

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the complaint of the)
MICHIGAN PUBLIC SERVICE COMMISSION)
STAFF against ALTER'S MOVING, INC., and)
JOHN ALTER, individually, as well as all assigns,)
successors, other d/b/a's, and assumed names of)
either party.)
_____)

Case No. T-1291

At the April 24, 1997 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. John G. Strand, Chairman
Hon. John C. Shea, Commissioner
Hon. David A. Svanda, Commissioner

OPINION AND ORDER

On August 29, 1996, the Commission Staff (Staff) filed a complaint against Alter's Moving, Inc., and John Alter, individually, as well as all assigns, successors, d/b/a's, and assumed names of either entity (collectively, Alter). In that complaint, the Staff alleged that Alter performed unauthorized moves of household goods, made substantial misrepresentations to the shipping public, repeatedly refused to make its business records available to the Motor Carrier Enforcement Division of the Michigan Department of State Police (State Police), and expressed an intent to continue engaging in illegal and deceptive practices, all in violation of the Motor Carrier Act, MCL 475.1 et seq.; MSA 22.531 et seq. (the Act), and the Commission's Motor Carrier Rules, as amended, 1984 AACRS, R 460.18101 et seq. (the Rules). The Staff requested that the Commission initiate a contested case proceeding to investigate the alleged violations, impose a substantial administrative assessment against Alter, authorize the State Police to impound all of Alter's vehicles that are

found operating in violation of the Act or the Rules or in contravention of the Commission's orders, enter a cease and desist order against future violations of the Act and the Rules, and ask Attorney General Frank J. Kelley to seek injunctive relief, if necessary, to restrain or enjoin Alter from further violations of the Act and the Rules.

A copy of the complaint was served on Alter by certified mail, for which a return receipt was executed on September 6, 1996. The complaint was also published in the biweekly Information Bulletin on September 16, 1996. Although a notice included with the complaint that was served on Alter indicated that any replies to the allegations should be made within 20 days, no response was submitted.

Pursuant to due notice, an evidentiary hearing was conducted on January 6, 1997 before Administrative Law Judge James N. Rigas (ALJ). In support of its complaint, the Staff offered testimony from three witnesses. The Staff also sponsored six exhibits, all of which were received into evidence. Alter did not participate in the hearing.

Leesa K. Black, an investigating officer for the State Police, testified that although Alter has never obtained authority to conduct intrastate transportation of household goods, she was made aware of at least two unauthorized moves performed by the company. According to Officer Black, these illegal moves came to light due to billing disputes between Alter and the shippers, as well as claims for damage and theft. Officer Black went on to testify that although Alter admitted to making those unauthorized moves, it repeatedly denied her request for access to the company's business records. She further testified that Alter refused to comply with a subpoena issued on November 26, 1996, which required production of those records by December 17, 1996. Therefore, Officer Black stated, she was unable to determine the volume of business (unauthorized or otherwise) that Alter had done over the last few years. Nevertheless, based on its purchase

of yellow pages advertisements concerning the transportation of household goods throughout Michigan,¹ she determined that Alter intends to continue offering unauthorized motor carrier service.

The second witness, Glenn E. Ray, testified that one of the two illegal moves discussed by Officer Black involved Alter's transportation of Mr. Ray's household goods during 1995. He stated that in response to questions posed prior to the move, Alter specifically misrepresented its status as a licensed, bonded, and insured motor carrier within Michigan. Mr. Ray went on to testify that only after the move, when he and his wife initiated a complaint against Alter for damage to their furniture and the theft of several pieces of jewelry, did he discover that Alter lacked intrastate authority.

The final witness was Mary E. Low, Director of the Office of Safety and Compliance for the Commission's Motor Carrier Division. Ms. Low testified that an assessment of \$194,000 should be imposed upon Alter due to its past violations and its flagrant and continuing disregard of the Act and the Rules. She arrived at that total by imposing the maximum assessment of \$500 per violation provided for under Section 18 of the Act² to (1) both of the illegal moves Alter admittedly performed [\$1,000], (2) each of the 20 days between December 17, 1996 and the start of the hearings in this case during which Alter failed to comply with the subpoena [\$10,000], (3) the misrepresentation Alter made to Mr. and Mrs. Ray [\$500], and (4) each of the 365 days covered by Alter's most recent purchase of its yellow pages advertisement [\$182,500]. Ms. Low further testified that in order to avoid a continuation of Alter's past actions, the Commission should also (1) direct the State Police to impound all of Alter's vehicles until the assessment is paid and the company obtains the necessary authority to conduct intrastate moves, (2) issue a cease and desist order covering any further

¹These documents were obtained from Ameritech Publishing, Inc., pursuant to a search warrant issued by the 39th District Court on May 1, 1996.

²MCL 479.18; MSA 22.583.

unauthorized moves, and (3) ask Attorney General Frank J. Kelley to seek injunctive relief, if necessary, to block further violations of the Act and the Rules by Alter.

At the close of the hearing, the ALJ issued an oral proposal for decision (PFD) in which he concluded that the Staff satisfactorily supported all allegations contained in its August 29, 1996 complaint. He therefore recommended that the Commission grant the relief sought by the Staff and detailed in Ms. Low's testimony. No exceptions to the PFD have been filed.

The Commission finds that the PFD is supported by the record and should be adopted, with one modification. Specifically, testimony offered by Officer Black and Mr. Ray indicates that Alter is a relatively small operation that may have only one truck. Thus, requiring payment of a \$194,000 assessment as a condition precedent to obtaining intrastate authority (and impounding Alter's vehicle or vehicles until that assessment is paid) would make it impossible for Alter to resume operations even if it chose to comply fully with the Act and the Rules. Although a much higher assessment can be supported by the record, reducing the assessment to \$6,000³ produces a reasonable result. The Commission therefore concludes that the ALJ's findings should be adopted, that his recommended assessment should be reduced to \$6,000, and that all other sanctions discussed in the PFD should be imposed.

The Commission finds that:

a. Jurisdiction is pursuant to 1933 PA 254, as amended, MCL 475.1 et seq.; MSA 22.531 et seq.; 1939 PA 3, as amended, MCL 460.1 et seq.; MSA 22.13(1) et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; MSA 3.560(101) et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1992 AACCS,

³This figure was arrived at by assessing Alter \$250 for (1) each of the 2 unauthorized moves documented by the Staff [\$500]; (2) each of the 20 days between the date set for its response to the District Court's subpoena and the evidentiary hearing conducted in this case [\$5,000]; (3) the intentional misrepresentation described in Mr. Ray's testimony [\$250]; and (4) its purchase of the yellow pages advertisement for 1996-1997 [\$250].

R 460.17101 et seq.

b. Alter has violated the Act and the Rules.

c. Based on its past violations and its flagrant and continued disregard of the Act and the Rules, Alter should be obligated to pay to the State of Michigan an administrative assessment of \$6,000 and should be subject to other sanctions, as set forth in this order.

THEREFORE, IT IS ORDERED that:

A. The complaint filed on August 29, 1996 by the Commission Staff is granted.

B. Alter's Moving, Inc., and John Alter, individually, as well as all assigns, successors, d/b/a's, and assumed names of either entity, shall pay to the State of Michigan an administrative assessment of \$6,000.

C. The Motor Carrier Enforcement Division of the Michigan Department of State Police shall impound all motor vehicles used for commercial purposes by Alter's Moving, Inc., and John Alter, and shall detain those vehicles until the assessment imposed by this order is paid in full and Alter's Moving, Inc., or John Alter, or both, obtain intrastate motor carrier authority for the transportation of household goods.

D. Alter's Moving, Inc., and John Alter shall cease and desist from further violations of the Motor Carrier Act and the Commission's Motor Carrier Rules.

E. Attorney General Frank J. Kelley shall be requested to seek injunctive relief, if necessary, to avoid further violations of the Motor Carrier Act and the Commission's Motor Carrier Rules by Alter's Moving, Inc., and John Alter, individually, as well as all assigns, successors, d/b/a's, and assumed names of either entity.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26; MSA 22.45.

MICHIGAN PUBLIC SERVICE COMMISSION

(SEAL)

John G. Strand
Chairman

By its action of April 24, 1997

John C. Shea
Commissioner

Dorothy Wideman
Executive Secretary

David A. Svanda
Commissioner

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Suggested Minute:

“Adopt and issue order dated April 24, 1997 granting the complaint, issuing a cease and desist order, establishing a \$6,000 assessment, and imposing other sanctions against Alter’s Moving, Inc., and John Alter, as set forth in the order.”