

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
Bureau of Investigation and Enforcement	:	
	:	
v.	:	C-2019-3014087
	:	
Elite Moving Company, LLC	:	

INITIAL DECISION

Before
Mary D. Long
Administrative Law Judge

INTRODUCTION

A complaint filed by the Bureau of Investigation and Enforcement (BIE) against a motor carrier for violating the Public Utility Code is sustained. BIE proved that the motor carrier offered to furnish transportation of household property for compensation without having a certificate of public convenience from the Public Utility Commission. A civil penalty of \$5,000 is assessed.

HISTORY OF PROCEEDINGS

On November 6, 2019, BIE filed a Formal Complaint against Elite Moving Company, LLC (Elite Moving), alleging that Elite Moving offered to furnish transportation of household property for compensation on August 24, 2019, without having a certificate of public convenience from the Pennsylvania Public Utility Commission authorizing it to do so. As relief, BIE sought a civil penalty in the amount of \$5,000. The Complaint included a notice to plead.

On November 26, 2019, a response to the Complaint was filed by Tiffany Konop on behalf of Elite Moving. In her response she states that she started the company with her husband, and she admitted that she failed to file an application for household goods authority from the Commission.

On February 14, 2020, the Complaint was assigned to me and scheduled for a hearing on March 19, 2020. On February 18, 2020, I issued a prehearing order which explained the hearing procedure. I also issued an Interim Order directing Elite Moving, LLC to secure representation by an attorney if it wished to present a defense at the hearing.¹

On March 16, 2020, Governor Wolf had issued a state of emergency in Pennsylvania in an effort to mitigate the spread of COVID-19 in Pennsylvania, impacting Commission operations. Accordingly, by Interim Order entered March 16, 2020, the March 19, 2020 hearing was cancelled, and the matter continued until the Office of Administrative Law Judge could resume operations remotely.

On April 21, 2020, the hearing was rescheduled for June 4, 2020. A new prehearing order was issued on April 24, 2020. Paragraph 6 of the prehearing order reminded Elite Moving Company, LLC that a partnership, limited liability company, corporation, trust, association must have an attorney licensed to practice law to represent it in the proceeding.

The hearing convened as scheduled. Christopher Andreoli, Esquire, appeared representing BIE, along with one witness, Commission Motor Carrier Enforcement Officer Christopher Urey. Along with the testimony of Officer Urey, nine exhibits were admitted into the record. No attorney entered an appearance on behalf of Elite Moving. Tiffany Konop, the owner of Elite Moving, appeared but was not permitted to testify. The hearing generated a transcript of 27 pages. Following the receipt of the transcript, the record was closed by Interim Order entered June 16, 2020.

¹ 52 Pa. Code § 1.21; *see also*, *Pa. Pub. Util. Comm'n v. Calypso Moving, LLC*, C-2019-3013404 (Opinion and Order entered May 21, 2020), at p. 5.

FINDINGS OF FACT

1. The Complainant is the Bureau of Investigation and Enforcement.
2. The Respondent is Elite Moving Company, LLC.
3. Tiffany Konop is an owner of Elite Moving Company, LLC. (BIE Ex. 9)
4. Elite Moving does not hold a certificate of public convenience authorizing it to operate as a motor carrier of household goods. (BIE Ex. 1; N.T. 9)
5. On December 28, 2018, BIE sent Elite Moving a “cease and desist” letter, which notified Elite Moving that it was required to secure a certificate of public convenience in order to continue transporting household goods. (BIE Ex. 3)
6. BIE received complaints regarding Elite Moving. (N.T. 11)
7. As part of the investigation of these complaints, BIE arranged a move of household goods with Elite Moving on August 24, 2019. (N.T. 12)
8. BIE Enforcement Officer Christopher Urey, using a web application known as “Thumbtack” and the assistance of Westmoreland Movers, LLC,² arranged to have items picked up at a location in Cheswick, Pennsylvania and delivered to a location in Wexford, Pennsylvania. (N.T. 12; 13; 21-22; BIE Ex. 7)
9. Elite Moving provided a rate of \$90 per hour with a three-hour minimum, plus \$ 1.50 per mile. (N.T. 13; BIE Ex. 7)

² Westmoreland Movers, LLC, a certificated household goods carrier, complained to the Commission regarding the unauthorized activities of Elite Moving. N.T. 22-23.

10. On August 24, 2019, Officer Urey, along with his supervisor, Cynthia Hawthorne, met two gentlemen driving a “U-Haul” who identified themselves as representatives of Elite Moving. (N.T. 13, 14; BIE Ex. 8)

11. The BIE Enforcement Officers informed the gentlemen that they were in violation of the Public Utility Code and completed a driver vehicle inspection report, known as a DVCR. (N.T. 14)

12. Following the August 24, 2019 inspection, BIE submitted a non-traffic citation to the local magistrate in Cheswick, Pennsylvania. (N.T. 15; BIE Ex. 4)

13. Elite Moving pled guilty to the non-traffic citation before the local magistrate. (N.T. 15-16; BIE Ex. 5)

14. Elite Moving admitted that it pled guilty to the non-traffic citation and paid a fine. (BIE Ex. 9)

15. Tiffany Konop, the owner of Elite Moving, was aware it had to obtain a certificate of public convenience issued by the Commission in order to lawfully provide transportation of household goods. (BIE Exs. 3, 9)

DISCUSSION

BIE is the Complainant in this proceeding; therefore, it bears the burden of proof.³ The term “burden of proof” means a duty to establish a fact by a preponderance of the evidence.⁴ The term “preponderance of the evidence” means that one party has presented evidence which is more convincing, by even the slightest degree, than the evidence presented by the opposing party. Additionally, the Commission must ensure that the decision is supported by substantial

³ *Pa. Pub. Util. Comm’n v. Polzot*, Docket C-2011-2271305 (Opinion and Order entered October 31, 2013); 66 Pa.C.S. § 332(a).

⁴ *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950).

evidence in the record. The Pennsylvania appellate courts have defined substantial evidence to mean such relevant evidence that a reasonable mind may accept as adequate to support a conclusion; more is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established.⁵

There is no dispute regarding the facts. Therefore, the only issue is whether the assessment of a \$5,000 civil penalty is a reasonable fit for the gravity of the violation of the Public Utility Code. As explained below, BIE provided sufficient evidence to support the imposition of this penalty.

On December 28, 2018, Elite Moving received a cease and desist letter from the Commission which notified it that it was required to secure a certificate of public convenience from the Commission before it could operate as a motor carrier of household goods. Commission records establish that Elite Moving does not hold a certificate of public convenience which would authorize it to transport household goods. Further, in her response to BIE's Complaint, Tiffany Konop, the owner of Elite Moving, admits that she failed to secure a certificate of public convenience which would authorize Elite Moving's operation as a moving company.

Nevertheless, on August 24, 2019, as part of an investigation by BIE, BIE Enforcement Officer Christopher Urey, using a web application known as "Thumbtack," arranged to have items picked up at a location in Cheswick, Pennsylvania and delivered to a location in Wexford, Pennsylvania. Elite Moving provided a rate of \$90 per hour with a three-hour minimum, plus \$1.50 per mile. Officer Urey, along with his supervisor, Cynthia Hawthorne, met two gentlemen driving a "U-Haul" who identified themselves as representatives of Elite Moving. After identifying themselves as Commission enforcement officers, an inspection was completed, and a non-traffic citation was filed with the local magistrate. Elite Moving pled guilty and paid the required fine.

⁵ *Norfolk & Western Railway Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980); *Murphy v. Pa. Dept. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).

The Public Utility Code defines “contract carrier by motor vehicle” to include a person or corporation that transports passengers or property, between points within the Commonwealth by motor vehicle for compensation.⁶ Section 2501(b)(1)(ii) of the Code,⁷ defines a contract carrier by motor vehicle as follows:

Any person or corporation that holds itself out to provide or furnish transportation of household property between residential dwellings within this Commonwealth by motor vehicle for compensation, owns or operates the motor vehicle and provides or furnishes a driver of the motor vehicle with the transportation or use of the transportation.

No person or corporation shall render service as a contract carrier by motor vehicle unless there is in force with respect to such carrier a certificate of public convenience issued by the Commission, authorizing such person or corporation to engage in such business.⁸

Furthermore, by providing or furnishing the transportation of household property between points within the Commonwealth by motor vehicle for compensation, Elite Moving is subject to the power and authority of this Commission pursuant to Section 501(c) of the Code, which requires a public utility to comply with Commission regulations and orders.⁹ Consequently, Elite Moving is subject to Section 3310(b) of the Code,¹⁰ and the corresponding penalty promulgated under Section 3310(c) of the Code,¹¹ which authorizes the imposition of a penalty in the amount of \$5,000 for the first violation of the Code.

⁶ 66 Pa. C.S. § 2501.

⁷ 66 Pa. C.S. § 2501(b)(1)(ii).

⁸ *See* 66 Pa.C.S. § 2503(a)(1).

⁹ 66 Pa.C.S. § 501(c).

¹⁰ 66 Pa C.S. § 3310(b).

¹¹ 66 Pa.C.S. § 3310(c).

The Commission has recently rendered a number of recent decisions which impose a \$5,000 penalty on motor carriers who render service without authorization to do so.¹² The factor considered by the Commission is whether the penalty is sufficient to deter future violations.¹³

Like the carriers in these recent decisions, Elite Moving was aware that a certificate of public convenience was required to authorize the transportation of household goods. In December 2018, BIE issued a cease and desist letter to Elite Moving which notified the carrier that it was required to file an appropriate application with the Commission before rendering service. Yet, as evidenced by the incident on August 24, 2019, Elite Moving continued to render service without Commission authorization. There are no circumstances which would mitigate the imposition of the \$5,000 penalty as set forth in Section 3310 of the Public Utility Code. In his testimony, Officer Urey explained the significant public safety interest at stake when motor carriers render service without Commission authorization, including driver training, vehicle safety and enforcement of insurance requirements. A civil penalty of \$5,000 is reasonable and sufficient to deter future violations.

In sum, BIE sustained its burden of proving that Elite Moving violated the Public Utility Code and that the imposition of a civil penalty in the amount of \$5,000 is appropriate.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter of the complaint. 66 Pa.C.S. §§ 501, 701.

¹² *Pa. Pub. Util. Comm'n v. Calypso Moving, LLC*, Docket C-2019-3013404 (Opinion and Order entered May 21, 2020)(imposing a \$5,000 penalty); *Pa. Pub. Util. Comm'n v. Mickey Jadallah d/b/a ABC Moving Service, LLC*, Docket C-2019-3013129 (Opinion and Order entered May 21, 2020)(imposing a \$10,000 penalty); *Pa. Pub. Util. Comm'n v. Mubers Moving Corp.*, Docket C-2018-3003688 (Opinion and Order entered April 30, 2020)(imposing a \$5,000 penalty).

¹³ *E.g., Calypso Moving*, at 11.

2. The Bureau of Investigation and Enforcement bears the burden of proof.
66 Pa.C.S. § 332.

3. Elite Moving, LLC violated the Public Utility Code by holding itself out to provide or furnish transportation of household property without authorization. 66 Pa.C.S. §§ 1101, 2501, 3310.

4. A civil penalty is reasonable and appropriate in this case.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint of the Bureau of Investigation and Enforcement against Elite Moving Company, LLC is sustained.

2. That, within thirty (30) days of the entry date of a final order by the Commission, Elite Moving, LLC, shall remit \$5,000, payable by certified check or money order, to “Commonwealth of Pennsylvania” and sent to:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

3. That a copy of this Initial Decision shall be served upon the Financial and Assessment Chief, Office of Administrative Services.

4. That, if Elite Moving, LLC fails to make the payment required by Ordering Paragraph No. 2, above, within thirty (30) days of the entry date of a final order of the Commission, the Commission's Bureau of Administrative Services, Assessment Section, shall refer this matter to the Pennsylvania Office of Attorney General for appropriate action.

5. That Elite Moving, LLC shall cease and desist from all violations of the Public Utility Code.

Date: August 13, 2020

_____/s/
Mary D. Long
Administrative Law Judge