

**BEFORE THE
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

In the Matter of:

**PRS OF NEVADA, LTD., DBA
PROFESSIONAL ROOFING
SERVICES,
(U.S. DOT No. 1945611)**

Respondent.

**Docket No. FMCSA-2013-0428¹
(Western Service Center)**

FINAL ORDER

1. *Background*

On August 2, 2013, the Nevada Division Administrator of the Federal Motor Carrier Safety Administration (FMCSA) issued a Notice of Claim (NOC) to PRS of Nevada, Ltd., dba Professional Roofing Services (Respondent), proposing a civil penalty of \$4,300. The NOC, which was based on a roadside inspection conducted in Kingman, Arizona on May 1, 2013, charged Respondent with one violation of 49 CFR 385.325(c), operating a commercial motor vehicle in interstate commerce on or after the effective date of an out-of-service order based on Respondent's failure to submit evidence of adequate corrective action following a new entrant safety audit.²

In a reply to the NOC (Reply) served September 3, 2013, Respondent contested the violation, but did not request a particular form of administrative adjudication, as required by 49

¹ The prior case number was NV-2013-0055-US0470.

² See Attachment A to Field Administrator's Submission of Evidence (Claimant's Submission of Evidence).

CFR 386.14(b).³ Respondent asserted that it did not know its DOT permit had been suspended until it received a citation in a previous case. It stated that it was still in the process of reinstating its DOT number. It alleged that on May 1, 2013, its Arizona roofing operation requested that it transfer one of its Nevada-registered vehicles to Arizona. It attempted to obtain a temporary permit to move the vehicle to Arizona at the Arizona/Nevada State line, but was advised that Arizona could not issue such a permit. Respondent claimed that the vehicle was then driven back to Las Vegas and did not enter Arizona.

The Field Administrator for FMCSA's Western Service Center (Claimant) served his Submission of Evidence on October 28, 2013. Because Respondent did not request a formal hearing, its Reply will be treated as a *de facto* election of administrative adjudication by submission of written evidence without hearing under § 386.14(d)(1)(iii)(A).⁴ Claimant's submission of evidence was timely filed under 49 CFR 386.16(a)(1).

Claimant contended that the evidence demonstrated that Respondent's vehicle violated the out-of-service order by operating from Nevada to Arizona, that he is entitled to a final order finding the facts to be as alleged in the NOC, and that the civil penalty was correctly calculated in accordance with the applicable statutory requirements. Respondent did not respond to Claimant's Submission of Evidence.

³ See Attachment B to Claimant's Submission of Evidence.

⁴ See *In the Matter of All Star Trucking & Hauling, LLC*, Docket No. FMCSA-2006-24089, Order on Request for Extension of Time and Motion for More Definite Statement, Mar. 17, 2006; and *In the Matter of Bybee Transport, Inc.*, Docket No. FMCSA-2006-24810, Final Order, Mar. 24, 2009, at 2

2. Decision

When a respondent contests alleged violations through submission of evidence and argument without a hearing, the claimant has the burden to demonstrate by a preponderance of the evidence that the respondent violated the regulations as charged.⁵ To establish by a preponderance of the evidence means that something is more likely so than not.⁶

A. The Violation

Section 385.325(c) provides that a new entrant may not operate in interstate commerce on or after the effective date of an out-of-service order issued because it did not take adequate corrective action to improve its safety management practices after failing a new entrant safety audit.⁷ The NOC alleged that Respondent operated a commercial vehicle in interstate commerce from Las Vegas, Nevada to Mesa, Arizona in violation of an out-of-service order served on the carrier on June 13, 2011.⁸ In support of this allegation, Claimant submitted the Declaration of Safety Investigator (SI) Michael Schlarmann.⁹

SI Schlarmann reviewed a Driver/Vehicle Examination Report dated May 1, 2013, which was prepared by R. Brown of the Arizona Department of Public Safety, Commercial Vehicle

⁵ See *In the Matter of R & R Express, Inc. dba KDK Transport, Inc.*, Docket No. FHWA-97-2425, Final Order: Decision on Review, Sept, 23, 1997, note 5, at 9, citing *United States v. Steadman*, 450 U.S. 91, at 95-104 (1981), *reh. denied*, 451 U.S. 933 (1981).

⁶ See *In the Matter of Commodity Carriers, Inc.*, Docket No. FMCSA-2001-8676, Final Order: Decision on Petition for Safety Rating Review, June 30, 2004, note 23, at 11, citing *Blossom v. CSX Transp. Inc.*, 13 F.3d 1477, 1482 (11th Cir. 1994).

⁷ See also 49 CFR 385.319(c).

⁸ The evidence, however, indicates that the vehicle was sent back to Las Vegas by the Arizona authorities before it reached its intended destination.

⁹ See Attachment C to Claimant's Submission of Evidence.

Enforcement Bureau.¹⁰ This document indicates that the inspection of Respondent's vehicle took place at the Kingman, Arizona Port of Entry. Therefore, Respondent's vehicle had crossed into Arizona before it was sent back to Las Vegas. SI Schlarmann also submitted copies of Respondent's failed April 5, 2011 New Entrant Safety Audit;¹¹ the June 13, 2011 Order which revoked Respondent's New Entrant Registration and ordered it to cease all interstate transportation;¹² the April 1, 2013 NOC charging Respondent with violating § 385.325(c) by operating in interstate commerce on October 17, 2012;¹³ and proof of payment of the \$1,890 penalty proposed in that NOC.¹⁴

The evidence establishes, therefore, that Respondent knew of the out-of-service order, violated it in October 2012, and violated it again on May 1, 2013 by operating a vehicle from Nevada to Arizona. Respondent could have contacted the Arizona authorities by telephone to determine whether it could obtain a temporary permit to operate in that State before entering Arizona, but chose not to do so. I conclude, therefore, that Claimant established that Respondent violated 49 CFR 385.325(c) by a preponderance of the evidence.

B. The Civil Penalty

Claimant contended that the proposed penalty was calculated to induce further

¹⁰ See Attachment C to Claimant's Submission of Evidence, Exhibit 1.

¹¹ See Attachment C to Claimant's Submission of Evidence, Exhibit 2.

¹² See Attachment C to Claimant's Submission of Evidence, Exhibit 4.

¹³ See Attachment C to Claimant's Submission of Evidence, Exhibit 3.

¹⁴ *Id.*

compliance while taking into account the factors required by 49 U.S.C. § 521(b)(2)(D)¹⁵ and attached a copy of the Uniform Fine Assessment (UFA) worksheet that was used to calculate the penalty.¹⁶ The UFA is software designed to implement a uniform and fair application of penalties by devising a formula for determining the penalty based on consideration of the specific statutory factors referenced in 49 U.S.C. § 521(b)(2)(D). The correct use of UFA algorithms is presumed to meet statutory requirements.¹⁷ Respondent did not take issue with the penalty calculation. In the absence of any evidence the penalty calculation was either improper or inappropriate, the penalty assessment will be upheld.¹⁸

THEREFORE, *It is Hereby Ordered That* Respondent pay to the Field Administrator for the Western Service Center, within 30 days of the service date of this Final Order, a total civil penalty of \$4,300 for one violation of the Federal Motor Carrier Safety Regulations. Payment may be made electronically through the Federal Motor Carrier Safety Administration's registration site at <http://safersys.org/> by selecting "Online Fine Payment" under the "FMCSA Services" category. This penalty is in addition and not in lieu of any additional outstanding penalties previously assessed. In the alternative, payment by cashier's check, certified check, or money order should be remitted to the Western Field Administrator at the address shown in the

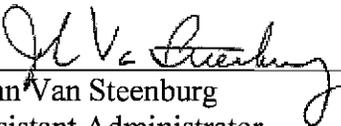
¹⁵ These factors include the nature, circumstances, extent and gravity of the violation committed and, with respect to the violator, the degree of culpability, history of prior offenses, effect on ability to continue to do business, and such other factors as justice and public safety may require.

¹⁶ See Attachment D to Claimant's Submission of Evidence.

¹⁷ See *In the Matter of Alfred Chew & Martha Chew, and Alfred & Martha Chew d/b/a Alfred & Martha Chew Trucking*, Docket No. FHWA-1996-5323, Final Order, Feb. 7, 1996.

¹⁸ See *In the Matter of Baker-Lewis Trucking, Inc.*, Docket No. FMCSA-2002-13749, Final Order, Nov. 15, 2004.

Certificate of Service.¹⁹



John Van Steenburg
Assistant Administrator
Federal Motor Carrier Safety Administration

2/3/14
Date

¹⁹ Pursuant to 49 CFR 386.64, a petition for reconsideration may be submitted within 20 days of the issuance of this Final Order.

CERTIFICATE OF SERVICE

This is to certify that on this 3rd day of February, 2014, the undersigned mailed or delivered, as specified, the designated number of copies of the foregoing document to the persons listed below.

Tamara Cicchetti, Manager
 PRS of Nevada, Ltd., dba Professional Roofing Services
 4180 W. Patrick Lane
 Las Vegas, NV 89118

One Copy
 U.S. Mail

Jedd M. Miloud, Esq.
 Trial Attorney
 Office of Chief Counsel (MC-CCE)
 Federal Motor Carrier Safety Administration
 Golden Hill Office Center
 12600 W. Colfax Ave., Suite B-300
 Lakewood, CO 80215

One Copy
 U.S. Mail

William R. Paden
 Field Administrator
 Federal Motor Carrier Safety Administration
 12600 W. Colfax Ave., Suite B-300
 Lakewood, CO 80215

One Copy
 U.S. Mail

Docket Operations
 U.S. Department of Transportation
 1200 New Jersey Avenue SE
 Room W12-140
 Washington, DC 20590

Original
 Personal Delivery