

1 JUDGE KASHI: How does everybody look for the 4th of
2 September?

3 MR. JENNINGS: Good.

4 JUDGE KASHI: Mr. Haynes? I'll tell you why, because
5 I'm going to be in Scranton that night for a public input
6 hearing on the PP&L restructuring matter.

7 MR. HAYNES: That is open.

8 JUDGE KASHI: Let's set it for September 4th. I
9 believe that's a Thursday.

10 MR. HAYNES: That's correct.

11 MR. JENNINGS: That's right.

12 JUDGE KASHI: Thursday, September 4th in Scranton.
13 Mr. Haynes, you're going to provide Mr. Jennings with your
14 witness list before the end of the week.

15 Are there any other matters that we need to take care
16 of this morning?

17 MR. JENNINGS: Excuse me, Judge. Is it going to be
18 10:00?

19 JUDGE KASHI: Do you want another time?

20 MR. JENNINGS: No, no. That's okay.

21 JUDGE KASHI: We can do it at 10:00, we can do it at
22 1:00.

23 MR. JENNINGS: No, 10:00 is fine. I just wanted to
24 make sure it was 10:00, so I'll pencil in AAA Stars, 10:00
25 on Thursday, the 4th of September.

1 JUDGE KASHI: Sounds good to me. Okay with you, Mr.
2 Haynes?

3 MR. HAYNES: That's fine, Your Honor.

4 JUDGE KASHI: Is there anything further from the
5 applicant?

6 MR. HAYNES: Just the consolidation of those other
7 dockets. It's my understanding that they should have been
8 closed. He did not contest them and paid the fine.

9 JUDGE KASHI: I haven't the vaguest idea why the
10 Commission did that.

11 MR. HAYNES: It should have been -- I think he just
12 sent the check in, probably didn't send a letter. He said
13 he did it by himself.

14 JUDGE KASHI: That's what the Commission's opinion
15 recites, so I don't know why they decided to run those on
16 the cover.

17 MR. HAYNES: I think they should have been closed as
18 satisfied. I'll send a letter in to that effect, Your
19 Honor.

20 JUDGE KASHI: All right. Anything else, Mr. Haynes?

21 MR. HAYNES: Nothing for the applicant.

22 JUDGE KASHI: Mr. Jennings, sir?

23 MR. JENNINGS: The only thing, I'm not really aware
24 of these Commission complaints except that I did get notices
25 of them for some reason after they were consolidated with

1 this remand.

2 And I think they're relevant insofar as this is a new
3 applicant and his propensity to operate legally. I don't
4 know the basis for the complaints. All I have is a caption.
5 I don't know exactly what the allegations were and what time
6 frames we are looking at.

7 JUDGE KASHI: Well, I'll tell you what. I have the
8 Commission records in front of me because I didn't know
9 that, either.

10 And the only thing that exists in the Commission's
11 folder, the record folder at the application number for
12 C-9601 is a letter from the Secretary telling them that
13 there has been a complaint filed.

14 That complaint was docketed on April 29, 1996, and
15 the allegations in that complaint involve the date of March
16 26, 1996, stating that the respondent placed flyer
17 advertisements at Abby's General Store, the Pocono Queen
18 Diner and IGA Store, Marshall's Creek, Pennsylvania in which
19 he held himself out under the fictitious trade name of
20 Dino's doing business as Man with Van Hauling and Moving to
21 transport household goods.

22 It then goes on to state that he was not holding a
23 certificate of public convenience, and Transportation and
24 Safety Prosecutory Staff requested the Commission fine him
25 \$750 for that complaint.

1 I have a receipt signed by, it looks like it was Star
2 DiGiacomo, and I also have a receipt No. 180471 for the
3 amount of \$750 taken by Mr. Joseph Meisinger for the
4 Department of Revenue regarding that particular complaint.
5 The only other thing that is in that folder is the
6 Commission's decision which we've already spoken about.

7 And the complaint from '95 is even more interesting
8 by virtue of the fact that there is nothing in the complaint
9 folder at that docket number.

10 The only thing that I have in that folder is the
11 Commission's decision of whatever that date is.

12 MR. JENNINGS: Consolidating and remanding it?

13 JUDGE KASHI: Right. That's the only reference I
14 have to it. Now, in the body of the Commission's complaint,
15 of course, they specifically made references that there was
16 a complaint, that he had quoted rates to an undercover
17 Commission enforcement officer for moving furniture, and
18 that there was a \$500 fine paid without contesting the
19 allegations. I have nothing that establishes that, not in
20 the Commission record folder.

21 MR. JENNINGS: But Judge, that's a 1995 complaint, is
22 that what that is?

23 JUDGE KASHI: That's correct, sir.

24 MR. JENNINGS: And the other was a '96 complaint?

25 JUDGE KASHI: That's correct.

1 MR. JENNINGS: Do you know if there has been any
2 further complaints since those two complaints, or do you
3 just have these before you?

4 JUDGE KASHI: That's the only two that are before me,
5 sir. But when I say that, that doesn't mean that anything
6 that had been filed or anything that had been complained of
7 would have been sent to me.

8 MR. JENNINGS: Yes, I guess that's what I'm really
9 asking you.

10 JUDGE KASHI: Okay. I have no idea. The only reason
11 I know about these two is, apparently we referenced them
12 during the hearing up in Scranton and the Commission decided
13 to consolidate them into this record.

14 But what else is there, if anything -- I'm not saying
15 that there is anything -- I'm saying I just don't know.

16 MR. JENNINGS: Okay.

17 JUDGE KASHI: Is there anything further from you
18 then, Mr. Jennings?

19 MR. JENNINGS: No, I have nothing further, Judge.

20 JUDGE KASHI: We will see you people on September
21 4th, Thursday, 10:00 a.m. in Scranton. If there's any
22 problems with the discovery, please call me and we'll
23 straighten it out, okay?

24 MR. JENNINGS: Judge, I just had one other question.
25 Is there a procedure by which I can ask for a record of

1 complaints since 1996 for this particular applicant?

2 JUDGE KASHI: A procedure?

3 MR. JENNINGS: How would I discover that from the
4 Commission records itself?

5 JUDGE KASHI: Well, I would imagine that you could
6 have them run the names for you.

7 MR. JENNINGS: Okay.

8 JUDGE KASHI: And the various names that we've been
9 using here, Dino's and Man with a Van and the applicant's
10 name, I would imagine that they would be able to run that
11 for you and see if there's anything under those names.

12 But other than that, I suspect the only way that you
13 would be able to get that information is to call the Bureau
14 of Transportation and Safety and see if they had anything.

15 They would probably be the quickest route into it, if
16 there is anything.

17 MR. JENNINGS: Thank you very much, Judge.

18 JUDGE KASHI: Thank you, Mr. Jennings. Thank you,
19 Mr. Haynes. Again, we'll see you in September.

20 (Whereupon, at 10:25 a.m., the proceedings were
21 adjourned, to be reconvened at 10:00 a.m., Thursday,
22 September 4, 1997 in Harrisburg, Pennsylvania.)

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C E R T I F I C A T E

I hereby certify, as the stenographic reporter, that the foregoing proceedings were taken stenographically by me and thereafter reduced to typewriting by me or under my direction, and that this transcript is a true and accurate record to the best of my ability.

COMMONWEALTH REPORTING COMPANY, INC.

By: John A. Kelly

John A. Kelly,
Certified Verbatim Reporter

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