

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Rita Dalinka	:	
	:	
v.	:	C-2015-2509071
	:	
A. Mastrocco Jr. Moving and Storage	:	

INITIAL DECISION

Before
Dennis J. Buckley
Administrative Law Judge

This Initial Decision dismisses a formal Complaint filed by Rita Dalinka (Complainant) alleging that her property was damaged by the firm of A. Mastrocco Jr. Moving and Storage (Mastrocco or Respondent) during a move from Philadelphia, Pennsylvania to Potomac, Maryland. Although no specific relief was requested in the original Complaint, as will be explained, below, what Complainant was seeking was an award of cash damages. As the matter complained of was a move of household goods that was made in interstate commerce, the Complaint must be dismissed for lack of jurisdiction.¹

HISTORY OF THE PROCEEDING

On October 13, 2015, Complainant filed a formal Complaint with the Secretary of the Commission alleging that Mastrocco's employees had damaged some of her household furnishings when those items were moved from Complainant's residence in Philadelphia, Pennsylvania to her new residence in Potomac, Maryland. Complainant did not specify her

¹ Although Complainant designated that this case was an appeal from a determination by the Commission's Bureau of Consumer Services (BCS), I find no underlying BCS case or determination in this matter.

requested relief in the original Complaint, indicating only that she wanted a payment arrangement. This is not, however, a billing dispute that would warrant consideration of a payment arrangement.² Complainant included with her Complaint a detailed letter setting forth the facts of the case as alleged by Complainant as well as photographs.

On October 20, 2015, the Secretary of the Commission served the Complaint on Respondent.

On November 7, 2015, Anthony P. Mastrocco, Jr., the President of Respondent, filed a letter/Answer to the Complaint denying the allegations in the Complaint and specifically stating that Complainant's furniture had not been damaged by Mastrocco's employees. Mr. Mastrocco also noted that he was not clear as to what Complainant was asking for to resolve the matter.

On November 9, 2015, Complainant filed a letter with the Secretary of the Commission asking to withdraw her Complaint and for a return of the documents that she had provided so that she would be able to file a Complaint with the United States Department of Transportation. Complainant subsequently contacted Commission staff and indicated that she did not wish to withdraw her Complaint.

On November 19, 2015, a Telephonic Hearing Notice was sent to the parties by the scheduling staff of the Commission's Office of Administrative Law Judge (OALJ), setting January 7, 2016, as the date for a telephonic hearing in this case.

On November 20, 2015, I issued a standard for Prehearing Order.

On December 2, 2015, Complainant called the OALJ requesting a continuance of this case stating that she had sustained an injury. Complainant did not indicate that she had

² Complainant's sole billing dispute was related to a \$200 deposit that had been billed twice, but that had been returned to Complainant. Complainant's allegation in this regard was to attempt to demonstrate the ineptness of Respondent's agents.

notified the Respondent of her request, and the Respondent's position with respect to that request was not known. I thereupon issued a Prehearing Order in which I directed Complainant to file her request for a continuance in writing, to provide a copy to the Respondent, and directing Respondent, as a corporation, to obtain counsel as required by the Commission's regulations.

On December 12, 2015, I received a letter requesting a continuance from the Complainant, who stated that she was in an accident on November 17, 2015, and sustained injuries that would preclude her from attending a hearing on January 7, 2016. On December 22, 2015, I was advised by e-mail from Anthony P. Mastrocco, Jr., that he had no objection to the requested continuance.

On December 30, 2015, I issued a Prehearing Order granting Complainant's request for a continuance.

On March 8, 2016, the OALJ issued a hearing notice rescheduling the hearing in this case for April 6, 2016.

On April 6, 2016, I convened a telephonic hearing originating from the Commission's office in Harrisburg, Pennsylvania. Complainant appeared and represented herself. Anthony P. Mastrocco, Jr. participated in the call but was referred back to the Prehearing Orders that required that a corporation be represented by counsel licensed to practice (or appearing *pro hac vice*) in Pennsylvania. Mr. Mastrocco thereupon asked for a continuance to seek counsel. Complainant objected to the request, indicating that she was prepared to go forward. I overruled the objection because: (1) Complainant's case would not be prejudiced by granting the continuance, and (2) as a matter of equity I considered it even treatments of the parties given Mastrocco's acquiescence in Complainant's request for a continuance on December 12, 2015. I also took the occasion of this hearing as an opportunity to explain at length to the parties that the Commission does not have jurisdiction to award damages, such a matter being under the jurisdiction of the civil courts. I further explained that a determination could be made as to whether the utility provided adequate and reasonable service, and that while I might impose

administrative sanctions on a utility that failed to do so, that would not result in cash damages payable to the Complainant. Complainant continued to object to the continuance given upcoming surgery, so I directed OALJ scheduling staff to work with her to find an acceptable hearing date.

On April 7, 2016, I issued an Order continuing this matter. I also noted that there may be a jurisdictional issue in this case because the movement of goods appeared to have been in interstate, not intrastate, commerce.

On April 21, 2016, the OALJ issued a hearing notice rescheduling the hearing in this case for May 12, 2016.

On May 12, 2016, I convened a telephonic hearing from the Commission's office in Harrisburg, Pennsylvania. Complainant appeared and offered testimony and ten exhibits: Exhibits C-1 through C-6 being photographs of Complainant's furniture showing alleged damage; Exhibits C-7 through C-9, being three separate bills of lading; and, Exhibit C-10, a Move In/Move Out Report from Complainant's residence in Philadelphia, Pennsylvania. These exhibits were received into evidence. Barry W. DeGroot, Esquire, appeared on behalf of A. Mastrocco Jr. Moving and Storage, Inc., and presented the testimony of Anthony P. Mastrocco, Jr., President of that corporation, and offered one exhibit, Exhibit R-1, a letter from Mr. Mastrocco to Complainant dated November 5, 2015. That exhibit was received into evidence. At hearing, counsel for Mastrocco moved to dismiss the Complaint based on lack of Commission jurisdiction. I held the Motion in abeyance pending issuance of this Initial Decision.

The record in this case closed on May 16, 2016, with the filing of the hearing transcript consisting of 44 pages, and Exhibits C-1 through C-10 and R-1. This case is now ready for decision.

FINDINGS OF FACT

1. Rita Dalinka is the Complainant in this case.

2. A. Mastrocco Jr. Moving and Storage, a Commission certificated carrier of household goods, is the Respondent.

3. On July 28, 2015, Respondent moved Complainant's household goods from her residence at 2401 Pennsylvania Avenue, Philadelphia, Pennsylvania, to her new residence at 12430 Park Potomac Avenue, Potomac, Maryland. Tr. at 34; Complainant's Exhibit Nos. 7-10.

4. In addition to its authority held from the PUC, Respondent also holds interstate transportation authority from the Interstate Commerce Commission. Tr. at 34.

DISCUSSION

The Commission, as a creation of the General Assembly, has only the powers and authority granted to it by the General Assembly as contained in the Public Utility Code. *Tod and Lisa Shedlosky v. Pennsylvania Electric Co.*, Docket No. C-20066937 (Order entered May 28, 2008); *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791 (Pa. 1977). The Commission must act within, and cannot exceed, its jurisdiction. *City of Pittsburgh v. Pennsylvania Pub. Util. Comm'n.*, 43 A.2d 348 (Pa Super. 1945). Jurisdiction may not be conferred by the parties where none exists. *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967). Subject matter jurisdiction is a prerequisite to the exercise of power to decide a controversy. *Hughes v. Pennsylvania State Police*, 619 A.2d 390 (Pa. Cmwlth. 1992) *alloc. denied*, 637 A.2d 293 (Pa. 1993).

The original request for relief made by Complainant, reiterated at the preliminary hearing on April 6, 2016, and continued up to May 10, 2016 (with the impermissible submission

of a draft settlement and release), was for an award of cash damages based on alleged damage to Complainant's furniture due to the negligence of Mastrocco's employees.³

The Commission does not have jurisdiction to award damages. *Feingold v. Bell of Pennsylvania*, 477 Pa. 1, 383 A.2d 791 (1977). On the other hand, that does not mean that the Commission lacks jurisdiction to hear a complaint that seeks damages. If such a complaint alleges a violation of the Public Utility Code, and if the allegations are established by the evidence presented at a hearing, an Administrative law Judge (ALJ) and the Commission might conclude that the utility committed violation of 66 Pa. C.S. § 1501 by failing to provide safe and adequate service. Although the Commission would not be able to award damages, it may decide to impose a fine or other penalty upon the utility. See *Seidel v. Ralph G. Smith, Inc.*, 49 Pa. PUC 557 (1975); *Robert Attianese and Michele Attianese v. Santoro Enterprises, Inc., t/d/b/a Thomas Gerrity Movers and Storage and Paul Arpin Van Lines, Inc.*, Docket No. A-00113019C0203 (March 12, 2004).

However, the key issue here is whether the Commission even has the jurisdiction to hear and decide this case. The Revised Interstate Commerce Act, 49 U.S.C. § 10521, establishes the Interstate Commerce Commission's jurisdiction over the transportation of property or passengers by motor carrier between points in the same state "through another state," providing in part as follows:

§ 10521. General jurisdiction

(a) Subject to this chapter and other law, the Interstate Commerce Commission has jurisdiction over transportation by motor carrier and the procurement of that transportation, except by a freight forwarder (other than a household goods freight forwarder) to the extent that passengers, property, or both, are transported by motor carrier --

(1) between a place in --

(A) a State and a place in another State;

³ As counsel for Mastrocco did not enter an appearance until the day of the hearing, I briefly discussed this document, its ex parte nature, and why I would not consider it, at the hearing on May 12, 2016.

(B) a State and another place in the same State through another State. . . .

(b) This subtitle does not –

(1) except as provided in sections 10922(c)(2), 10935, and 11501(e) of this title [all relating to regulation of motor carriers of passengers], affect the power of a State to regulate intrastate transportation provided by a motor carrier;

. . . .

(3) except as provided in section 10922(c)(2) of this title, allow a motor carrier to provide intrastate transportation on the highways of a State. . . .

Therefore, if Respondent's method of transporting goods constitutes *bona fide* interstate transportation, the PUC lacks jurisdiction and the complaint must be dismissed. See *Pa. P.U.C. v Simon's Express, Inc.*, Docket No. A-00105544C882, 70 Pa. PUC 96 (May 25, 1989).

The move originated in Philadelphia, Pennsylvania, and ended in Potomac, Maryland. Fundamentally, if a motor carrier transportation service is interstate in nature, the Commission does not have the jurisdiction to regulate that particular transportation service. *Re: Application of Renzenberger, Inc.*, Docket No. A-00116249 (Order entered February 7, 2003).

In determining whether or not transportation is "interstate" or "intrastate," the Courts have articulated the following test:

Whether transportation is interstate or intrastate is determined by the essential character of the commerce, manifested by shipper's fixed and persisting transportation intent at the time of the shipment, and is ascertained from all of the facts and circumstances surrounding the transportation. *Newcomer Trucking, Inc., Pitt-Ohio Express, Inc., Hammel's Express, Inc. v. Pittsburgh-Johnstown-Altoona Express, Inc.* Docket No. A-102956C871 67, Pa. PUC 702, (July 28, 1988); citing *Southern Pacific Transportation Co. v. Interstate Commerce Commission*, 565 F.2d 615 (9th Cir. 1977).

Considering the facts and circumstances in this case, the transportation of Complainant's household goods was interstate in nature. Complainant's furnishings were picked up at her apartment in Philadelphia, Pennsylvania, and they were transported across state lines to Complainant's new residence in Potomac, Maryland.

CONCLUSIONS OF LAW

1. The parties to and the subject matter of this proceeding are outside the jurisdiction of the Commission. *Pa. P.U.C. v Simon's Express, Inc.*, Docket No. A-00105544C882, 70 Pa. PUC 96 (May 25, 1989).
2. Section 10521 of the Revised Interstate Commerce Act, 49 U.S.C. § 10521, confers jurisdiction upon the Interstate Commerce Commission over the transportation of property or passengers by motor carriers between points in the same state "through another state."
3. The Commission, as a creation of the General Assembly, has only the powers and authority granted to it by the General Assembly as contained in the Public Utility Code. *Tod and Lisa Shedlosky v. Pennsylvania Electric Co.*, Docket No. C-20066937 (Order entered May 28, 2008); *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791 (Pa. 1977).
4. The Commission must act within, and cannot exceed, its jurisdiction. *City of Pittsburgh v. Pennsylvania Pub. Util. Comm'n.*, 43 A.2d 348 (Pa Super. 1945).
5. Subject matter jurisdiction is a prerequisite to the exercise of power to decide a controversy. *Hughes v. Pennsylvania State Police*, 619 A.2d 390 (Pa. Cmwlth. 1992) *alloc. denied*, 637 A.2d 293 (Pa. 1993).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion to Dismiss the Complaint of Rita Dalinka made by A. Mastrocco Jr. Moving and Storage at the hearing on May 12, 2016, at Docket No. C-2015-2509071, is granted.
2. That the formal Complaint filed by Rita Dalinka against A. Mastrocco Jr. Moving and Storage at Docket No. C-2015-2509071 is dismissed for lack of Commission jurisdiction.
3. That the record at Docket No. C-2015-2509071 be marked closed.

Dated: July 20, 2016

/s/
Dennis J. Buckley
Administrative Law Judge