

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF AGRICULTURE AND
CONSUMER SERVICES,

Petitioner,

Case No. 19-5838

vs.

FLORIDA LICENSED MOVING
CORPORATION,

Respondent.

RECOMMENDED ORDER

Pursuant to notice, a final hearing in this case was conducted before Administrative Law Judge Mary Li Creasy by video teleconference with locations in West Palm Beach and Tallahassee, Florida on January 21, 2020.

APPEARANCES

For Petitioner: Genevieve Hall, Esquire
Amanda B. McKibben, Esquire
Department of Agriculture and Consumer Services
407 South Calhoun Street, Suite 520
Tallahassee, Florida 32399-6587

For Respondent: Donald Goldrich, Esquire
Donald S. Goldrich, P.A.
5177 Northwest 74th Manor
Coconut Creek, Florida 33073-2734

STATEMENT OF THE ISSUE

Whether Respondent's renewal application for registration as an intrastate mover should be denied for the reasons set forth in the September 23, 2019, Denial of Application Letter.

PRELIMINARY STATEMENT

On September 23, 2019, Petitioner, Department of Agriculture and Consumer Services (“the Department”), notified Respondent, Florida Licensed Moving Corporation, of its denial of Respondent’s registration as an intrastate mover under chapter 507, Florida Statutes, due to litigation pending in Seminole County (“Denial Letter”). In addition, the registration was denied due to Respondent’s alleged false statements contained within the application.

Respondent timely contested the denial and the request for administrative hearing was forwarded to the Division of Administrative Hearings (“DOAH”) on November 1, 2019. The final hearing was held as scheduled on January 21, 2020.

Petitioner presented the testimony of Cindy Quincy, Regulatory Consultant. Petitioner’s Exhibits A through E were admitted into evidence. Respondent’s owner, James Fischer, testified on behalf of Respondent. Respondent offered no exhibits.

The parties declined to order a transcript of the proceedings. The parties timely filed proposed recommended orders, which were taken into consideration in the preparation of this Recommended Order. All references to statutes are to the version in effect in 2019 unless otherwise noted.

FINDINGS OF FACT

1. The Department is the state agency responsible for permitting and regulating household moving services in the State of Florida.

2. Respondent is a Florida corporation and conducts household moving services to the general public.

Harwood Case

3. Respondent is a named Defendant in the case of *Susan Harwood v Licensed Interstate Transport Corporation and Florida Licensed Moving Corporation*, filed in Seminole County Circuit Court, under Case No. 2019-

CA-000309-16-G (“Harwood Case”). The case alleged a breach of contract action for damages and violations of chapter 507.

4. On June 20, 2019, a default judgment was entered against Respondent in the Harwood Case in the amount of \$30,000.00, representing a \$5,000.00 civil penalty for each of the six separate violations of chapter 507, which also constitute deceptive and unfair trade practices under sections 501.201-501.213, Florida Statutes, the "Florida Deceptive and Unfair Trade Practices Act," \$800.00 in actual damages for breach of contract, plus an award of costs, and interest.

5. Respondent asserts it was not properly served in the Harwood Case and was not aware of the judgment until notified by the Denial Letter issued in this case on September 23, 2019.

6. After receipt of the Denial Letter, Respondent immediately filed a Motion to Set Aside Default Judgment in the Harwood Case, which as of the date of the final hearing, had not been set for hearing. The judgment remains unpaid by Respondent.

Enforcement Action

7. On September 14, 2018, the Department filed an enforcement action against Respondent in Seminole County Case No. 2018-CA-002516. The allegations contained in the pleading allege multiple violations of chapter 507, including allegations that Respondent engaged in fraudulent and dishonest acts while operating as a mover. This case is currently pending.

8. More specifically, this action alleges multiple acts of fraud, misrepresentation, or failure to disclose material facts to customers in violation of chapter 507. Respondent allegedly engaged in “hostage moves” – the practice of providing a low-ball cost estimates for moving and storage, then refusing to relinquish the goods without requiring greater amounts. Respondent also allegedly resorted to threats for excessive payments, failed

to provide estimates or contracts prior to moves, refused to accept credit card payments, and failed to maintain insurance coverage.

Alleged False Statements in Application

9. As part of its basis to deny Respondent's application, the Department asserts that Respondent was dishonest in the renewal application to be a registered mover. It is a violation of section 507.02 to knowingly make a false statement, representation, or certification in any application required to be submitted under chapter 507.

10. The application contained two questions upon which the Department based its denial, which read as follows:

a. Has this *person* not satisfied a civil fine or penalty arising out of any administrative or enforcement action brought by any government agency or private person based upon conduct involving fraud, dishonest dealing or any act of moral turpitude?

b. Does this *person* have a pending criminal, administrative, or enforcement proceeding in any jurisdiction, based upon conduct involving fraud, dishonest dealing, or any act of moral turpitude?
(emphasis added).

11. Respondent's President, James Fischer, answered "no" to these questions, which were truthful and accurate. He understood the questions to be specifically asked to the individual submitting the application on behalf of the entity applying. In fact, these questions appear on the application under the heading, "Owner/Management Information." Mr. Fischer did not knowingly make any false statements. There was no unsatisfied judgment against Mr. Fischer, nor was there a pending case against him when the application was made.

12. As to question (a) above, Mr. Fischer had no knowledge that there was a judgment from the Harwood Case when he answered the question truthfully.

13. The questions were poorly worded and used the word “person” instead of using the word “applicant.” The failure of the wording should not be construed against Respondent.

CONCLUSIONS OF LAW

14. DOAH has jurisdiction over the subject matter and the parties to this proceeding. §120.569 and §120.57(1), Fla. Stat.

15. Chapter 507 regulates household moving services. Pursuant to section 507.03, the Department is charged with registrations and denial of registrations for those entities seeking to register as a household mover.

16. Under section 507.03(8), the Department may deny, refuse to renew, or revoke the registration of any mover or moving broker based upon a determination that the mover or moving broker, or any of the mover’s or moving broker’s directors, officers, owners or general partners:

c. Has not satisfied a civil fine or penalty arising out of any administrative or enforcement action brought by any governmental or private person based upon conduct involving fraud, dishonest dealing, or any violation of this chapter;

d. Has pending against him or her any criminal, administrative or enforcement proceeding in any jurisdiction based upon conduct involving fraud, dishonest dealing, or any act of moral turpitude.

17. Because the Department is refusing to renew Respondent’s status as a household mover, the Department has the burden of proof in this proceeding and must show by clear and convincing evidence that Respondent committed the acts alleged in the Administrative Complaint. *Dep’t of Banking and Fin., Div. of Sec. and Inv’r Prot. v. Osborne Stern and Co.*, 670 So. 2d 932 (Fla. 1996).

18. It is uncontested that the fine in the Harwood Case remains unpaid. Nor has it been set aside. Similarly, it is uncontested that there is an

enforcement proceeding pending involving allegations of fraud and dishonest dealing. The Department has met its burden by proving by clear and convincing evidence that the denial of Respondent's application to be a household mover was valid and as such, the denial should be upheld.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department enter a Final Order denying Respondent's renewal application to provide household moving services.

DONE AND ENTERED this 5th day of May, 2020, in Tallahassee, Leon County, Florida.



MARY LI CREASY
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 5th day of May, 2020.

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.