

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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| In the matter of the application of                | ) |                |
| <b>MAGGART &amp; SONS, INC.</b> , for authority to | ) | File No. 27974 |
| operate as a motor carrier.                        | ) |                |
| _____                                              | ) |                |

At the February 1, 2002 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. Laura Chappelle, Chairman  
Hon. David A. Svanda, Commissioner  
Hon. Robert B. Nelson, Commissioner

**OPINION AND ORDER**

On April 3, 2001, Maggart & Sons, Inc., (Maggart) filed an application for authority to operate as a motor carrier. At approximately the same time, the Commission Staff (Staff) received a report from the Michigan State Police (State Police) indicating that Maggart had operated as a motor carrier without the required authority 721 times. Subsequently, Maggart and the Staff entered into a settlement agreement in which Maggart conceded that it had operated without the required authority and agreed to pay an administrative assessment of \$7,210. On August 9, 2001, the settlement agreement was forwarded to the Commission for its review.

On September 7, 2001, the Commission issued an order in this case (the September 7 order) concluding that it should not approve the settlement agreement, at least at that time. According to the Commission, it was not apparent from the information in the file that “an administrative assessment of \$10 per illegal haul-for-hire is sufficient to provide an appropriate incentive for

Maggart and others to obtain the authority required by statute to operate as a motor carrier.” September 7 order, p. 1. The Commission therefore remanded the matter for hearing and directed the parties to develop a record providing additional information on (1) why Maggart failed to renew its motor carrier authority, (2) when Maggart ceased making unauthorized hauls for hire, (3) the relationship between the timing of the State Police investigation, the end of Maggart’s unauthorized hauls, and the filing of the application, (4) the revenues and costs arising from the unauthorized transportation, and (5) any other information that the parties felt might assist the Commission in evaluating the settlement agreement and imposing an appropriate administrative assessment. The Commission also requested that, in the course of the hearing, Maggart show cause why any temporary authority granted by the Staff should not be revoked.

Pursuant to due notice, an evidentiary hearing was held on November 21, 2001 before Administrative Law Judge George Schankler (ALJ). George E. Lodwich, majority owner and Chief Executive Officer of Maggart, testified concerning all events leading up to and following the State Police investigation that gave rise to this matter. The record consists of 33 pages of transcript and 14 exhibits, all of which were received into evidence.

Following the close of the proofs, the ALJ issued an oral Proposal for Decision (PFD) in which he recommended approval of the application under the terms of the settlement agreement (including payment of the initially agreed-upon assessment of \$7,210). Neither Maggart nor the Staff excepted to the PFD.

#### Evidence Provided on Remand

According to Mr. Lodwich, Maggart has operated without incident in Indiana for approximately 18 years. Likewise, he testified that following Maggart’s receipt of authority to

commence service in Michigan during early 2000, it has been involved in no accidents and has received no citations for safety violations. Tr. 19.

More importantly, Mr. Lodwich provided evidence indicating that Maggart's failure to renew its authority for 2001 was not intentional. Specifically, he stated that Maggart received a motor carrier renewal packet from the Staff in late 2000. Tr. 8. At that point, Mr. Lodwich continued, he completed the necessary forms and mailed them, along with the required payment, "right before or after Thanksgiving." Id. His recollection of those events is supported by Exhibit A-2, which is a copy of Maggart's renewal application dated November 25, 2000, as well as Exhibits A-3 and A-5, which are copies of the checks (both dated November 21, 2000) corresponding to the payment of vehicle decal fees for Maggart's previously-existing and newly-acquired vehicles, respectively. See, Tr. 8-11.

Mr. Lodwich went on to state that, sometime during January 2001, one of Maggart's employees noticed that their vehicle decals had not yet arrived, contacted the Staff, and was reportedly told that the application was likely still being processed. Tr. 12. "Unfortunately," he continued, Maggart failed to follow up<sup>1</sup> and, instead, simply "lost sight of the process." Id. As a result, Maggart admits to conducting hundreds of unauthorized hauls between January 1 and April 2, 2001.

Immediately upon being cited for operating without authority, Mr. Lodwich continued, Maggart suspended its operations in Michigan, hand-delivered applications for both temporary and permanent authority, filed its proof of insurance, and provided the Staff with all requisite

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<sup>1</sup> Although not specifically addressed during the evidentiary hearing, statements set forth on Exhibit S-14 (a copy of the State Police incident report) indicate that Maggart's failure to follow up may have continued despite correspondence from the Staff indicating that no renewal of the carrier's operating authority could be found in the Commission's records.

documentation regarding its safety and drug-testing programs. See, Tr. 16-18 and 21-22; Exhibit A-8. As a result of those corrective measures, Maggart received a grant of temporary authority on April 3, 2001, one day after receiving its citation. Exhibit A-12. Since that time, records produced at the evidentiary hearing indicate, Maggart has timely sought and obtained several extensions of its temporary motor carrier authority. See, Exhibits A-9 through A-11.

In response to the Commission's request for information regarding the revenues and costs associated with Maggart's unauthorized hauls, Mr. Lodwich testified that the average gross income from the 721 shipments in question<sup>2</sup> was \$43 per load, resulting in total revenue of "a little over \$30,000." Tr. 19. He went on to state that this figure must be reduced by a general employee cost factor of 50% (or, approximately \$15,000) and fuel expense of between \$6,700 and \$6,800. Tr. 20. The result, even before a reduction for fixed costs such as insurance and depreciation, is approximately \$8,000. It therefore appears that, after accounting for such fixed costs, the \$7,210 assessment proposed in the settlement agreement would effectively offset any net income arising from Maggart's unauthorized transportation.

### Conclusion

Based on the evidence provided at the November 21, 2001 hearing, the Commission finds that the ALJ's recommendation should be adopted in its entirety. Although Maggart failed to follow-up on its initial request for renewal of its motor carrier authority, thus resulting in hundreds of unauthorized hauls during the first three months of 2001, the record reflects no intent on the part of the company to evade the Motor Carrier Act, 1933 PA 254, as amended, MCL 475.1 et seq. (the Act). Moreover, based on estimated revenues and expenses relating to Maggart's unauthorized

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<sup>2</sup> Notwithstanding Mr. Lodwich's belief that 721 shipments actually overstates the number of its non-exempt moves conducted in Michigan between January 1 and April 2, 2001, Maggart elected not to formally challenge the use of that figure.

service, the assessment agreed upon by the parties appears adequate to deprive the carrier of all net income produced by the carrier's improper for-hire hauls.

The Commission therefore finds that it should adopt the ALJ's recommendation, approve the settlement agreement entered into by the parties, impose an administrative assessment in the total amount of \$7,210, and order Maggart to cease and desist from further violations of the Act and applicable motor carrier rules. It further concludes that the temporary motor carrier authority under which Maggart is currently operating should not be revoked and, instead, the carrier's request for permanent authority should be granted.

The Commission FINDS that:

- a. Jurisdiction is pursuant to 1933 PA 254, as amended, MCL 475.1 et seq.; 1939 PA 3, as amended, MCL 460.1 et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1992 AACCS, R 460.17101 et seq.
- b. The settlement agreement is reasonable and in the public interest, and should be approved.
- c. Maggart's temporary motor carrier authority should not be revoked at this time and, instead, its application for permanent authority should be granted.

THEREFORE, IT IS ORDERED that:

- A. The settlement agreement, attached as Exhibit A, is approved.
- B. Maggart & Sons, Inc., shall pay to the State of Michigan, in the manner set forth in the settlement agreement, an administrative assessment in the total amount of \$7,210.
- C. Maggart & Sons, Inc., shall cease and desist from further violations of the Motor Carrier Act, 1933 PA 254, as amended, MCL 475.1 et seq., and all applicable motor carrier rules.
- D. The April 3, 2001 application filed by Maggart & Sons, Inc., is granted.

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.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ Laura Chappelle  
Chairman

( S E A L )

/s/ David A. Svanda  
Commissioner

/s/ Robert B. Nelson  
Commissioner

By its action of February 1, 2002.

/s/ Dorothy Wideman  
Its Executive Secretary

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MICHIGAN PUBLIC SERVICE COMMISSION

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Chairman

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By its action of February 1, 2002.

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File No. 27974

Suggested Minute:

“Adopt and issue order dated February 1, 2002 approving the settlement agreement, imposing an administrative assessment against Maggart & Sons, Inc., issuing a cease and desist order, and granting the April 3, 2001 application, as set forth in the order.”