

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

SCOTT LUELLEN,

Complainant

v.

Complaint Docket No. C-2016-2539599

MAROADI TRANSFER & STORAGE, INC.,

Respondent

PROPOSED ORDER

AND NOW, this ____ day of _____, 2016, Complainant Scott Luellen's Motion for Summary Judgment and Brief in Support thereof, and any responses thereto, it is hereby ORDERED and DECREED that

- (1) Respondent's Motion for Summary Judgment is DENIED; and,
- (2) Complainant's Motion for Summary Judgment is GRANTED.

BY:

THE COURT: HON. STEVEN K. HAAS
Administrative Law Judge

C-2016-2539599 - SCOTT LUELLEN v. MAROADI TRANSFER & STORAGE INC.

SCOTT LUELLEN

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ACCEPTS E-SERVICE REPRESENTING MAROADI TRANSFER & STORAGE INC.

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MAROADI TRANSFER & STORAGE, INC.,

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NOTICE TO RESPONDENT

PURSUANT TO 52 P A. CODE § 5.102 MOTIONS FOR SUMMARY JUDGMENT AND JUDGMENT ON THE PLEADINGS YOU ARE HEREBY NOTIFIED TO SERVE AN ANSWER OR OTHER RESPONSIVE PLEADING TO THIS MOTION WITHIN 20 DAYS OF SERVICE, OR WITHIN THE TIME PERMITTED BY THE COURT

COMPLAINANT'S FIRST AMENDED MOTION FOR SUMMARY JUDGMENT

Complainant, Scott Luellen, hereby files this instant Motion and respectfully requests summary judgment as to Complainant's claims because the Respondent procedurally defaulted on Requests for Admissions by over 100 days in which it conceded this Court's jurisdiction thrice over, conceded 7 of the 9 claims made against it, and in the alternative, schedule the case for a hearing of the evidence because this Court has exclusive jurisdiction because all events took place outside the scope of interstate commerce and exclusively within the Commonwealth of Pennsylvania, and in support states:

1. Complainant Scott Luellen (hereinafter "Luellen") filed an Amended Formal Complaint in this action on May 3, 2016 alleging various claims against Maroadi arising out of a contract for packing, loading, storage, and moving services.

2. Maroadi (under counsel who later resigned) filed its Answer, New Matter and Preliminary Objections in response to the Amended Complaint on May 24, 2016.
3. By Order of Court dated June 30, 2016, this Court DENIED Maroadi's Preliminary Objections, but noted it lacked jurisdiction to rule on any financial claims, which had been present in the original complaint, but were actually removed from the amended complaint.
4. Luellen subsequently filed numerous motions including discovery motions for production of documents, interrogatories, and Requests for Admissions, served on July 10, 2016, a certified copy of which was attached to Complainant's Motion to Deem Requests for Admissions Admitted that it filed with this Court on August 12, 2016, and are included by reference here.
5. Request for Admission number 31 read: "Admit that household goods being packed at 7105 Schoyer Avenue, Pittsburgh, PA in December 2014 were packed entirely within the Commonwealth of Pennsylvania (e.g., that the packing of goods was not interstate)."
[Emphasis added]
6. Request for Admission number 32 read: "Admit that household goods loaded at 7105 Schoyer Avenue, Pittsburgh, PA in December 2014 were loaded entirely within the Commonwealth of Pennsylvania (e.g., that the packing of goods was not interstate)."
[Emphasis added]
7. Request for Admission number 33 read: "Admit that Respondent does not registered to conduct business in any other state than the Commonwealth of Pennsylvania."
8. Request for Admission number 34 read: "Admit that Respondent could not have been engaged in interstate commerce in December 2014 because it itself is not licensed to conduct business in any other territory."

9. Moreover, Respondent also conceded all the claims against it as follows:
 - a. At request numbers 72 and 73, Respondent twice admitted Count 1;
 - b. At request number 74, Respondent admitted Count 3;
 - c. At request number 75, Respondent admitted Count 4;
 - d. At request number 76, Respondent admitted Count 5;
 - e. At request number 77, Respondent admitted Count 7;
 - f. At request number 78, Respondent admitted Count 9.
10. Further, Respondent also admitted by default that it had falsified answers to this Commission in request number 12, which stated: “Admit that James Messmer falsified answers to this Commission that “First Niagara” was Respondent’s insurer of record in December 2014.”
11. Maroadi acknowledged receipt of these discovery motions (and does so again in ¶ 4 of its Motion for Summary Judgment) and recognized its obligation to respond to discovery by choosing to partially respond to the requests for production and interrogatories; however, Maroadi refused to respond to Complainant’s Requests for Admissions within the statutorily required 20 calendar days under 52 Pa. Code § 5.350(c). Title 52 Pa. Code § 5.350(c) reads: “The matter is admitted unless, within 20 days after service of the request, the party to whom the request is directed answers or makes an objection to the matter, signed by the party or by his attorney.”
12. Maroadi has now refused to respond to Complainant’s Request for Admissions for over 120 days, or 500% of the statutorily deadline, which notably passed well before this Court held

the case in abeyance. Nor has Maroadi moved for additional time to respond, nor a motion for a protective order, nor was any protective order ever granted.

13. Therefore, on August 12, 2016, Complainant timely electronically filed a Motion to Deem Admissions Admitted under 52 Pa. Code § 5.350, which is on record with this Court and served upon Respondent. The Court did not enter its Order holding this proceeding in abeyance until August 16, 2016, by which time Maroadi had already procedurally defaulted by two weeks. Maroadi also choose to never oppose the Motion to Deem Admissions Admitted for the last 87 days after it was served. At no time were Complainant's Request for Admissions, or Motion to Deem Admissions Admitted, stayed prior to Maroadi's statutory and procedural default on July 30, 2016.
14. On October 5, 2016, a prehearing conference call was held with the Court and the parties; however, no witnesses were sworn or testified. No evidence was admitted to the record.
15. This Court requested that both parties file cross motions for summary judgment and, among other things, address the issue of whether the Commission has jurisdiction in an Order dated October 5, 2016; this Motion for Summary Judgment followed.
16. Even assuming *arguendo*, that Respondent had acknowledged its discovery obligations then not willfully refused to answer Requests for Admissions by the statutory deadline, and had not failed to oppose the Motion to Deem Admissions Admitted at any time in the 120 days since they were served, or the 32 days between being served with Requests for Admissions and this Court's order holding the case in abeyance, the facts of this case, when examined closely, place it exclusively within the jurisdiction of this Court.

17. While the Pennsylvania Utilities Commission's (hereinafter "Commission") jurisdiction is limited to intrastate commerce under 66 Pa. C.S. § 701, the claims made in this case exclusively involve intrastate commerce, and do not involve interstate transportation, they exclusively involve discrete elements of work that had nothing to do with interstate transportation. Maroadi was hired, and partially supervised, to conduct the packing and loading of materials into a storage and transfer unit across numerous days exclusively within the Commonwealth of Pennsylvania. Whether or not another company eventually, a day or more later, transferred the storage container, or a portion of the packed goods, to another location has no relevance to this case regardless of how much Respondent's counsel would like to obfuscate and blur the facts to make it appear so. [Emphasis added]
18. There is a direct transportation-related corollary that is instructive here. Just as the Federal Motor Carrier Safety Administration (FMCSA) has exclusive jurisdiction over vehicles while in transit between states, the Federal Aviation Administration (FAA) or Federal Bureau of Investigation (FBI) have exclusive jurisdiction over aircraft while in transit between states. However, when an incident occurs on an aircraft within a state, after or prior to it entering interstate transfer, that state, in this case the Commonwealth of Pennsylvania, has EXCLUSIVE jurisdiction. For example, in recently and internationally published news stories, an altercation reportedly occurred between a well-known male actor and his teenage son on a flight on a private aircraft in transit between US states. Neither the local authorities in the departure nor arrival city had jurisdiction; only the FBI had jurisdiction because the altercation occurred while in transit between states. Had the altercation occurred before or after the vehicle was in transit between states – prior to its departure or after its arrival, state authorities would have had exclusive jurisdiction, which is the case here.

19. Of course, upon a moment's reflection and critical thought, this makes complete common sense. The fact that any vehicle, aircraft, or watercraft may at some future time travel between states does not in and of itself give federal authorities jurisdiction, nor does it relieve state authorities of jurisdiction. A vehicle, aircraft, or watercraft not in transit, parked in a jurisdiction, is exclusively within that jurisdiction. Otherwise, it would be impossible to establish any jurisdiction over a vehicle, aircraft, or watercraft because, by their very nature mobile equipment, they transition between jurisdictions all the time. Jurisdiction can never be established via time travel – by where someone or something may be or go in the future. A Court has jurisdiction over a person or object based on where it is when the incident occurs, never upon where it could or might go in the future. [Emphasis added]
20. Accordingly, Luellen's Amended Complaint is not only within the exclusive jurisdiction of the Commonwealth of Pennsylvania, Maroadi has willfully and repeatedly procedurally defaulted on the subject of jurisdiction, and 7 of the 9 claims against it. And, under 52 Pa. Code § 5.350(c), this Court lacks discretion to ignore the procedural defaults and must deem all facts listed in the Requests for Admission as having been admitted by Respondent.
21. In the unlikely event that this Court rules against Complainant here, it will almost certainly be overturned on appeal because the Court statutorily lacks jurisdiction to *de novo* ignore a litigant's repeated procedural defaults and refusal to answer Requests for Admissions in which the Respondent repeatedly conceded jurisdiction and the claims made against it.

WHEREFORE, Complainant SCOTT LUELLEN, respectfully requests that this Honorable Court grant its Motion for Summary Judgment, and in the alternative, order a hearing to present evidence and rule on the merits of the Formal Complaint, and GRANT such other relief as the Court deems fair and just.

Respectfully submitted,

/s/

SCOTT LUELLEN,
14 Marlboro Street
Belmont, MA 02478

VERIFICATION

I, Scott Luellen, 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 a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904.

/s/ _____
Scott Luellen
14 Marlboro Street
Belmont, MA 02478
E-mail: SEricLuellen@gmail.com

Sunday, November 14, 2016
Date:

CERTIFICATE OF SERVICE

I, Scott Luellen, hereby certify that a true and correct copy of the foregoing Motion for Summary Judgment was sent via e-Service to Counsel for Maroadi Transfer & Storage, Inc., 1801 Lincoln Hwy, North Versailles, PA 15137 on or before Monday, November 14, 2016 to:

MARSHALL, DENNEHEY, WARNER, COLEMAN & GOGGIN

Alex Yoder, Esquire

ID P A 316694

100 Corporate Center Drive, Suite 201

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(717) 651-3505

/s/ _____

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Date: Monday, November 14, 2016