

BEFORE THE PENNSYLVANIA PUBLIC UTILITIES COMMISSION

Application of Northeastern Movers, Inc  
for approval to transport household goods  
in use between points in Pennsylvania.

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Docket #A-2024-3046642

**APPLICANT’S MOTION FOR SUMMARY JUDGMENT ON PROTEST OF CADDEN  
BROS. MOVING & STORAGE, INC.**

Applicant Northeastern Movers, Inc. (“Applicant” or “Northeastern”) hereby moves for summary judgment on the protest of Cadden Bros. Moving & Storage, Inc. (“Protestant” or “Cadden”) and states as follows:

1. Applicant filed an application with the Commission for a certificate of public convenience to operate as a common carrier of household goods in-use on February 20, 2024, and the application was published in the Pennsylvania Bulletin on March 9, 2024 after it was approved by the Bureau of Technical Utility Services.

2. On March 19, 2024, Cadden filed a letter to the Commission that was docketed by the Commission as a protest. Notably, Cadden’s letter fails to satisfy the formal requirements of a protest set forth in 52 Pa. Code § 3.381(c), namely:

- a. The docket number of Northeastern’s application;
- b. A statement of Cadden’s interest in the application; and
- c. A list of all Commission docket numbers under which Cadden operates.

3. For these failures alone, Cadden’s letter should be struck from the Commission’s docket.

4. Furthermore, Cadden's letter raises two grounds for its protest: 1) lack of financial fitness; and 2) alleged unlicensed operations. For the reasons set forth below, summary judgment should be granted on both grounds.

5. Under, 52 Pa. Code § 5.102, a motion for summary judgment may be filed after the pleadings are closed, but within a time so that the hearing is not delayed. A motion for summary judgment must be based on the pleadings and depositions, answers to interrogatories, admissions and supporting affidavits. *Id.* The presiding officer will grant or deny a motion for judgment on the pleadings or a motion for summary judgment, as appropriate. The judgment sought will be rendered if the applicable pleadings, depositions, answers to interrogatories and admissions, together with affidavits, if any, show that there is no genuine issue as to a material fact and that the moving party is entitled to a judgment as a matter of law. *Id.*

6. In *Waldron v. Philadelphia Electric Company*, 54 Pa. PUC 98 (1980), the Commission explained the process of meeting the burden of proof. In accordance with *Waldron* and the previously-cited legal standards, Applicant has the burden to put forth evidence establishing a *prima facie* case as to technical and financial fitness for the proposed service. If Applicant establishes a *prima facie* case, the burden of going forward, but not the ultimate burden of proof, shifts to the Protestant to rebut the *prima facie* case with evidence which is at least co-equal. If Applicant's evidence is rebutted to the legally required extent, the burden of going forward shifts back to the Applicant, which must rebut the adverse party's evidence by a preponderance of the evidence. *Poorbaugh v. W. Penn Power Co.*, 1994 Pa. PUC LEXIS 95. Under 52 Pa. Code § 41.14, an application for authority may be withheld if the record demonstrates that the applicant lacks the propensity to operate safely and legally. The regulation provides a list of factors for the Commission to examine to make this determination, including: "Whether an

applicant has sufficient capital, equipment, facilities and other resources necessary to serve the territory requested.” *Id.*

7. After an applicant for motor carrier authority has met its burden of proving fitness, the next consideration is whether the record demonstrates a lack of propensity on the part of the applicant to operate safely and legally. This finding must be based upon the totality of a record which demonstrates conclusively that an applicant will not operate safely or legally. The applicant has no affirmative duty to prove that it will operate safely and legally. *See, Application of Mahmoud Awad*, Docket No. A-00119891, (Final Order entered January 3, 2005).

**SUMMARY JUDGMENT MUST BE GRANTED REGARDING NORTHEASTERN’S  
FINANCIAL FITNESS**

8. Commission regulations at 52 Pa. Code § 41.14 provide the criteria which must be met by Applicants seeking motor common carrier authority to establish financial fitness. As stated therein, Applicants must demonstrate that they have “sufficient capital, equipment, facilities and other resources necessary to serve the territory requested.” 52 Pa. Code § 41.14.

9. In *Application of Raymond P. Sutherland*, Docket No. A-00122346, (Opinion and Order entered June 5, 2007), the Commission considered what was meant by the term *sufficient capital* in the context of 52 Pa. Code § 41.14. In so doing, the Commission observed that there was no regulatory definition and no statute or decisional law providing any specific monetary or other standards necessary to meet the *sufficient capital* requirement. Accordingly, the Commission concluded that the determination of financial fitness was within its discretion, on a case-by-case basis, with the primary concern being the adequacy of service to the public.

10. The Statement of Financial Position submitted with Northeastern’s Verified Statement lists \$101,108 in current assets (including \$65,255 in checking and brokerage accounts),

\$21,500 in cash, and \$250,000 in motor vehicle equipment, and total short and long-term liabilities less than Northeastern's total assets. This financial statement was prepared by Northeastern's accountant, Kathryn M. Keane, EA of Macanta Business Services in Brooklyn, NY. (**Exhibit 1**, Affidavit of Kathryn M. Keane). Furthermore, Applicant's Verified Statement lists six trucks and states that Applicant has leased an office space and a 28,838 square-foot warehouse with parking for its trucks and equipment.

11. In summary, it was entirely reasonable for the Bureau of Technical Utility Services to approve Northeastern's Application and publish it in the Pennsylvania Bulletin. Movers with far fewer resources are routinely approved.

12. Instead of addressing these facts directly, Cadden makes a speculative argument that Northeastern's finances are not plausible based on the financial statement that it submitted with its prior application on September 16, 2022 (Docketed at A-2022-3035356). Cadden further argues that the Commission should audit Northeastern's finances.

13. Cadden's speculative argument ignores that Northeastern was licensed by the FMCSA to operate interstate moves in 2019 and by the New York DOT to operate intrastate moves in New York since 2020. (**Exhibit 2**, Affidavit of Edward McKeon). The majority of Northeastern's business is in New York. *Id.* Northeastern's success is not, in and of itself, evidence of fraud—regardless of whether it bucks the trend in the industry.

14. Cadden's rank speculation should not allow it to delay approval of Northeastern's application so it can conduct a fishing expedition into Northeastern's finances and delay Northeastern's application. Allowing it to do so would flout the Commission's intent to streamline the process for new applicant for household goods authority and eliminate protests as a matter of course by removing the ability of competitors to protest applications based on market need. Indeed,

Cadden continues to protest virtually all new applications in northeastern Pennsylvania as a matter of course.

**SUMMARY JUDGMENT MUST BE GRANTED REGARDING NORTHEASTERN'S**

**ALLEGED UNLICENSED OPERATIONS**

15. Cadden further baldly asserts that Northeastern has and continues to perform unlicensed household goods moves in Pennsylvania, based on its Google reviews and its website.

16. This argument conveniently ignores the fact that Northeastern is lawfully operating in Pennsylvania. It has interstate authority from the FMCSA and is therefore entitled to conduct household goods moves into or out of Pennsylvania, as long as each move starts or ends in a state other than Pennsylvania. Northeastern is also permitted to provide “labor-only” services in Pennsylvania.

17. Nothing on the page of Northeastern’s website submitted by Cadden (or elsewhere on Northeastern’s website) suggests that Northeastern is conducting intrastate household goods moving operations between points in Pennsylvania.

18. Furthermore, save for one, the Google reviews attached to Cadden’s letter do not suggest that Northeastern operated intrastate household goods moving operations between points in Pennsylvania, as they do not identify the start point and end point of each move. At best, some of them vaguely indicate that services were performed in the Scranton area, which does not rule out interstate and/or labor-only services.

19. The one move that includes start and end points in Pennsylvania is most recent review, by a “Jacob Schneider” only one week before the date of Cadden’s letter. Northeastern has reviewed its records and does not have a record of a job for a Jacob Schneider. (Ex. 2). The fact that

the review in question is only one week before the date of Cadden's letter calls into question the reliability of this hearsay review.

20. Finally, even if the purported Schneider review is genuine and indicates that Northeastern performed a single unlicensed move, this does not prove that Northeastern lacks the propensity to operate safely and legally. *See Application of Joel Sicherman t/a/ BestDarnMovers*, A-2016-2532991 (finding that an applicant's extensive operation without commission authority does not preclude a carrier from obtaining lawful authority) (*citing BIE v. Uber Technologies, Inc., Gegen, LLC, Rasier LLC, and Rasier-PA, LLC*, Docket Number C-2014-2422723; *Capital City Cab Serv. v. Pa. PUC*, 138 A.3d 119, 130 (Pa. Commw. Ct. Apr. 19, 2016) *citing Brinks, Inc. v. Pennsylvania Public Utility Commission*, 500 Pa. 387, 456 A.2d 1342, 1344 (Pa. 1983)).

WHEREFORE, for the reasons stated herein, Applicant respectfully requests that summary judgment be entered in favor of Applicant on the protest of Cadden Bros. Moving & Storage, Inc.

Respectfully submitted,

Dated: April 19, 2024

/s/Andrew J. Horowitz, Esquire  
Andrew J. Horowitz, Esquire  
PA Bar 311949  
OBERMAYER REBMANN MAXWELL & HIPPEL LLP  
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Pittsburgh, PA 15219  
412-288-2461  
412-281-1530(f)  
andrew.horowitz@obermayer.com

*Counsel for Applicant*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 19th day of April, 20204, the within Motion for Summary Judgment was served on Protestants via first class mail, postage prepaid:

Patrick A. Cadden  
Cadden Bros. Moving & Storage, Inc.  
1106 Mid Valley Drive  
Olyphant, PA 18447

Corey Sands  
Matheson Transfer Co.  
PO Box 1324  
Kingston, PA 18704

/s/Andrew J. Horowitz, Esq.

**EXHIBIT 1**

**BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Northeastern Movers, Inc for approval to transport household goods in use between points in Pennsylvania

Docket #A-2024-3046642

**AFFIDAVIT OF KATHRYN M. KEANE**

I, Kathryn M. Keane, being duly sworn according to law, depose and say that the facts above set forth are true and correct to the best of my knowledge, information and belief and I expect to be able to prove the same at any hearing hereof.

1. I am an adult individual and competent to make this Affidavit.
2. I am the owner of Macanta Business Services, located at 2109 Homecrest Avenue, Brooklyn, NY.
3. The Statement of Financial Position attached as **Exhibit A** to this Affidavit was prepared by me in November of 2023. It is accurate to a reasonable degree of accounting certainty.

  
KATHRYN M. KEANE, Affiant

Sworn and subscribed before me this 19 day of April, 2024

  
(Signature of official administering oath)

\_\_\_\_\_  
(My Commission Expires)

**ALBERT V PARISI**  
NOTARY PUBLIC, STATE OF NEW YORK  
Registration No. 01PA5060245  
Qualified in Kings County  
My Commission Expires: 05/20/26

**EXHIBIT A**

**Statement of Financial Position (Balance Sheet)**  
 As of (date) 10/31/23  
 (Must be less than 6 months old)

ASSETS

Current Assets		
Cash	<u>21,500</u>	
Other Current Assets (specify)	<u>79,608</u>	
Total Current Assets		<u>101,108</u>
Tangible Assets		
Motor Vehicle Equipment	<u>250,000</u>	
Property (buildings, land, etc.)		
Office Equipment		<u>1,000</u>
TOTAL ASSETS		<u>352,108</u>

LIABILITIES

Current Liabilities (Due within one year of date)		
Loans	<u>15,000</u>	
Credit cards/revolving credit	<u>40,591</u>	
Other Liabilities (Attach schedule)	<u>0</u>	
Total Current Liabilities		<u>55,591</u>
Long Term Liabilities (Due after one year of date)		
Mortgage		
Long term commercial loan	<u>90,000</u>	
Other Liabilities (Attach Schedule)	<u>140,000</u>	
Total Long-Term Liabilities		<u>230,000</u>
TOTAL LIABILITIES		<u>285,591</u>

Current Assets

Checking / Brokerage Accounts  
 \$14,353                      \$65,255

Other Liabilities

Truck Financing \$140,000

**EXHIBIT 2**

**BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

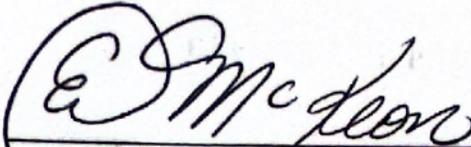
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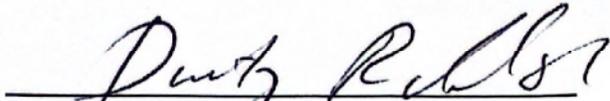
**AFFIDAVIT OF EDWARD MCKEON**

I, Edward T. McKeon, being duly sworn according to law, depose and say that the facts above set forth are true and correct to the best of my knowledge, information and belief and I expect to be able to prove the same at any hearing hereof.

1. I am the sole shareholder of Northeastern Movers, Inc (“Northeastern”).
2. I am an adult individual and competent to make this Affidavit.
3. The Statement of Financial Position attached to Northeastern’s February 20, 2024 application to begin service was prepared by Northeastern’s accountant, Kathryn M. Keane, EA of Macanta Business Services in Brooklyn, NY.
4. Northeastern was granted authority by the FMCSA to perform interstate moves of household goods in use in 2019 and authority by the New York DOT to perform intrastate moves in 2020.
5. The majority of Northeastern’s business is in New York. Northeastern currently provides interstate services and load/unload services in Pennsylvania, but does not provide intrastate moves of household goods in use between points in Pennsylvania.
6. I have caused Northeastern to review its records, and it has no record of a recent move by a Jacob Schneider.

  
EDWARD MCKEON, Affiant

Sworn and subscribed before me this 18 day of April, 2024

  
(Signature of official administering oath)

04-19-2027  
(My Commission Expires)

DMITRY RUBALSKY  
NOTARY PUBLIC, State of New York  
No. 01RU5011281  
Qualified in Kings County  
Commission Expires 04/19/2027