

S E R V E D
July 27, 2016
FEDERAL MARITIME COMMISSION

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DOCKET NO. 15-10

**REVOCATION OF OCEAN TRANSPORTATION INTERMEDIARY
LICENSE NO. 017843 – WASHINGTON MOVERS, INC.**

**PARTIAL RULING ON BOE'S DISCOVERY MOTION FILED JUNE 13, 2016, and
ORDER TO SUPPLEMENT THE RECORD**

I. MOTION FOR LEAVE TO RESPOND.

The Bureau of Enforcement (BOE) served interrogatories, requests for production of documents, and requests for admissions. Washington Movers served responses, but BOE is dissatisfied with the responses, and on June 13, 2016, filed a Motion for a Determination of the Insufficiency of Request for Admission Responses and to Compel Response to Interrogatories and Requests for Production Directed to Washington Movers, Inc. (Motion to Compel).

On June 23, 2016, Washington Movers filed a Certificate of Service with “supplemental production of documents in response to [BOE’s] requests for the production of documents” and the following documents:

- Maryland Combined Registration Application for 2014
- W-2 form for 2015 for Norma Ghanem
- W-3 form for 2015
- 1099 Misc form for Sandra Rodriguez for 2014
- FBI Receipt for Property Received/Returned/Released/Seized File # BA 2441763 dated December 21, 2013

On July 14, 2016, Washington Movers filed a Motion for Leave to Respond to the Bureau of Enforcement’s Motion for a Determination of the Insufficiency of Request for Admission Responses and to Compel Response to Interrogatories and Requests for Production Directed to Washington Movers, Inc. (Motion for Leave to Respond). It attached a response to the motion to compel to the

motion for leave to file. Washington Movers also filed a second copy of the Maryland Combined Registration Application for 2014 and a copy of Washington Movers' federal income tax return for 2015 signed by Norma Ghanem.

On July 19, 2016, BOE filed an opposition to Washington Movers' motion for leave to respond. BOE argues that the motion for leave to respond

fails to show any exceptional circumstances or provide any facts on which the ALJ could determine that justice may require acceptance of the filing. Counsel simply asks for leave to respond without providing any basis for its untimely request. In fact, counsel expressed no indication to BOE of any intent to respond until the inquiry of the OALJ, which event occurred well after the due date for a response. The requirements of the rule are explicit: late filed documents will only be considered in exceptional or unique circumstances. Respondent's filing flouts the Commission's rules and should be summarily rejected.

(BOE Opposition filed July 19, 2016, at 3.)

There is an underlying philosophy favoring reaching the merits of proceedings before administrative agencies such as the Commission. "Under this philosophy agencies prefer to decide cases based on evidence rather than on defaults and technicalities . . ." *Tak Consulting Engineers v. Bustani*, 28 S.R.R. 581, 583 (ALJ 1998). Consistent with this philosophy, while recognizing Washington Movers' failure to file its response to BOE's motion to compel in a timely manner, I grant Washington Movers' motion for leave to respond and permit filing of its response to BOE's motion.

II. WASHINGTON MOVERS IS ORDERED TO SUPPLEMENT THE RECORD WITH ADDITIONAL TAX INFORMATION.

During the hearing, the undersigned expressed interest in knowing who signed the tax returns for Washington Movers for tax year 2013. Transcript of March 23, 2016, hearing at 73:6-15. In its requests for production of documents, the Bureau of Enforcement (BOE) requested: "Produce signed copies of all U.S. Federal, state, and local income tax and business tax returns including all attachments and supporting schedules filed by or on behalf of Respondent for the years 2014 and 2015, including any part year returns." (BOE Request for Production No. 1.) BOE did not ask for returns for 2013.

Washington Movers responded to the request by stating:

Objection – relevance, qualified privilege to tax returns.

Washington Movers International, Inc. objects to this request to the extent that it seeks irrelevant information, which is not reasonably calculated to lead to the

discovery of admissible evidence. Respondents tax returns do not make the fact that Respondent was never convicted of any wrongdoing by a court of the United States more or less likely.

Washington Movers International, Inc. also holds a qualified privilege as to its tax returns.

Notwithstanding the foregoing, please see the enclosed disc.

(Washington Movers Response to BOE Request for Production No. 1.)

In its motion to compel, BOE argues:

BOE requested signed and dated copies of federal and state tax returns for 2014 and 2015. Respondent provided an unsigned and undated copy of federal form 1120 for 2014 and an unsigned, undated copy of Maryland form 500 for 2014. No returns were provided for 2015. Signed tax returns are relevant to Sam Ghanem's capacity and role as an officer of the company. Respondent raised this issue and was one of the reasons that the Commission assigned the case for resolution by the Administrative Law Judge. See *Order Regarding Preliminary Issues*, served February 12, 2016, slip op. at 9.

Respondent also asserted qualified privilege as a basis for not producing requested tax records, but fails to provide any evidence to support its claim. A proponent of a privilege must adduce competent evidence in support of its claims and "offer more than just conclusory statements, generalized assertions, and unsworn statements of its counsel". *United States, v. All Assets Held at Bank*, 2015 U.S. Dist. Lexis 148719 (D.D.C. 2015) (requiring disclosure of tax records in response to civil discovery). Returns filed with federal and state taxing authorities may show that Sam Ghanem was serving in an official capacity on behalf of Respondent at relevant time periods. BOE is therefore entitled to discover this information.

(BOE Motion to Compel at 2-3.)

In its response to the motion, Washington Movers states:

Each of the above-referenced requests seeks tax documents from Washington Movers. Despite its objections, Washington Movers produced its federal and state 2014 corporate tax return and its employees 2015 W-2s.

Washington Movers' hereby supplements its production and attaches a signed copy of its 2014 state tax return and a signed copy of its 2015 federal tax return. Upon information and belief, Washington Movers' does not have 2014 W-2s nor

2014-2015 1099s. Further, Washington Movers does not have access to a signed copy of its 2014 federal tax return; that return was prepared by a professional and Washington Movers' only has access to an unsigned confirmation copy.

(Washington Movers' Response to BOE Motion to Compel at 2-3.)

RULING:

Washington Movers' objections to production of the tax records are overruled. As BOE correctly states, the identity of the person who signed the tax returns is probative of "the extent of Sam Ghanem's current involvement with the company." *Revocation of Ocean Transportation Intermediary License No. 017843 – Washington Movers, Inc.*, FMC No. 15-10, slip op. at 9 (FMC Feb. 12, 2016) (Order Regarding Preliminary Issues).

Although BOE did not ask for 2013 returns, as stated at the March 23, 2016, hearing, the undersigned is interested in knowing who signed Washington Movers' 2013 income tax returns, which presumably were signed some time in 2014, after Sam Ghanem was arrested and indicted, but long before his trial. Therefore, on or before August 9, 2016, Washington Movers is ordered to supplement the record by responding to the following:

1. Identify the person who signed the federal and state income tax returns for Washington Movers for 2013. If Washington Movers contends that it was a person other than Sam Ghanem, Washington Movers is ordered to serve and file copies of the cover page and the signed signature page of Washington Movers' federal and state tax returns for 2013.
2. Identify the person who signed the federal and state income tax returns for Washington Movers for 2014. If Washington Movers contends that it was a person other than Sam Ghanem, Washington Movers is ordered to serve and file copies of the cover page and the signed signature page of Washington Movers' federal and state tax returns for 2014.

In its opposition to the motion, Washington Movers contends that it only has access to unsigned copies of its 2014 returns. The federal Internal Revenue Service provides means of obtaining exact copies of federal tax returns. See <https://www.irs.com/articles/how-to-get-an-exact-copy-of-a-past-tax-return>, last visited July 22, 2016. If Washington Movers responds to this order by filing signed copies of the returns, it may redact the dollar amounts from the entries on the forms as well as other personally identifiable information set forth in Commission Rule 13. 46 C.F.R. § 502.13.

III. WASHINGTON MOVERS IS ORDERED TO SUPPLEMENT THE RECORD WITH ADDITIONAL INFORMATION ABOUT PERSONS AUTHORIZED TO SIGN ON WASHINGTON MOVERS' BANK ACCOUNTS.

During the hearing, the undersigned expressed interest in knowing whether Sam Ghanem was a signer on Washington Movers' bank accounts, and if so, when he was removed as a signatory.

JUDGE GUTHRIDGE: . . . [H]ow long do you think, Mr. Patel, it would take you to get the bank records showing when – if he was signatory when he was removed as signatory?

MR. PATEL: I would hopefully have those within a few weeks. I'll have to get those.

Transcript, March 23, 2016, at 77:12-17.

On April 7, 2016, Washington Movers filed its Production Pursuant to March 25, 2016, Discovery Schedule & Response to Exhibits and Preliminary Findings of Fact to which it attached an Industrial Bank signature card for a Washington Movers' account opened November 12, 2014, and revised March 23, 2016, showing Norma Ghanem as the only signer; and an Industrial Bank signature card for a Washington Movers' account opened November 12, 2014, and revised August 14, 2015, showing Sam Ghanem and Norma Ghanem as the authorized signers indicating that the purpose of the card was to add a signer. The documents filed do not identify who opened the account on November 12, 2014, or who the authorized signer was at that time. They also do not provide evidence of the authorized signers on Washington Movers accounts between January 1, 2014, and November 12, 2014, or whether Washington Movers had other accounts. Therefore, on or before August 9, 2016, Washington Movers is ordered to supplement the record by responding to the following:

1. Identify the authorized signer or signers for the Industrial Bank account for the period November 12, 2014, through August 14, 2015, and provide all signature cards in effect during this period.
2. Identify all Washington Movers financial accounts for the period January 1, 2014, and the present and provide copies of all signature cards in effect during this period.

IV. BOE IS ORDERED TO SUPPLEMENT THE RECORD WITH WASHINGTON MOVERS' SERVICE CONTRACTS.

The following colloquies took place in the March 23, 2016, hearing.

JUDGE GUTHRIDGE: And my question is did Washington Movers enter into a service contract with MSC or anybody else that would have begun May of 2014?

MR. TROIANO: Yes.

JUDGE GUTHRIDGE: They did? Do you know who signed?

MR. TROIANO: Sam Ghanem.

JUDGE GUTHRIDGE: Sam Ghanem signed the service contract in 2014?

MR. TROIANO: Yes.

Transcript, March 23, 2016, at 29:13-30:1.

JUDGE GUTHRIDGE: Right. Okay. Did Washington Movers have any service contracts with any other vessel operating common carriers?

MR. TROIANO: Yes, they did.

JUDGE GUTHRIDGE: And we will know who signed those also?

MR. TROIANO: Yes, we will.

JUDGE GUTHRIDGE: Particularly the ones after the beginning of 2014?

MR. TROIANO: Yes. Yes.

Transcript, March 23, 2016, at 31:22-32:9.

On or before August 9, 2016, BOE is ordered to supplement the record with the Washington Movers' service contract with MSC signed in 2014 and with any other service contracts between Washington Movers and any other vessel-operating common carrier (VOCC) signed by Sam Ghanem in 2014 or 2015. "Any other service contracts" includes any amendments to 2013 service contracts signed by Sam Ghanem in 2014. As discussed in the March 23, 2016, hearing, *see* Transcript, March 23, 2016, at 30:10-31:22, BOE should not file all pages of the service contracts, but only the pages necessary to determine that the service contract was between Washington Movers

and a VOCC and that Sam Ghanem signed the service contract or amendment on behalf of Washington Movers.

Ruling on the remainder of BOE's motion to compel is deferred.



Clay G. Guthridge
Administrative Law Judge