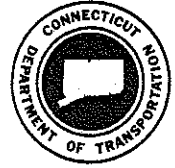


STATE OF CONNECTICUT
DEPARTMENT OF TRANSPORTATION



2800 BERLIN TURNPIKE, P.O. BOX 317546
NEWINGTON, CONNECTICUT 06131-7546

Phone:

(860) 594-2875

DOCKET NUMBER 1011-C-98-HG

RE: IN THE MATTER OF THE CITATION
OF PROFESSIONAL MOVERS, LLC.

FINAL DECISION

January 5, 2011

I. INTRODUCTION

A. Citation

By citation dated November 22, 2010, issued by the Regulatory and Compliance Unit of the Department of Transportation (hereinafter "department"), pursuant to Connecticut General Statutes Section 13b-407, Professional Movers, LLC (hereinafter "respondent"), of 21 Bridge Street, Second Floor, Westport, Connecticut, and holder of Certificate Number 120, authorized to operate motor vehicles for the transportation of property for hire as a motor common carrier to all points in Connecticut from a headquarters in Westport, was ordered to come before the department to answer allegations made therein.

Pursuant to said citation, the respondent was directed to appear at the Newington office of the Department of Transportation to show cause why Certificate Number 120 should not be suspended or revoked for violation of Connecticut General Statutes Section 13b-398 for operating in the transportation of household goods for hire without proper authorization, to wit: for remaining in business while the certificate holder was no longer registered as a legal entity with the office of the Secretary of the State or in existence.

The citation was sent to the respondent by first class and certified mail and recited the department's reasons for issuing same.

B. Hearing

Pursuant to Section 13b-407 of the Connecticut General Statutes, the public hearing for this citation was held on December 21, 2010 at the Newington office of the department, 2800 Berlin Turnpike, Newington, Connecticut.

Notice of the citation and of the hearing to be held thereon was given to the respondent and to such other parties as required by General Statutes Section 4-182 and 13b-407.

Laila A. Mandour, Esq. was designated by the Commissioner of Transportation to conduct the hearing on this matter, pursuant to Connecticut General Statutes Section 13b-17.

C. Appearances

The respondent appeared through Arif Suhail and was represented by Allen A. Currier, Esq. whose address is 258 Spielman Highway, Post Office Box 2033, Burlington, Connecticut. The respondent's address is 21 Bridge Square, 2nd Floor, Westport, Connecticut.

II. JURISDICTION

The Department of Transportation has the jurisdiction to determine matters dealing with the operation of any motor vehicle in the transportation of household goods for hire as a household goods carrier in the State of Connecticut. Section 13b-407 of the Connecticut General Statutes provides that the Commissioner of Transportation may revoke or suspend any certificate or permit for willful and repeated violations of any of the provisions of the Statutes or regulations governing the industry of transportation of household goods within the State of Connecticut.

III. FINDINGS OF FACT

Household goods moving certificate 120 was issued to Professional Movers LLC through sale and transfer from Jim Fahey d/b/a Jim Fahey Moving and Storage on March 28, 2008. (Connecticut Department of Transportation Decision, Application Number 0801-S-09-HG, March 28, 2008.)

The background of this company was well detailed in the Findings of Facts of the Memorandum of Decision issued by the Honorable Michael Hartmere in the Superior Court at Bridgeport, Connecticut. Those findings are incorporated by reference for the purposes of this Final Decision. See Arif Suhail vs Syed M. Agha, Memorandum of Decision CV09 502-75-28S, Superior Court, J.D. of Fairfield at Bridgeport, October 19, 2010.) Said Memorandum of Decision is attached hereto and made a part hereof as Appendix I.

At its inception, Professional Movers LLC consisted of two members, Arif Suhail and Syed Munir Aga (Agha). The two members worked together for approximately one year, when several problems ensued between the owners of the company. The problems between the owners included Agha diverting the moving business to and operating it from an office in Fairfield, Connecticut.

As a result, Suhail filed a law suit against Agha and requested judicial dissolution of the company known as Professional Movers LLC. After a seven day trial, the court dissolved Professional Movers LLC in accordance with Suhail's request. The Court ordered that the three trucks owned by the dissolved company be transferred to the plaintiff, Suhail. The Court also ordered Suhail to assume the responsibility for any outstanding balance on the note to Jim Fahey (the original transferor of Certificate 120) for the company's purchase.

Thereafter, through counsel in a letter dated November 12, 2010, Suhail advised the Regulatory and Compliance Unit of the court case and of the resulting dissolution. Suhail requested that the Department of Transportation effectuate a transfer and allow Suhail, through his newly formed company, Jim Fahey Moving and Storage LLC, to continue operation under certificate number 120. No

response was forthcoming from the Regulatory and Compliance Unit, other than the instant citation filed against Professional Movers LLC.

Suhail established a new company in the name of Jim Fahey Moving and Storage LLC, which carries commercial auto insurance. Suhail's criminal conviction history shows no record. The company has been operating since Suhail was awarded the assets and liabilities of Professional Movers LLC.

IV. CONCLUSIONS OF LAW

The respondent in this matter was dissolved by order of the superior court, Judicial District of Fairfield at Bridgeport and the assets and liabilities of the company were awarded to Arif Suhail, one of the two members of Professional Movers LLC. Suhail established a new business name and contacted the department, through his attorney, to request that certificate number 120 be reissued in the new name of the business. The request resulted in the citation of the respondent. At the citation hearing the superior court's Memorandum of Decision was introduced into evidence.

Suhail provided evidence showing that he has established a new company named Jim Fahey Moving and Storage LLC which assumed the assets and liabilities of the dissolved company, submitted a criminal conviction history form showing no convictions or criminal record, has provided proof of insurance and a copy of the company's tariff. Professional Movers LLC has been in operation throughout the court proceedings and up to the date of hearing, with no problems.

The former Professional Movers LLC has not violated any statutes or regulations, per se. Only by order of the superior court did the company dissolve. Suhail has attempted in every way to keep the company in operation and has succeeded. Accordingly, certificate number 120 will be issued in the name of Jim Fahey Moving and Storage LLC.

V. ORDER

Based on the forgoing findings and conclusions, Certificate Number 120 is hereby re-issued in the name of Jim Fahey Moving and Storage LLC.

The citation filed by the Regulatory and Compliance Unit of the department is dismissed.

CERTIFICATE NO. 120
TO OPERATE MOTOR VEHICLES FOR THE TRANSPORTATION
OF PROPERTY FOR HIRE AS A MOTOR COMMON CARRIER

Jim Fahey Moving and Storage LLC is hereby permitted and authorized, subject to such regulations and conditions as the department may from time to time prescribe, to transport property for hire as a motor common carrier over irregular routes as follow:

Household goods, within the State of Connecticut, between all points upon calls received at its headquarters in Westport, Connecticut.

RESTRICTIONS:

The certificate holder must accept and transport property, as herein authorized in accordance with its tariff on file with the department, for all persons who desire the service to the extent of the certificate holder's facilities at uniform rates for all similar service.

This certificate cannot be sold or transferred until it has been operational for more than 24 months.

There shall be carried in each vehicle operated under this authority, a copy of the certificate registration receipt issued by the department.

This certificate shall remain in effect until amended, suspended or revoked by the department. Failure of the certificate holder to maintain proper insurance and/or to comply with all pertinent motor vehicle laws and other State statutes and/or rules, regulations and orders of the department shall be considered sufficient cause to amend, suspend or revoke said certificate. This certificate may be transferred only with approval of the department and within the conditions and restrictions contained herein.

Dated at Newington, Connecticut on this the 5th day of January 2011.

CONNECTICUT DEPARTMENT OF TRANSPORTATION



Laila A. Mandour
Staff Attorney III
Administrative Law Unit
Bureau of Finance and Administration

OFFICE OF THE CLERK
SUPERIOR COURT

2010 OCT 21 P 12:23

APPENDIX I
Final Decision
Docket No. 1011-C-98-HG
CV09 502 75 28-S

JUDICIAL DISTRICT OF
FAIRFIELD AT BRIDGEPORT
STATE OF CONNECTICUT SUPERIOR COURT

ARIF SUHAIL : J. D. OF FAIRFIELD
VS : AT BRIDGEPORT
SYED M. AGHA : OCTOBER 19, 2010

MEMORANDUM OF DECISION

On or about September 18, 2009, the plaintiff, Arif Suhail, filed this law suit against the defendant, Syed, M. Agha, seeking, inter alia, a judicial dissolution of the limited liability company Professional Movers, LLC, pursuant to Connecticut General Statutes § 34-207. The defendant filed an answer, special defenses and counterclaim on November 23, 2009, to which the plaintiff filed a reply on December 10, 2009. The plaintiff filed a certificate of closed pleadings dated December 10, 2009. On February 1, 2010, the defendant filed a motion to dismiss counts two through seven of the plaintiff's complaint which included allegations of breach of fiduciary duty, tortious interference, and unjust enrichment. The defendant's motion, based on subject matter jurisdiction, was granted by the court on February 11, 2010. The matter was tried to the court on seven days, or parts thereof, spanning a six week period of time commencing on February 4, 2010. Based on the evidence produced, the court makes the following findings of fact.

RESPONDENT'S EXH. # 1

DATE 12/21/10 FULL I.D.

FINDINGS OF FACT

On November 9, 2007, the parties executed an operating agreement to form a limited liability company entitled "Professional Movers, LLC." (Plaintiff's Exhibit 1).¹ The LLC was formed to purchase a business known as "Jim Fahey Moving and Storage." In December, 2006, the plaintiff had begun negotiations with Jim Fahey, the owner of the business, and was able to reduce the cash needed for the purchase from \$135,000 to \$100,000, \$20,000 of which was to be a note. In order to complete the transaction the plaintiff required an outside party to contribute \$40,000 in cash. When the plaintiff and the defendant began discussing buying the Fahey business, part of the conversation was that the defendant would contribute \$40,000 towards the purchase. The plaintiff and the defendant knew each other because the plaintiff was formerly married to the sister of Nosheen Agha, the defendant's wife. The plaintiff and the defendant's wife had a bitter relationship. During the discussions leading up to the formation of the LLC to purchase the business, the defendant explained to the plaintiff that the \$40,000 representing his contribution would be taken from his wife's Bank of America credit card.

The plaintiff personally handled the applications for and negotiations with the Department of Transportation and bank financing of the additional funds needed for the purchase of the business. The plaintiff expended considerable time in the form of start-up services which he valued at \$40,000, in addition to his cash contribution of \$8,000.

¹ Hereinafter plaintiff's exhibits will be referred to as "PX- -."

In terms of their backgrounds, the plaintiff is better educated than the defendant having received a Bachelors Degree whereas the defendant has the equivalent of an 8th grade education. Each was educated in Pakistan. From 2003 to August of 2008, the plaintiff worked for and managed Three Amigos, a moving, hauling and cleaning company owned by Nosheen Ahga's brother, Shaheen Butt. The defendant was interested in forming an LLC with the plaintiff because the defendant had lost his job or was about to lose his job, and if he was unable to find another way to earn a living, he would be forced to return to Detroit, Michigan.

The plaintiff agreed to accept the defendant as a full and equal partner in the business he planned to purchase subject to the following conditions: (1) that the defendant contribute \$40,000; and (2) that the defendant's wife refrain from any involvement in the business. The defendant borrowed the \$40,000 from his wife which she obtained as a credit card advance. The operating agreement of Professional Movers, LLC which the parties entered on November 7, 2007 (PX 1), provided that each party would be a member and a manager and share in profits, losses and distributions on a 50-50 basis. Section 7.1 of the agreement provided that "Each member shall contribute such cash, property, or services as is set forth in Exhibit B hereto as its share of the Initial Capital Contribution." Section 7.2 of the agreement provides that no member shall be required to make any capital contribution except as set forth in Section 7.1. The agreement defines capital contribution as any agreed contribution to the capital of the company in cash, property or services by a member, whenever made. "Initial Capital Contribution" is defined as the initial contribution to the capital of the company pursuant to this operating agreement as set forth on Exhibit B attached hereto. The attachment

states that the defendant and the plaintiff each contributed \$1,000 to the LLC. Section 6.4 of the operating agreement provides that "Except as may be expressly provided in Article VIII, no Member shall have priority over any other Member or Economic Interest owner either as to the return of Capital Contributions or as to Net Profits, Net Losses or Distributions; provided that this Section shall not apply to repayment of loans (as distinguished from Capital Contributions) which a Member has made to the Company."

Section 5.2 of the operating agreement provided that the company would have initially two managers: the plaintiff and the defendant. Section 5.1 of the agreement concerning management of the Company provides as follows:

The business and affairs of the Company shall be managed by its Managers. The Managers shall direct, manage and control the business of the Company to the best of their ability. Except for situations in which the approval of the Members is expressly required by this Operating Agreement or by non-waiverable provisions of applicable law, the Managers shall have full and complete authority, power and discretion to manage and control the business, affairs and properties of the Company, to make all decisions regarding those matters and to perform any and all other acts or activities customary or incident to the management of the Company's business. At any time where there is one than

one Manager, any one Manager may exercise all of the powers delegated to the Managers herein and may take any action permitted by the Manager, unless the approval of more than one of the Managers is expressly required pursuant to this Operating Agreement.

Section 5.4 of the agreement provides that "The Manager shall not be required to manage the Company as its sole and exclusive function and he may have other business interests and may engage in other activities in addition to those relating to the Company."

Section 5.5 of the agreement provides that "The Manager may from time to time open bank accounts in the name of the Company, and the Manager shall be the sole signatory thereon, unless the Manager determines otherwise."

Finally, Section 8.5 of the agreement provides that "Nothing in this Operating Agreement shall prevent any Member from making secured or unsecured loans to the Company by agreement with the Company."

The LLC began operations on April 8, 2008 with \$88,500 in funds of which the plaintiff contributed \$8,000, the defendant contributed \$40,000 and \$40,500 came from loans from the Newtown Savings Bank. The defendant's wife previously had borrowed \$49,000 from her Bank of America credit card account to prepare for the purchase. The amount of

money borrowed on the credit card included an amount sufficient to make the required monthly payments prior to the closing.

On April 8, 2008, the parties purchased the business known as Jim Fahey Moving and Storage through their newly formed company, utilizing \$80,000 of the funds deposited in Newtown Savings Bank. Although the company was able to attract business, the two principals soon began having difficulties concerning the finances of the LLC. The plaintiff kept monthly records in which he recorded the revenues and expenses of the company, profit and loss, and the amounts paid to the Members. One of the major problems which developed between the parties was the treatment of the initial \$40,000 from the defendant to the company for start up. The plaintiff believed that any distributions to the defendant from company funds in excess of the defendant's share of earnings was either a return of capital or a loan from capital to be repaid. The defendant apparently believed that the distributions were simply a repayment by the company of his wife's personal credit card and neither a return of capital nor a loan. According to the plaintiff's summary of bank statements (PX 5), for the period April 2008 through August 2008, the defendant Agha drew some \$30,600 while the plaintiff drew \$6,076. This was done with the plaintiff's knowledge and permission.

On August 7, 2008, the plaintiff and the defendant submitted an application to the Newtown Savings Bank on behalf of the LLC to obtain a \$20,000 loan in order to open an office in Westport, Connecticut. The parties represented in the application (PX 10) that the funds would be used to establish an office, purchase furniture, a computer and supplies. The

bank granted the loan on the condition that \$5,000 of the proceeds would be used to pay down a portion of the prior loan and that the remaining proceeds of \$15,000 would be available for the company's new office. When the loan proceeds were made available by the bank, the defendant signed a check for \$15,000 made out to himself and removed said funds from the company's control in order to transfer said funds to his wife's use. This was the first time funds were drawn for the defendant's use without the plaintiff's signature on the check. The defendant's total draws from the company totaled \$48,600 as of September 11, 2008. The plaintiff's draw for the same period was \$6,294. The defendant during this time was paying down his wife's credit card balance. Under Section 5.5 of the Operating Agreement each manager was entitled to open bank accounts in the name of the company and could be the sole signatory on such accounts.

The parties continued to work together in the business until April, 2009 when the plaintiff was no longer able to monitor the flow of business and the relevant correlations to income because the defendant, or his wife, redirected all calls to their home phone in Fairfield. Although the plaintiff was able to continue to monitor deposits to the Newtown Savings company account, that contact ended in September, 2009 when the defendant opened a new company account at Peoples Bank in Fairfield without informing the plaintiff. As a consequence thereof, the deposits to the Newtown Savings Bank were discontinued and all funds earned by the company were deposited by the defendant into the Peoples bank account.

No effort to relocate the location of the company's operations from the defendant's residence in Fairfield to a commercial location in Westport occurred because the defendant had used the funds designated to open the Westport office to pay down his wife's credit card balance. According to the Connecticut Department of Transportation, the parties purchased a business that was licensed to operate only in Westport and any change to any other location would require that another application be filed, legal notices be published, and a hearing occur if any objections were received. No application to change the application from Westport to any other location was ever filed. The defendant's wife did change the mailing address of the business from Danbury to the defendant's home in Fairfield.. There was no evidence that the defendant replaced the \$15,000 company funds which had been borrowed from Newtown Savings Bank to establish a Westport office but instead used by the defendant to pay his wife's credit card balance.

Under Section 5.4 of the Operating Agreement, the parties were free to conduct other business and owed no exclusive duty to the company. In this regard, the defendant when questioned about the source of a deposit in February of 2009 to his personal account maintained in Webster Bank stated that the money (\$3,000) was for work performed for Three Amigos, rather than Professional Movers, LLC. The defendant stated that Three Amigos is a hauling and moving company owned by his brother-in-law and that the defendant operates that business from his residence in Fairfield.

On January 10, 2010 the defendant made a payment to himself from company funds in the amount of \$15,300. On the same date the defendant made a payment to himself in the amount of \$6,078.54 and paid off the Bank of America credit card loan in full. The total amount paid by the company to the defendant to make payments on the credit card loan was \$44,019.52.

Due to the complexities of this matter, including language difficulties by the parties and the fact that both the plaintiff and the defendant conducted business using cash with some frequency, exact figures are difficult to ascertain. Each party prepared and kept some form of "business records." Based upon bank deposits from April, 2008 through January, 2010 the defendant drew \$106,744 from the company's accounts, while the plaintiff drew \$41,516. (PX 5).

From early 2009, the parties through their attorneys exchanged correspondence, but no reconciliation or mediation was possible.

CONCLUSIONS OF LAW

Based upon all of the evidence presented, this court concludes that count one of the complaint seeking a dissolution of the LLC is the only viable option. Connecticut General Statutes § 34-207 provides:

"On application by or for a member, the superior court for the Judicial District where the principal office of the limited liability company is located may order dissolution of a limited liability company whenever it is not reasonable practical to

carry on the business in conformity with the articles of organization or operating agreement.”

Connecticut General Statutes § 34-208 provides:

“(a) Except as otherwise provided in writing in the operating agreement, the business and affairs of the limited liability company may be wound up (1) by the members or managers who have authority pursuant to section 34-40 to manage the limited company prior to dissolution or (2) on application of any member or legal representative or assignee, thereof, by the superior court for the judicial district where the principal office of the limited company is located, if one or more of the members or managers of the limited liability company have engaged in wrongful conduct or under other cause shown.

(b) The persons winding up the business affairs of the limited liability company may, in the name of, and on behalf of, the limited liability company: (1) Prosecute and defend suits; (2) settle and close the business of the limited liability company; (3) dispose of and transfer the property of the limited liability company; (4) discharge the liabilities of the limited liability company; and (5) distribute to the members of any remaining assets of the limited liability company.”

The plaintiff conclusively has demonstrated by the testimony and exhibits admitted into evidence that it is not reasonably practical to carry on the business in conformity with the operating agreement. The testimony of the defendant and the defendant's exhibits and testimonial evidence including that of the defendant's wife, support this conclusion. The undisputed facts of this case evidence the unavoidable conclusion that the parties equally own

a company that is deadlocked and cannot operate as intended. The plaintiff seeks a judicial dissolution and the defendant testified that he will never work with the plaintiff again. The parties are deadlocked. *Sanders vs. Firtel*, 293 Conn. 515 (2009).

There is finger pointing between the parties as to the others' conduct. Each party, with some justification, points to the other's use of cash in transacting business. Each accuses the other of playing hard and fast with the rules and with filing misleading documents, including some with the Department of Transportation. Most troublesome to the court is the defendant's conduct in using the proceeds from the \$20,000 loan from Newtown Savings Bank in September, 2008, granted to open an office in Westport, to pay off his wife's credit card debt. That credit card loan now has been paid in full.

The defendant asks the court for a less drastic remedy than dissolution of the company. The defendant requests that the court fashion a less harsh equitable remedy, suggesting a buyout of the interest of the plaintiff, who seeks dissolution, by the defendant. The court declines to attempt to fashion such a remedy in light of the overwhelming evidence supporting dissolution. While neither party is free from fault and each contributed to the conditions warranting dissolution, the plaintiff is entitled to consideration given the weight of the evidence. There was a lack of agreement as to the running of the company from the outset. Likewise, there was a lack of agreement as to the exact nature of the \$40,000 advanced to the LLC by the defendant. The operating agreement gave equal powers to the plaintiff and defendant, the two managers, including check writing and business decisions without

consultation with the other. While clearly the plaintiff did not want the defendant's wife involved in the business given their antagonistic relationship, the defendant's wife was involved from the very beginning, including borrowing the \$40,000 used for the startup expenses for the business, on her credit card.

The plaintiff, however, brought years of prior experience to the business. It was the plaintiff's idea to buy the existing business and he alone did all of the ground work and negotiations with the owner. The plaintiff also completed the necessary paperwork with the Department of Transportation and Newtown Savings Bank for the initial loan.

Based on all of the evidence presented during the trial, the court will find in favor of the plaintiff. Judgment on count one of the complaint will enter.

There was no evidence presented to the court by either party as to the current value of the assets of the LLC. The assets which were the subject of testimony were the three trucks. The three trucks, a 1999 GMC, a 2001 Chevrolet, and a 1987 International, were used as collateral for the startup loan of \$40,500 from Newtown Savings Bank on April 7, 2008. Likewise, no evidence was presented concerning the amount of the outstanding liability on the note to Jim Fahey.

Given the differences in the withdrawal of funds from the LLC by the parties during the operation of the LLC together, the court orders the transfer of the three trucks presently

owned by the company to the plaintiff. Additionally, the plaintiff must assume responsibility for any balance on the note to Jim Fahey which remains outstanding. Finally, any outstanding balance of the loan from Newtown Savings Bank in September, 2008, which was not used for the Westport office startup purposes, is to be assumed by the defendant.

So ordered.


HARTMERE, J.