6-3001-8659-2
HHG 73942-74542/T-93-317

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR MINNESOTA TRANSPORTATION REGULATION BOARD

In the Matter of the Joint Petition
of TLC - Cedar Van, Inc. (Transferor)
and TLC Distributing, Inc.
(Transferee) for Transfer of Household
Goods Mover Permit Authority Between
Specified Areas.

FINDINGS OF FACT,
CONCLUSIONS,
RECOMMENDATION
AND MEMORANDUM

The above-entitled matter came on for hearing on April 26, 1994, in Sou St. Paul, Minnesota.

Appearing on behalf of the Transferor in this matter was James B. Hovla of the firm of Krause & Rollins, 310 Groveland Avenue, Minneapolis, Minnesot 55403.

Appearing on behalf of the Protestant Berger Transfer & Storage, Inc. w Andrew R. Clark of the firm of Kalina, Wills, Woods, Gisvold & Clark, Suite 200, 941 Hillwind Road Northeast, Minneapolis, Minnesota 55432-5964.

Also present during the hearing were Board Chairman Richard Helgeson an Board Members Lorraine Mayasich and Lyle Mehrkens.

The record in this matter closed on May 27, 1994, upon receipt of the final brief.

Notice is hereby given that, pursuant to Minn. Stat. § 14.61, and the Rules of Practice of the Transportation Regulation Board, and the rules of t 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 Tr

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, reply to exceptions may be filed and served within ten days after the servic of the exceptions to which reply is made. Oral argument before a majority o 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 fi 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 had in the matter.

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

## STATEMENT OF ISSUES

Does the transfer of household goods authority (without any further limitation) include authority to move office and "high value" equipment witl any further showing of past activity in moving such items?

If the transfer does not automatically include office equipment and "hi value" items, has Transferor nonetheless demonstrated adequate activity witl the past two years to justify the transfer of office equipment moving autho along with household goods authority?

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

## FINDINGS OF FACT

1. Cedar Van Lines was a moving business started by the parents of Ronald Dahmes back in the early 1960's. In 1966, a predecessor agency of tl Board granted authority to it, and in 1967, it was incorporated and the official name became Cedar Van Lines, Inc. Following the death of his parer Ronald Dahmes did become the sole shareholder of Cedar Van Lines, Inc. in 19

2. Cedar Van Lines, Inc. encountered financial difficulties, and in September of 1991, filed for Chapter 11 bankruptcy protection.

3. On March 24, 1993, Cedar Van Lines, Inc. (Transferor) and TLC - Ce Van, Inc. (Transferee) filed a joint petition seeking an ex parte order authorizing and approving the transfer of household goods and temperature control commodities permits held by the Transferor to the Transferee. This done in order to have a clean entity (one not involved in the bankruptcy) fo various regulatory and operational purposes. On March 24, 1993, the Board issued its consolidated ex parte order approving the transfer of household goods mover authority and temperature control commodities authority, specifically described as follows:

> Household goods between points in the Twin Cities and contiguous cities and villages, and from such area to other points in the State, and from other points in the State to such area.

Ex. 3.

4. Bobby Taylor is the president of TLC Distributing, Inc., which is warehousing and delivery service. Its primary business has been the receipt furniture from manufacturers and the delivery of such furniture to ultimate buyers, either individual homes or retail stores. Taylor's ultimate goal is

to merge the household goods moving business of TLC - Cedar Van into TLC Distributing.

5. At some time around the turn of the year between 1992 and 1993 Dal and Taylor negotiated for the sale of the stock of TLC - Cedar Van, Inc. Or about February 19, TLC Distributing, Inc. paid $5,000 to Dahmes as a "down payment" of a total purchase price of $45,000. On April 5, 1993, Dahmes and Taylor entered into a formal written agreement for the sale of stock, wherel Dahmes agreed to sell the stock of TLC - Cedar Van, Inc. to TLC Distributing Inc. pursuant to a schedule whereby 51% of the stock would be sold and delivered within 14 days of the date the approval of the ex parte transfer o authority from Cedar Van Lines, Inc. to TLC - Cedar Van, Inc., and the balar of the stock would be transferred on September 10, 1995. The purchase price would be paid out on a monthly basis over a period of roughly 30 months, carrying the payments out to September of 1995. If the Board were to fail t approve TLC's acquisition of a controlling interest in Dahmes' stock, then T Distributing would have the option to rescind the transaction.

6. The parties at the hearing stipulated that the price agreed to was reasonable. They also agreed that the Transferor TLC Cedar Van, Inc. had no outstanding obligations to creditors. They further agreed that TLC Distributing holds no operating authority from the Board that would prohibit transfer. Finally, they agreed that there had been adequate amount of activ under the permit during the relevant two-year period (April 5, 1991 to April 1993) so as to justify the transfer of the residential portion of household goods moving authority, as well as authority to move high value items. The only area of disagreement is related to the transfer of office equipment mov authority. Initially, the parties disagreed about whether such authority is automatically transferable with household goods authority, without a showing past activity. If past activity in making office moves must be shown, the parties also disagreed as to whether the actual past activity of the Transfe in making office moves had been adequate to support the transfer of that portion of the authority.

7. The relevant two-year period for determining past activity under t permit is April 1991 to April 5, 1993. Minn. Stat. § 221.151, subd. 1 (1992 See, Findings 6, supra.

8. An office move within a single building is not such a movement as requires motor carrier authority. It is, therefore, irrelevant for purposes the statute.

9. A traffic movement that is not evidenced by supporting documentati such as bills of lading, company records, operation records, checks, or othe written matter with sufficient specificity to allow meaningful cross-examination may not be considered for purposes of Minn. Stat. § 221.151, subd. 1 (1992).

10. Interstate traffic movements must be excluded from consideration f purposes of Minn. Stat. § 221.151, subd. 1 (1992).

11. The movement of furniture to and between model homes for a real estate agent or builder qualifies as a commercial move under Minn. Stat. § 221.151, subd. 1 (1992).

12. Between April of 1991 and April 5, 1993, Cedar Van Lines, Inc., liste its initial traffic abstract, Ex. 1, 23 movements it alleges are commercial office moves. Traffic Abstract, Commercial. Five of the 23 moves occurred January and February of 1991 and, hence, are outside of the relevant two-yea period. Of the remaining 18 moves, Protestant Berger concedes that movement occurring on April 10, 1991, April 15 and 16, 1991, May 5, 1991, and March 2 1992, were office moves under the Transferor's authority. Brief to Administrative Law Judge by Berger Transfer & Storage, Inc., p. 2. Such movements are adequately supported by traffic documentation.

13. In addition to the traffic movements listed by Berger in Finding 1 supra, the following shipments listed on the traffic abstract also qualify a evidencing activity in commercial moves during the relevant two-year period March 3, 1992, movement from Eagan to Woodbury; May 22, 1991, movement of mo home furniture to Eagan; September 6, 1991, movement of model home furniture from Burnsville to Rosemount; June 11, 1991, movement of model home furnitur from Anoka to Minneapolis.

14. At the hearing herein, the Transferor produced sufficient company records to substantiate additional commercial moves not on the traffic abstr as follows: December 16, 1991, move of office furniture from Bloomington to Plymouth for Metro Life; April 10, 1991, movement of office furniture betwee buildings in Burnsville for "The Resume Place"; July 7, 1991, periodic mover of model home furniture for Custom Energy Homes as often as three times per month; July 31, 1991, movement of office furniture between St. Paul and Minneapolis for Morgan Fleming; November 14 and 15, 1991, movement of realty office for Nationwide Realty in Minneapolis and Burnsville; May 1991, moveme of office furniture between locations in Burnsville for Nationwide Realty.

15. As a consequence of Findings 7-14, supra, it is appropriate to cre the Transferor with 14 documented commercial moves during the relevant statutory period. That is less than five percent of the Transferor's total business during that two-year statutory period.

16. In transferring a household goods movers permit, the Board has the discretion of transferring only a portion of the permit and cancelling the remainder as dormant. A grant of motor carrier authority is not divisible i separate permits, at least as regards each separately classified permit unde Minn. Stat. § 221.111 (1993 Supp.).

17. The proposed Transferee has demonstrated that it is fit and able t operate the proposed business. Vehicles are properly maintained. There is adequate capital available. The business would be operated in a lawful and law-abiding manner.

18. Berger Transfer & Storage, Inc., is a large mover. It holds authority, and does in fact operate in both interstate and intrastate market

In both markets, it moves residential goods, office goods, and high value goods.

19. Berger has 50 tractor trailer rigs available for moves in Minnesot along with such ancillary equipment as 1,000 dollies, 600 book carts, and 25 large carts.

20. It has been Berger's experience that the office moving business is extremely competitive in the Twin Cities' area. When Berger is inspecting o bidding on an office move, it usually has between two and eight other movers for competition, and there have been as many as 12 or 13. The amount of off moving has declined in recent years, due to the lack of new office buildings being built in the Metropolitan Area. Nonetheless, competition is such that one Berger estimator ended up with a 16% "closure ratio" on his estimates, which meant that 84% of his estimates did not result in jobs actually perfor by Berger.

21. Although Berger is aware of TLC - Cedar Van as a household goods mover, one with whom it does compete in that segment, it does not know TLC Cedar Van, Inc. to be active in the office moving segment. It would not cou TLC - Cedar Van among the 12 to 13 office movers whom it views as its competition. To the best of its knowledge, Berger has never bid against TLC Cedar Van for an office move.

22. Berger opposes transfer of the office moving portion of the autho because it views TLC as a smaller company with less overhead, a company whic can bid well under Berger for jobs. Currently, TLC - Cedar Van's hourly rat for two men and one van is between $20 and $22 less than Berger's rate for t same configuration.

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

## CONCLUSIONS

1. The Transportation Regulation Board has jurisdiction over the subj matter of the hearing.

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

3. From Transferee's experience, knowledge of the regulations and financial condition, the Judge concludes that it is fit and able within the meaning of Minn. Rule 7800.0100, subp. 4.

4. Transferee's vehicles, being regularly maintained and free from defects, are within the safety requirements prescribed by the Department.

5. The purchase price for the transfer is reasonable.

6. Between April of 1991 and April 5, 1993, the residential household goods moving authority and authority to transfer high cost items was activel

exercised, so as to authorize the transfer of that segment of the authority under Minn. Stat. § 221.151, subd. 1 (1992).

7. The recognized number of documented office movements during that s period, at most 14 office and commercial movements, constituting less than 1 percent of the Transferor's total business during the two-year statutory period, is not sufficient activity under the office and commercial portion o the authority to authorize its transfer. The commercial inventory

and office moving authority of the Transferor was not, therefore, actively exercised during the two-year statutory period, as required by Minn. Stat. § 221.151, subd. 1 (1992).

8. It is appropriate to transfer the residential and high value goods moving authority from the Transferor to the Transferee and to cancel that portion of the permit which relates to commercial inventory and office moves

9. Any Finding of Fact more properly termed a Conclusion, and any Conclusion more properly termed a Finding of Fact is hereby expressly adopte as such.

THIS REPORT IS NOT AN ORDER AND NO AUTHORITY IS GRANTED HEREIN. THE TRANSPORTATION REGULATION BOARD WILL ISSUE THE ORDER OF AUTHORITY WHICH MAY ADOPT OR DIFFER FROM THE FOLLOWING RECOMMENDATIONS.

Based on the foregoing Conclusions, the Administrative Law Judge recommends to the Transportation Regulation Board that it issue the followin

## ORDER

The Joint Petition of TLC - Cedar Van, Inc. (Transferor) and TLC Distributing, Inc. (Transferee) for the transfer of household goods moving authority between points in the Twin Cities and contiguous cities and villag and from such area to other points in the state and from other points in the state to such areas is GRANTED, with the exception that no authority to transport furniture, fixtures, equipment and property of stores, offices, museums, institutions, hospitals, or other establishments when a part of the stock, equipment, or supply of such stores, offices, museums, institutions, hospitals, or other establishments is transferred. That portion of the household goods mover authority of Transferor is CANCELLED.

Dated this 24th day of June, 1994.

s/ Allan W. Klein

ALLAN W. KLEIN
Administrative Law Judge

## NOTICE

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

Reported: Tape Recorded; No Transcript Prepared.

MEMORANDUM

This is a proceeding to transfer a household goods movers permit from t
Transferor to the Transferee. All of the issues have been stipulated, with

the exception of the authority of the Board to transfer less than the entire scope of household goods moving authority from the Transferor to the Transfe and the data relating to activity under the commercial inventory and office move authority of the Transferor during the relevant statutory two-year peri April of 1991 - April 5, 1993.

The Administrative Law Judge believes that the definition of household goods mover contained in Minn. Stat. § 221.011 (1992), is a restatement of t types of household goods moving services initially identified by the Interst Commerce Commission in 1937. Classification of Motor Carriers of Property, MCC 703 (ICC 1937). The fullest statement of the ICC definition is containe in Practices of Motor Common Carriers of Household Goods, Ex Parte, MC-19, 5 MCC 177 (ICC 1951). The ICC noted in that proceeding that the definition of household goods service is divisible into a part relating to residential property and effects, office equipment and furniture and commercial stock an articles of high value. In 1965, the Legislature amended Minn. Stat. § 221 (1964), to recognize a distinction between residential moves and business mo involving office supplies and equipment or business stock.

These two categories of service within the household goods mover autho are distinct and have been recognized by the Board as properly being the subject of grants of authority not encompassing both species of services, i the evidence presented does not warrant a grant of full authority. See, In Matter of the Joint Petition of Glen D. Olson (Transferor) and John S. Herold (Transferee), IRCC 942, 61793/T-88-301, April 17, 1991; In the Matte the Joint Petition of Edward Knoll (Transferor) and Tony Berndt (Transferee HHG 13058-73970/T-93-187, April 9, 1993; In the Matter of the Petition of Ju Ann Kinneary, d/b/a Bravo Movers for Household Goods Mover Permit Authority HHG 71855/A-92-311, March 3, 1993; Petition of Owen G. Hall, d/b/a Budget Moving and Storage, IRCC 61394/A-91-391, _____, 1992. The Administrative La Judge is, therefore, satisfied that the Board has the discretion, if it chooses, to grant authority to a household goods mover limited to authority less than the full authority stated in Minn. Stat. § 221.011 (1992).

This case, however, involves a transfer of authority under Minn. Stat. § 221.151 (1992). That statute requires that the authority sought to be transferred be actively exercised during the two-year period immediately preceding the transfer. For purposes of this proceeding, the two-year statutory period is April of 1991 through April 5, 1993. The parties have stipulated that there were sufficient moves during the two-year period to substantiate or justify the transfer of all authority possessed by the Transferor, except authority related to the movement of office furniture and equipment and commercial inventories, item B of the Transferor's authority. Since the Administrative Law Judge has determined that the two aspects of th authority defined in Minn. Stat. § 221.011 (1992), are, or may be, distinct, transfer of full authority requires proof of activity in both residential household goods moving and office or commercial inventory moving.

The Administrative Law Judge believes that the number of moves under th office furniture and equipment and commercial inventory portion of the Transferor's authority was not sufficient during the statutory two-year peri to authorize its transfer. The Administrative Law Judge agrees with the Transferor and Transferee that the amount of activity required is somewhat

subjective and different in the context of household goods movers authority than in other transportation contexts. See, Five Star Trucking, Inc. v. Minnesota Transportation Regulation Board, 370 N.W.2d 666 (1985); In the Matter of Dawn Moving & Storage, Inc., PSC-76-120-LN (1976). For the office and commercial inventory authority to have been actively exercised, however, there must be evidence of such activity as would convince the Administrative Law Judge that a need for the authority still exists and that the Transferor had been a competitive factor in the commercial moving market. Absent such evidence, transfer of a dormant authority, with its resulting adverse impact competing carriers, is inappropriate. Here, the number of commercial and office moves during the relevant two-year period was extremely small, a maxi of 14 movements. Such traffic did not constitute a substantial portion of t Transferor's business. A Berger witness testified that the Transferor was n considered a competitive factor in the commercial and office moving business and that Berger, despite its active participation in the market, had never b against the Transferor. Berger also testified that such moves account for approximately ten percent of an active household goods mover's annual business. Comparing the 14 documented commercial movements during the two- period to the total number of movements reported by the Transferor, it is apparent that the Transferor was not actively involved in the office equipme and commercial inventory moving market, during the statutory two-year perioc

Finally, the Transferor and Transferee argue that household goods movin authority is not divisible so as to create two authorities. The Transferor Transferee rely upon In the Matter of the Joint Petition of Spindler Transfer Co., d/b/a Spindler Services, and Thrifty Moving & Storage, Inc., Docket No. IRCC 345, 54199/T-86-53 (1986). That decision rightly holds that only that portion of the authority which has been actively exercised may be transferred. The Spindler decision would, however, be satisfied by transferring to the Transferee in this proceeding Parts A and C of the authority and cancelling the Transferor's Part B authority.

AWK