

**BEFORE THE
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

In the Matter of:

**HURRICANE MOVERS, INC.
(U.S. DOT No. 1825545)**

Respondent

**Docket No. FMCSA-2011-0104¹
(Southern Service Center)**

ORDER APPOINTING ADMINISTRATIVE LAW JUDGE

1. Background

On January 5, 2011, the Acting Florida Division Administrator of the Federal Motor Carrier Safety Administration (FMCSA) issued a Notice of Claim (NOC) to Hurricane Movers, Inc. (Respondent), proposing a civil penalty of \$25,000, based on one alleged violation of 49 CFR 392.9a(a)(1)/14901(d)(3), operating without the required operating authority² while transporting household goods in interstate commerce under 49 USC 14901(d)(3), which was discovered during a non-ratable Commercial Compliance Review of Respondent on May 18, 2010.³ The charge pertains to a shipment of household goods allegedly transported by Respondent from Tyler, Texas to Atlanta, Georgia on or about February 1, 2010 after its FMCSA operating authority had been revoked.

¹ The prior case number of this matter was FL-2010-0188-US1072.

² Section 392.9a(a)(1) prohibits a motor vehicle providing transportation requiring operating authority from operating without the required operating authority. The term "operating authority" is defined in 49 CFR 390.5 as the registration required by 49 U.S.C. § 13902 and certain enumerated regulations implementing that statutory provision.

³ See Government Exhibit B to Field Administrator's Motion for Final Agency Order Pursuant to 49 CFR 392.9a(a)(1)/14901(d)(3) and Memorandum of Law in Support (Motion for Final Order). The NOC omitted the reference to Title 49 of the United States Code in citing section 14901(d)(3).

On March 14, 2011, Respondent served a Reply to the NOC, in which it denied the allegation, stating that it did not operate the vehicle identified in the charge, and requested a hearing.⁴ After submitting a Notice of Objection to Respondent's Request for Hearing on April 12, 2011, FMCSA's Field Administrator for the Southern Service Center (Claimant) served a Motion for Final Order on June 30, 2011. In his Motion, Claimant argued that: (1) there were no material facts in dispute warranting a hearing; (2) the evidence submitted in support of the motion established a *prima facie* case for the violation charged; and (3) the proposed civil penalty was calculated in accordance with applicable statutory requirements. Specifically, Claimant contended that because Respondent failed to file appropriate evidence that it had current bodily injury and property damage insurance, FMCSA issued a decision on January 19, 2010 revoking Respondent's operating authority.⁵ As a result, Respondent was prohibited from operating in interstate commerce as of that date. Claimant averred that Respondent's argument that it did not operate the vehicle identified in the charge was unavailing. Claimant pointed to a signed statement by Respondent's dispatcher, Mike Lasri, on May 18, 2010, in which he admitted that Respondent used a company driver to transport household goods in interstate commerce from Tyler, Texas to Atlanta, Georgia on February 1, 2010, after its household goods authority had been revoked on January 19, 2010.⁶ In addition, Claimant asserted that Respondent issued the estimate/inventory as well as the bill of lading for the shipment.

⁴ See Government Exhibit D to Motion for Final Order. In its Reply, Respondent also denied failing to properly distribute and adequately secure a commercial motor vehicle's cargo. That, however, was not a charge in the NOC. The NOC charged Respondent with having violated 49 CFR 392.9a(a)(1), whereas the requirement for cargo being properly distributed and adequately secured is contained in 49 CFR 392.9(a)(1).

⁵ FMCSA Federal Program Specialist Jeffrey Sanderson submitted a copy of the FMCSA decision revoking Respondent's operating authority effective January 19, 2010 based on its lack of insurance coverage. See Government Exhibit 12 to Motion for Final Order.

⁶ See Motion for Final Order, at 9, citing Exhibit F, Supporting Document 1.

On August 16, 2011, Respondent replied to the Motion for Final Order, requesting that the Motion be denied and the matter be set for formal hearing. Respondent contended that although there was no dispute that its operating authority had been revoked on January 19, 2010, it had not been established that it was Respondent that had undertaken the February 1, 2010 transportation. Respondent maintained that on January 15, 2010, it had leased the truck allegedly used in the February 1, 2010 transportation to Lions Logistics, LLC for a nonexclusive period not to exceed six months.⁷ Respondent submitted the declarations page for the Insurance Coverage of Lions Logistics, which showed one its drivers to be the same driver whom Claimant alleged was the driver who transported household goods in interstate commerce for Respondent on February 1, 2010.⁸

Although Respondent conceded that the bill of lading contains Respondent's letterhead, it argued that the document was executed when the shipment was loaded on January 17, 2010, at which time Respondent's operating authority was still in effect. As to the "admission" by the dispatcher, Respondent contended that Mr. Lasri is a non-native speaker who believed that he was being asked if he was aware that Respondent had operating authority on the date of the compliance review, May 18, 2010, not at the time of the February 1, 2010 transportation. Based upon his belief that he was being asked about the status of Respondent's operating authority on May 18, 2010, Mr. Lasri signed the statement that had been prepared for him by Claimant.

⁷ See Attachment A to Reply Memorandum in Opposition to the Field Administrator's Motion for Final Order (Respondent's Opposition to Motion for Final Order).

⁸ See Attachment B to Respondent's Opposition to Motion for Final Order.

2. Discussion

A. Motion for Final Order

A motion for final order is analogous to a motion for summary judgment. Therefore, the moving party bears the burden of clearly establishing that there is no genuine issue of material fact, and it is entitled to a judgment as a matter of law.⁹ All inferences must be drawn in favor of the non-moving party, Respondent in this case. Notwithstanding Respondent's failure to show any material facts in dispute, Claimant must establish a *prima facie* case; in other words, he must present evidence clearly establishing all essential elements of his claim.¹⁰ If Claimant makes a *prima facie* case and Respondent fails to produce evidence rebutting the *prima facie* case, the motion for final order will be granted.¹¹ For the reasons set forth below, I find that Claimant has not made a *prima facie* case.

B. Respondent's Arguments

Respondent's arguments are not without problems. If Lions Logistics became the authorized carrier following the execution of the bill of lading, that document should have been revised and put in the name of Lions Logistics. It was not. Moreover, there are questions as to the validity of the lease. The lease contains no end-of-lease term even though the lease refers to one.¹² The provision stating the "trailers will be returned to the Lessor by July 15, 2010"¹³ does not constitute a specified term to satisfy the written lease requirements under 49 CFR 376.12(b).

⁹ See *In re Forsyth Milk Hauling Co., Inc.*, Docket No. R3-90-037, 58 Fed. Reg. 16916, at 16983, Mar. 31, 1993 (Order, Dec. 5, 1991).

¹⁰ *Id.*

¹¹ *Id.*

¹² See Attachment A to Respondent's Opposition to Motion for Final Order, Delivery and Return of Property, page 1 of lease.

¹³ See Attachment A to Respondent's Opposition to Motion for Final Order, Liability, page 2 of lease.

Additionally, the lease agreement contains the same signature for both the lessee and lessor.¹⁴ Furthermore, even though Respondent contended that Mr. Lasri thought he was referring to Respondent's operating authority on May 18, 2010, that is not what the statement that he signed says. There is no reference to operating authority on May 18, 2010. The statement signed by Mr. Lasri specifically states that on February 1, 2010, Respondent transported household goods in interstate commerce at a time when its household goods authority had been revoked.

Nevertheless, the burden is on Claimant to make a *prima facie* case, and all inferences must be drawn in favor of Respondent. Notwithstanding the problems with the lease, it is still possible that Lions Logistics transported the household goods in question on February 1, 2010. And even though the admission statement signed by Mr. Lasri specifically referred to Respondent, not Lions Logistics, as the carrier that transported the household goods on February 1, 2010, it is also possible that, as a non-native speaker, Mr. Lasri did not know what he was signing. Respondent alleged that the statement that Mr. Lasri signed had been prepared by Claimant. In addition, the person named in the signed statement as the driver who operated the commercial motor vehicle transporting the household goods on February 1, 2010 is listed on the insurance declarations page of Lions Logistics. Accordingly, there is an issue of fact in dispute -- whether it was Respondent or Lions Logistics that transported the household goods in question. As a result, the Motion for Final Order is denied, and the case is being assigned to the U.S. Department of Transportation's Office of Hearings.

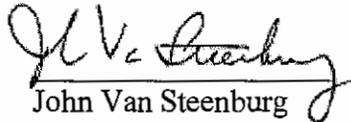
3. Appointment of Administrative Law Judge

In accordance with 49 CFR 386.54, an administrative law judge is hereby appointed, to be designated by the Chief Administrative Law Judge of the Department of Transportation, to

¹⁴ See Attachment A to Respondent's Opposition to Motion for Final Order, page 2 of lease.

preside over this matter and render decisions on all issues, including the civil penalty, if any, to be imposed. The proceeding shall be governed by subparts D and E of 49 CFR 386 of the Rules of Practice and all orders issued by the administrative law judge.

It Is So Ordered.



John Van Steenburg
Assistant Administrator
Federal Motor Carrier Safety Administration

2/18/14

CERTIFICATE OF SERVICE

This is to certify that on this 19 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.

Lyore Iulius ¹⁵ President Hurricane Movers, Inc. 1331 Regal Row Suite 300 Dallas, TX 75247	One Copy U.S. Mail
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Deborah Stanziano, Esq. Office of Chief Counsel Federal Motor Carrier Safety Administration Southern Service Center 1800 Century Blvd., NE, Suite 1700 Atlanta, GA 30345	One Copy U.S. Mail
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Darrell L. Ruban Field Administrator, Southern Service Center Federal Motor Carrier Safety Administration 1800 Century Blvd., NE, Suite 1700 Atlanta, GA 30345	One Copy U.S. Mail
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U.S. Department of Transportation Docket Operations, M-30 West Building Ground Floor Room W12-140 1200 New Jersey Avenue, S.E. Washington, D.C. 20590	Original Personal Delivery
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¹⁵ Counsel for Respondent submitted his Notice of Withdrawal on March 26, 2012.