

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF AGRICULTURE AND)
CONSUMER SERVICES,)
)
Petitioner,)
)
vs.) Case No. 08-0853
)
TARGET VANLINES INC.,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on April 28, 2008, by video teleconference with connecting sites in Lauderdale Lakes and Tallahassee, Florida, before Errol H. Powell, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Eric H. Miller, Esquire
Department of Agriculture and
Consumer Services
2005 Apalachee Parkway
Tallahassee, Florida 32301

For Respondent: Yosef J. Kramerman, pro se
Target VanLines, Inc.
3201 Griffin Road, Suite 203
Fort Lauderdale, Florida 33312-6900

STATEMENT OF THE ISSUE

The issue for determination is whether Respondent committed

the offenses set forth in the Administrative Complaint and, if so, what action should be taken.

PRELIMINARY STATEMENT

By Administrative Complaint dated January 9, 2008, the Department of Agriculture and Consumer Services (Department) charged Target VanLines, Inc. (Target VanLines) with two counts of violating Chapter 507, Florida Statutes. Target VanLines was charged as follows: Count 1, violating Section 507.05, Florida Statutes, by failing to provide a written, signed, and dated contract and estimate to a prospective shipper before providing any moving or accessorial services; and Count 2, violating Section 507.05(4), Florida Statutes, by failing to provide the prospective shipper with the name, telephone number, and physical address of the location where the goods will be held pending further transportation, including situations where the mover retains possession of goods pending resolution of a fee dispute. Target VanLines contested the Administrative Complaint and timely requested a formal hearing. On February 20, 2008, this matter was referred to the Division of Administrative Hearings.

At hearing, Yosef Joey Kramerman, the representative for Target VanLines appeared by telephone. Target VanLines requested a continuance, to which the Department objected. After hearing argument from Target VanLines and the Department,

the request was denied. The Department presented the testimony of four witnesses, including Mr. Kramerman, and entered 13 exhibits (Petitioner's Exhibits numbered 1-13) into evidence. Mr. Kramerman testified on behalf of Target VanLines and entered no exhibits into evidence. No notary was present at the location at which Mr. Kramerman testified; however, the Department waived the requirement of the presence of a notary on the condition that Mr. Kramerman place on the record his Florida driver's license number, which he did.

A transcript of the hearing was ordered. At the request of the parties, the time for filing post-hearing submissions was set for ten days following the filing of the transcript. The Transcript, consisting of one volume, was filed on May 19, 2008. On May 22, 2008, Respondent filed an agreed request for an extension of time until June 10, 2008, for the filing of post-hearing submissions, which was granted. The Department timely filed its post-hearing submission. Target VanLines chose not to file a post-hearing submission. The Department's post-hearing submission was considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. At all times material hereto, Target VanLines was registered with the Department as an intrastate mover of household goods, holding registration number IM 1450. Target

VanLines' registration with the Department expired on February 8, 2008.

2. Since February 2008, all moves by Target VanLines have been out of state.

3. No dispute exists that Target VanLines is registered as a Florida corporation with the Department of State, Division of Corporations, under corporation number P06000113440. Further, no dispute exists that, previously, Target VanLines was administratively dissolved on September 14, 2007, by the Division of Corporations for Target VanLines' failure to file its 2007 annual report/uniform business report.

4. At the time of hearing, Target VanLines' physical address was 3282 North 29th Court, Hollywood, Florida 33020. Target VanLines' prior physical address was 5657 Dawson Street, Hollywood, Florida 33023.

The Marsha Painter Situation

5. On August 12, 2006, Marsha Painter entered into a contract with Zip to Zip Moving & Storage, Inc. (Zip to Zip) to move Ms. Painter's household goods from her residence at 1801 East Terra Mar Drive, Fort Lauderdale, Florida into storage with Zip to Zip until she located another residence at which time her household goods would be delivered to her new residence.

6. At that time, the father of Yosef Joey Kramerman, Target VanLines' representative at hearing, was a 50 percent

owner of Zip to Zip. Mr. Kramer's father did not testify at hearing.

7. No packing of the household goods was performed by Zip to Zip. The move was considered a local move.

8. The contract with Zip to Zip failed to include and disclose the name, physical location, or telephone number of the storage location. Furthermore, Ms. Painter was not verbally informed by Zip to Zip where the storage facility was located.

9. The storage fee was \$160.00 per month, payable on the 13th of every month to Zip to Zip. The fee was sometimes paid monthly and, at times, for a three-month period.

10. For approximately eight months, at the end of October or the beginning of November 2006 to May 2007, Ms. Painter was outside of the United States.

11. During her absence, Ms. Painter's mother paid the storage fees from Ms. Painter's personal checking account.

12. Further, during her absence, Ms. Painter's mother engaged in communications on behalf of Ms. Painter regarding all matters associated with Ms. Painter's household goods.

13. By letter dated January 4, 2007, to Zip to Zip Ms. Painter's mother, on Ms. Painter's behalf, mailed a check in the amount of \$480.00 for three months storage to Zip to Zip.

14. Ms. Painter's mother did not testify at hearing.

15. Target VanLines does not deny that, at some point after the letter dated January 4, 2007, it verbally informed Ms. Painter's mother that it had taken over Zip to Zip and the storage facility of Zip to Zip; that Target VanLines had taken over the storage of and had possession of her household goods because Zip to Zip had gone out of business; and that future storage payments should be made payable to it, not Zip to Zip.¹

16. Furthermore, Target VanLines admits that it notified Ms. Painter in writing that future storage payments should be made payable to it, not Zip to Zip.

17. By invoice dated March 12, 2007, Target VanLines charged Ms. Painter three months storage, from March 13 through June 13, 2007, in the amount of \$480.00. Target VanLines does not deny that it received the \$480.00 for storage fees.

18. Target VanLines admits that it provided Ms. Painter with storage services for her household goods and that it was paid for the storage services.

19. Ms. Painter does not deny that she had knowledge, through her mother, that, as of March 12, 2007, Target VanLines had possession of her household goods and that Target VanLines was being paid for storage service.

20. However, Ms. Painter did not execute or authorize a written contract with Target VanLines for storage service.

Neither did she execute or authorize a written contract with Target VanLines for moving services.

21. Further, no evidence was presented of any transaction between Zip to Zip and Target VanLines or that Target VanLines had assumed the obligations of Zip to Zip.

22. An inference is drawn and a finding is made that, at all times pertinent hereto, Target VanLines was aware that Zip to Zip failed to include in the written contract with Ms. Painter the name, telephone number, and physical address of the location where her goods were to be stored and that it (Target VanLines) had no written contract with Ms. Painter regarding the storage of her household goods.

23. Furthermore, an inference is drawn and a finding is made that, as of March 12, 2007, at the time of the invoice, Target VanLines had not entered into a written contract with Ms. Painter for the storage of her household goods, which included the name, telephone number, and physical address of the location where her household goods were stored.

24. In June 2007, Ms. Painter contacted Target VanLines for the delivery of her household goods to her new residence. At the time of the first delivery, all of her household goods were not delivered. Over a period of time, she went to three different storage facilities, including at Target VanLines' prior address on Dawson Street, to identify her household goods

because some of her household goods were missing at each delivery, which also resulted in multiple deliveries.

25. An inference is drawn and a finding is made that, since Zip to Zip failed to have a written contract for storage of Ms. Painter's household goods, which included the name, telephone number, and physical address of the storage location, Target VanLines was not aware as to which storage location Ms. Painter's household goods were located.

26. Prior to the failure of all of Ms. Painter's household goods being delivered, Target VanLines failed to provide Ms. Painter with the name, physical address, or telephone number of the storage facilities where her household goods were stored.

The Gregory Wood Situation

27. Around September 2007, Gregory S. Wood entered into a contract with Authorized Movers to move his household goods from his residence in Deltona, Florida to his new residence in Bonifay, Florida, at an estimated cost of \$4,530.00. The date of the move was September 4, 2007. The contract was prepared on August 29, 2007.

28. Among other things, the contract provided that access for a 52-foot trailer was required. Authorized Movers determined that, because of the quantity of household goods being moved, a 52-foot trailer was required.

29. The cost of the move was charged to Mr. Wood's credit card before the moving date.

30. Prior to the moving date, Mr. Wood was contacted and informed that, instead of a 52-foot trailer, two 26-foot trucks would be used, with one arriving in the morning and the other arriving later in the day for loading the remainder of the household goods. He was not informed that he would be charged for the second truck, in addition to the contract price, for the move. Mr. Wood was informed on the day of the move that he would be charged for the second truck.

31. The movers arrived at Mr. Wood's Deltona residence on September 4, 2007, to pack and load his household goods. The movers arrived around 1:30 p.m. in a 26-foot truck that bore no insignia to identify it as Authorized Movers, but the movers wore t-shirts with the logo "Authorized Movers." The movers discussed additional packing charges for the quantity of packing needed to be performed, but the movers never confirmed the additional charges or specified an amount. The movers did not present any additional documents for Mr. Wood to review or sign. The second 26-foot truck arrived at Mr. Wood's residence around 7:30 p.m., and the loading of the first 26-foot truck was completed around 10:00 p.m. Mr. Wood decided that, with the lateness of the hour and since he and his wife and child were

tired, he would decline the use of the second truck and proceed to the new residence with what was loaded on the first truck.

32. On September 5, 2007, the movers arrived in the 26-foot truck in the afternoon with Mr. Wood's household goods at his Bonifay residence. The movers refused to unload his household goods unless Mr. Wood paid them \$730.00 for unspecified additional charges, which he paid with his credit card. By paying with his credit card, Mr. Wood was charged an additional \$28.00 processing fee by the movers, totaling \$758.00.

33. The additional charge of \$758.00 was processed as a payment to Target VanLines. Not being aware of Target VanLines, Mr. Wood questioned the designation of the payment to Target VanLines; at that time, he was informed by the movers that they were employed by Target VanLines. With the additional payment being successfully processed, the movers unloaded Mr. Wood's household goods.

34. Target VanLines admits that it was paid the \$758.00.² Target VanLines claims that the additional charge was for additional services performed, such as packing materials and the second truck.³ This charge by Target VanLines was separate and apart from the contract that Mr. Wood had with Authorized Movers.

35. Mr. Wood's contract was with Authorized Movers, not Target VanLines. Target VanLines admits that it was acting as an agent, i.e., a carrier, for Authorized Movers under the contract between Mr. Wood and Authorized Movers.⁴

36. The contract with Authorized Movers did not specify any additional services or the additional amount paid to Target VanLines.

37. Target VanLines did not prepare an additional written estimate or contract for the moving services that it performed.

38. Authorized Movers refunded the \$758.00 to Mr. Wood. Furthermore, Authorized Movers deducted the \$758.00 from the amount due Target VanLines for the services that Target VanLines rendered as Authorized Movers' agent.

CONCLUSIONS OF LAW

39. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and the parties thereto pursuant to Sections 120.569 and 120.57(1), Florida Statutes (2008).

40. The Department has the burden of proof to show by clear and convincing evidence that Target VanLines committed the offenses set forth in the Administrative Complaint. Department of Banking and Finance, Division of Securities and Investor Protection v. Osborne Stern and Company, 670 So. 2d 932 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

41. Section 507.01, Florida Statutes (2007), provides definitions for Chapter 507, Florida Statutes (2007), and provides in pertinent part:

(1) "Accessorial services" means any service performed by a mover which results in a charge to the shipper and is incidental to the transportation or shipment of household goods, including, but not limited to, valuation coverage; preparation of written inventory; equipment, including dollies, hand trucks, pads, blankets, and straps; storage, packing, unpacking, or crating of articles; hoisting or lowering; waiting time; carrying articles excessive distances to or from the mover's vehicle, which may be cited as "long carry"; overtime loading and unloading; reweighing; disassembly or reassembly; elevator or stair carrying; boxing or servicing of appliances; and furnishing of packing or crating materials. The term includes services not performed by the mover but performed by a third party at the request of the shipper or mover, if the charges for these services are to be paid to the mover by the shipper at or before the time of delivery.

* * *

(4) "Contract for service" or "bill of lading" means a written document approved by the shipper in writing before the performance of any service which authorizes services from the named mover and lists the services and all costs associated with the household move and accessorial services to be performed.

(5) "Department" means the Department of Agriculture and Consumer Services.

(6) "Estimate" means a written document that sets forth the total costs and describes the basis of those costs, relating

to a shipper's household move, including, but not limited to, the loading, transportation or shipment, and unloading of household goods and accessorial services.

(7) "Household goods" or "goods" means personal effects or other personal property commonly found in a home, personal residence, or other dwelling, including, but not limited to, household furniture. The term does not include freight or personal property moving to or from a factory, store, or other place of business.

(8) "Household move" or "move" means the loading of household goods into a vehicle, moving container, or other mode of transportation or shipment; the transportation or shipment of those household goods; and the unloading of those household goods, when the transportation or shipment originates and terminates at one of the following ultimate locations, regardless of whether the mover temporarily stores the goods while en route between the originating and terminating locations:

- (a) From one dwelling to another dwelling;
- (b) From a dwelling to a storehouse or warehouse that is owned or rented by the shipper or the shipper's agent; or
- (c) From a storehouse or warehouse that is owned or rented by the shipper or the shipper's agent to a dwelling.

(9) "Mover" means a person who, for compensation, contracts for or engages in the loading, transportation or shipment, or unloading of household goods as part of a household move. The term does not include a postal, courier, envelope, or package service that does not advertise itself as a mover or moving service.

* * *

(12) "Shipper" means a person who uses the services of a mover to transport or ship household goods as part of a household move.

(13) "Storage" means the warehousing of a shipper's goods while under the care, custody, and control of the mover.
(emphasis in original)

42. Section 507.05, Florida Statutes (2007), titled "Estimates and contracts for service," provides in pertinent part:

Before providing any moving or accessorial services, a contract and estimate must be provided to a prospective shipper in writing, must be signed and dated by the shipper and the mover, and must include:

(1) The name, telephone number, and physical address where the mover's employees are available during normal business hours.

(2) The date the contract or estimate is prepared and any proposed date of the move.

(3) The name and address of the shipper, the addresses where the articles are to be picked up and delivered, and a telephone number where the shipper may be reached.

(4) The name, telephone number, and physical address of any location where the goods will be held pending further transportation, including situations where the mover retains possession of goods pending resolution of a fee dispute with the shipper.

(5) An itemized breakdown and description and total of all costs and services for loading, transportation or shipment, unloading, and accessorial services to be provided during a household move or storage of household goods.

(6) Acceptable forms of payment. A mover shall accept a minimum of two of the three following forms of payment:

- (a) Cash, cashier's check, money order, or traveler's check;
- (b) Valid personal check, showing upon its face the name and address of the shipper or authorized representative; or
- (c) Valid credit card, which shall include, but not be limited to, Visa or MasterCard.

A mover must clearly and conspicuously disclose to the shipper in the estimate and contract for services the forms of payments the mover will accept, including the forms of payment described in paragraphs (a)-(c).

43. Zip to Zip and Target VanLines were each a mover as defined in Section 507.01(9), Florida Statutes (2007).

44. Ms. Painter and Mr. Wood were each a shipper as defined in Section 507.01(12), Florida Statutes (2007).

45. Regarding Ms. Painter, Zip to Zip contracted with Ms. Painter to move her household goods, store them, and move them to her new residence, once she located a new residence; all for a fee. Therefore, Zip to Zip provided her accessorial services, as defined in Section 507.01, Florida Statutes (2007). Zip to Zip failed to include in the written contract with Ms. Painter the name, telephone number, and physical address of the location where her goods were to be stored.

46. Target VanLines took over the business of Zip to Zip, including the storage. Target VanLines provided storage for Ms. Painter's household goods for a fee, and, therefore,

provided her accessorial services. § 507.01(1), Fla. Stat. (2007).

47. Target VanLines was aware that Zip to Zip failed to include in the written contract with Ms. Painter the name, telephone number, and physical address of the location where her goods were stored.

48. Target VanLines failed to provide Ms. Painter a written contract for accessorial services, which included the name, telephone number, and physical address of the locations where her goods were stored.

49. The evidence demonstrates that Target VanLines violated Section 507.05(4), Florida Statutes (2007).

50. As to Mr. Wood, the additional charge of \$730.00 by Target VanLines for additional services performed, such as packing materials and the second truck, was separate and apart from the contract that Mr. Wood had with Authorized Movers and from Target VanLines' status as an agent for Authorized Movers.

51. Target VanLines provided the additional services to Mr. Wood without a written contract and estimate.

52. The evidence demonstrates that Target VanLines violated Section 507.05, Florida Statutes (2007).

Penalty

53. Section 507.09, Florida Statutes (2007), provides in pertinent part:

(1) The department may enter an order doing one or more of the following if the department finds that a mover or moving broker, or a person employed or contracted by a mover or broker, has violated or is operating in violation of this chapter or the rules or orders issued in accordance with this chapter:

(a) Issuing a notice of noncompliance under s. 120.695.

(b) Imposing an administrative fine not to exceed \$ 5,000 for each act or omission.

(c) Directing that the person cease and desist specified activities.

(d) Refusing to register or revoking or suspending a registration.

(e) Placing the registrant on probation for a period of time, subject to the conditions specified by the department.

(2) The administrative proceedings which could result in the entry of an order imposing any of the penalties specified in subsection (1) are governed by chapter 120.

(3)The department may adopt rules under ss. 120.536(1) and 120.54 to administer this chapter.

54. The Department suggests an administrative fine of \$5,000.00 per violation, totaling \$10,000.00.

55. As to the violation of Section 507.05(4), Florida Statutes (2007), involving Ms. Painter's situation, under the circumstances of that situation, an administrative fine of \$5,000.00 is too severe. The evidence demonstrates, among other things, that Target VanLines was not the original mover but took

over the business of the original mover after the original mover had placed Ms. Painter's household goods in storage; that the original mover failed to include in the written contract the name, telephone number, and physical address of the location of the storage facility where her goods were being stored; that Target VanLines became aware of the original movers failure, as described above; and that Target VanLines failed to enter into a written contract with Ms. Painter for accessorial services, which included the name, telephone number, and physical address of the location of the storage facility where her household goods were stored. As a result, a more reasonable administrative fine is \$2,500.00

56. As to the violation of Section 507.05, Florida Statutes, involving Mr. Wood's situation, the Department's suggested administrative fine of \$5,000.00 is reasonable.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the Department of Agriculture and Consumer Services enter a final order:

1. Finding that Target VanLines, Inc. violated Sections 507.05 and 507.05(4), Florida Statutes (2007).
2. Imposing an administrative fine in the amount of \$5,000.00 for a violation of Section 507.05, Florida Statutes

(2007), and in the amount of \$2,500.00 for a violation of Section 507.05(4), Florida Statutes (2007).

DONE AND ENTERED this 15th day of October 2008, in Tallahassee, Leon County, Florida.



ERROL H. POWELL
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 15th day of October, 2008.

ENDNOTES

1/ Some of Ms. Painter's testimony was hearsay, as to what occurred during her absence from the United States, which could not be used to establish findings of fact.

2/ Mr. Kramerman has no first-hand knowledge of Mr. Wood's situation, but makes this admission based upon the exhibits admitted into evidence and Mr. Wood's testimony.

3/ Ibid.

4/ Ibid.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this recommended order. Any exceptions to this recommended order should be filed with the agency that will issue the final order in this case.