

**BEFORE THE
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

In the Matter of:

**RIGHT START MOVING, INC.,
(U.S. DOT No. 2156616)**

Respondent.

**Docket No. FMCSA-2013-0419¹
(Western Service Center)**

FINAL ORDER

1. Background

On August 1, 2013, the Acting California Division Administrator of the Federal Motor Carrier Safety Administration (FMCSA) issued a Notice of Claim (NOC) to Right Start Moving, Inc. (Respondent), proposing a civil penalty of \$2,200. The NOC, which was based on a June 20, 2013 compliance review, charged Respondent with: (1) one violation of 49 CFR 375.403(a), failing to prepare a binding estimate in the form and manner prescribed, with a proposed civil penalty of \$1,100; and (2) one violation of 49 CFR 375.701(a), providing documents containing language purporting to release the carrier or its agents from liability, with a proposed civil penalty of \$1,100.²

In a reply to the NOC (Reply) dated August 29, 2013, Respondent admitted violation (1) and contested violation (2). It claimed that it was unaware that its Bill of Lading contained language that violated § 375.701(a) and was only seeking to limit liability for “items packed by

¹ The prior case number was CA-2013-0455-US1164.

² See Attachment A to Field Administrator’s Submission of Evidence Pursuant to 49 CFR 386.16(a) and Memorandum of Law in Support (Claimant’s Submission of Evidence).

owner, internal mechanical working and the like.”³ Respondent requested that the civil penalty for this violation be dismissed because “it was never our intent to waive liability for legitimate claims” and it was operating in good faith. Respondent, however, did not request a particular form of administrative adjudication, as required by 49 CFR 386.14(d).

The Regional Field Administrator for FMCSA’s Western Service Center (Claimant), contending that Respondent waived its right to a formal hearing, timely served his Submission of Evidence on October 28, 2013. Because Respondent did not request a formal hearing, its reply to the NOC 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 argued that he established the violations by a preponderance of the evidence and that the civil penalty was correctly calculated in accordance with the applicable statutory requirements. Respondent did not serve written evidence or argument in response to Claimant’s Submission of Evidence.

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. To establish by a preponderance of the evidence means that something is more likely so than not.⁵

³ See Attachment C 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.

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.*

A. *The Violations*

1. 49 CFR 375.403(a)

Under § 375.403(a)(6), if a household goods motor carrier has issued a binding estimate and, when the carrier arrives to pick up the shipment, it appears that the shipper has tendered additional household goods or requires additional services, the carrier may negotiate a revised written binding estimate accurately listing, in detail, the additional household goods or services. The NOC's Statement of Charges alleged that a revised binding estimate prepared for the transportation of Dilip Singh's household goods from Torrance, California to Sugar Land, Texas on May 7, 2013 did not include an accurate, detailed listing of the additional household goods or required services. Because Respondent's Reply did not dispute this alleged violation, it was unnecessary for Claimant to provide any evidence to establish that the violation occurred.⁶

2. Section 375.701(a)

Section 375.701(a) states: "Your delivery receipt or shipping document must not contain any language purporting to release or discharge you or your agents from liability." In support of this alleged violation, Claimant submitted the Declaration of FMCSA Investigator Omar Salomon.⁷ Investigator Salomon conducted the June 20, 2013 compliance review of Respondent. He reviewed shipping documents related to the Singh shipment cited in connection

Steadman, 450 U.S. 91, at 95-104 (1981), *reh. denied*, 451 U.S. 933 (1981); and *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).

⁶ See *In re Executive Express Trucking, Inc.*, Docket No. FHWA-1997-2499, Final Order (Sept. 14, 1999), citing *In re Lakeview Farms, Inc.*, Docket No. R3-91-157, 58 Fed. Reg. 62481, 63482, Final Order (Feb. 3, 1993).

⁷ See Attachment D to Claimant's Submission of Evidence.

with violation (1). Although Respondent claimed in its Reply that it only intended to limit its liability for items packed by the owner, the Bill of Lading contains language releasing Respondent from liability for damage to: (a) pressed wood (particle board) furniture; (b) internal electronic or mechanical items, regardless of whether they are packed by the shipper; (c) fragile or brittle items; (d) cosmetic damage to any item; and (e) the interior or exterior of the shipper's residence.⁸ Given that these releases of liability appear in Respondent's own document, Respondent's statement that "it was never our intent to waive liability for legitimate claims" is disingenuous and contrary to the evidence. I conclude, therefore, that Claimant established that Respondent violated 49 CFR 375.701(a) by a preponderance of the evidence.

B. The Civil Penalty

In determining the amount of the civil penalty with respect to violations of Part 375, the Agency must consider the degree of culpability, any history of prior such conduct, the degree of harm to shipper or shippers, ability to pay, the effect on ability to do business, whether the shipper has been adequately compensated before institution of the proceeding, and such other matters as fairness may require.⁹ In the absence of any evidence the penalty calculation was either improper or inappropriate, the penalty assessment will be upheld.¹⁰ In support of the penalty calculation, Claimant submitted a Uniform Fine Assessment (UFA) worksheet prepared by Investigator Salomon.¹¹ The UFA recommended a penalty of \$1,100 per count, which is the

⁸ See Attachment D to Claimant's Submission of Evidence, Exhibit 9.

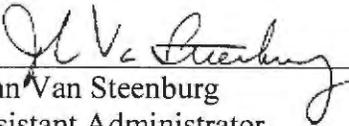
⁹ See 49 U.S.C. § 14901(c).

¹⁰ See *In the Matter of Baker-Lewis Trucking, Inc.*, Docket No. FMCSA-2002-13749, Final Order, Nov. 15, 2004.

¹¹ See Attachment B to Claimant's Submission of Evidence.

minimum penalty for violations of regulations relating to the protection of individual household goods shippers.¹² The penalty, therefore, will be upheld.

THEREFORE, *It is Hereby Ordered That* Respondent pay to the Regional Field Administrator for the Western Service Center, within 30 days of the service date of this Final Order, a total civil penalty of \$2,200 for two violations of the Federal Motor Carrier Commercial 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. In the alternative, payment by cashier's check, certified check, or money order should be remitted to the Western Regional Field Administrator at the address shown in the Certificate of Service.¹³



John Van Steenburg
Assistant Administrator
Federal Motor Carrier Safety Administration

2/3/14
Date

¹² See Appendix B to 49 CFR Part 386, paragraph (g)(7).

¹³ 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.

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