

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of Micah Zappe, Notice of)	Case No. 13-702-TR-CVF
Apparent Violation and Intent to Assess)	(OH0779003223C)
Forfeiture.)	(OH0779003223D)
		(OH0779003224C)
		(OH0779003224D)

OPINION AND ORDER

The Commission, considering the evidence of record, the applicable law, and being otherwise fully advised, hereby issues its opinion and order.

APPEARANCES:

Mike DeWine, Ohio Attorney General, by Ryan O'Rourke, Assistant Attorney General, Public Utilities Section, 180 East Broad Street, Columbus, Ohio 43215, on behalf of the Staff of the Commission.

Micah Zappe, 9 Woodsedge Court, Stafford, VA 22554, on his own behalf.

OPINION:

I. Nature of the Proceeding and Background

On October 12, 2012, Trooper Jeff Jirles of the Ohio State Highway Patrol (Highway Patrol) conducted an inspection of two commercial motor vehicles (CMV) on Interstate 70 in Guernsey County. Both CMVs were operated by Micah Zappe; the first CMV was driven by Mr. Zappe and the second CMV was driven by James West. *Inspector Jirles found identical violations during both inspections, i.e., neither driver had a medical certificate, an apparent violation of Title 49, Code of Federal Regulations (C.F.R.), Part 391.41(a), or a record of duty status (logbook), an apparent violation of 49 C.F.R. 395.8(k)(2). In addition, for the operation of both CMVs, Mr. Zappe allegedly had not obtained the required operating authority to transport goods, pursuant to 49 C.F.R. 392.9a(a)(1), or paid the Unified Carrier Registration (UCR) fee, as required by 49 C.F.R. 392.2.*

Following the inspection, Notices of Apparent Violation and Intent to Assess Forfeiture were mailed to Mr. Zappe and Mr. West. While Mr. Zappe contacted Staff in accordance with the notice sent to him, Mr. West never personally contacted Staff to request a settlement conference or a hearing. In addition, Mr. West was not present at the

hearing. Thereafter, on February 19, 2013, Commission Staff (Staff) timely served four Notices of Preliminary Determination (NPD) in accordance with Rule 4901:2-7-12, Ohio Administrative Code (O.A.C.). Two of the NPDs concerned the inspection of Mr. Zappe and his CMV; the total civil forfeiture was \$1,200, consisting of a \$200 forfeiture for violating 49 C.F.R. 391.41(a) (no medical card) and 49 C.F.R. 395.8(k)(2) (no logbook), and a \$1,000 forfeiture for violating 49 C.F.R. 392.9a(a)(1) (no federal operating authority) and 49 C.F.R. 392.2 (did not pay UCR fee). The other two NPDs concerned the inspection of Mr. West and his CMV, and resulted in the same total civil forfeiture of \$1,200 for violating 49 C.F.R. 391.41(a), 49 C.F.R. 395.8(k)(2), 49 C.F.R. 392.9a(a)(1), and 49 C.F.R. 392.2. The parties could not reach a settlement at the April 25, 2013, prehearing conference. The hearing was conducted on July 12, 2013.

II. The Law

Under Rule 4901:2-5-02(A), O.A.C., the Commission adopted the Federal Motor Carrier Safety Rules (FMCSR), found in 49 C.F.R. 40, 107 subparts (f) and (g), 367, 380, 382, 383, 385, 386, 387, and 390-397, to govern transportation or offering for transportation by motor vehicle within Ohio. In addition, Rule 4901:2-5-02(B), O.A.C., requires all motor carriers engaged in interstate commerce in Ohio to operate in conformity with all rules of the U.S. Department of Transportation (USDOT). Further, Section 4923.99, Revised Code, authorizes the Commission to assess a civil forfeiture of up to \$25,000 per day against any person who violates the safety rules adopted by the Commission when transporting persons or property, in interstate commerce.

III. Issue in the Case/Discussion

The primary issue concerns Staff's contention that Mr. Zappe owns and operates Professional Relocation Methods, a business under which he and Mr. West were driving CMVs for-hire while transporting property in interstate commerce. Mr. Zappe contends that there is no business named Professional Relocation Methods and that, although he received modest compensation for his assistance with the move involved in this case, he simply helps members of his church and other acquaintances move household goods if they approach him for assistance.

A. Staff's Position

Trooper Jirles testified that he conducted inspections of Mr. Zappe, Mr. West, and the two CMVs, and found identical violations during both inspections. Specifically, neither driver had a medical certificate, an apparent violation of 49 C.F.R. 391.41(a), or a logbook, an apparent violation of 49 C.F.R. 395.8(k)(2). In addition, for the operation of both CMVs, Mr. Zappe allegedly had not obtained federal operating authority to

transport goods, pursuant to 49 C.F.R. 392.9a(a)(1), or paid the UCR fee, as required by 49 C.F.R. 392.2.

Trooper Jirles stated that Mr. Zappe's CMV was not marked with a company name or USDOT number, which is a violation if goods are transported in commerce (Tr. at 13). According to Trooper Jirles, Mr. Zappe initially indicated that he was involved in a "personal move" of furniture. During the inspection, Mr. Zappe admitted that the furniture in the CMV he was driving belonged to an individual named Sharon Klahr, and that Ms. Klahr had paid him and several other persons to move furniture from Virginia to Ohio. However, Mr. Zappe did not indicate the amount of his compensation (Tr. at 13-15). Trooper Jirles also stated that although Mr. Zappe claimed that Ms. Klahr paid for the rental of the CMVs, the rental agreement for CMV that he was driving identified the three letters "PRM" as the customer (Tr. at 13-15; Staff Ex. 3). Trooper Jirles also observed that Mr. Zappe was wearing what appeared to be a "uniform shirt," upon which the names "Professional Relocation Methods" and "Micah Zappe" were written. Trooper Jirles stated that he "inquired of him [Mr. Zappe] with regard to this company, and that's how we determined that this is who the carrier was." Trooper Jirles also determined that PRM and Professional Relocation Methods have the same address, so he concluded that the CMV driven by Mr. Zappe was rented by Professional Relocation Methods. However, Trooper Jirles conceded that he did not ask anyone during the inspection what the letters PRM represented (Tr. at 14, 20-22; Staff Ex. 3).

According to Trooper Jirles, the CMV driven by James West also was carrying Ms. Klahr's property. Trooper Jirles' inspection of Mr. West and his CMV resulted in the same apparent violations as were found during the inspection of Mr. Zappe (Tr. at 15; Staff Ex. 1 and 2). Trooper Jirles also determined that Mr. West was compensated by Ms. Klahr for his assistance, but he did not recall whether Mr. West was wearing a shirt with the Professional Relocation Methods name (Tr. at 15-17). The rental agreement for Mr. West's CMV identified Mr. Zappe as the customer who rented the CMV (Tr. at 21; Staff Ex. 3).

Joseph Turek, counsel for the Commission's Transportation Department and supervisor within the Transportation Department's Compliance Division, also testified for Staff. Mr. Turek provided copies of printouts from websites such as Yatedo.com, Radaris.com, and Cottus.com, and he observed that each of these websites indicate Mr. Zappe as the owner of Professional Relocation Methods (Tr. at 57-59; Staff Exhibit 8). Mr. Turek also provided information from another website, the Pipl Directory, which states "for moving help please contact Micah Zappe" (Tr. at 59; Staff Ex. 8). Mr. Turek concluded that, based on his research, there is an entity named Professional Relocation Methods that Mr. Zappe "has held himself out to own and operate" (Tr. at 59-60).

Mr. Turek also explained that the civil forfeitures were calculated according to a fine schedule maintained by the Commission's Compliance Division. While the inspection of Mr. West and his CMV resulted in apparent violations for both driver and carrier, Mr. Turek noted that staff only assessed a fine against Mr. West for the driver violations, i.e., not possessing a medical certificate and a record of duty status. The carrier violations associated with the inspections of Mr. Zappe's and Mr. West's CMVs, i.e. not having operating authority to transport goods and not having paid the UCR fee, were assessed against Mr. Zappe as owner of Professional Relocation Methods. In addition, forfeitures were assessed against Mr. Zappe for not possessing a medical certificate and a record of duty status (Tr. at 28-34).

Mr. Turek asserts that a notice of apparent violation and intent to assess forfeiture (NIF) was mailed to Mr. West, and that he did not request a conference or a hearing; rather, Mr. Zappe responded on behalf of Mr. West (Tr. at 35-39; Staff Ex. 6 and 7). According to Mr. Turek, Mr. West never personally contested the alleged violations (Tr. at 36).

B. Mr. Zappe's Position

Mr. Zappe stated that he is currently employed by a company named Wiley, which is located in Arlington, Virginia, and is a business under contract with the government, and that he was previously employed by General Dynamics (Tr. at 46, 50). He contends that he was approached by Ms. Klahr and her husband for assistance in moving to Ohio and he agreed to help (Tr. at 47). Mr. Zappe also testified that he receives requests from church members and other acquaintances to obtain a truck and assist in moving locally and town-to-town. He remarked that "when you lift heavy things, the word gets around and people petition you for help" (Tr. at 47-50).

According to Mr. Zappe he was compensated "modestly" with "just extra spending money" for transporting the Klahrs' goods. He explained that the CMV rental documents indicate his name because he used his credit card initially to pay for the rentals; ultimately, he added, Ms. Klahr paid for the rentals (Tr. at 51). Mr. Zappe did not indicate clearly whether Mr. West was compensated, but stated that Mr. West "volunteered to help" (Tr. at 51).

Mr. Zappe emphasized that there is no business named Professional Relocation Methods. Instead, he explained, the Penske truck rental location which he patronizes informed him, after he had rented trucks for two or three years, that he could receive a discount on the rentals if he provided a company name at the time of the rental (Tr. at 47-49).

Regarding the shirt that he wore during the inspection, Mr. Zappe stated that it displayed the Professional Relocation Methods name, but not his own name. He added that "with as much work as I did, I thought it would look legitimate to have that name [Professional Relocation Methods] on something." According to Mr. Zappe, he had two shirts printed with the name Professional Relocation Methods when he had some family reunion shirts printed. Mr. Zappe explained that he is the only person with shirts that display the Professional Relocation Methods name (Tr. at 52-53).

Mr. Zappe acknowledged that the LinkedIn website indicates his association with Professional Relocation Methods, but he emphasized that LinkedIn also indicates his primary employer at the time he registered, General Dynamics. Mr. Zappe contends that he provided information to LinkedIn "at a very cursory level," and he asserts that he only listed Professional Relocation Methods as an "additional interest," along with other interests such as competitive cycling (Tr. at 53-54; 62). He attests that "there is no business registered in that name [Professional Relocation Methods]. It does not exist" (Tr. at 53-54). As for Mr. Turek's research on Yatedo.com, Radaris.com, Cottus.com, and the Pipl Directory, Mr. Zappe argues that such sites "are nothing more than search engines that just pull the same redundant information" which is "consistent with what was on LinkedIn" (Tr. at 63).

Mr. Zappe produced a letter (Zappe Exhibit 1) explaining Mr. West's inability to attend the hearing. According to Mr. Zappe, Mr. West had earlier participated in a teleconference regarding the alleged violations (Tr. at 65).

CONCLUSION:

Rule 4901:2-7-20(A), O.A.C., requires that, at the hearing, Staff prove the occurrence of a violation by a preponderance of the evidence. Based upon the record in this proceeding, the Commission finds that Staff has proven, by a preponderance of the evidence, that Mr. Zappe and Mr. West were for-hire carriers operating CMVs in interstate commerce and subject to the FMCSR. In reaching this conclusion, the Commission observes that Mr. Zappe and Mr. West were driving CMVs, as defined in 49 C.F.R. 390.5, because each vehicle's gross vehicle weight rating exceeded 10,001 lbs. (Staff Ex. 1 and 2). The Commission also observes that a "for-hire motor carrier" is defined in 49 C.F.R. 390.5 as "a person engaged in the transportation of goods or passengers for compensation." Next, the Commission notes Trooper Jirles' testimony that, during the inspection, Mr. Zappe stated that he was paid by Ms. Klahr to transport her property, and that, at the hearing, Mr. Zappe confirmed that he was compensated by Ms. Klahr for the move involved in this case (Tr. at 13-15, 51). In addition, Trooper Jirles also testified that during his inspection of Mr. Zappe, he learned that Mr. West also was compensated for transporting Ms. Klahr's property; Mr. West was not present at the hearing to contest this (Tr. at 15-16, 35-39).

Therefore, the Commission finds that Staff has proven, by a preponderance of the evidence, that Mr. Zappe and Mr. West violated 49 C.F.R. Part 391.41(a), which requires a driver to be physically qualified and carry a medical examiner's certificate, and 49 C.F.R. 395.8(k)(2), which requires a driver to maintain a logbook. These rules ensure that drivers of CMVs do not exceed the hourly limit for drivers operating a CMV and must have the required medical health to operate a CMV.

The Commission also finds that staff has proven, by a preponderance of the evidence, that Mr. Zappe violated 49 C.F.R. 392.2, which requires compliance with laws in which a CMV is operated, e.g. payment of the UCR fee for Ohio, and 49 C.F.R. 392.9a(a)(1), which requires obtaining federal operating authority before providing for-hire interstate transportation in a CMV. In addition to operating CMVs for-hire in interstate commerce, the Commission notes that Mr. Zappe's name is indicated as the customer on the rental agreement for Mr. West's CMV (Tr. at 21); similarly, the rental agreement for Mr. Zappe's CMV indicates the customer as PRM, which Trooper Jirles determined has the same address as for Professional Relocation Methods (Tr. at 20-21; Staff Ex. 3). Furthermore, Professional Relocation Methods is a name that Mr. Zappe used to receive discounts for CMV rentals and which he had printed on his shirt to make his services look "more legitimate" (Tr. at 48-49, 52-53.) In addition, Mr. Zappe stated that he listed the Professional Relocation Methods name on his LinkedIn profile, a social network website for business professionals (Tr. at 53-54, 61-64.)

Having found that Staff has proven by a preponderance of the evidence that Mr. Zappe and Mr. West were in violation of the cited CFRs, we next address the appropriate civil forfeitures that should be assessed against Mr. Zappe and Mr. West. Staff contends that Mr. Zappe should pay a civil forfeiture of \$200.00 for not possessing a medical examiner's certificate and a logbook, and a civil forfeiture of \$2,000.00 because federal operating authority and a UCR had not been obtained for either CMV by Mr. Zappe. First, the Commission finds it reasonable to waive \$1,000.00 of the \$2,000.00 assessed for violation of 49 C.F.R. 392.2 and 49 C.F.R. 392.9a(a)(1), because if federal operating authority and a UCR had been obtained before the inspection, both CMVs would have been covered. As for the remaining \$1,200.00 assessed against Mr. Zappe, the Commission observes that while he violated the aforementioned federal requirements on October 12, 2012, the record does not indicate whether Mr. Zappe received compensation on any other occasions that he assisted in moving household goods for other parties that would constitute a moving business. The Commission notes Mr. Zappe's assertions that Ms. Klahr ultimately paid for CMV rentals, that he was compensated "modestly" for his services in this case, and that his primary form of employment is not as a mover of household goods; Staff did not challenge these assertions. In addition, although Staff found Mr. Zappe's name associated with the name "Professional Relocation Methods" on several social network websites, these websites do

not indicate that Mr. Zappe had "held himself out to own and operate" a business named Professional Relocation Methods. Indeed, assuming that a party found the name Professional Relocation Methods on a such a website, the website does not associate household goods moving services with the name Professional Relocation Methods. As for the Pipl Directory website which states "for help with your moving needs, please contact Micah Zappe," it is unclear who placed this information on that website, whether Mr. Zappe had any knowledge of the website, or the length of time such information has been on the website. Given these factors, the Commission finds it reasonable that Mr. Zappe be assessed the \$200.00 civil forfeiture for the logbook and medical certificate violations, and that the remaining \$1000.00 civil forfeiture should be held in abeyance for one year from the date of this opinion and order. If future CMV inspections of Mr. Zappe are conducted in Ohio within one year of the date of this opinion and order, and if Mr. Zappe is discovered to be operating a for-hire household goods moving business without being in compliance with the appropriate FMCSRs, he will be responsible for payment of the remaining \$1000.00 civil forfeiture assessed in this case, as well as any other appropriate civil forfeitures assessed by Staff. Therefore, Mr. Zappe shall pay the \$200.00 civil forfeiture to the Commission by check or money order, made payable to "Treasurer, State of Ohio" and mailed or delivered to Public Utilities Commission of Ohio, Attention: Fiscal Department, 180 East Broad Street, 4th Floor, Columbus, Ohio 43215-3793. Case No. 13-702-TR-CVF and Inspection Report Nos. OH0779003223D, OH0779003223C, and OH0779003224C shall be written on Mr. Zappe's check. Payment shall be made within 60 days of this opinion and order.

Regarding the \$200.00 forfeiture assessed against Mr. West, the Commission notes that although a Notice of Apparent Violation and Intent to Assess Forfeiture was mailed to Mr. West, he never personally contacted Staff to request a settlement conference or a hearing. In addition, Mr. West was not present at the hearing. Pursuant to Rule 4901:2-7-14, O.A.C., a respondent upon whom a NIF or NPD has been served and who, within 30 days, fails to pay the forfeiture stated in the notice, or serve upon the Commission a request for conference or request for administrative hearing, shall be in default. Therefore, Mr. West is in default, pursuant to Rule 4901:2-7-14, O.A.C., and shall pay the \$200.00 civil forfeiture to the Commission by check or money order, made payable to "Treasurer, State of Ohio" and mailed or delivered to Public Utilities Commission of Ohio, Attention: Fiscal Department, 180 East Broad Street, 4th Floor, Columbus, Ohio 43215-3793. Case No. 13-702-TR-CVF and Inspection Report No. OH0779003224D shall be written on Mr. West's check. Payment shall be made within 60 days of this opinion and order.

The Commission emphasizes that our decision in this case is based on the specific facts at issue here and the evidence presented by the parties, and does not in any way limit the obligations of Mr. Zappe and Mr. West to adhere to the regulations in the future. Thus, if Mr. Zappe accepts any further compensation for moving property in a

CMV that he has rented, continue to use the Professional Relocation Methods name to receive rental discounts, and wear a Professional Relocation Methods shirt to appear "more legitimate," he will be considered a for-hire household goods moving company that must comply with the FMCSR. Similarly, if Mr. West continues to accept compensation for moving property in a CMV, he will create the impression that he an employee of a moving business. Alternatively, if Mr. Zappe seeks only to volunteer his time to help members of his church and others with moving, he would best accomplish this goal by not making arrangements to rent a CMV, accept any compensation for his services, use the name Professional Relocation Methods to receive a discount, or wear a shirt with what appears to be a company name to look "more legitimate."

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) On March 18, 2013, Micah Zappe filed, on his behalf and on behalf of Mr. West, a request for an administrative hearing regarding the apparent violations of 49 C.F.R. 391.41(a), 49 C.F.R. 395.8(k)(2), 49 C.F.R. 392.2, and 49 C.F.R. 392.9a(a)(1).
- (2) A prehearing conference was held on April 25, 2013.
- (3) A hearing was held on July 12, 2013.
- (4) Rule 4901:2-7-20, O.A.C., requires that, at hearing, Staff prove the occurrence of a violation by a preponderance of the evidence.
- (5) Based upon the record in this proceeding, the Commission finds that Staff has proven, by a preponderance of the evidence, that Mr. Zappe operated, and that he and Mr. West were driving, CMVs for-hire while transporting household goods in interstate commerce on October 12, 2012.
- (6) The Commission finds it reasonable that Mr. Zappe pay \$200.00 within 60 days of this opinion and order, with \$1000.00 held in abeyance for one year from the date of this opinion and order.
- (7) The Commission finds it reasonable that Mr. West pay \$200.00 within 60 days of this opinion and order.

ORDER:

It is, therefore,


ORDERED, That Mr. Zappe pay a \$200.00 civil forfeiture for the violation of 49 C.F.R. 391.41(a) and 49 C.F.R. 395.8(k)(2). It is, further,

ORDERED, That Mr. West pay a \$200.00 civil forfeiture assessed for the violation of 49 C.F.R. 391.41(a) and 49 C.F.R. 395.8(k)(2). It is, further,

ORDERED, That the Attorney General of Ohio take all legal steps necessary to enforce the terms of this opinion and order. It is, further,

ORDERED, That a copy of this opinion and order be served upon all parties of record.

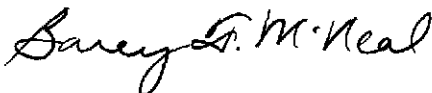
THE PUBLIC UTILITIES COMMISSION OF OHIO


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Entered in the Journal

OCT 16 2013



Barcy F. McNeal
Secretary