

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Uniform Cover and Calendar Sheet

1. <u>REPORT DATE:</u> July 7, 2006	2. <u>BUREAU AGENDA NO.</u> JULY-2006-L-0048*
3. <u>BUREAU:</u> LAW	
4. <u>SECTION(S):</u>	5. <u>PUBLIC MEETING DATE:</u>
6. <u>APPROVED BY:</u> Director: Pankiw, 7-5000 Mgr/Spvr: Longwell, 3-3190 Legal Review:	July 20, 2006 DOCKETED OCT 10 2006
7. <u>PERSONS IN CHARGE:</u> Smith, 7-5262	9. <u>EFFECTIVE DATE OF FILING:</u> N/A
8. <u>DOCKET NO.:</u> A-00115371, A-00115371, Fs. 1 & 2	DOCUMENT FOLDER

10. (a) **CAPTION** (abbreviate if more than 4 lines)
 (b) Short summary of history & facts, documents & briefs
 (c) Recommendation

- (a) Petition of Mambo Movers, Inc for reinstatement of its Certificate of Public Convenience at Docket # A-00115371.
- (b) On May 2, 2006, Mambo Movers Inc. filed a Petition for Reinstatement of its Certificate of Public Convenience at Docket # A-00115371.
- (c) The Law Bureau has reviewed the Petition for Reinstatement filed by Mamba Movers, Inc. and recommends that the Commission adopt this Opinion and Order which reinstates the Petitioners Certificate at Docket # A-00115371.

RJP

11. **MOTION BY:** Commissioner Chm. Holland
SECONDED: Commissioner Cawley

Commissioner Shane - Yes
 Commissioner Pizzingrilli - Yes
 Commissioner Fitzpatrick - Yes

CONTENT OF MOTION: Staff recommendation adopted.



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

IN REPLY PLEASE
REFER TO OUR FILE

July 24, 2006

A-00115371

MAMBO INC
PO BOX 43737
PHILADELPHIA PA 19106

Pennsylvania Public Utility Commission
Bureau of Transportation and Safety
v.
Mambo Movers, Inc.

To Whom It May Concern:

This is to advise you that the Commission in Public Meeting on July 20, 2006 has adopted an Opinion and Order in the above entitled proceeding.

An Opinion and Order has been enclosed for your records.

Very truly yours,

James J. McNulty
Secretary

encls
cert. mail
MH

MAMBO MOVERS INC
1440 LOMBARD STREET
PHILADELPHIA PA 19146

DOCUMENT
FOLDER

DOCKETED
AUG 8 2006

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held July 20, 2006

Commissioners Present:

Wendell F. Holland, Chairman
James H. Cawley, Vice Chairman
Bill Shane
Kim Pizzingrilli
Terrance J. Fitzpatrick

DOCUMENT
FOLDER

Pennsylvania Public Utility Commission, Bureau of
Transportation and Safety

A-00115371
A-00115371, Fs. 1 & 2

v.

Mambo Movers, Inc.

OPINION AND ORDER

DOCKETED
AUG 8 2006

BY THE COMMISSION:

Before us for consideration is the Petition for Reinstatement of Certificate of Public Convenience (Petition) filed on May 2, 2006, by Mambo Movers, Inc., (Petitioner). No Response to the Petition has been filed.

History of the Proceeding

On August 29, 2005, the Commission's Bureau of Transportation and Safety (BTS) instituted a Complaint against the Petitioner, alleging that the Petitioner failed to maintain evidence of cargo insurance on file with this Commission, a violation of the Public Utility Code at 66 Pa. C.S. Section 512, 52 Pa. Code Section 32.2(c), and 52 Pa. Code Section 32.11(a), Section 32.12(a) or 32.13(a). The Complaint, with notice appended thereto, was sent to the Petitioner on or about August 30, 2005 and was

returned on September 22, 2005 as unclaimed. The insurance complaint was resent by first class mail on September 26, 2005 and was not returned. The Complaint advised the Petitioner that if an Answer were not filed within twenty days, BTS would request that the Commission issue an order which cancels Respondent's certificate of public convenience. Respondent failed to file an Answer and failed to have its insurer file evidence of insurance.

By Order entered January 25, 2006, we cancelled the Petitioner's Certificate of Public Convenience (Certificate) and assessed a fine in the amount of \$100 for Respondent's failure to comply with the provisions of 66 Pa. C.S. Section 512. Respondent was advised by our Order that it had fifteen days to file a Petition for Reinstatement of its certificate for good cause.

On May 2, 2006, the Petitioner filed a Petition requesting reinstatement of its Certificate. By letter dated May 18, 2006, the Secretary returned the Petition because it had not been filed within fifteen days of entry of our January 25, 2006 Order. On May 31, 2006, Petitioner resubmitted its Petition for Reinstatement requesting that the Commission waive its fifteen day filing provision pursuant to 52 Pa. Code Section 1.91 and consider the merits of Respondent's Petition for Reinstatement.

Discussion

We will waive the fifteen day filing provision as requested by Petitioner pursuant to 52 Pa. Code Section 1.91 because the petition's attachments reveal that considerable efforts were made to file the Form H cargo insurance with the Commission. We will, therefore, consider the merits of Respondent's Petition for Reinstatement.

It is well settled that decisions such as whether to grant a Petition for Reinstatement are left to the Commission's discretion and will be reversed only if that

discretion is abused. *Hoskins Taxi Service v. Pa. PUC*, 486 A.2d 1030 (Pa. Cmwlth. 1985). In ruling upon a petition for reinstatement, it is incumbent upon this Commission to examine all relevant factors in order to reach an equitable result. *Medical Transportation, Inc.*, 57 Pa. P.U.C. 79 (1983).

The Commission has identified five factors which are particularly relevant to the determination of a petition to reinstate: (1) the amount of time which elapsed between the cancellation of the certificate of public convenience and the filing of the petition to reinstate; (2) whether the petitioner has a record of habitually violating the Public Utility Code; (3) the reasonableness of the excuse given for the violation that caused the certificate to be cancelled, *Re: Bishop*, 58 Pa. P.U.C. 519 (1984); (4) whether the petitioner has implemented procedures to prevent a recurrence of the circumstances giving rise to the subject complaint, *Pa. PUC v. Grimm Motors*, Docket No. A-00111048, *et al.* (May 1, 1998); and (5) whether the petitioner is in compliance with the requirement that all assessments must be current prior to reinstatement, *Re: M.S. Carriers, Inc.*, Docket No. A-00110601 (May 4, 1999).

We note that, although the sole reason for the cancellation of the Petitioner's Certificate was the Petitioner's failure to maintain evidence of cargo insurance, we find it necessary to evaluate all five factors in deciding whether to grant or deny the Petition.

The first factor relevant to the determination of a petition for reinstatement is the amount of time a certificate remains dormant. When the period of dormancy is short, reinstatement can be treated solely as a matter between a petitioner and the Commission. *Application of Michael LoRusso, t/d/b/a Elegance Limousine Service*, 1999 Pa. PUC LEXIS 14, *5 (1999). The longer this period becomes, the more likely it is that another carrier would rely on the cancellation as being permanent and formulate plans to fulfill the dormant service. *Id.*

The Petitioner's Certificate was cancelled by Order entered January 25, 2006, and the Petitioner filed its Petition for Reinstatement on May 2, 2006. Although Petitioner did not file its Petition for Reinstatement within fifteen days as directed by our January 25, 2006 Order, because we are waiving the fifteen day filing requirement, we conclude that the May 2nd filing of Respondent's Petition does not weigh against reinstatement.

The second reinstatement factor is whether the Petitioner has a record of habitually violating the Code or the Commission's regulations. The Petitioner was issued its Certificate on April 13, 1999. A review of the Commission's records reveals that, other than the complaint for which the Petitioner's Certificate was cancelled, the Petitioner has had only two other complaints filed against it. The other two complaints involved evidence of insurance issues and were both satisfied by Petitioner within a reasonable period of time. On review of the foregoing, we conclude that the Petitioner does not have a substantial history of violations of the Code and our Regulations. Accordingly, we conclude that this factor weighs in favor of reinstatement.

The third reinstatement factor queries the reasonableness of the excuse offered for the violation. The violation for which the Petitioner's Certificate was cancelled was that the Petitioner failed to maintain evidence of cargo insurance on file with the Commission. The Petitioner avers that although it timely paid its cargo insurance premium, for reasons unknown to Petitioner, the Commission never received the Form H issued by the Century Surety Company. We have noted in prior proceedings that the carrier, not its insurance broker or insurance carrier, remains responsible for the maintenance of evidence of current insurance on file with the Commission. However, we conclude that the Petitioner has offered a reasonable excuse for the violation which led to the cancellation and that this factor weighs in favor of reinstatement.

The fourth reinstatement factor to be considered is whether the Petitioner has implemented procedures to prevent a recurrence of the circumstances giving rise to the subject Complaint. To demonstrate that it will be more diligent in maintaining evidence of insurance with the Commission in the future, on July 7, 2006, Petitioner submitted a Form H representing evidence of cargo insurance. This filing will be returned to Petitioner until such time as its certificate of public convenience is reinstated. We note, however, that this attempted insurance filing on the Petitioners part indicates that it will take greater efforts in the future that evidence of insurance for its operations is maintained at all times. Furthermore, beginning April 1, 2006, evidence of insurance may be submitted to the Commission electronically. On review of the foregoing, we conclude that the Petitioner has provided a reasonable solution to prevent a recurrence of the *circumstances giving rise to the subject Complaint*. Accordingly, this factor weighs in favor of reinstatement.

The fifth factor requires assessments and fines to be current prior to reinstatement. On March 28, 2006, Petitioner paid the \$100 fine assessed in the complaint docketed at A-00115371C0501. Furthermore, Petitioner has no outstanding assessment. As such, this factor also weighs in favor of reinstatement.

Recently, the Commission has adopted a policy of requiring a new filing of proof of insurance on behalf of carriers whose petitions for reinstatement are granted. Accordingly, reinstatement of the Petitioner's Certificate herein will be made conditional on the receipt of a new filing of proof of insurance by the Petitioner's insurance provider within thirty days of the date of entry of the instant Opinion and Order.

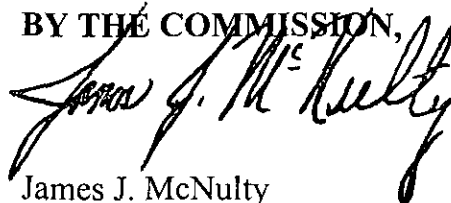
In evaluating the facts and circumstances of this proceeding, we conclude that reinstatement of the Petitioner's Certificate is appropriate. However, we wish to

admonish the Petitioner that violation of the Commission's rules and regulations can result in the imposition of severe sanctions including the cancellation of its Certificate; **THEREFORE,**

IT IS ORDERED:

1. That the Petition for Reinstatement filed by Mambo Movers, Inc., on May 2, 2006, will be granted conditional upon the filing of appropriate proof of liability insurance for Mambo Movers, Inc. with the Commission's Bureau of Transportation and Safety within thirty (30) days of the date of entry of this Opinion and Order.
2. That Mambo Movers, Inc., is prohibited from operating until the appropriate proof of liability insurance has been filed with the Commission's Bureau of Transportation and Safety, as outlined above.
3. That a copy of this Opinion and Order shall be served upon the Pennsylvania Department of Transportation and on the Pennsylvania Department of Revenue.

BY THE COMMISSION,



James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: July 20, 2006

ORDER ENTERED:

JUL 24 2006