

**BEFORE THE
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

IN THE MATTER OF:

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DOCKET NO.: FMCSA-2017-0300

**SAFEWAY MOVING & STORAGE,
INC. DBA APEX MOVING &
STORAGE
US DOT NO. 2780116**

CASE NO.: FL-2017-0207-US0815

Respondent.

**REGIONAL FIELD ADMINISTRATOR’S SUBMISSION OF WRITTEN EVIDENCE
AND ARGUMENT IN SUPPORT OF NOTICE OF CLAIM**

COMES NOW, the Regional Field Administrator (RFA), for the U.S. Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA), Southern Service Center, by and through the undersigned Agency Counsel, and files his submission of written evidence and argument in support of FMCSA’s Notice of Claim against SAFEWAY MOVING & STORAGE, INC. DBA APEX MOVING & STORAGE, US DOT NO. 2780116 (hereinafter referred to as “Respondent”), showing:

I. PROCEDURAL HISTORY

A compliance investigation of Respondent in this matter resulted in a Notice of Claim served July 12, 2017 - which cited the Code of Federal Regulations as opposed to the United States Code in error, for the violation – and an Amended Notice of Claim served August 14, 2017, charging Respondent with 1 violation of 49 U.S.C. § 14901(d)(3), for failure to properly register as a household goods (HHG) carrier or broker.¹ The Amended Notice of Claim asserts a

¹ Commercial Enforcement Specialist Betty Becherer Declaration (“Declaration”) at 1-2; Exhibit RFA-2, Evidence pp. 13-25.

civil penalty in the amount of \$30,330 derived from FMCSA's Uniform Fine Assessment (UFA) program.²

On or about August 9, 2017 and August 16, 2017, Respondent replied to the Notice of Claim and Amended Notice of Claim, respectively, seeking to submit argument and evidence without a hearing.³

II. SUBMISSION OF WRITTEN EVIDENCE AND ARGUMENT IN SUPPORT OF NOTICE OF CLAIM

The RFA demonstrates through evidence and argument that Respondent committed 1 violation of 49 U.S.C. § 14901(d)(3), for failure to properly register as a household goods (HHG) carrier or broker.

STANDARD OF PROOF

When a Respondent contests a violation through the submission of evidence and argument, the Regional Field Administrator has the burden to demonstrate by a preponderance of evidence that the Respondent violated the regulation(s) as charged.⁴ To establish by a preponderance of evidence means that something is more likely so than not.⁵ The RFA demonstrates that he has met the preponderance of evidence standard in this matter.⁶

A. EVIDENCE AND ARGUMENT

² RFA-12, Evidence pp. 105-108.

³ RFA-3, Evidence pp. 26-48; RFA-4, Evidence pp. 49-50.

⁴ See *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. Steadman*, 450 U.S. 91, at 95-104 (1981), *reh. denied*, 451 U.S. 933 (1981); *All American Moving & Storage*, Docket No. FMCSA-2008-0238, Final Order, November 3, 2011, at 2.

⁵ See *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 *Forsyth Milk Hauling Co., Inc.*, Docket No. R3-90-037, 58 Fed. Reg. 16916, 16983, Order (December 5, 1991).

Florida Division Commercial Enforcement Specialist Betty Becherer's Declaration (hereinafter "Declaration) explains in detail the violation charged, and how the evidence FMCSA attaches as exhibits RFA-1 through RFA-14 demonstrates Respondent committed the violation charged.

The original bill of lading is in the Respondent's name, for individual shipper Anne McGuinness, for the trip originating in Collins, VA, bound for destination of Pottstown, PA, on a scheduled move date of October 14-15, 2016, at a total estimated price of \$1,594.56, and a customer payment to Respondent in the amount of \$478, for the transportation of HHG. The September 20, 2016 binding estimate and credit card authorization for and from Respondent lists the carrier's name as "**Safeway Moving & Storage.**" The Credit Card Authorization form for shipper Anne McGuinness shows the shipper was charged, and the Respondent received, \$478 in connection with the HHG move.⁷ Effective August 31, 2016, Respondent was placed out-of-service as a result of its final Unsatisfactory Safety Rating.⁸

The Commercial Enforcement Specialist testifies at 5:

It was the Respondent's responsibility, after they found out that Respondent could not operate and was being placed out-of-service, to let the shipper know that Respondent could not transport the shipment, and to a refund the shipper's deposit so the shipper could look for another carrier with authority. Alternatively, the Respondent could have refunded the money first, and then offered the shipper the option of using US Moving, Inc., and provide the shipper with a new Binding Estimate contract under US Moving, Inc.'s US DOT number. Instead, the Respondent accepted the Respondent's money, was placed out-of-service, and brokered the load to its sister company under common ownership.

⁷ Evidence pp. 52-57.

⁸ RFA-11, Evidence pp. 98-104.

After Respondent was placed out-of-service on August 31, 2016,⁹ Respondent, by its own admission, arranged for the transportation of property by a motor carrier for compensation with US Moving Services Dba Safe Way Moving, USDOT 1833493. US Moving Services dba Safe Way Moving, USDOT 1833493, Revised Written Estimate for Jim and Anne McGuinness lists the motor carrier as “**Safe Way Moving**,”¹⁰ very similar to the name Respondent used on its original Bill of Lading for the transportation at issue in this matter: **Safe Way Moving and Storage, Inc.**”¹¹ Both companies’ forms MCS-150 are signed for by Yehoshua Vaknin as President.¹²

FMCSA Licensing and Insurance (L & I) report for Respondent show it did not have broker authority during the move;¹³ Respondent did not have the authority to arrange for the transportation of property by a motor carrier for compensation. A broker does not transport the property and does not assume responsibility for the property.¹⁴ The FMCSA Out-of-Service Order for Respondent effective August 31, 2016 demonstrates why Respondent could not perform the move and brokered the job to its sister company US Moving Services, Inc. dba Safe Way Moving, US DOT no. 1833483.¹⁵

III. CIVIL PENALTY

FMCSA calculated the civil penalty for the two remaining violations charged in this matter utilizing FMCSA’s Uniform Fine Assessment (“UFA”).¹⁶ The UFA is designed to implement a uniform and fair application of penalties by devising a formula for determining the

⁹ RFA-11, Evidence pp. 98-104.

¹⁰ Evidence p. 58.

¹¹ Evidence p. 52.

¹² Evidence pp. 109-110.

¹³ RFA-6.

¹⁴ Direct Movers, LLC, Docket No. FMCSA-2009-0245, Final Order, October 5, 2012, at 3.

¹⁵ RFA-11, *See also* RFA-5, Evidence pp. 51-62.

¹⁶ RFA-3, Evidence pp. 40-45; Declaration at 3.

penalties based on consideration of the specific statutory factors.¹⁷ The UFA utilizes the nine legislative criteria specified in 49 U.S.C. § 521(b)(2)(D) when calculating the civil penalty amount. These nine criteria are: the nature of the violation, the circumstances of the violation, the extent of the violation, the degree of culpability, the gravity of the violation, ability to pay, effect of ability to continue to do business, history of prior offenses, and matters as justice and public safety may require. A civil penalty calculated using the UFA is presumed to comply with the statutory requirements,¹⁸ and in the absence of any evidence indicating that the penalty calculation was either improper or inappropriate, the penalty assessment will be upheld.¹⁹ The asserted penalty for this enforcement is in conformity with the applicable statutory requirements, and is based upon a careful examination of specific factors related to inducing Respondent's future compliance.²⁰

The civil penalty should be upheld.

IV. CONCLUSION

The RFA prays the Assistant Administrator issue an Order:

- (1) finding the Respondent committed the violation charged in the Notice of Claim; and
- (2) ordering Respondent pay to the Regional Field Administrator for the Southern Service Center, within 30 days of the service date of the Final Order, a total civil penalty in the amount of \$30,330.


Respectfully submitted this 13th day of October, 2017.

¹⁷ *Global Energy, Inc.*, Docket No. 2007-0076, Final Order (August 5, 2010).

¹⁸ *See Alfred Chew & Martha Chew, dba Alfred & Martha Chew Trucking*, FHWA Docket No: 96-5323, Final Order, February 7, 1996, at 8 (1996 WL 33484112).

¹⁹ *See Baker-Lewis Trucking, Inc.*, Docket No. FMCSA-2002-13749, Final Order, November 15, 2004; *Federal Motor Carrier Safety Administration v. White Farms Trucking*, Docket No. FMCSA-2009-0083, Decision of Administrative Law Judge (September 30, 2010) at 8.

²⁰ 49 U.S.C. § 521(b); *See Alfred Chew & Martha Chew, dba Alfred & Martha Chew Trucking*, FHWA Docket No: 96-5323, Final Order, February 7, 1996, at 8 (1996 WL 33484112).

A handwritten signature in dark ink, reading "Matthew Hardy". The signature is fluid and cursive, with a horizontal line extending from the end of the name.

Matthew J. Hardy, Agency Counsel
Office of Chief Counsel
Federal Motor Carrier Safety Administration
1800 Century Boulevard, Suite 1700
Atlanta, Georgia 30345
Telephone: 404-327-7376
Email: matthew.hardy@dot.gov

**BEFORE THE
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

IN THE MATTER OF:

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DOCKET NO.: FMCSA-2017-0300

**SAFEWAY MOVING & STORAGE,
INC. DBA APEX MOVING &
STORAGE
US DOT NO. 2780116**

CASE NO.: FL-2017-0207-US0815

Respondent.

**DECLARATION OF COMMERCIAL ENFORCEMENT SPECIALIST
BETTY BECHERER**

I, BETTY BECHERER, hereby declare as follows:

1. I am a Commercial Enforcement Specialist at the Federal Motor Carrier Safety Administration (FMCSA), Florida Division, and was so employed during the compliance investigation conducted on the above-named Respondent, USDOT 2780116.
2. My declaration is based on my personal knowledge obtained in my official duties as a FMCSA Commercial Enforcement Specialist.
3. I review motor carriers and drivers to determine compliance with applicable State motor carrier laws, Federal Motor Carrier Safety Regulations ("FMCSRs"), Hazardous Materials Regulations ("HMRs"), and Federal Motor Carrier Commercial Regulations ("FMCCRs").
4. The compliance investigation of Respondent in this matter resulted in a Notice of Claim (NOC) served July 12, 2017. Exhibit RFA-1, Evidence pp. 1-12, is an accurate copy of the FMCSA Notice of Claim, charging Respondent with 1 violation of 49 C.F.R. § 14901(d)(3), for failure to properly register as a household goods carrier or broker. The Code of Federal Regulations (CFR) was listed in error, and should have read United States Code (USC).

5. On August 14, 2017, Respondent was served an Amended Notice of Claim. Exhibit RFA-2, Evidence pp. 13-25, is an accurate copy of the FMCSA Amended Notice of Claim, charging Respondent with 1 violation of 49 U.S.C. § 14901(d)(3), for failure to properly register as a household goods (HHG) carrier or broker. The Amended Notice of Claim asserts a civil penalty in the amount of \$30,330.
6. RFA-3, Evidence pp. 26-48, is a correct copy of the Respondent's Reply to Notice of Claim requesting Administrative Adjudication without a hearing. The Reply points out the original charge read C.F.R. as opposed to U.S.C. The Reply argues that if the charge is 49 U.S.C. 14901, "Respondent cannot prove the elements necessary to establish that Respondent acted as a broker or even that Respondent is a broker necessitating licensure." (sic). Respondent asserts it did not arrange for a shipper's goods to be moved by another carrier for compensation.
7. The evidence demonstrates Respondent arranged for the shipper's transportation, was compensated by the shipper, and brokered the load to another carrier. *See* RFA-5, Evidence pp. 51-62.
8. The Reply at Evidence pp. 30-31 asserts that on or about August 12, 2016 Respondent provided shipper Anne McGuinness with an online estimate to move her HHG from VA to PA, to occur in October of 2016; on September 1, 2016 Respondent's operating authority was revoked and Respondent was unable to reinstate its authority by October 2016; and Respondent transferred the move "solely as an unpaid accommodation to the shipper so as not to interrupt her moving plans," to another company licensed by the FMCSA, with proper operating authority, to transport the HHG. Respondent asserts the shipper paid US

Moving Services, Inc. d/b/a Safe Way Moving, and the Respondent herein, Safeway Moving & Storage, Inc., was not paid by the shipper nor the moving carrier.

9. RFA-4, Evidence pp. 49-50, is an accurate copy of the Reply to the Amended Notice of Claim served on FMCSA on or about August 16, 2017 requesting the Respondent's original Reply to Notice of Claim be considered the timely response to the Amended Notice of Claim.
10. RFA-12, Evidence pp. 105-108, is an accurate and true copy of the Uniform Fine Assessment ("UFA") generated in this case. The UFA calculated the total civil penalty amount at \$30,337 for the 1 violation charged. The proposed civil penalty, as charged in the Notice of Claim, is in the amount of \$30,330.
11. RFA-5, Evidence pp. 51-62, is an accurate copy of evidence supporting violation 1-1. The evidence demonstrates that on or about October 15, 2016, Respondent arranged for the transportation of household goods (HHG) from Collins, VA to Pottstown, PA on behalf of an individual shipper, Anne McGuinness. Respondent failed to register as a HHG broker as required. Respondent was paid by the shipper and arranged for the move from VA to PA.
12. Evidence supporting violation 1-1 includes a copy of Respondent's Binding Moving Estimate Job no. SW8035740, for individual shipper Anne McGuinness, origin in Collins, VA, destination in Pottstown, PA, move date October 14-15, 2016, total estimate price of \$1,594.56, and customer payment to Respondent in the amount of \$478.00; Respondent's Credit Card Authorization form for shipper Anne McGuinness, Job no. SW8035740, showing a charge of \$478; a copy of US Moving Services dba Safe Way Moving, USDOT 1833493, Revised Written Estimate for Order No: 8035740 for individual shippers Jim and

Anne McGuinness, showing US Moving dba Safe Way Moving performing the move under its name as opposed to under the authority of Respondent, Safeway Moving and Storage, Inc., DOT no. 278016; a brokered move with charges including a 30% deposit or booking fee of \$478.00; US Moving Services dba Safe Way Moving Interstate Bill of Lading Contract and Order for Service, Order No. 8035740, for individual James McGuinness, showing US Moving performing the move, pick-up date October 15, 2016, and delivery date November 1, 2016, after Respondent was placed out-of-service for a final Unsatisfactory Safety Rating effective August 31, 2016; a correct copy of the HHG Descriptive Inventory for individual shipper James McGuinness, Contract no, 8035740, showing items transported by US Moving Services, Inc. dba Safe Way Moving; a FMCSA Licensing and Insurance (L & I) report for Respondent showing it did not have broker authority during the move (See RFA-6, Exhibit A); and a Federal Motor Carrier Safety Administration Out-of-Service Order for Respondent dated August 17, 2016, effective on August 31, 2016, showing why Respondent could not perform the move on October 15, 2016, and therefore brokered the job to its sister company US Moving Services, Inc. dba Safe Way Moving, US DOT no. 1833483 (*See* RFA-11, Exhibit F). *See also* RFA-5, Evidence pp. 51-62.

13. RFA-14, Evidence p. 110, is an accurate copy of US Moving Services, Inc. dba Safe Way Moving's form MCS-150, and RFA-13, Evidence p. 109, is an accurate copy of Respondent's MCS-150.
14. Both companies' forms MCS-150 are signed for by Yehoshua Vaknin as President. After Respondent was placed out-of-service, it brokered the load at issue in this matter to its

sister company US Moving Services, Inc. dba Safe Way Moving. Both companies share the name “Safe Way Moving.” Evidence pp. 109-110.

15. It was the Respondent’s responsibility, after they found out that Respondent could not operate and was being placed out-of-service, to let the shipper know that Respondent could not transport the shipment, and to refund the shipper’s deposit so the shipper could look for another carrier with authority. Alternatively, the Respondent could have refunded the money first, and then offered the shipper the option of using US Moving Services, Inc., and provide the shipper with a new Binding Moving Estimate contract under US Moving, Inc.’s US DOT number. Instead, the Respondent accepted the Respondent’s money, was placed out-of-service, and brokered the load to its sister company under common ownership.
16. RFA-6, evidence pp. 63-66, is a correct copy of the L&I Report for Respondent showing it did not have broker authority when it brokered the move to its sister company after Respondent was placed out-of-service.
17. RFA-7, evidence pp. 67-69, is a true copy of the Florida Department of State Division of Corporations report on Respondent showing its carrier official.
18. RFA-8, evidence pp. 70-71, is a correct copy of Respondent’s FMCSA form MCS-150.
19. RFA-9, evidence pp. 72-86, is an accurate copy of Respondent’s Non-Ratable Investigation dated June 29, 2016 showing Respondent’s prior contact with FMCSA.
20. RFA-10, evidence pp. 87-97, is a correct copy of Respondent’s Notice of Claim, in case no. FL-2016-0218-US0815, served August 4, 2016, showing Respondent’s prior contact with FMCSA and that it should have knowledge of the FMCSRs.
21. RFA-11, Evidence pp. 98-104, is a correct copy of the FMCSA Out-of-Service Order on Respondent dated August 17, 2016, with an effective date of August 31, 2016.

22. The Out-of-Service Order, RFA-11, is the reason the Respondent could not perform the move on October 15, 2016, and brokered the job to Respondent's sister company, US Moving Services, Inc. dba Safe Way Moving, during a period in which Respondent did not have brokering authority.

I swear and affirm this _10_ day of October, 2017, that the evidence in this matter, and testimony in this declaration, is correct, true, and accurate to the best of my knowledge.



BETTY BECHERER
Commercial Enforcement Specialist
Florida Division
Federal Motor Carrier Safety Administration

CERTIFICATE OF SERVICE

Docket No. FMCSA-2017-0300, Case No. FL-2017-0207-US0815

This is to certify that on **October 13, 2017**, the undersigned mailed or delivered, as specified, the designated number of copies of the foregoing document to the persons listed below. FMCSA's exhibits are being filed under seal. The exhibits may contain substantial amounts of personally identifiable information and will not be published to regulations.gov. The exhibits filed under seal have this this day been served upon FMCSA's Adjudications Counsel and upon the Respondent's counsel by mail. For questions please call or email the undersigned attorney.

Law Office of Lana E. Joslin
Attorney for Safeway Moving & Storage, Inc.
68 South Service Rd., Ste 100
Melville, NY 11747

by mail
full pleading and exhibits

Erica Winbush
**Florida Division
Federal Motor Carrier Safety
Administration**

The undersigned delivered as specified, a copy of attached pleading to the person listed below as specified. The exhibits are being filed under seal and will not be uploaded to regulations.gov.

Adjudications Counsel
U.S. Department of Transportation
1200 New Jersey Ave., SE
Washington, DC 20590

by email
full pleading and exhibits

U.S. Department of Transportation
Dockets, M-30
West Building Ground Floor
Room W12-140
1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

by electronic filing
to regulations.gov
pleading only, exhibits are filed
under seal and are not being
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Matthew J. Hardy, Agency Counsel
Federal Motor Carrier Safety Administration
1800 Century Boulevard, Suite 1700
Atlanta, Georgia 30345
Telephone: 404-327-7376
Email: matthew.hardy@dot.gov

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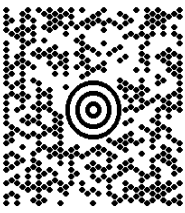
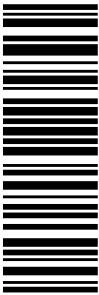
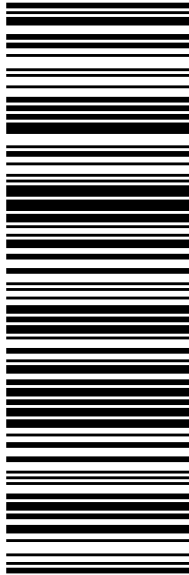

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