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Pennsylvania

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Kenneth A. Olsen
Attorney at Law
33 Philhower Road
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PLEASE DOCKET

PA PUIC
Via Fax and First Class Mail

November 17, 2003

Hon. Alison K. Turner, ALJ
Pennsylvania Public Utility Commission
1302 Pennsylvania State Office Bldg.
1400 West Spring Garden St.
Philadelphia, PA 17130

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Dear Judge Turner: Re: Application of James and Debra Ament
No. A-00119270

As your records will indicated, I represent Applicant in the above referred to proceeding.

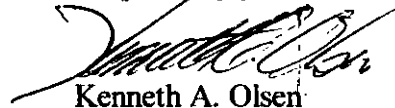
This will confirm our telephone conversation today during which I, on behalf of Applicant, requested, with the consent of my adversary, and Your Honor graciously granted an extension to the briefing schedule in this proceeding. This request was made due to my recent illnesses in addition to existing schedule burdens/demands of my sole practitioner practice (ie. court, hearing, mediation, and deposition appearances and pleading deadlines). Accordingly, the briefing dates set forth in Your Honor's October 23, 2003 Order have been revised so as to now allow the parties' Main Briefs to be filed on or before December 19, 2003 and Reply Briefs to be filed on or before January 5, 2003. As stated previously, I had consulted with my adversary regarding my foregoing request and he had graciously consented to same.

If you have any questions relative to any of the above, or require additional information, do not hesitate to contact me. Your courtesies, considerations, and understandings, and those of Mr. Casey, have been and are appreciated.

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JAN 07 2004

Respectfully yours,



Kenneth A. Olsen

KAO:amo

cc: James and Debra Ament

William H. R. Casey, Esq. (Via Fax and First Class Mail)

Secretary's Office of the Commission (Attn. Mr. Steve Springer)

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NOV 20 2003

Public Utility Commission
Philadelphia Office
Administrative Law Judge

Kenneth A. Olsen
Attorney at Law
33 Philhower Road
Lebanon, New Jersey 08833

Via FEDEX Airbill No. 8435 6920 5351

December 18, 2003

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

ORIGINAL

DOCUMENT

Dear Sir: Re: Application of James & Debra Ament, tenants by entirety*
Docket No. A-00119270

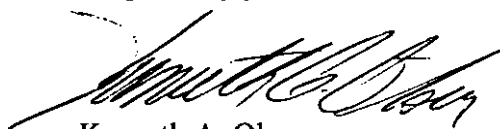
As your records will indicate, I represent Applicant, James and Debra Ament, tenants by entirety, in the above referred to proceeding.

Attached hereto, for filing with your Commission on behalf of my client pursuant to the Administrative Law Judge's revised briefing schedule, find original and nine copies of Applicant's Main/Initial Brief.

Kindly acknowledge receipt on the duplicate of this letter attached. A self-addressed stamped envelope is enclosed for your convenience.

If you have any questions relative to any of the above or attached, or require additional information, do not hesitate to contact me. Your courtesies and considerations are appreciated.

Respectfully yours,



Kenneth A. Olsen

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DEC 18 2003

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

KAO:amo
Enc.

cc with enc.: Hon. Alison K. Turner, ALJ (via FEDEX Airbill No. 8435 6920 5362)
William H. R. Casey., Esq. (via FEDEX Airbill No. 8435 6920 5373)
James and Debra Ament (via First Class Mail)

*Applicant's proper legal name has been changed to is James & Debra Ament t/d/b/a We-Haul Moving

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

IN THE MATTER OF:
APPLICATION OF
JAMES & DEBRA AMENT, TENANTS BY ENTIRETY
NUMBER A-00119270

MAIN/INITIAL BRIEF

OF

APPLICANT

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DEC 18 2003

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Dated: December 18, 2003

Filed By:
Kenneth A. Olsen
33 Philhower Road
Lebanon, New Jersey 08833
(908) 832-9207
Attorney for Applicant
James & Debra Ament

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

IN THE MATTER OF:
APPLICATION OF
JAMES & DEBRA AMENT, TENANTS BY ENTIRETY
NUMBER A-00119270

MAIN/INITIAL BRIEF

OF

APPLICANT

Comes now, James & Debra Ament t/d/b/a We-Haul Moving (amended company name filing made after the filing of the instant application-Tr. 16)*, with address at 1165 Ilona Drive, Hellertown, Pennsylvania 18055 (hereinafter referred to as Applicant), by its Attorney, Kenneth A. Olsen, and in accordance with the Rules of Practice of the Pennsylvania Public Utility Commission ("Commission") and pursuant to the revised briefing schedule of the Hon. Allison K. Turner, ALJ, files this, its Main or Initial Brief, in the above entitled proceeding.*

I
STATEMENT OF THE CASE

Applicant, on or about September 24, 2002, filed an application for a certificate of public convenience for approval of the operation of motor vehicles as common carrier to transport household goods in use, between points in the Counties of Lehigh, Northampton and Bucks, and from points in said Counties, to points in Pennsylvania, and vice versa. This application was published in the Pennsylvania Bulletin of October 5, 2002, Vol. 32, No. 40, at Page 4930. Subsequently, protests to this application were filed by O'Brien's Moving and Storage, Inc.;

*References to the record in this proceeding will be governed by the following abbreviations:

Tr. = Transcript of oral hearing and page number, Ex. = Exhibits received into evidence

Adam Meyer, Inc.; Keller Moving and Storage, Inc.; Clemmer Moving and Storage, Inc.; Ace Moving & Storage; BBD & Sons Moving, Inc.; Fisher-Hughes of Allentown, Inc.; Frick Transfer, Inc.; Fritz Moving Co., Inc.; Morgan Moving & Storage, Inc.; Read's Van Service, Inc.; Shelly Moving & Storage, Inc.; Shivley's Moving & Storage, Inc.; and Town & Country Van Lines, Inc. (hereinafter referred to collectively as Protestants) all represented by William H. R. Casey, Esq. By notice dated December 4, 2002, an Initial Hearing was scheduled for March 14, 2003 before the Hon. Allison K. Turner, ALJ, in Philadelphia, PA, and a Prehearing Order was issued and signed by the Hon. Allison K. Turner, ALJ on February 20, 2003. The Initial Hearing was held March 14, 2003, at which time testimony was taken and evidentiary exhibits were submitted on behalf of Applicant and Protestants, and Protestants' counsel made an oral motion on the record to dismiss the instant application. The Hon. Allison K. Turner, ALJ, then gave Applicant thirty (30) days to retain counsel for a subsequent hearing and deferred decision on Protestants' motion to dismiss. After Applicant retained its present counsel and notice of appearance was filed with the Commission, Applicant filed its Answer to Protestants' Motion To Dismiss and a subsequent hearing was eventually scheduled for September 8, 2003. At the close of the evidentiary record on September 8, 2003, the Hon. Allison K. Turner, ALJ ordered the submission of briefs by all parties and that said briefs contain an argument in support of or in opposition to Protestants' Motion To Dismiss. A briefing schedule was established by the Hon. Allison K. Turner, ALJ, and later revised at Applicant's request, with consent of Protestants' counsel, to set December 19, 2003 as the date for filing of the parties' main/initial briefs and January 5, 2004 as the date for filing reply briefs of the parties.*

II PERTINENT TESTIMONY AND EVIDENCE OF APPLICANT

Applicant presently holds operating authority from this Commission to transport property as a motor carrier between points in Pennsylvania. (Applicant's Ex. 9). Applicant presently holds operating authority from the Federal Motor Carrier Safety Administration, U. S.

Department of Transportation, to transport household goods as a common carrier by motor vehicle in interstate or foreign commerce. (Applicant's Ex. 10). Applicant presently has the equipment and materials listed on Applicant's Ex. 13 to utilize in its existing operations and those operations contemplated in the instant application if granted by the Commission. The motor vehicle(s) is garaged at a leased facility in Coopersburg, PA and Applicant's offices are at 1165 Ilona Drive, Hellertown, PA. (Tr. 15, 79). Applicant presently has the amounts of motor truck cargo and liability insurance listed on Applicant's Ex. 12 for the protection of the public in its existing operations and those operations contemplated in the instant application if granted by the Commission. Applicant is a member of the American Moving and Storage Association (Applicant's Ex. 11), and a principal of Applicant, Mr. Ament, is familiar with the transportation and handling of household goods in use having owned a household goods moving company in Brooklyn, NY. (Tr. 8). Presently, Applicant has approximately \$25,000.00 to \$30,000.00 in cash on hand or in the bank, or readily accessible through available lines of credit, to continue existing operations and commence intrastate Pennsylvania household goods in use operations upon a grant of authority from the Commission. (Tr. 80, 83-86). Applicant also has a credit line with Budget Truck through which it has access to rent additional vehicles and/or equipment if needed in existing and proposed operations. (Tr. 84). In support of its application, Applicant also presented evidence of: population growth in the Lehigh County, PA area during the years from 1990 through 2001; projected population growth in the Lehigh County, PA area by the year 2025; size of civilian labor force, employment, and unemployment in Pennsylvania for the last six months of year 2002; Yahoo! Yellow Pages listings of household goods moving companies in the Allentown, PA area; Applicant's letter attempt to negotiate a restrictive amendment with Protestants; Applicant's letter to its state legislative representative; and a copy of a White House Press Release statement from President Bush citing the need to support America's small businesses as the "backbone of our nation's economy." (Applicant's Ex. 1-7).

III
PERTINENT TESTIMONY OF SUPPORTING PUBLIC WITNESSES

Cameron Robert Sowder. (Tr. 87-91). Mr. Sowder appeared at the September 8, 2003 hearing individually in support of the authority sought by Applicant in the instant proceeding and set forth on Applicant's Ex. 8. (Tr. 88). Mr. Sowder will have a need for at least two movements in the next six (6) months to a year of household goods in use from Coopersburg, Pa to the Bethlehem, PA area, and thereafter from the Bethlehem, PA area to the Hellertown, PA or Saucon Valley, PA area. (Tr. 89). Moreover, Mr. Sowder will also require a movement of household goods in use, which have been storage for him, within Lehigh and Northampton Counties. (Tr. 89).

Rosana Rao. (Tr. 92-100). Ms. Rao appeared at the September 8, 2003 hearing individually in support of the authority sought by Applicant and is a real estate salesperson for Weidel Realtors in New Hope, PA. (Tr. 92-94). As a realtor, Ms. Rao maintains a personal list of people who can provide various services, including the transportation of household goods, and who she can recommend to her clientele. (Tr. 94-95). In the past six (6) months, she has had two (2) inquiries from her clientele regarding household goods in use transportation, to which she recommended Applicant, but did not know if the inquiries actually utilized Applicant. (Tr. 95). She regularly receives inquiries from clientele regarding household goods moving services in the area of her work. (Tr. 94-99). Ms. Rao actually utilized Applicant to transport a very large antique armoire from its place of purchase to her home in the Hellertown, PA area and was satisfied with Applicant's services. (Tr. 97-98).

Teresa Nicholas. (Tr. 101-107). Ms. Nicholas appeared at the September 8, 2003 hearing individually in support of the authority sought by Applicant, and provides house cleaning services for the public, including the Church of the Assumption ("Church") in Bethlehem, PA. (Tr. 101-103). During the course of her supplying house cleaning services for the Church, she receives inquiries from church parishoners regarding household goods moving services, and she

has recommends Applicant but does not know if parishoners follow her recommendations. (Tr. 103-104). Ms. Nicholas also serves as the Church's secretary at times and was personally involved in making the arrangements for and witnessing the transportation of a piano, applicances, and household goods to the Church and on behalf of the Church free of charge by the Applicant. (Tr. 104-106). The gratis or charity household goods services performed by Applicant for the Church were fine and satisfactory. (Tr. 106).

IV
PERTINENT TESTIMONY AND EVIDENCE OF PROTESTANTS

Steven Posivak. (Tr. 26-37). Mr. Posivak is the insurance person responsible for hiring and training operations personnel, and serves as liason between operations and sales for O'Brien's Moving & Storage, Inc. ("O'Brien's") in Allentown, PA. O'Brien's has intrastate Pennsylvania household goods authority, presently employs approximately 70 people, has 60 pieces of equipment (consisting of tractor trailers, flat trucks, pack vans), and has experienced a sharp decline in sales and operations since September 11th. (T. 27). However, Mr. Posivak did not testify to or present documentary evidence of the amount of the decline in sales and operations for any comparative period of time, or the extent to which O'Brien's facilities and equipment are not being fully utilized. (Tr. 27). Although Mr. Posivak did testify about some alleged intrastate movements of household goods from residences and Protestants' Ex. 1-3 were admitted into the record, Mr. Posivak did not know if these moves were actually intrastate movements of household goods in use from/to residences for compensation by Applicant, and did not know if the Commission took any official action against Applicant based on his complaints to the Commission. (Tr. 27-37).

Rodney Pursell. (Tr. 37-40). Mr. Pursell is president of Adam Meyer, Inc. (Meyer), which employs 18 people, has offices and equipment (consisting of 4 trailers, 3 tractors, and 3 straight trucks), and has experienced diminished revenues and under utilized equipment and employees. (Tr. 38-39). However, Mr. Pursell did not testify to or present documentary

evidence of the amount of diminished revenues or under utilization of equipment and employees for any comparative period of time, nor did he present any documentary evidence of an alleged household goods move by Applicant on January 13, 2003 being unlawful. (Tr. 39-40).

Edward Keller. (Tr. 40-48). Mr. Keller is president and owner of Keller Moving & Storage, Inc. ("Keller") which has intrastate Pennsylvania authority, warehouse and office space, 17 pieces of equipment, and has experienced equipment and employees not being utilized. (Tr. 41-44). However, Mr. Keller did not testify to or present documentary evidence of the amount of lost business or employees for any comparative period of time with factual basis as to the cause of the alleged loss. (Tr. 41-48). Mr. Keller did not remember the names of the various applicants for Keller's salesperson's position, nor did he remember interviewing Mr. Ament of the Applicant for Keller's salesperson's position. (Tr. 45-48).

Robert Clemmer. (Tr. 48-50). Mr. Clemmer is vice president of Clemmer Moving & Storage, Inc. which has facilities in Pennsylvania, equipment (consisting of 25 trailers, 15 tractors, straight vans and smaller vans), 65 to 70 employees, and has experienced an under utilization of facilities and a falling-off of revenues since September 11th. (Tr. 49). However, Mr. Clemmer did not testify to or present documentary evidence of the amount of lost revenues or under utilization of facilities for any comparative period of time. (Tr. 49-50). Although Mr. Clemmer believes the public is well serviced by the existing 11 moving companies, he did provide any testimony or documentation to substantiate his belief. (Tr. 50).

V

STATEMENT OF QUESTIONS INVOLVED

Applicant states that the questions involved in this proceeding are as follows: (1) Does the approval of the instant application serve a useful public purpose, responsive to a public demand or need?; (2) Does Applicant possess the technical and financial ability to provide the proposed service and comply with Commission regulations?; and (3) Would the approval of this application endanger or impair the operations of Protestants contrary to the public interest?

VI
SUMMARY OF ARGUMENT

It is Applicant's position it has demonstrated approval of the instant application will serve a useful public purpose responsive to a public demand and need. Secondly, Applicant has demonstrated it possesses the technical and financial ability to provide the proposed service. Inasmuch as the one documented move by Applicant without authority has been adequately explained and satisfactorily resolved with the Commission (ie. see following "Argument In Opposition To Motion To Dismiss") and cannot be a preclusion to a subsequent grant of authority, there has been no showing on the record that Applicant lacks a propensity to operate safely and legally, thereby removing any such basis on which to withhold a grant of authority. Thirdly, there has been no showing or documentation that Protestants operations would be endangered or impaired contrary to the public interest by a grant of the instant application.

VII
ARGUMENT

Applicant possesses the technical and financial ability to provide the proposed service. Applicant has submitted ample evidence of its technical and financial ability to provide the proposed service in the form of amount and types of equipment and material it owns and utilizes in its authorized intrastate and interstate operations, a description of its facilities and its present intrastate and interstate operations, a description of the type and amount (in excess of the Commission's minimum requirements) of cargo and liability insurance it presently has in effect for the protection of the public, a description of its financial condition consisting of available cash in the bank and lines of credit to conduct present and future operations and rent additional equipment as needed, and the background of Mr. Ament being knowledgeable of household goods transportation through past ownership of a moving business and present authorized operations. The credibility of the foregoing testimonial and documentary evidence adduced by Applicant regarding its technical and financial ability to provide the proposed service was sufficiently established during the hearings and not attacked by Protestants.

Moreover, no showing has been made of any propensity by Applicant to operate in other than a lawful and safe manner. As discussed below in Applicant's Argument In Opposition To Protestants' Motion To Dismiss, the one substantiated movement by Applicant without appropriate operating authority was admitted to by Applicant, occurred as a result of misinformation received by Applicant, and was satisfactorily resolved between Applicant and the Commission. The other unlawful movement(s) alleged by Protestants to have been performed by Applicant were not substantiated or documented by Protestants during the hearings. Measured against the standards and principles espoused Application of Friedman's Express, Inc., Docket No. A-00024369, Folder 9, Am-B, Folder 10, Am-I, and in Loma, Inc. v. Pennsylvania Public Utility Commission, 682 A.2d 424 (Pa. Comwlth. 1996), the one unlawful movement acknowledged by Applicant and the other unlawful movement(s) alleged by Protestants do not support any conclusion that Applicant lacks the propensity to operate safely and lawfully. On the contrary, the facts that Applicant has filed for and received interstate household goods operating authority, filed for and received intrastate property operating authority from the Commission, and commenced and continued with the instant application proceeding clearly demonstrates Applicant's propensity to operate lawfully and safely. Incidentally, it has been held the Commission considered the applicant's unauthorized service as proof of public need where the service was based on a good faith misunderstanding of the scope of its certificate and the revenues generated thereby may be considered in determining applicant's financial fitness. W. C. McQuaide, Inc. v. Pennsylvania Public Utility Commission, 1156 (Pa. Cmwlth. 1991), 585 A.2d 1151 (1991).

The instant application will serve a useful public purpose responsive to a public demand or need. It is not necessary that an applicant for a certificate of public convenience show that a proposed service be absolutely indispensable or establish a demand for service in every square mile of territory sought, as proof of necessity within an area generally is sufficient to support a grant of authority. Modern Transfer Co. v. Pennsylvania Public Utility Commission, 179 Pa.

Super. 46, 115 A.2d 887 (1955); Reeder v. Pennsylvania Public Utility Commission, 192 Pa. Super. 298, 162 A.2d 231 (1960); Zurcher v. Pennsylvania Public Utility Commission, 173 Pa. Super. 343, 98 A.2d 218 (1953); and B. B. Motor Carriers, Inc. v. Com., Public Utility Commission, 36 Pa. Cmwlth. 26, 389 A.2d 210 (1978). While evidence of present need can be presented, the Commission may act upon indicated future need if circumstances require such. Highway Exp. Lines, Inc. v. Pennsylvania Public Utility Commission, 195 Pa. Super. 92, 169 A.2d 798 (1961). An applicant's burden is met by showing the proposed service is reasonably necessary for the public's accommodation or convenience, as an absolute or indispensable necessity need not be proven. Highway Exp. Line v. Pennsylvania Public Utility Commission, 164 Pa. Super. 145, 63 A.2d 461 (1949); Pennsylvania R. Co. v. Pennsylvania Public Utility Commission, 181 Pa. Super. 343, 124 A.2d 685 (1956); D. F. Bast, Inc. v. Pennsylvania Public Utility Commission, 185 Pa. Super. 487, 138 A.2d 270 (1958); and Dutchland Tours, Inc. v. Pennsylvania Public Utility Commission, 19 Pa. Cmwlth. 1, 337 A.2d 922 (1975). The evidentiary record in this proceeding establishes that Applicant's proposed service is reasonably necessary for the public's existing or future accommodation or convenience in the general area sought by Applicant. The public witnesses' testimony as to present and future movements of household goods in the areas of Bethlehem, Coopersburg, Hellertown, New Hope, and Saucon Valley, PA, and desire to utilize Applicant, demonstrate Applicant's proposed service is reasonably necessary for the public's accommodation or convenience. Applicant's Ex. 1-4 demonstrate current and future population growth and employment needs in the territory sought by Applicant most likely will result in a public demand for additional household goods transportation by existing and newly certificated motor carriers, which will have an adequate labor pool for staffing.

Protestants have not demonstrated that a grant of the instant application would significantly endanger or impair their respective operations contrary to the public interest. It has been conclusively determined that the legislature, in enacting the Public Utility Law, did not

intend to benefit established carriers by erecting artificial barriers to the entry of new competitors. Merz White Way Tours v. Pennsylvania Public Utility Commission, 204 Pa. Super. 43, 201 A.2d 446 (1964); New Kingsington City Lines, Inc. v. Pennsylvania Public Utility Commission, 200 Pa. Super. 490, 190 A.2d 179 (1963). Moreover, the primary object of the public service laws is not to establish a monopoly or to guarantee the security of investment in public service corporations, but first, and at all times, to serve the interests of the public. D. F. Bast, Inc. v. Pennsylvania Public Utility Commission, 185 Pa. Super. 487, 138 A.2d 270 (1958). The law does not guarantee any carrier freedom from competition, and the public convenience and interest may require a proposed service (ie. such as Applicant's herein) even though it results in diversion of business from existing carriers. Railway Exp. Agency, Inc. v. Pennsylvania Public Utility Commission, 195 Pa. Super. 394, 171 A.2d 860 (1961). The courts and the Commission have historically recognized that no existing carrier has an absolute right to be free from competition. Noerr Motor Freight, Inc. v. Pennsylvania Public Utility Commission, 181 Pa. Super. 332, 338, 124 A.2d 393 (1956). Furthermore, the Commission, in Application of Eazor Express, Inc., 53 Pa. PUC 374 (1979), stated more emphasis would be placed on economic analysis and commission discretion over the level of competition which appears to best serve the public interest, with less emphasis on protecting existing carriers from additional competition. Not one of the Protestants herein submitted quantitative evidence of the extent to which the grant of the instant application would endanger or impair their respective operations to the point of being contrary to the public interest. Merely stating that business or revenues have decreased, or equipment, facilities, and employees have not been fully utilized since September 11, 2001, does not establish any adverse endangerment or impairment connection to a grant of the instant application. It is probable that a decrease in business and revenues, or in the utilization of equipment, facilities, and employees, after September 11, 2001 was the result of the general national and regional economic conditions and/or Protestants' particular business practices. Also, Protestants herein appear to have lost sight of the fact that a certificate of public

convenience issued by the Commission merely confers the right to do business as a regulated public utility, but it does not provide any iron-clad guarantee that such business will be protected from competition, be successful, or always be available to the certificate holder.

Accordingly, while Applicant submits the evidentiary record in this proceeding establishes its technical and financial ability to provide the proposed service in a safe and lawful manner, and establishes that the approval of the instant application is in the public interest responsive to public demand and need, the evidentiary record is void of how a grant of the instant application will endanger or impair Protestants' operations contrary to the public interest.

VIII

ARGUMENT IN OPPOSITION TO MOTION TO DISMISS

Although no formal written Motion To Dismiss had been filed by Protestants, it appears from a review of the March 14, 2003 initial hearing transcript and William H. R. Casey, Esq.'s March 24, 2003 letter that Protestants' oral Motion To Dismiss is based upon Protestants' assertions that: (1) a prior shipment was made by Applicant without the appropriate operating authority; (2) Applicant was not prepared to present its entire case as to fitness and public need at the March 14, 2003 initial hearing; (3) Applicant not being able to present evidence of public need in the format of supporting public witnesses' live testimony; and (4) and misrepresentation to the Honorable Administrative Law Judge and the Commission as to the status of Applicant's grant of "commercial" operating authority from this Commission. Based upon the facts, evidence of record, and applicable case law, none of the foregoing together or individually support the grant of a motion to dismiss or the issuance of an order to dismiss the underlying application.

First, applicable case law has established the principle that a motor carrier authority applicant's prior unlawful operations do not preclude the Commission from granting authority in a subsequent proceeding. Loma, Inc. v. Pennsylvania Public Utility Commission, 682 A.2d 424 (Pa. Cmwlth. 1996). The Commission can accept evidence presented by a motor carrier applicant, in a proceeding subsequent to any unauthorized operations, as credible to determine

that the company is likely to comply with the Commission's regulations in the future. Loma, Inc. v. Pennsylvania Public Utility Commission, supra. Moreover, Applicant avers the unlawful movement referred to by Protestants' counsel at the March 14, 2003 hearing occurred as a result of Applicant's reliance on misinformation from the Commission's personnel that Applicant had temporary authority to perform intrastate household goods movements while its permanent authority application was pending. Furthermore, the unlawful movement, for which Applicant was cited by the Commission at Docket No. A-00119270C0301, was only an isolated movement and was satisfactorily resolved between Applicant and the Commission at Docket No. A-00119270C0302. Consequently, the occurrence of one isolated prior unlawful operation should not and does not form a basis upon which to grant Protestants' Motion To Dismiss, and certainly does not form a basis under the Application of Friedman's Express, Inc., Docket No. A-00024369, Folder 9, Am-B, Folder 10, Am-I (Order entered August 17, 1989) standard of a propensity to operate unsafely and illegally.

Second, the fact that Applicant may not have been ready to present its entire case as to fitness and public need at the March 14, 2003 initial hearing is moot and should not form a basis for a grant of Protestant's Motion To Dismiss when the Honorable Administrative Law Judge recognized that Applicant was not experienced transportation counsel, granted Applicant the opportunity to retain counsel and another hearing to present additional evidence of fitness and public need, and demonstrated by such rulings that the Commission's Rules of Practice allow for the scheduling of further hearings for the presentation of Applicant's case if such is deemed necessary in the opinion of the presiding hearing officer. In fact, at the subsequent September 8, 2003 hearing, Applicant did present testimony of public witnesses, in addition to that of Applicant's witness, in support of the instant application.

Third, the fact that Applicant did not present evidence of public need at the March 14, 2003 initial hearing in the format of live testimony from public witnesses also is moot and should not form a basis for a grant of Protestants' Motion To Dismiss when the Honorable

Administrative Law Judge granted Applicant the opportunity to present additional evidence of fitness and public need at another future hearing, and such was done on September 8, 2003.

Fourth, any misrepresentation as to the status of a grant of its “commercial” operating authority by this Commission was not purposely made by Applicant. At the time of the March 14, 2003 hearing, Applicant was unaware that an untimely filing of insurance by its insurance carrier and misinformation from Commission staff resulted in dismissal of its “commercial” authority application. Applicant had been informed by its insurance carrier that proper and timely filing of the required insurance had been made with the Commission in order to secure issuance of a Certificate of Public Convenience, but such information was later proven to be incorrect. When Applicant learned that timely and proper filing of the required insurance was not made by its insurance carrier, Applicant contacted the Commission and was misinformed that all which was needed to be done was refile by the insurance carrier for its “commercial” authority grant to be reinstated followed by issuance of a Certificate of Public Convenience. When Applicant became aware that its “commercial” authority application had been dismissed and not reinstated, it filed another application for “commercial” operating authority with the Commission, together with submission of another filing fee. This second filing for “commercial” operating authority resulted in a grant of authority and issuance of a Certificate of Public Convenience on June 4, 2003 (Applicant’s Ex. 9).

Therefore, in view of the foregoing, Protestants’ Motion To Dismiss was and is not only premature in light of the scheduling of an additional hearing for presentation of Applicant’s case, but also lacks foundation in fact and law. Accordingly, Protestants’ Motion To Dismiss should be denied

IX
PROPOSED FINDINGS OF FACT

1. Applicant presently holds property authority from the Commission, and interstate household goods authority from the Federal Motor Carrier Safety Administration, U. S. Department of Transportation. (Applicant's Ex. 9 and 10).

2. Applicant presently performs authorized operations in the territory involved in the instant application pursuant to its Certificate of Public Convenience issued by the Commission under Docket No. A-00119270, Folder 3, and Certificate MC-456009-C issued by the Federal Motor Carrier Safety Administration, U. S. Department of Transportation. (Tr. 8, 68-87, 92-107)

3. Applicant presently has the necessary equipment, materials, facilities, insurance (cargo and liability), technical and financial ability to perform the proposed service in a lawful and safe manner. (Tr. 8, 15, 68-87, 92-107). (Applicant's Ex. 11-13).

4. The instant application will serve a useful public purpose responsive to a present and future public demand and need. (Tr. 87-107). (Applicant's Ex. 1-7).

5. A grant of the instant application will not endanger or impair Protestants' contrary to the public interests. (Tr. 26-50).

X
PROPOSED CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter in this case.

2. The Applicant possesses the technical and financial ability to provide the proposed service.

3. Sufficient evidence has been presented to show a public need and demand for the proposed by Applicant, which will serve a useful public purpose.

4. In permitting a motor carrier to enter a competitive field, the Public Utility Commission need not find the proposed service to be rendered by Applicant is absolutely indispensable, but it is sufficient that service is reasonably necessary for accommodation or convenience of the public. Pittsburgh & L. E. R. Co. v. Pa. P.U.C., 170 Pa. Super. 411 (1952).

5. In order to establish need, it is not necessary to prove an absolute necessity or present demand for the service in every part of the territory involved. Pa. P.U.C. v. Purolator Courier, 24 Pa. Cmwlth. Ct. 301 (1976).

6. The amount of competition which will best serve the public interest and convenience is a matter within the discretion of the Public Utility Commission. Merz White Way Tours v. Pa. P.U.C., 204 Pa. Super. 490, 201 A.2d 446 (1964).

7. The approval of the instant application will not endanger or impair the operations of the Protestants contrary to the public interest.

XI
PROPOSED ORDER

AND NOW, this day of , 2004, upon consideration of the complete record of formal testimony and evidence submitted and obtained in this proceeding, it hereby ordered and directed as follows:

That the application of James & Debra Ament, Tenants by Entirety, docketed at A-00119270, be and it is hereby granted so as to permit Applicant to transport, by motor vehicle, as a common carrier, household goods in use, between points in the Counties of Lehigh, Northampton and Bucks, and from points in said Counties, to points in Pennsylvania, and vice versa.

Applicant shall not engage in any transportation granted herein until it shall have complied with the requirements of the Pennsylvania Public Utility Law and the Rules and Regulations of the Pennsylvania Public Utility Commission relating to the filing and acceptance of evidence of cargo and liability insurance in the appropriate amounts for the protection of the public, and related to the filing and acceptance of a tariff establishing just and reasonable rates.

In the event Applicant has not, on or before sixty (60) days from the service of this Order, complied with the requirements hereinbefore set forth, the application shall be dismissed without

further proceedings.

AND IT IS SO ORDERED.

Allison K. Turner, Administrative Law Judge

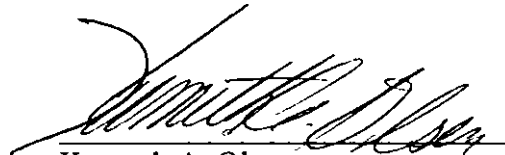
XII
CONCLUSION AND PRAYER FOR RELIEF

Wherefore, the above premises being considered, Applicant seeks the relief set forth in this Commission's rules and regulations, and respectfully prays the Honorable Administrative Law Judge find as follows:

1. That Applicant is fit, willing, and able to provide the services proposed herein, in that it possesses the requisite technical and financial ability to provide the proposed service and comply with Commission regulations;
2. That Applicant, through its operating and public witnesses, together with its submitted evidentiary record, has shown a need for the proposed operations in that approval of this application will serve a useful public purpose, responsive to a public need;
3. That Protestants operations, or that of other carriers, will not be endangered or impaired by the grant of this application;
4. That the grant of the authority sought herein is not contrary to the public interest;
5. That the record in its entirety supports a finding that the application be granted in its entirety; and
6. Protestants' Motion To Dismiss, together with any other sanctions sought in Protestants' Motion, be and is hereby denied.

Dated: December 18, 2003

Respectfully submitted,




Kenneth A. Olsen
33 Philhower Road
Lebanon, New Jersey 08833
(908) 832-9207
Attorney for James & Debra Ament
Applicant

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the original and true copies of the foregoing document upon the persons listed below, via Federal Express, prepaid, in accordance with the requirements of 52 Pa. Code 1.54 (relating to service by a participant).

William H. R. Casey, Esq., 99 East Court St., Doylestown, PA 18901 as to a true copy; and the Hon. Alison K. Turner, ALJ, Pennsylvania Public Utility Commission, 1302 Philadelphia State Office Bldg., 1400 West Spring Garden St., Philadelphia, PA 19130 as to a true copy; and the Hon. James. J. McNulty, Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265 as to an original and nine copies.

Dated this 18th day of December, 2003.


KENNETH A. OLSEN
Attorney for James & Debra Ament
Applicant

WILLIAM H. R. CASEY

ATTORNEY AT LAW

99 EAST COURT STREET

DOYLESTOWN, PENNSYLVANIA 18901

(215) 348-7300

FAX (215) 348-1456

ORIGINAL

DOCUMENT

December 19, 2003

James J. McNulty, Secretary
Commonwealth of Pennsylvania
Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17120

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DEC 19 2003

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

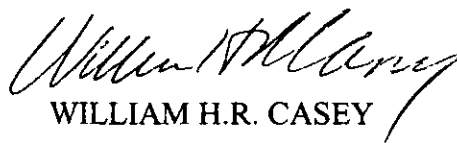
**RE: Brief of Protestants
Application of James and Debra Ament, Tenants by Entirety
PUC Docket Number A-00119270**

Dear Secretary McNulty:

Enclosed please find an original Brief of Protestants pertaining to the above-captioned application and nine copies as required by 52 Pa. Code Section 5.502.

I have also, this date, forwarded copies to the Applicant's attorney, Kenneth A. Olsen, Esquire, via U.S. Mail, and Administrative Law Judge Allison K. Turner, via e-mail.

Very truly yours,


WILLIAM H.R. CASEY

WHRC/mw

Enclosures

cc: Protestants
Administrative Law Judge Allison K. Turner
Kenneth A. Olsen, Esquire

RJP

89

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of : Docket No. A-00119270
: :
James and Debra Ament, : :
Tenants by Entirety : :

DOCKETED
FEB 26 2004

DOCUMENT

BRIEF OF PROTESTANTS

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DEC 19 2003

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

WILLIAM H. R. CASEY, ESQUIRE
Attorney for Protestants
99 East Court Street
Doylestown, PA 18901
(215) 348-7300

STATEMENT OF THE QUESTIONS

1. HAS THE APPLICANT ESTABLISHED A PUBLIC NEED FOR ADDITIONAL HOUSEHOLD GOODS IN USE SERVICE IN THE AREAS REQUESTED?
2. DOES THE APPLICANT LACK A PROPENSITY TO OPERATE SAFELY AND LEGALLY?

STATEMENT OF THE CASE

In the summer of 2002, an application was filed by James and Debra Ament, Tenants by Entirety to Docket A-00119270 to begin to operate motor vehicles as a common carrier for the transportation of household goods in use, between points in the counties of Lehigh, Northampton and Bucks and from points in said counties to points in Pennsylvania and vice versa.

The application was advertised in the Pennsylvania Bulletin on October 5, 2002. Protests to the application were timely filed by Ace Moving & Storage; Adam Meyer, Inc., Clemmer Moving & Storage; Fisher Hughes of Allentown, Inc; Fritz Moving Co., Inc.; Frick Transfer, Inc.; O'Brien's Moving and Storage, Inc.; Keller Moving and Storage, Inc.; Reads Van Service; Shelly Moving & Storage, Inc.; Shively's Moving & Storage Co and Town & Country Van Lines, Inc.

A hearing was subsequently scheduled before Administrative Law Judge Alison K. Turner on March 14, 2003 in Philadelphia, Pennsylvania, at which the Applicants appeared and William H. R. Casey, Esquire appeared on behalf of the Protestants.

Thereafter the Applicant testified without counsel, which testimony is summarized as follows:

Mr. Ament stated numerous times that he had a commercial PUC license and was performing commercial moves. (N.T. 8, 17, 19, 20, 21 and 22). He offered seven exhibits regarding

unemployment figures, population, small businesses, lists of area movers and a letter to Protestant's counsel. (N.T. 10 – 15 and 35).

On cross examination, Mr. Ament acknowledged his application restricted household moves until authority was granted, but admitted to doing a household move in violation of his promise. (N.T. 16, 17). He also confirmed he had placed a yellow page advertisement claiming licensed household rights, in anticipation of obtaining Commission approval. (W.T. 19, 20).

Four of the Protestants testified, a summary of which is as follows:

1. Steven Posivak

Mr. Posivak, an employee of O'Brien's Moving & Storage Lines, testified concerning O'Brien's rights and facilities and how they were not being fully utilized since September 11, 2002. He stated that he confronted the Applicant during a household move on October 17, 2002 and notified the Commission about the violation. (N.T. 30, 31). Later that month, on October 26, 2002, he again confronted the Applicant during a household move at an apartment complex. (N.T. 32, 33) Photographs of this move were entered as Protestants exhibit No. 3.

2. Rodney Pursell

Mr. Pursell, president of Adam Meyer Moving & Storage Co., testified regarding his company's household rights and facilities and stated their facilities and employees were not being fully utilized during this period. (N.T. 38, 39). He was seen the yellow page advertisement by

Applicant and seen Applicant's truck working at a residence in Hanover Township, which be reported to the Commission. (N.T. 39, 40).

3. Edward R. Keller

Mr. Keller, president of Keller Moving and Storage Co., testified regarding his company's household rights and facilities and that they were not being fully utilized during this period. (N.T. 41, 42). He also had seen Applicant's yellow page advertisement. (N.T. 43).

4. Robert Clemmer

Mr. Clemmer, president of Clemmer Moving and Storage Co., testified regarding his company's household rights and facilities and equipment. He stated that they were not being fully utilized during this period. (N.T. 48, 49). He has seen Applicant's advertisement in a weekly newspaper "Pennsylvania Power" and seen their truck in Coopersburg. (W.T. 49).

A second hearing was held on September 8, 2003. At this hearing Applicant was represented by counsel Kenneth A. Olsen, Esquire. Mr. Olsen advised that Applicant was now a partnership, James and Debra Ament, d/b/a We-Haul Moving, a fictitious name. (N.T. 60)

Thereafter, Mr. Ament was resworn and offered several exhibits, including a copy of his original application, his Certificate of Public Convenience regarding commercial moves dated June 4, 2003, his interstate household goods certificate dated May 19, 2003 membership in the American

Moving and Storage Association, a certificate of insurance dated September 4, 2003 and a list of equipment and materials.

Applicant also offered testimony from Cameron Sowder, an individual, who stated he would need service for two household goods moves in the area within the next six months or a year. (N.T. 89).

Applicant also offered testimony by Rosana Rao, an individual, who testified she worked for Weidel Realtors in New Hope, Bucks County. (N.T. 92). She stated she had no personal need for household goods service, but recommends movers to her real estate clients. (N.T. 94, 95). She stated she would recommend the Applicant because he moved an armoire for her in a commercial move before the summer. (N.T. 97 – 1000).

Applicant also offered testimony by Teresa Nichols, a self-employed house cleaner who testified she had no need for household services. (N.T. 102, 103). She recommends U-Haul to parishoners at her church because Applicant moved a piano and other goods donated to the church without charge. (N.T. 104 – 107).

The Administrative Law Judge then denied Applicant's attorney's Motion to Dismiss Protestants who did not appear at the hearing and set a briefing schedule for the parties.

PROPOSED FINDINGS OF FACT

1. James and Debra Ament are individuals doing business as a partnership with the fictitious name, We-Haul Moving, located at 1655 Ilona Drive, Hellertown, Pennsylvania 18055. (N.T. 15, 60).
2. Applicant filed an application to obtain household goods in use rights between points in the counties of Lehigh, Northampton and Bucks, and from points in said counties to points in Pennsylvania, and vice versa on September 4, 2002 (Exhibit No. 8).
3. Applicant admitted making a household move without authority on January 23, 2003.
4. Applicant applied for commercial rights on December 4, 2002 at Docket No. A-00119270, F.2. (Commission records.)
5. Applicants' commercial rights application was dismissed by the Commission for non-compliance on February 21, 2003 and Applicants were notified by the Secretary of the Commission by letter on that day. (Commission records.)
6. Applicant stated to Administrative Law Judge Allison K. Turner at the March 14, 2003 hearing that he had a commercial PUC license (N.T. 8, 17, 18, 19, 20, 21 and 22).
7. Applicant called Cameron Sowder, an individual, who stated he would need service for two household goods moves in the area within the next six months or a year. (N.T. 89).
8. Applicant Rosana Rao, an individual, who would recommend movers to her real estate clients. (N.T. 97 – 100)

9. Applicant called Teresa Nichols, a self-employed house cleaner who testified recommends Applicant to members of her church without. (N.T. 102 – 107).
10. Protestants called Steven Posevok, an employee of O'Briens Moving & Storage Van Lines, who confronted Applicant on two occasions in October 2002 when Applicant was moving furniture.
11. Protestants called Rodney Pursell, president of Adam Meyer Moving & Storage Co., who testified he saw Applicant making a household move in Hanover Township without authority. (N.T. 38, 40).
12. Protestants called Robert Clemmer, president of Clemmer Moving and Storage Co., who testified saw Applicant's advertisement in a weekly newspaper "Pennsylvania Power" during the period Applicant had no rights. (W.T. 48, 49).
13. Protestants called Edward R. Keller, president of Keller Moving and Storage Co., who testified he had seen Applicant's advertisement and that his facilities were not being fully utilized. (N.T. 41 - 43).
14. Applicant has limited financial resources but can perform service if licensed (N.T. 85)
15. Applicant has a propensity to operate illegally.

SUMMARY OF ARGUMENT

Applicant's need testimony was weak in substance and in geographic area and should be ruled inadequate. His propensity to operate illegally has clearly been shown. The propensity, coupled with his repeated denials and blaming of others, including Commission staff and his own insurance broker indicate he is incorrigible and cannot be relied upon to comply with Commission rules in the future. His application should be denied for the protection of the public.

ARGUMENT

A. RELEVANT LEGAL PRINCIPLES

The standard for the evidentiary criteria used to decide common motor carrier applications has an extensive history with variations. However, the Pennsylvania Public Commission has wisely provided a clear and current set of directions for both the burden of going forward and the evidence necessary to establish a new right to operate as a common carrier.

The statutory reference for this authority is found at 66 Pa.C.S. 1103, which provides the following: "...A certificate of public convenience shall be granted by an order of the commission, only if the commission shall find or determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public..." As stated in Seaboard Tank Lines, Inc., Petitioner, v. Public Utility Commission, Respondent, 93 Pa.Cmwlth.601, 502 A.2d 762, 1985: "The new policy essentially preserves the criteria traditionally employed, but eliminates the applicant's evidentiary burden of demonstrating inadequacy of existing service." The procedure adopted by the Commission is found at 52 Pa.Code 41.14, and provides as follows: "Evidentiary criteria used to decide motor common carrier applications statement of policy. (a) An applicant seeking motor common carrier authority has a burden of demonstrating the approval of the application will serve a useful public purpose, responsive to a public demand or need. (b) An applicant seeking motor common carrier authority has the burden of demonstrating that it possesses the technical and financial ability to provide the proposed services, and, in addition, authority may be

withheld if the record demonstrates that the applicant lacks a propensity to operate safely and legally. (c) The Commission will grant motor common carrier authority commensurate with the demonstrated public need unless it is established the entry of a new carrier into the field would endanger or impair the operation of existing common carriers to an extent that, on balance, the granting of authority would be contrary to the public interest."

"Pursuant to new criteria at 52 Pa.Code 41.14, a motor carrier applicant now has a bipartite prima facie burden of proof, in that Section 41.14(a) places upon an applicant the burden of demonstrating that approval of the application will serve a useful public purpose, responsive to a public demand or need, while 41.14(b) places upon an applicant the burden of demonstrating that it possesses the technical and financial ability to provide the proposed service, along with the caveat that operating authority may be withheld if the record demonstrates that the applicant lacks a propensity to operate safely and legally." Application of Blue Bird Lines, Inc., 72 Pa.P.U.C.262, 1990.

B. NEED

The Commission in Application of Bluebird Coach Lines, Inc., 72 Pa. 262, 274 (1990), clarified the "public need" requirement of the transportation policy statement contained in Subsection 41.14(a);

When, through relevant, probative, competent and credible evidence of record, a motor common carrier applicant has shown that the applicant's proposed service will satisfy the supporting witnesses' asserted transportation demand/need, the applicant has sustained its burden of proof under subsection 41.14

(a) by establishing that “approval of the application will service a useful public need.”

The supporting shipper testimony must be legally competent and credible, and must be probative and relevant to the application proceeding. The supporting witnesses must articulate a demand or need for the type of service embodied in the application. The witnesses must identify Pennsylvania origin and destination points between which they require transportation, and these points must correspond with the scope of the operating territory specified in the application.

Applicant’s need testimony was very weak. Only one of his witnesses had a need for service, which was in the future and therefore indefinite. The realtor witness had no decision making authority with her clients and was merely recommending Applicant. Her experience with Applicant and that of Ms Nichols were property moves and therefore not relevant.

C. PROPENSITY TO OPERATE ILLEGALLY

Applicant reluctantly acknowledged he had agreed in his application affidavit not to perform household goods in use moves until authority was granted. He did not keep his promise.

He was caught by the Commission on January 13, 2003 making an illegal household move, as well as being confronted on two other occasions in October 2002 by Protestants while participating in moving activities. Committing a move after confrontation indicates disdain and disregard for Commission rules and alone is grounds for dismissal. There is no evidence that anyone at the Commission told him he had temporary authority. That claim is as unworthy of belief as his claim

that Gail Travitz, a long-time employee of the Commission, told him not to attend his hearing.

Further, his defense of the confrontation incidents that he alleges were commercial, occurred in October, and the record indicated his commercial application was not filed until December 4, 2002. He was not authorized to do any moving in October. This is an admission of additional illegal moves.

More serious and egregious, however are his numerous false statements under oath to Administrative Law Judge Turner that he had commercial rights, when he did not. The December 4, 2002 application had been discussed by the Commission on February 21, 2003, and the Applicant had been notified. Again, he points to misinformation from the Commission staff. No evidence of this "misinformation" was produced. He claims he did not receive the Commission notification of the dismissal and was misinformed by his insurance agent as to his compliance.

Judge Turner asked Applicant directly at the March 14, 2003 hearing: (N.T. 18, 19)

"...you do have a commercial license from the PUC? What is that license number?

THE WITNESS: I don't have it right now.

JUDGE TURNER: But you do make legal moves under your Commercial license?

THE WITNESS: Yes, Ma'am.

JUDGE TURNER: Please do provide us with that.

THE WITNESS: Sure."

Applicant knew he had no certificate to provide because he had never received one. Even if you accept his claim that he did not receive the dismissal letter, he knew he had no certificate but told Judge Turner he didn't have it with him, but that he does commercial moves with it. He knew those

statements were untrue.

After the hearing, he applied for commercial authority, but he presented no evidence of how he suddenly became aware that his application had been dismissed. On the contrary, he realized at the hearing that he had better get the license. His witness, Ms Rav, testified that he moved her armoire before the summer (N.T.100) and he did not receive his commercial license until June 4, 2003.

Mr. Ament testified he did not feel he should have to apply and go through a process to perform moving services. His actions in disregard of Commission rules and his misrepresentation of his activities confirm this. He clearly has a propensity to operate illegally and should not be licensed as a mover in Pennsylvania.


PROPOSED CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter of this proceeding.
2. The burden of proof is on Applicant to establish that it possesses the technical and financial ability to provide the proposed service, and will operate safely and legally within its certificated area.
3. Applicant sustained its burden of establishing that it possesses the technical and financial ability to provide the proposed service, and does not possess a propensity to operate unsafely and/or legally.
4. The burden of proof is on Protestants to establish that granting the application would endanger or impair their operations to such an extent that, on balance, the granting of the authority would be contrary to the public interest.
5. Protestants failed to sustain their burden of establishing that granting the application would endanger or impair their operations to such an extent that, on balance, the granting of the authority would be contrary to the public interest.
6. The burden of proof is on Applicant to establish that approval of the application will serve a useful public purpose, responsive to a public demand or need.
7. Applicant has failed to sustain its burden of establishing that approval of the application will serve a useful public purpose, responsive to a public demand or need.

CONCLUSION and REQUESTED ORDER

In view of the foregoing, the application is denied.

Respectfully submitted,



WILLIAM H. R. CASEY
Attorney for Protestants

Date: 12/19/03

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

IN THE MATTER OF:
APPLICATON OF
JAMES & DEBRA AMENT, TENANTS BY ENTIRETY
NUMBER A-00119270

REPLY BRIEF
OF
APPLICANT

RECEIVED

DEC 31 2003

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

DOCKETED
MAR 08 2004

Dated: December 31, 2003

Filed By:
Kenneth A. Olsen
33 Philhower Road
Lebanon, New Jersey 08833
(908) 832-9207
Attorney for Applicant
James & Debra Ament

DOCUMENT
FOLDER

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

IN THE MATTER OF:
APPLICATION OF
JAMES & DEBRA AMENT, TENANTS BY ENTIRETY
NUMBER A-00119270

REPLY BRIEF

OF

APPLICANT

RECEIVED

DEC 31 2003

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Comes now, James & Debra Ament t/d/b/a We-Haul Moving (amended company name filing made after the filing of the instant application-Tr. 16)*, with address at 1165 Ilona Drive, Hellertown, Pennsylvania 18055 (hereinafter referred to as Applicant), by its Attorney, Kenneth A. Olsen, and in accordance with the Rules of Practice of the Pennsylvania Public Utility Commission ("Commission") and pursuant to the revised briefing schedule of the Hon. Allison K. Turner, ALJ, files this, its Reply Brief, in the above entitled proceeding.*

I
REPLY TO STATEMENT OF THE CASE

In many respects, the Statement of the Case in Protestants' Brief is correct regarding the procedural history of the instant proceeding, but differs from Applicant's Brief in its treatment of the digest of testimony of the witnesses. Although Protestants' Brief accurately digests portions of the witnesses' testimony, it does not digest all of the witnesses's pertinent testimony.

Specifically, Protestant's Statement of the Case does not include reference to Mr. Ament's testimony regarding: (A) his background and operational familiarity in the residential

*References to the record in this proceeding will be governed by the following abbreviations:

Tr. = Transcript of oral hearing and page number, Ex. = Exhibits received into evidence

household goods industry; (B) available finances, cash, and lines of credit to commence the proposed operation and lease/rent additional equipment if and as needed; and (C) the exhibits entered into the record through Mr. Ament's testimony relative to evidence of public need other than by live witness testimony and Applicant's existing qualification as an interstate motor common carrier of household goods and a intrastate Pennsylvania motor carrier of property. Moreover, Protestants' Statement of the Case does not include reference to: (A) public witness Sowder's testimony as to future need for movements of household goods in storage, in addition to the minimum two movements of household goods within the next six months to a year, and the points or places of origin and destination; (B) public witness Rao's testimony as to her need to have a household goods carrier to recommend to her clientele and the two inquiries from clientele she received in the past six months regarding household goods in use transportation; and (C) public witness Nicholas's testimony that she receives inquiries from church parishoners regarding households transportation services and would like to recommend Applicant. Furthermore, Protestants' Statement of the Case does not include reference to the lack of any substantiating evidence from Protestants' four witnesses regarding: (A) amount of diminished revenues; (B) amount of under-utilization of equipment and facilities, and (C) whether the movements of household goods without operating authority alleged against Applicant (other than the one admitted to by Applicant) were intrastate moves for compensation about which the Commission took enforcement action.

In view of the foregoing, it is respectfully submitted that the Statement Of The Case and Pertinent Testimony of the various witnesses contained in Applicant's Brief is more accurate and should be adopted by the Honorable Administrative Law Judge.

II REPLY TO STATEMENT OF QUESTIONS INVOLVED

While Protestants' Statement of the Questions involved is accurate, Applicant submits that its Statement of Questions Involved is a more inclusive and accurate statement of the issues

involved in this proceeding and, as such, should be adopted by the Honorable Administrative Law Judge.

III
REPLY TO SUMMARY OF ARGUMENT

Applicant disagrees with Protestants' Summary of Argument. While Protestants' Summary of Argument accurately summarizes Protestants' Argument, Applicant contends it has demonstrated: (A) approval of the instant application will serve a useful public purpose responsive to a public demand and need in the representative geographic area sought; (B) Applicant possesses the technical and financial ability to provide the proposed service in a safe and lawful manner; and (C) there has been no showing or documentation that Protestants operations would be endangered or impaired contrary to the public interest by a grant of the instant application. Accordingly, Applicant's Summary of Argument should be adopted by the Honorable Administrative Law Judge.

IV
REPLY TO ARGUMENT

Although Protestants correctly restate the legal principles espoused in Seaboard Tank Lines, Inc. Petitioner v. Public Utility Commission, Respondent, 93 Pa. Cmwlth. 601, 502 A.2d 762 (1985); Application of Blue Bird Lines, Inc., 72 Pa. P.U.C. 262 (1990); and at 52 Pa. Code 41.14, Protestants fail to recite the various other case law interpreting and applying the legal principles applicable to an applicant's burden regarding public need and technical and financial ability to operate safely and lawfully. The case law cited by Applicant, as to the type of standards of proofs required to meet the public need and propensity to operate safely and lawfully tests, are applicable to the instant proceeding, demonstrate Applicant met its public need and technical and financial burdens, and establish a grant of the authority sought will not adversely affect Protestants contrary to the public interest. Accordingly, it is submitted that the case law argument contained in Applicant's Argument more completely recites the relevant legal principles applicable to the instant proceeding.

Measured against the standards and principles espoused Application of Friedman's Express, Inc., Docket No. A-00024369, Folder 9, Am-B, Folder 10, Am-I, and in Loma, Inc. v. Pennsylvania Public Utility Commission, 682 A.2d 424 (Pa. Comwlth. 1996), the one unlawful movement acknowledged by Applicant and the other unlawful movement(s) alleged by Protestants do not support any conclusion that Applicant lacks the propensity to operate safely and lawfully. On the contrary, the facts that Applicant has filed for and received interstate household goods operating authority, filed for and received intrastate property operating authority from the Commission, and commenced and continued with the instant application proceeding clearly demonstrates Applicant's propensity to operate lawfully and safely. Incidentally, it has been held the Commission considered the applicant's unauthorized service as proof of public need where the service was based on a good faith misunderstanding of the scope of its certificate and the revenues generated thereby may be considered in determining applicant's financial fitness. W. C. McQuaide, Inc. v. Pennsylvania Public Utility Commission, 1156 (Pa. Cmwlth. 1991), 585 A.2d 1151 (1991). Applicant submitted ample evidence of its technical and financial ability to provide the proposed service in the form of amount and types of equipment and material it owns and utilizes in its authorized intrastate and interstate operations, a description of its facilities and its present intrastate and interstate operations, a description of the type and amount (in excess of the Commission's minimum requirements) of cargo and liability insurance it presently has in effect for the protection of the public, a description of its financial condition consisting of available cash in the bank and lines of credit to conduct present and future operations and rent additional equipment as needed, and the background of Mr. Ament being knowledgeable of household goods transportation through past ownership of a moving business and present authorized operations. The credibility of the foregoing testimonial and documentary evidence adduced by Applicant regarding its technical and financial ability to provide the proposed service was sufficiently established during the hearings and not attacked by Protestants on cross-examination. In fact, no showing has been made by Protestants of any

propensity by Applicant to operate in other than a lawful and safe manner. The one substantiated movement by Applicant without appropriate operating authority was admitted to by Applicant, occurred as a result of misinformation received by Applicant, and was satisfactorily resolved between Applicant and the Commission. The other unlawful movement(s) alleged by Protestants to have been performed by Applicant were not substantiated or documented by Protestants during the hearings and cannot be argued by Protestants in their brief as evidence of Applicant's lack of propensity to operate safely and lawfully.

In reply to Protestants argument that Applicant has not meet its burden on public need, it must be remembered that it is not necessary that an applicant for a certificate of public convenience show that a proposed service be absolutely indispensable or establish a demand for service in every square mile of territory sought, as proof of necessity within an area generally is sufficient to support a grant of authority. Modern Transfer Co. v. Pennsylvania Public Utility Commission, 179 Pa. Super. 46, 115 A.2d 887 (1955); Reeder v. Pennsylvania Public Utility Commission, 192 Pa. Super. 298, 162 A.2d 231 (1960); Zurcher v. Pennsylvania Public Utility Commission, 173 Pa. Super. 343, 98 A.2d 218 (1953); and B. B. Motor Carriers, Inc. v. Com., Public Utility Commission, 36 Pa. Cmwth. 26, 389 A.2d 210 (1978). Moreover, while evidence of present need can be presented, the Commission may act upon indicated future need if circumstances require such. Highway Exp. Lines, Inc. v. Pennsylvania Public Utility Commission, 195 Pa. Super. 92, 169 A.2d 798 (1961). Furthermore, an applicant's burden is met by showing the proposed service is reasonably necessary for the public's accommodation or convenience, as an absolute or indispensable necessity need not be proven. Highway Exp. Line v. Pennsylvania Public Utility Commission, 164 Pa. Super. 145, 63 A.2d 461 (1949); Pennsylvania R. Co. v. Pennsylvania Public Utility Commission, 181 Pa. Super. 343, 124 A.2d 685 (1956); D. F. Bast, Inc. v. Pennsylvania Public Utility Commission, 185 Pa. Super. 487, 138 A.2d 270 (1958); and Dutchland Tours, Inc. v. Pennsylvania Public Utility Commission, 19 Pa. Cmwth. 1, 337 A.2d 922 (1975). The evidentiary record in this proceeding establishes that

Applicant's proposed service is reasonably necessary for the public's existing or future accommodation or convenience in the general area sought by Applicant. The public witnesses' testimony as to present and future movements of household goods in the areas of Bethlehem, Coopersburg, Hellertown, New Hope, and Saucon Valley, PA, and desire to utilize Applicant demonstrate Applicant's proposed service is reasonably necessary for the public's accommodation or convenience. Applicant's Ex. 1-4 demonstrate current and future population growth and employment needs in the territory sought by Applicant most likely will result in a public demand for additional household goods transportation by existing and newly certificated motor carriers, which will have an adequate labor pool for staffing.

Inasmuch as Protestants have not argued or demonstrated that a grant of the instant application would significantly endanger or impair their respective operations contrary to the public interest, Applicant cannot reply to same and requests the Honorable Administrative Law Judge adopt Applicant's argument in this portion of its Main/Initial Brief.

Therefore, Applicant submits its Argument, that the evidentiary record in this proceeding measured against the applicable case law and principles cited by Applicant establishes its technical and financial ability to provide the proposed service in a safe and lawful manner, establishes that the approval of the instant application is in the public interest responsive to public demand and need, and the evidentiary record being void of how a grant of the instant application will endanger or impair Protestants' operations contrary to the public interest, is the correct Argument to be adopted by the Honorable Administrative Law Judge herein.

V

REPLY TO ARGUMENT IN OPPOSITION TO MOTION TO DISMISS

Although the Honorable Administrative Law Judge directed the parties to address and argue Protestants' oral Motion To Dismiss in their respective Briefs, Protestants did not do so and Applicant cannot reply to same. However, since Applicant did submit an argument in opposition to Protestants' Motion To Dismiss, Applicant submits same should be adopted by the

Honorable Administrative Law Judge in total, as if repeated and set forth at length herein, in denying Protestants' Motion to Dismiss, with prejudice.

VI
REPLY TO PROPOSED FINDINGS OF FACT

While Applicant agrees with Protestants' Proposed Findings of Fact Nos. 1, 2, 3, 4, 5, 7, 8, and 13, it disagrees with the remainder of Protestants' Proposed Findings of Fact as stated, since such are without factual support or foundation in the evidentiary record of this proceeding. If Protestants' Proposed Finding of Fact No. 9 had stated Ms. Nicholas would recommend Applicant to members of her church without charge based on Applicant's prior gratis movements of household goods in use for the church, such would have been acceptable to Applicant. If Protestants' Proposed Finding of Fact No. 10 had stated Mr. Posivak confronted Applicant on one occasion, such would have been acceptable to Applicant. However, in view of the foregoing, Applicant submits that the correct and more accurate Proposed Findings of Fact are those set forth in its Main/Initial Brief on page 14, and request that same be adopted by the Honorable Administrative Law Judge in this proceeding.

VII
REPLY TO PROPOSED CONCLUSIONS OF LAW

While Applicant agrees with Protestants' Proposed Conclusions of Law Nos. 1, 2, 4, 5, and 6, it disagrees with the remainder of Protestants' Proposed Conclusions of Law as stated, since such are without factual support or foundation in the evidentiary record of this proceeding. If Protestants' Proposed Conclusion of Law No. 3 had stated Applicant also possesses the propensity to operate safely and lawfully, such would have been acceptable to Applicant. If Protestants' Proposed Conclusion of Law No. 7 had stated Applicant sustained its burden of establishing that approval of the application will serve a useful public purpose, responsive to a public demand or need, such would have been acceptable to Applicant. However, in view of the foregoing, Applicant submits that the correct and more accurate Proposed Conclusions of Law are those set forth in its

Main/Initial Brief on pages 14 and 15, and requests that same be adopted by the Honorable Administrative Law Judge in this proceeding.

VIII
REPLY TO REQUESTED/PROPOSED ORDER

Applicant disagrees with Protestants' Requested or Proposed Order as such directly contradicts the entire record and evidence adduced in this proceeding, and is without foundation. Applicant submits that the proper Proposed Order to be adopted herein, is that set forth on pages 15 and 16 of its Main/Initial Brief.

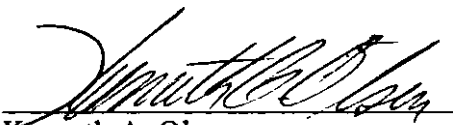
IX
REPLY TO CONCLUSION

Applicant disagrees with Protestants' Conclusion since there is no foundation for same in the entire evidentiary record of this proceeding. Applicant submits that the proper Conclusion and Prayer for Relief is that set forth on page 16 of its Main/Initial Brief, as follows:

1. That Applicant is fit, willing, and able to provide the services proposed herein, in that it possesses the requisite technical and financial ability to provide the proposed service and comply with Commission regulations;
2. That Applicant, through its operating and public witnesses, together with its submitted evidentiary record, has shown a need for the proposed operations in that approval of this application will serve a useful public purpose, responsive to a public need;
3. That Protestants operations, or that of other carriers, will not be endangered or impaired by the grant of this application;
4. That the grant of the authority sought herein is not contrary to the public interest;
5. That the record in its entirety supports a finding that the application be granted in its entirety; and
6. Protestants' Motion To Dismiss, together with any other sanctions sought in Protestants' Motion, be and is hereby denied.

Dated: December 31, 2003

Respectfully submitted,



Kenneth A. Olsen
33 Philhower Road
Lebanon, New Jersey 08833
(908) 832-9207
Attorney for James & Debra Ament
Applicant

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the original and true copies of the foregoing document upon the persons listed below, via first class mail, postage prepaid, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

William H. R. Casey, Esq., 99 East Court St., Doylestown, PA 18901 as to a true copy; and the Hon. Allison K. Turner, ALJ, Pennsylvania Public Utility Commission, 1302 Philadelphia State Office Bldg., 1400 West Spring Garden St., Philadelphia, PA 19130 as to a true copy; and the Hon. James. J. McNulty, Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265 as to an original and nine copies.

Dated this 31st day of December, 2003.


KENNETH A. OLSEN
Attorney for James & Debra Ament
Applicant

WILLIAM H. R. CASEY

ATTORNEY AT LAW
99 EAST COURT STREET
DOYLESTOWN, PENNSYLVANIA 18901
(215) 348-7300
FAX (215) 348-1456

ORIGINAL

January 5, 2004

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JAN 05 2004

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

James J. McNulty, Secretary
Commonwealth of Pennsylvania
Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17120

RE: Reply Brief of Protestants
Application of James and Debra Ament, Tenants by Entirety
PUC Docket Number ~~A-009270~~

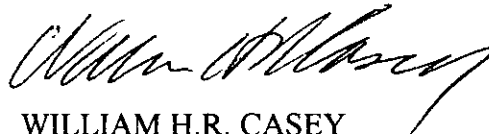
Dear Secretary McNulty:

A-00119270

Enclosed please find an original and nine (9) copies of the Reply Brief of Protestants pertaining to the above-captioned Application on behalf of my clients, as listed below:

Thank you for your cooperation in this matter.

Very truly yours,



WILLIAM H.R. CASEY

WHRC/mw
Enclosures

cc: Administrative Law Judge Allison K. Turner
Ace Moving & Storage
Adam Meyer, Inc.
BBD & Sons Moving, Inc.
Clemmer Moving & Storage, Inc.
Fisher-Hughes of Allentown, Inc.
Frick Transfer, Inc.
Fritz Moving Co., Inc.
Keller Moving & Storage, Inc.
Morgan Moving & Storage, Inc.
O'Brien's Moving & Storage, Inc.
Read's Van Service, Inc.
Shelly Moving & Storage, Inc.
Shivley's Moving & Storage, Inc.
Town & Country Van Lines, Inc.
Kenneth A. Olson, Esquire

DOCUMENT

RJP

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of

James and Debra Ament,
Tenants by Entirety

:
:
:
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Docket No. A-00119270

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JAN 05 2004

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

REPLY BRIEF OF PROTESTANTS

WILLIAM H. R. CASEY, ESQUIRE
Attorney for Protestants
99 East Court Street
Doylestown, PA 18901
(215) 348-7300

DOCKETED
FEB 26 2004

REPLY BRIEF OF PROTESTANTS

AND NOW, this 5th day of January 2004 comes Protestants O'Brien Moving & Storage, Inc., et. al. by their attorney, William H. R. Casey, who files this reply brief in accordance with the briefing schedule of the Honorable Allison K. Turner.

REPLY ARGUMENT

DOCUMENT

Applicants' Brief claims that Protestants did not substantiate or document unlawful moves by Applicant. (p. 8 of Applicants' Main Brief) This is incorrect.

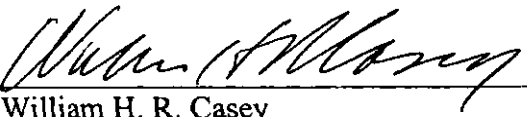
Steven Posivak of O'Brien's Moving & Storage, Inc. testified regarding two illegal moves by Applicant on October 17, 2003 and October 26, 2003. Pictures of the October 26, 2003 move were admitted into evidence (Protestants Exhibit 3). Moreover, Applicant admitted these moves when he cross-examined Mr. Posivak (N.T. 35, 36). Mr. Ament stated that this was not a household move, implying again that he had commercial property rights when he did not. The pictures of his We-Haul Moving, Inc. truck in the process of a move coupled with his telephone book advertisement claiming rights are the best evidence of his true intent.

Applicants' numerous claims of "good faith misunderstandings" are clearly not borne out by the record. Applicant offered no explanation of his October moves and no corroboration of his agent's error in filing the insurance. He asserts he did not receive the letter from the Commission informing him that his December 2002 commercial application had been dismissed and that representatives of the Commission had misled him on at least two occasions. He blames others for the violations and offers his unsupported assertions as proof.

The clearest example of his deceptive intent occurred at the March 2003 hearing when he told Judge Turner he had commercial rights but did not have the certificate with him. There had been no certificate issued to him by the Commission at that time.

For these and other reasons cited in Protestants' Main Brief, the Application should be denied.

Respectfully submitted,



William H. R. Casey

Date: 4/5/04

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

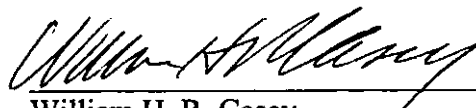
PROOF OF SERVICE

I, William H.R. Casey, Esquire, hereby verify that a true and correct copy of the attached Reply Brief of Protestants was mailed to the following parties via postage paid, first class U.S. Mail.

James J. McNulty, Secretary
Commonwealth of Pennsylvania
Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17120

Alison K. Turner
Administrative Law Judge
1302 Philadelphia State Office Building
1400 West Spring Garden Street
Philadelphia, PA 19130

Kenneth A. Olsen
Attorney at Law
33 Philhower Road
Lebanon, N.J. 08833



William H. R. Casey

Date: 1/5/04

Act 294

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OCT 14 PM 2:27
BUREAU

Case Identification:

A-00119270 Application of James & Debra Ament, tenants by entirety...

Initial Decision By:

ALJ Allison K. Turner

Deadline for Return to OSA:

October 14, 2004

This decision has not been reviewed by OSA.

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OCT 14 2004

OFFICE OF SPECIAL ASSISTANTS

* * * * *

I want full Commission review of this decision.

Commissioner

Date

I do not want full Commission review of this decision.

Mendell J. Holland
Commissioner

10/14/04
Date

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OCT 18 2004

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FOLDER

Act 294

Case Identification:

A-00119270 Application of
James & Debra Ament, tenants
by entirety..

Initial Decision By:

ALJ Allison K. Turner

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October 14, 2004

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OCT 14 2004

OFFICE OF SPECIAL
ASSISTANTS

* * * * *

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Commissioner

Date

I do not want full Commission review of this decision.

Robert K. Blomick

Commissioner

10-14-04

Date

Act 294

Case Identification: A-00119270 Application of James & Debra Ament, tenants by entirety..

Initial Decision By: ALJ Allison K. Turner

Deadline for Return to OSA: October 14, 2004

This decision has not been reviewed by OSA.

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OCT 15 2004

OFFICE OF SPECIAL ASSISTANTS

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Commissioner

Date

✓ I do not want full Commission review of this decision.

Glen Thomas

Commissioner

10-15-04

Date

Act 294

Case Identification:

A-00119270 Application of
James & Debra Ament, tenants
by entirety..

Initial Decision By:

ALJ Allison K. Turner

Deadline for Return to OSA:

October 14, 2004

This decision has not been reviewed by OSA.

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OCT 13 2004

OFFICE OF SPECIAL
ASSISTANTS

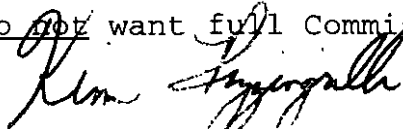
* * * * *

I want full Commission review of this decision.

Commissioner

Date

I ~~do not~~ want full Commission review of this decision.



Commissioner

10/12/04

Date

ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

IN THE MATTER OF:
APPLICATION OF
JAMES & DEBRA AMENT, TENANTS BY ENTIRETY
NUMBER A-00119270

EXCEPTIONS

OF

APPLICANT

TO

INITIAL DECISION OF

ALLISON K. TURNER, ALJ, DATED 9/8/04, SERVED 9/30/04

RECEIVED

OCT 20 2004

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUSINESS

**DOCUMENT
FOLDER**

DOCKETED
OCT 22 2004

Dated: October 20, 2004

Filed By:
Kenneth A. Olsen
33 Philhower Road
Lebanon, New Jersey 08833
(908) 832-9207
Attorney for Applicant
James & Debra Ament

PENNSYLVANIA PUBLIC UTILITY COMMISSION OCT 20 2004

IN THE MATTER OF:
APPLICATION OF
JAMES & DEBRA AMENT, TENANTS BY ENTIRETY
NUMBER A-00119270

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

EXCEPTIONS OF APPLICANT
TO INITIAL DECISION OF
ALLISON K. TURNER, ALJ, DATED 9/8/04, SERVED 9/30/04

Comes now, James & Debra Ament t/d/b/a We-Haul Moving (amended company name filing made after the filing of the instant application-Tr. 16)*, with address at 1165 Ilona Drive, Hellertown, Pennsylvania 18055 (hereinafter referred to as Applicant), by its Attorney, Kenneth A. Olsen, and in accordance with the Rules of Practice of the Pennsylvania Public Utility Commission ("Commission") and pursuant to the secretarial letter issued September 30, 2004 by the Commission, files this, its Exceptions to the September 8, 2004 Initial Decision of the Hon. Allison K. Turner, ALJ, served September 30, 2004, in the above entitled proceeding.* For the purposes of these Exceptions, Applicant adopts the History of the Proceeding set forth at pages 1-3 of the Initial Decision.

I
EXCEPTIONS

1. Applicant excepts to Finding of Fact No. 4 in that it infers the advertisement referenced in Protestants' Ex. 1 states Applicant is holding itself out as having PUC rights. (ID. 4). This finding is not based on the evidence of record.

The basis for Finding of Fact No. 4 was Protestants' Exhibit 1 and transcript pages 17-20.

*References to the record in this proceeding will be governed by the following abbreviations: Tr. = Transcript of oral hearing and page number, Ex. = Exhibits received into evidence, ID. = Initial Decision of ALJ Allison K. Turner (dated 9/8/04)(served 9/30/04) and page number.

However, a plain reading of the advertisement referenced in Protestants' Exhibit 1 and transcript Pages 17-20 does not reveal any statement that Applicant holds rights or authority from this Commission.

2. Applicant excepts to Finding of Fact No. 13 in that it does not accurately state all the Pennsylvania points of household goods in use need testified to by public witness Cameron Sowder. (ID. 5) This finding is based on a reading of only a portion of the entire testimony of public witness Cameron Sowder.

The basis for Finding of Fact No. 13 was based on the testimony of Cameron Sowder at the September 8, 2003 hearing. However, a full reading of Mr. Sowder's testimony at pages 87-91 of the transcript reveals Mr. Sowder stating a need for residential household goods moves from Coopersburg to the Bethlehem area, from Bethlehem to Hellertown or the Saucon Valley area, and movements of residential household goods in storage within Lehigh and Northampton Counties.

3. Applicant excepts to Conclusion of Law No. 1 in that it infers Applicant did and will have a future propensity to operate illegally. (ID. 21) This conclusion is not based on the evidence of record.

Applicant presently holds operating authority from this Commission to transport property as a motor carrier between points in Pennsylvania. (Applicant's Ex. 9). Applicant presently holds operating authority from the Federal Motor Carrier Safety Administration, U. S. Department of Transportation, to transport household goods as a common carrier by motor vehicle in interstate or foreign commerce. (Applicant's Ex. 10). Applicant presently has the equipment and materials listed on Applicant's Ex. 13 to utilize in its existing operations and those operations contemplated in the instant application if granted by the Commission. The motor vehicle(s) is garaged at a leased facility in Coopersburg, PA and Applicant's offices are at 1165 Ilona Drive, Hellertown, PA. (Tr. 15, 79). Applicant presently has the amounts of motor truck cargo and liability insurance listed on Applicant's Ex. 12 for the protection of the public in

its existing operations and those operations contemplated in the instant application if granted by the Commission. Applicant is a member of the American Moving and Storage Association (Applicant's Ex. 11), and a principal of Applicant, Mr. Ament, is familiar with the transportation and handling of household goods in use having owned a household goods moving company in Brooklyn, NY. (Tr. 8).

Moreover, no showing has been made of any propensity by Applicant to operate in other than a lawful and safe manner. The one substantiated movement by Applicant without appropriate operating authority was admitted to by Applicant, occurred as a result of misinformation received by Applicant, and was satisfactorily resolved between Applicant and the Commission. The other unlawful movement(s) alleged by Protestants to have been performed by Applicant were not substantiated or documented by Protestants during the hearings. Measured against the standards and principles espoused Application of Friedman's Express, Inc., Docket No. A-00024369, Folder 9, Am-B, Folder 10, Am-I, and in Loma, Inc. v. Pennsylvania Public Utility Commission, 682 A.2d 424 (Pa. Cmwlth. 1996), the one unlawful movement acknowledged by Applicant and the other unlawful movement(s) alleged by Protestants do not support any conclusion that Applicant lacks the propensity to operate safely and lawfully. On the contrary, the facts that Applicant has filed for and received interstate household goods operating authority, filed for and received intrastate property operating authority from the Commission, and commenced and continued with the instant application proceeding clearly demonstrates Applicant's propensity to operate lawfully and safely. Incidentally, it has been held the Commission considered the applicant's unauthorized service as proof of public need where the service was based on a good faith misunderstanding of the scope of its certificate and the revenues generated thereby may be considered in determining applicant's financial fitness. W. C. McQuaide, Inc. v. Pennsylvania Public Utility Commission, 1156 (Pa. Cmwlth. 1991), 585 A.2d 1151 (1991).

Applicable case law has established the principle that a motor carrier authority applicant's prior unlawful operations do not preclude the Commission from granting authority in a subsequent proceeding. Loma, Inc. v. Pennsylvania Public Utility Commission, 682 A.2d 424 (Pa. Cmwith. 1996). Although the Honorable Administrative Law Judge opines the Loma case is not applicable to the instant case because of factual dissimilarities between the two cases, the legal principle established in Loma (ie. a motor carrier authority applicant's prior unlawful operations not precluding a grant of authority from the Commission in a subsequent proceeding) is binding upon this Commission and governs the interpretation and application of law in the instant case. The Commission can accept evidence presented by a motor carrier applicant, in a proceeding subsequent to any unauthorized operations, as credible to determine that the company is likely to comply with the Commission's regulations in the future. Loma, Inc. v. Pennsylvania Public Utility Commission, supra. Moreover, Applicant avers the unlawful movement referred to by Protestants' counsel at the March 14, 2003 hearing occurred as a result of Applicant's reliance on misinformation from the Commission's personnel that Applicant had temporary authority to perform intrastate household goods movements while its permanent authority application was pending. Furthermore, the unlawful movement, for which Applicant was cited by the Commission at Docket No. A-00119270C0301, was only an isolated movement and was satisfactorily resolved between Applicant and the Commission at Docket No. A-00119270C0302. Consequently, the occurrence of one isolated prior unlawful operation should not and does not form a basis upon which to conclude lack of propensity to operate, and certainly does not form a basis under the Application of Friedman's Express, Inc., Docket No. A-00024369, Folder 9, Am-B, Folder 10, Am-I (Order entered August 17, 1989) standard of a propensity to operate unsafely and illegally.

The Honorable Administrative Law Judge also cites a lack of candor by Applicant's operating witness in testifying at the March 14, 2003 hearing as a basis for her conclusion that Applicant had a propensity to operating illegally. Yet, the March 14, 2004 hearing transcript is

replete with examples of Applicant's pro se witness being unversed in the Commission's Rules of Practice, the adversary procedure of a motor carrier application hearing, and evidentiary requirements of a motor carrier application hearing. The result of which was the Honorable Administrative Law Judge graciously granting Applicant additional time to secure an attorney and an additional opportunity to present its case at a future continued hearing, which it did in compliance with Commission rules and regulations. As represented by Applicant through hearing testimony, and in answering letters to a complaint and post-hearing submissions, any misrepresentation as to the status of a grant of its "commercial" operating authority by this Commission was not purposely made by Applicant. At the time of the March 14, 2003 hearing, Applicant was unaware that an untimely filing of insurance by its insurance carrier and misinformation from Commission staff resulted in dismissal of its "commercial" authority application. Applicant had been informed by its insurance carrier that proper and timely filing of the required insurance had been made with the Commission in order to secure issuance of a Certificate of Public Convenience, but such information was later proven to be incorrect. When Applicant learned that timely and proper filing of the required insurance was not made by its insurance carrier, Applicant contacted the Commission and was misinformed that all which was needed to be done was refile by the insurance carrier for its "commercial" authority grant to be reinstated followed by issuance of a Certificate of Public Convenience. When Applicant became aware that its "commercial" authority application had been dismissed and not reinstated, it filed another application for "commercial" operating authority with the Commission, together with submission of another filing fee. This second filing for "commercial" operating authority resulted in a grant of authority and issuance of a Certificate of Public Convenience on June 4, 2003 (Applicant's Ex. 9). Any conclusion that Applicant had a propensity to operate illegally and not comply with Commission regulations is directly contradicted and refuted by: (A) Applicant's expenditures of time and money to retain an attorney to represent it throughout the course of these Commission proceedings; (B) Applicant's expenditure of time and money to

satisfy Commission fitness requirements in securing commercial property operating authority; (C) Applicant's expenditure of time and money to satisfy Federal Motor Carrier Safety Administration fitness requirements in securing interstate motor carrier household goods operating authority ; (D) Applicant's participation throughout the course of Commission proceedings by and through its operating witness testimony under oath; and (E) absence of any finding or conclusion that Applicant does not possess a propensity to operate lawfully in the future.

4. Applicant excepts to Conclusion of Law No. 2 to the extent it states Applicant has not shown that the application would be responsive to a public demand and need. (ID. 22). This conclusion is not based on the evidence of record.

Not only did the Honorable Administrative Law Judge err in concluding Applicant has not demonstrated that the application would be responsive to a public demand and need, but the Honorable Administrative Law Judge also contradicted herself (within the same conclusion of law) by stating the instant application may serve a useful public purpose if restricted.

It is not necessary that an applicant for a certificate of public convenience show that a proposed service be absolutely indispensable or establish a demand for service in every square mile of territory sought, as proof of necessity within an area generally is sufficient to support a grant of authority. Modern Transfer Co. v. Pennsylvania Public Utility Commission, 179 Pa. Super. 46, 115 A.2d 887 (1955); Reeder v. Pennsylvania Public Utility Commission, 192 Pa. Super. 298, 162 A.2d 231 (1960); Zurcher v. Pennsylvania Public Utility Commission, 173 Pa. Super. 343, 98 A.2d 218 (1953); and B. B. Motor Carriers, Inc. v. Com., Public Utility Commission, 36 Pa. Cmwlth. 26, 389 A.2d 210 (1978). While evidence of present need can be presented, the Commission may act upon indicated future need if circumstances require such. Highway Exp. Lines, Inc. v. Pennsylvania Public Utility Commission, 195 Pa. Super. 92, 169 A.2d 798 (1961). An applicant's burden is met by showing the proposed service is reasonably necessary for the public's accommodation or convenience, as an absolute or indispensable

necessity need not be proven. Highway Exp. Line v. Pennsylvania Public Utility Commission, 164 Pa. Super. 145, 63 A.2d 461 (1949); Pennsylvania R. Co. v. Pennsylvania Public Utility Commission, 181 Pa. Super. 343, 124 A.2d 685 (1956); D. F. Bast, Inc. v. Pennsylvania Public Utility Commission, 185 Pa. Super. 487, 138 A.2d 270 (1958); and Dutchland Tours, Inc. v. Pennsylvania Public Utility Commission, 19 Pa. Cmwlt. 1, 337 A.2d 922 (1975). The evidentiary record in this proceeding establishes that Applicant's proposed service is reasonably necessary for the public's existing or future accommodation or convenience in the general area sought by Applicant, and especially in the areas of from Coopersburg to Bethlehem, from Bethlehem to Hellertown or the Saucon Valley area, and movements of residential household goods in storage with Lehigh and Northampton Counties. The public witnesses' testimony as to present and future movements of household goods in the areas of Bethlehem, Coopersburg, Hellertown, New Hope, and Saucon Valley, Lehigh and Northampton Counties, and desire to utilize Applicant, demonstrate Applicant's proposed service is responsive to a public demand and need, and reasonably necessary for the public's accommodation or convenience, at least in these restricted areas (as alluded to in the non-excepted part of Conclusion of Law No. 2 wherein the Honorable Administrative Law Judge stated "the instant application, if restricted, may serve a useful public purpose").

Also in support of its application, Applicant presented evidence of: population growth in the Lehigh County, PA area during the years from 1990 through 2001; projected population growth in the Lehigh County, PA area by the year 2025; size of civilian labor force, employment, and unemployment in Pennsylvania for the last six months of year 2002; Yahoo! Yellow Pages listings of household goods moving companies in the Allentown, PA area; Applicant's letter attempt to negotiate a restrictive amendment with Protestants; Applicant's letter to its state legislative representative; and a copy of a White House Press Release statement from President Bush citing the need to support America's small businesses as the "backbone of our nation's economy." (Tr. 8-15, Applicant's Ex. 1-7). Applicant's Ex. 1-4 demonstrate

current and future population growth and employment needs in the territory sought by Applicant most likely will result in a public demand for additional household goods transportation by existing and newly certificated motor carriers, which will have an adequate labor pool for staffing.

5. Applicant excepts to Conclusion of Law No. 4 to the extent that it states Applicant's technical and financial fitness is minimal. (ID. 22). This conclusion is not based on the evidence of record.

Not only did the Honorable Administrative Law Judge err in concluding Applicant has minimal technical and financial fitness, but the Honorable Administrative Law Judge also contradicted herself (within the same conclusion of law) by stating Applicant could provide service despite "minimal technical and financial fitness." Applicant presently has the equipment and materials listed on Applicant's Ex. 13 to utilize in its existing operations and those operations contemplated in the instant application if granted by the Commission. The motor vehicle(s) is garaged at a leased facility in Coopersburg, PA and Applicant's offices are at 1165 Ilona Drive, Hellertown, PA. (Tr. 15, 79). Applicant presently has the amounts of motor truck cargo and liability insurance listed on Applicant's Ex. 12 for the protection of the public in its existing operations and those operations contemplated in the instant application if granted by the Commission. Applicant is a member of the American Moving and Storage Association (Applicant's Ex. 11), and a principal of Applicant, Mr. Ament, is familiar with the transportation and handling of household goods in use having owned a household goods moving company in Brooklyn, NY. (Tr. 8). Presently, Applicant has approximately \$25,000.00 to \$30,000.00 in cash on hand or in the bank, or readily accessible through available lines of credit, to continue existing operations and commence intrastate Pennsylvania household goods in use operations upon a grant of authority from the Commission. (Tr. 80, 83-86). Applicant also has a credit line with Budget Truck through which it has access to rent additional vehicles and/or equipment if needed in existing and proposed operations. (Tr. 84).

There is no doubt Applicant possesses the technical and financial ability to provide the proposed service in either the full territory sought or in a restricted area testified to by the supporting public witnesses. Applicant has submitted ample evidence of its technical and financial ability to provide the proposed service in the form of amount and types of equipment and material it owns and utilizes in its authorized intrastate and interstate operations, a description of its facilities and its present intrastate and interstate operations, a description of the type and amount (in excess of the Commission's minimum requirements) of cargo and liability insurance it presently has in effect for the protection of the public, a description of its financial condition consisting of available cash in the bank and lines of credit to conduct present and future operations and rent additional equipment as needed, and the background of Mr. Ament being knowledgeable of household goods transportation through past ownership of a moving business and present authorized operations. The credibility of the foregoing testimonial and documentary evidence adduced by Applicant regarding its technical and financial ability to provide the proposed service was sufficiently established during the hearings and not attacked by Protestants.

6. Applicant excepts to Conclusion of Law No. 5. (ID. 22). This conclusion is neither based on the evidence of record nor applicable law or regulation.

For the reasons set forth above in Applicant's Exceptions 1 through 5, inclusive, Applicant submits the evidentiary record and applicable law/regulation in this proceeding establishes its technical and financial ability to provide the proposed service (whether in the entire territory sought or a more restricted area) in a safe and lawful manner, and establishes that the approval of the instant application is in the public interest responsive to public demand and need (whether in the entire territory sought or a more restrictive area).

7. Applicant excepts to Ordering Paragraph No. 1. (ID. 22). This ordering paragraph is neither based on the evidence of record nor applicable law or regulation.

For the reasons set forth above in Applicant's Exceptions 1 through 6, inclusive, Applicant submits that the evidentiary record and applicable law/regulations in this proceeding do not support a denial of the instant application in its entirety, but support either a grant of the authority sought in its entirety or in a restricted territory of specific points between Bethlehem, Coopersburg, Hellertown, New Hope, and Saucon Valley, and Lehigh and Northampton Counties.

II
CONCLUSION AND PRAYER FOR RELIEF

Wherefore, the above premises being considered, Applicant seeks the relief set forth in this Commission's rules and regulations, and respectfully prays the Commission reject the Initial Decision of the Honorable Administrative Law Judge and grant Applicant's application as follows:

1. That Applicant is fit, willing, and able to provide the services proposed herein, in that it possesses the requisite technical and financial ability to provide the proposed service and comply with Commission regulations;
2. That Applicant, through its operating and public witnesses, together with its submitted evidentiary record, has shown a need for the proposed operations in that approval of this application will serve a useful public purpose, responsive to a public need;
3. That Protestants operations, or that of other carriers, will not be endangered or impaired by the grant of this application;
4. That the grant of the authority sought herein is not contrary to the public interest;
5. That the record in its entirety supports a finding that the application be granted in its entirety or, in the alternative, granted to conform to evidence of public need testimony between specific points (ie. Coopersburg, Bethlehem, Hellertown, and points within Lehigh and Northampton County, PA).

Dated: September 30, 2004

Respectfully submitted,



Kenneth A. Olsen
33 Philhower Road
Lebanon, New Jersey 08833
(908) 832-9207
Attorney for James & Debra Ament
Applicant

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the original and true copies of the foregoing document upon the persons listed below, via Federal Express, prepaid, in accordance with the requirements of 52 Pa. Code 1.54 (relating to service by a participant).

William H. R. Casey, Esq., 99 East Court St., Doylestown, PA 18901 as to a true copy; and the Hon. James. J. McNulty, Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265 as to an original and nine copies.

Dated this 20th day of October, 2004.



KENNETH A. OLSEN
Attorney for James & Debra Ament
Applicant

DOCUMENT

DATE: October 21, 2004

SUBJECT: A-00119270

TO: Office of Administrative Law Judge
Susan Hoffner

FROM: James J. McNulty
Secretary
nvl

DOCKETED

OCT 21 2004

APPLICATION OF JAMES & DEBRA AMENT TENANTS BY ENTIRETY..

The Initial Decision has been served upon all parties of interest.

Neither exceptions nor requests for review from the Commissioners have been received by the Commission. This matter is referred to your office for whatever action you deem necessary.

cc: Office of Special Assistants

P.S. Please note that exceptions or reply exceptions may come in timely with certificates of mailings. A second memo will not be released for these exceptions.

WILLIAM H. R. CASEY

ATTORNEY AT LAW
99 EAST COURT STREET
DOYLESTOWN, PENNSYLVANIA 18901

(215) 348-7300
FAX (215) 348-1456

RECEIVED

ORIGINAL

November 1, 2004

James J. McNulty, Secretary
Commonwealth of Pennsylvania
Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17120

NOV 01 2004

PA PUBLIC UTILITY COMMISSION
SECRETARIAT BUREAU

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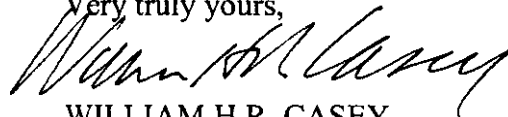
**RE: Protestants' Reply to Exceptions of Applicant to Initial Decision of Allison K. Turner, ALJ
Application of James and Debra Ament, t/d/b/a We-Haul Moving
PUC Docket Number A-00119270**

Dear Secretary McNulty:

Enclosed please find an original and nine (9) copies of Protestants' Reply to Exceptions of Applicant to Initial Decision of Allison K. Turner, ALH to the above-captioned Application on behalf of my clients, as listed below:

Thank you for your cooperation in this matter.

Very truly yours,



WILLIAM H.R. CASEY

WHRC/mw
Enclosures

cc: Honorable Allison K. Turner, ALJ
Ace Moving & Storage
Adam Meyer, Inc.
BBD & Sons Moving, Inc.
Clemmer Moving & Storage, Inc.
Fisher-Hughes of Allentown, Inc.
Frick Transfer, Inc.
Fritz Moving Co., Inc.
Keller Moving & Storage, Inc.
Morgan Moving & Storage, Inc.
O'Brien's Moving & Storage, Inc.
Read's Van Service, Inc.
Shelly Moving & Storage, Inc.
Shivley's Moving & Storage, Inc.
Town & Country Van Lines, Inc.

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

IN THE MATTER OF:
APPLICATION OF
JAMES & DEBRA AMENT, t/d/b/a WE - HAUL MOVING
NUMBER A-00119270

RECEIVED
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UTILITY COMMISSION
CLERK'S BUREAU

PROTESTANTS'
REPLY TO EXCEPTIONS
OF APPLICANT TO INITIAL
DECISION OF ALLISON K. TURNER, ALJ

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AND NOW, This 1st day of November, 2004 comes Protestants O'Brien Moving & Storage, Inc., *et.al.* by their attorney, William H.R. Casey, who files this Reply to Exceptions filed by Applicant to the Initial Decision of Honorable Allison K. Turner, ALJ.

1. Applicant excepts to Finding of Fact No. 4 in that it infers the advertisement referenced in Protestant's Ex. 1 states Applicant is holding itself out as having PUC rights. (ID. 4). This finding is not based on the evidence of record.

Reply: Applicants' advertisement states he performs licensed local residential moves. The Commission is the governmental agency that issues such licenses; therefore, he is claiming PUC rights. Applicant's testimony that he was "licensed commercially" was shown by the record to be untrue.

2. Applicant excepts to Finding of Fact No. 13 in that it does not accurately state all the Pennsylvania points of household goods in use need testified to by public witness

Cameron Sowder. (ID. 5). This finding is based on a reading of only a portion of the entire testimony of public witness Cameron Sowder.

Reply: Finding of Fact 13 contains the only probative evidence by this witness. Reference to a “good chance” for storage movement for the witness himself “within Lehigh and Northampton Counties” is vague and speculative.

3. Applicant excepts to Conclusion of Law No. 1 in that it infers Applicant did and will have a future propensity to operate illegally. (ID.21). This conclusion is not based on the evidence of record.

Reply: Protestants incorporate herein by reference Judge Turner’s discussion of this issue at p. 16-20 of the Initial Decision. Moreover, Protestants believe that the Judge was more than fair to Applicant at the initial hearing, despite the numerous false statements by Applicant. There is no requirement to be “versed in the Commission’s Rules of Practice,” to simply tell the truth. The Applicant promised, under oath, in his application not to perform moves before being licensed, but did so and took an oath at the hearing to tell the truth and did not do so.

4. Applicant excepts to Conclusion of Law No. 2 to the extent it states Applicant has not shown that the application would be responsive to a public demand and need. (ID.22). This conclusion is not based on the evidence of record.

Reply: Applicant seeks household goods in use authority for three heavily populated counties and offers testimony of one witness who needs to move twice in one year and two others who will recommend Applicant to unknown others. The conclusion of Judge Turner is clearly justified.

5. Applicant excepts to Conclusion of Law No. 4 to the extent that it states

Applicant's technical and financial fitness is minimal. (ID.22). This conclusion is not based on the evidence of record.

Reply: There was no evidence of finances offered by Applicant and his acquisition of certificates for property from the Commission and the US Department of Transportation are issued automatically. Moreover, Applicant offered no evidence from these operations to support his financial fitness nor safety of his operations.

6. Applicant excepts to Conclusion of Law No. 5. (ID.22). This Conclusion is neither based on the evidence of record nor applicable law or regulation.

Reply: For the reasons set forth in the Initial Decision written by Judge Turner, and the Replies by Protestants, the conclusion is clearly warranted by the evidence and in conformity with law.

7. Applicant excepts to Ordering Paragraph No. 1.. (ID.22). This Ordering Paragraph is neither based on the evidence of record nor applicable law or regulation.

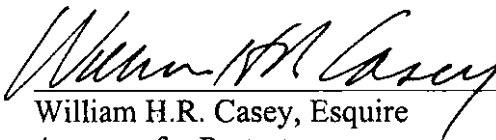
Reply: Ordering Paragraph No. 1 is based upon the evidence and in conformity with applicable law and regulations.

CONCLUSION

WHEREFORE, Protestants respectfully pray the Commission reject Applicants' Exceptions and confirm the Initial Decision of Judge Allison K. Turner.

Dated: November 1, 2004

Respectfully submitted,



William H.R. Casey, Esquire
Attorney for Protestants

CERTIFICATE OF SERVICE

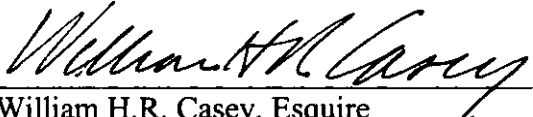
I hereby certify that I have this day served the original and true copies of the foregoing document upon the persons listed below, via U.S. Mail – Certificate of Mailing enclosed – in accordance with the requirements of 52 Pa. Code 154 (relating to service by a participant).

James J. McNulty, Secretary
Commonwealth of Pennsylvania
Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17120

Kenneth A. Olsen, Esquire
33 Philhower Road
Lebanon, NJ 08833

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NOV 01 2004
PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Dated: November 1, 2004



William H.R. Casey, Esquire
Attorney for Protestants

DATE: November 22, 2004

SUBJECT: A-00119270 **Superseding**

TO: Cheryl W. Davis, Director
Office of Special Assistants

FROM: James J. McNulty
Secretary
nvl

DOCKETED
NOV 30 2004

**DOCUMENT
FOLDER**

JAMES AND DEBRA AMENT

Copies of the Initial Decision have been served upon all parties of interest.

Exceptions have been filed by:

APPLICANT

Reply Exceptions have been received from:

O'BRIEN MOVING & STORAGE ET AL

cc: Annette Shelley