

TRB-87-100-BC  
2-3001-1642-2  
IRCC 57498/C-87-82

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE TRANSPORTATION REGULATION BOARD

In the Matter of the Minnesota  
Department of Transportation,

Complainant,

vs.

FINDINGS OF FACT,  
CONCLUSIONS AND  
RECOMMENDED ORDER

Erik Anders Waag and Roal  
Earl Waag, a/k/a Rollie  
Waag, individually and as  
partners d/b/a Mighty  
Moving and Mighty Movers,

Respondents

The above-entitled matter came on for hearing before Bruce D. Campbell, Administrative Law Judge from the State Office of Administrative Hearings on July 15, 1987, at 9:50 a.m, in the hearing room of the Transportation Regulation Board, Administrative Truck Center, 254 Livestock Exchange Building, 100 Stockyards Road, South St, Paul, Minnesota.

Appearances: John B. Galus, Special Assistant Attorney General, 515 Transportation Building, St. Paul, Minnesota 55155, appeared on behalf of Complainant, Minnesota Department of Transportation (Department). Neither Erik Anders Waag, nor Roal Earl Waag, a/k/a Rollie Waag (Messrs. Waag or Respondents), appeared at the hearing, either personally or by counsel,

The record closed on July 15, 1987, at the conclusion of the hearing.

Notice is hereby given that, pursuant to Minn. Stat. 14.61, and the Rules of Practice of the Public Utilities Commission, as applicable to the Transportation Regulation Board, and the Rules of the Office of Administrative Hearings, exceptions to this Report, if any, by any party adversely affected must be filed within 20 days of the mailing date hereof with the Transportation Regulation Board, Minnesota Administrative Truck Center, 254 Livestock Exchange Building, 100 Stockyards Road, South St. Paul, Minnesota 55075. Exceptions must be specific and stated and numbered separately. Proposed Findings of Fact, Conclusions and Order should be included, and copies thereof shall be served upon all parties. If desired, a reply to exceptions may be filed and served within ten days after the service of the exceptions to which reply is made. Oral argument before a majority of

the Board may be permitted to all parties adversely affected by the

Administrative Law Judge's recommendation who request such argument. Such request must accompany the filed exceptions or reply, and an original and five copies of each document must be filed with the Board.

The Minnesota Transportation Regulation Board will make the final determination of the matter after the expiration of the period for filing exceptions as set forth above, or after oral argument, if such is requested and had in the matter.

Further notice is hereby given that the Board may, at its own discretion, accept or reject the Administrative Law Judge's recommendation and that said recommendation has no legal effect unless expressly adopted by the Board as its final order.

#### STATEMENT OF ISSUES

The hearing was ordered to consider the Complaint filed against Erik Waag and Roal Waag, d/b/a Mighty Moving and Mighty Movers, by the Minnesota Department of Transportation, pursuant to Minn. Stat. 221.293 (1986)

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

#### FINDINGS OF FACT

1. On March 5, 1987, the Department of Transportation filed with the transportation Regulation Board a verified Complaint against Erik Waag and Roal Waag pursuant to Minn. Stat. 221.293 (1986), alleging violations of Minnesota Statutes ch. 221 (1986). A copy of the Complaint is attached hereto as Exhibit A and made-a part hereof.

2. By letter dated March 16, 1987, the Transportation Regulation Board, through Lorraine E, Mayasich, Vice-Chairman, directed that the Respondents reply to the Complaint within 20 days of the date of the letter. A copy of the Complaint was also served on the Respondents. The Respondents did not file an Answer to the Complaint.

3. On June 10, 1987, the Transportation Regulation Board issued a Notice of Hearing, Statement of Complaint and Show Cause Order, The Notice restated the allegations of the Complaint and required the Respondents to appear at a hearing to be held commencing at 9:30 a.m. on Wednesday, July 15, 1987, in the Board's hearing room at the Administrative Truck Center, 254 Livestock Exchange Building, 100 Stockyards Road, South St. Paul, Minnesota, Page 3 of the Notice of Hearing contained the following statement:

If Respondent fails to attend or otherwise appear at the hearing in this matter after having been served with a copy of this Order, Respondent shall be deemed in default, and

the allegations or issues set forth in the Complaint shall be deemed proved, and the Board shall issue an Order directing that Respondent cease and desist from the allegations contained in the Complaint.

4. On June 10, 1987, Carol Halverson, an employee of the Transportation Regulation Board, served a copy of the Notice of Hearing, Statement of

Complaint and Show Cause Order on Respondents at the address they had provided to-the Board, 5129 Abbott Avenue South, Minneapolis, Minnesota 55410.

5. Neither Erik Waag, nor Roal Waag appeared at the hearing personally or through counsel, They did not otherwise communicate with the Administrative Law Judge regarding the hearing.

6. The allegations of the Complaint were recently litigated before the Board in a motor carrier proceeding in which Erik Waag and Roal Waag sought authority from the Transportation Regulation Board to provide transportation services as irregular route household goods movers. In the Matter of the Petition of Erik and Rollie Waag for irregular Route Common Carrier Permit Authority to Transport Household Goods Restricted to the Transportation of Personal Effects-and Property Used or to Be Used By Its Owner in His or Her Dwelling Between Points Located in the Counties of Hennepin, Anoka, Ramsey, Dakota, Washington, Carver and Scott, TRB-87-045-AK, 6-3001-1153-2, IRCC 57498/A-86-464.

7. In a document entitled Findings of Fact, Conclusions and Recommended Order and Memorandum issued by the Administrative Law Judge in that proceeding on April 2, 1987, it was determined that Erik and Rollie Waag had engaged in the illegal activities described in the Complaint See Findings of Fact 9-17 and Conclusion 3 thereof.

8. By Order dated June 10, 1987, the Transportation Regulation Board adopted verbatim the Findings of Fact, Conclusions and Recommended Order of the Administrative Law Judge as its final Order in the authority proceeding. The time for an appeal from the final Order of the Board has expired No appeal has been filed and the Board's Order is not now subject to reconsideration or judicial review,

9. As a consequence of Findings I - 8, supra, the allegations of the Complaint attached hereto regarding violations of Minn. Stat ch. 221 (1986) are established both on grounds of default and res judicata. Such allegations are hereby adopted as if fully set forth herein.

10. The Respondents currently have no motor carrier authority to provide service in Minnesota.

Based on the foregoing Findings of Fact, the Administrative Law Judge makes the following:

#### CONCLUSIONS

1. The Administrative Law Judge and the Transportation Regulation Board have jurisdiction over the subject matter of the hearing pursuant to Minnesota Statutes 221.293 (1986).

2. Proper notice of the hearing was timely given, and all relevant substantive and procedural requirements of law or rule have been fulfilled and, therefore, the matter is properly before the Administrative Law Judge and the Transportation Regulation Board,

3. As a consequence of Finding 9, supra, the violations of Minnesota Statutes ch, 221 enumerated in the Complaint have been established.

4. As a consequence of Conclusion 3, supra, and Finding 10, supra, a cease and desist order against the Respondents should be issued by the Transportation Regulation Board, pursuant to Minn. Stat. 221.293 (1986).

THIS REPORT IS NOT AN ORDER. THE TRANSPORTATION REGULATION BOARD WILL ISSUE THE FINAL ORDER IN THIS PROCEEDING WHICH MAY ADOPT OR DIFFER FROM THE FOLLOWING RECOMMENDATION.

Based on the foregoing Conclusions, it is the Recommendation of the Administrative Law Judge to the Board that it issue the following:

#### ORDER

Erik Anders Haag and/or Roal Earl Haag, a/k/a Rollie Haag, individually and as partners, d/b/a Mighty Moving and Mighty Movers, and as partners or principals in any other business enterprise not possessing the requisite motor carrier authority shall immediately cease and desist from operating or advertising or otherwise holding themselves out to be a motor carrier. Further, they shall, within 30 days of the date of this Order, remove any and all public advertisements or notices presently posted on appearing which hold them out to be a motor carrier or to be authorized to provide the services of a motor carrier under Minnesota Statutes ch, 221 (1986),

Dated this 17th day of July, 1987.

BRUCE D. CAMPBELL  
Administrative Law Judge

#### NOTICE

Pursuant to Minn. Stat. 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

Reported: Tape Recorded, Default.

#### MEMORANDUM

Despite repeated attempts by both the Board and the Administrative Law Judge to secure the presence of Erik Anders Waag and Roal Earl Waag, a/k/a Rollie Waag, at the hearing scheduled herein to respond to the Complaint brought by the Minnesota Department of Transportation, a default occurred. Under the Notice and Order for Hearing and the Administrative Procedure Act, that default, alone, is sufficient to support the Order herein recommended.

It is important to note, however, that this proceeding transcends the

normal incidence of default. As noted in the Findings, the allegations of the Complaint were fully litigated before the Board in a previous authority proceeding at which Erik Haag and Roal Haag did appear and were represented by

counsel. In fact, the record of that proceeding includes their admissions of the illegal acts complained of. The Administrative Law Judge found that the acts included in the Complaint had occurred. That determination was specifically adopted by the Transportation Regulation Board and the Respondents did not appeal from that Order of the Board. Under such circumstances, relitigation of the veracity of the claims is prohibited by principles of res judicata and collateral estoppel. *Travelers Insurance Co. v. \_\_\_\_\_ son*, 163 N.W.2d 289, (Minn. 1968); *Willems v. Commissioner of Public Safety*, 333 N.W.2d 619, 621 (Minn, 1983); *State Department of Public Safety v. House*, 192 N.W.2d 93 (Minn. 1971); *Matter of Estate of Congdon*, 309 N.N.2d 261 (Minn. 1981); *State \_\_\_\_\_ of Minnesota, city of Burnsville v. Juarez*, 345 N.W.2d 801 (Minn App 1984).

B.D.C.