

Decision 08-07-030 July 31, 2008

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
Leonard James Hearn, Regional
Relocations, LLC (File No: MTR-190415)
for a Household Goods Carrier Permit.

Application 07-12-027
(Filed December 24, 2007)

**DECISION GRANTING THE APPLICATION OF REGIONAL RELOCATIONS,
LLC FOR A HOUSEHOLD GOODS CARRIER PERMIT**

1. Summary

By this decision, we grant the application of Regional Relocations, LLC, for a household goods carrier permit subject to the conditions set forth herein.

This proceeding is closed.

2. Background

In September 2007, Regional Relocations, LLC (Applicant) submitted an application for a household goods carrier permit (permit). Applicant is owned by Leonard James Hearn and Kathleen Phair. By letter dated October 18, 2007, the Director of the Commission's Consumer Protection and Safety Division (CPSD) notified Applicant that the application was denied. CPSD stated that since Hearn was convicted of a serious felony for which he served prison time and is still on supervised release (probation/parole), it would place the public at risk if the permit were issued. Therefore, CPSD determined that it would not be in the public interest to issue the permit.

A prehearing conference was held on February 28, 2008. An Assigned Commissioner's Scoping Memo and Ruling was issued on March 6, 2008

identifying the primary issue and setting a schedule including evidentiary hearings. Subsequently, the parties agreed that there were no issues of fact requiring evidentiary hearings. The parties also agreed that no briefs were necessary. The assigned Administrative Law Judge (ALJ) then cancelled the evidentiary hearings.

3. Central Issue—Fitness to Provide Service

The central issue before the Commission is whether the application should be denied because Hearn is still on probation. CPSD argues it is reasonable and in the public interest to require all applicants to complete all obligations to society imposed on them by any court, including probation, before granting a permit. Since Hearn is still on probation, CPSD recommends denial of the application.

Sections 5101 through 5335 of the Public Utilities Code establish a program for the regulation of household goods carriers.¹ A key element of the Commission's regulatory program is to protect consumers from dishonest, fraudulent, and incompetent movers. Section 5135(f) states that the Commission "shall issue a permit only to those applicants who it finds have demonstrated that they possess sufficient knowledge, ability, integrity and financial resources and responsibility to perform the service within the scope of their application."

Section 5135(e) states that the Commission may refuse to issue a permit "if it is shown that an applicant or an officer, director, partner or associate thereof has committed any act constituting dishonesty or fraud; committed any act which, committed by a permit holder would be grounds for suspension or

¹ All section references are to the Public Utilities Code unless specified otherwise.

revocation of the permit; misrepresented any material fact on the application; or, committed a felony, or crime involving moral turpitude.”

The California Real Estate Commissioner, in granting Hearn a restricted real estate salesperson license, reached the following legal conclusions:

- “By using private shipping companies to unknowingly transport drugs, Respondent employed fraud, deceit and falsehood.”
- “By dealing and distributing illegal drugs, respondent intended to confer financial benefit on himself.”
- “His year-long criminal activity demonstrates a pattern of repeated and willful disregard of the law.”
- “Respondent’s felony conviction for selling and distributing cocaine and heroin involves moral turpitude.”

We concur in the above findings and find that they constitute grounds for denial of the permit.² However, we are not prohibited from granting one.

4. Relevant Prior Decisions

4.1. Decision (D.) 01-10-006

D.01-10-006 concerned an applicant who had a felony conviction for burglary in 1992, and a felony conviction for possession of narcotics in 1993. The applicant was released from prison to a three-year parole in 1994 and discharged from parole in 1995. The applicant’s record showed no other arrests or

² The California Real Estate Commissioner’s decision is discussed in more detail later in this decision.

convictions after completion of parole. The applicant did not reveal his criminal record in his application, but the Commission found that this was a reasonable misinterpretation of the application form that was subsequently revised to avoid such misinterpretation. The California Department of Motor Vehicles issued the applicant a motor carrier permit in early 2001, under which the applicant may haul freight. We adopted a settlement between the applicant and the Consumer Services Division, a predecessor to CPSD, which provided for issuance of a household goods carrier permit for a term of two years subject to specified conditions. This decision is not a precedent because it was a settlement, but is informative as to what might be done.

4.2. D.01-09-044

D.01-09-044 concerned an applicant who had been convicted in 1987 of possession of narcotics with intent to sell. The applicant had pleaded no contest to the charges and served three years probation. In addition, the applicant failed to reveal his criminal record in the permit application. We found that the applicant's more recent conduct (including his successful completion of probation) demonstrates a pattern of compliance with the criminal laws of this state. We also found that the applicant's failure to reveal his criminal record in the permit application was not sufficient grounds for denial of the application. Therefore, we instructed our staff to issue a permit upon a showing that the applicant meets all other applicable requirements.

4.3. Discussion

The above decisions are informative as to our options regarding this application. The decisions indicate that a prior criminal history is not an absolute bar to our granting of a permit. In addition, D.01-10-006 indicates that issuance of a permit for a limited period subject to specified conditions is an option.

5. Hearn's Qualifications

Hearn revealed his criminal record in his application. He was convicted in 1989 of seven counts relating to conspiracy to possess cocaine and heroin with intent to distribute and use of a business to do so. He was sentenced to 235 months in prison. He had no prior criminal record.

On November 17, 2000, the United States Court for the Eastern District of Tennessee at Knoxville reduced the sentence to 210 months.³ In doing so, the court stated:

“In short, the court is extremely impressed with the defendant's work ethic and achievements, his efforts to educate himself, his participation in the Jericho Road Youth Counseling Program, his efforts to be a good father and role model for his daughter, and his positive influence on other inmates. It appears that the defendant takes a sincere interest in assisting other individuals. The court finds that the defendant's rehabilitation has been extraordinary when compared to other defendants and that his case rests outside the heartland of cases.”

In October 2002, Hearn was released on parole until October 31, 2011. He began working as a paralegal and continues to do so.

In May 2004, Hearn applied for a real estate salesperson license. On September 27, 2005, a hearing on his application was held before an ALJ with the Office of Administrative Hearings.

The ALJ's proposed decision was dated October 12, 2005.⁴ In the decision, the ALJ went through Hearn's record and activities since his release.

³ *United States of America v. Leonard J. Hearn*, No. 3:88-cr-49.

⁴ In the Matter of the Application of Leonard J. Hearn, Respondent, OAH No. L-2005070886 in Case No. H-32020 LA.

The ALJ concluded:

“Lastly, Respondent’s crime occurred 17 years ago – a long time has passed since then. Respondent was released in October 2000 and has shown tremendous effort to lead a respectable life in the community for the past three years. While respondent’s crime was reprehensible, his efforts to change his life for the better have demonstrated rehabilitation sufficient to warrant a restricted license. Because Respondent’s efforts have all taken place within the time he was incarcerated or on supervised release, it is necessary to restrict Respondent’s license through and sufficiently beyond his probationary period.”

The ALJ’s proposed order granted a restricted license and stated that Hearn would not be eligible to apply for an unrestricted license for nine years.

The restrictions included the following:

- The Real Estate Commissioner may by appropriate order suspend the license if Hearn is convicted of a crime substantially related to his fitness or capacity as a licensee, or receipt of evidence that he has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.
- Hearn must provide a signed statement by the real estate broker who employs him, and any subsequent employing brokers, that the broker has read the decision that is the basis for issuance of the restricted license and that the broker will carefully review all transaction documents prepared by Hearn and closely supervise him.

On November 9, 2005, the California Real Estate Commissioner issued a decision adopting the ALJ's Proposed Decision.⁵

Hearn is a member of the Southland Regional Association of Realtors. As a realtor, he is also a keyholder which gives him permission to enter residential and commercial properties that are for sale or rent.

Since July 2007, Hearn has worked for Ace Relocation Systems, Inc., a branch of Atlas Moving and Storage, as a driver frequently supervising a team of up to six men. In September 2007, he made employee of the month "For doing more, doing it better and always exceeding our expectations."⁶

With his application, Hearn provided copies of reference letters from:

Kevin Casey, General Manager Ace Relocation Systems, Inc.;
Betty R. Marsden, Broker/Owner, BR Marsden and Associates;
Michael Salemi;
Gloria Wells;
Kathleen D. Phair;
Earnest Hearn; and
Sharon I. Hearn.

Casey and Marsden are Hearn's employers. Salemi is his landlord. Wells is a friend who has known him personally and professionally for over 20 years. Phair is part owner of Applicant and a friend who has known Hearn personally and professionally since 2003. Earnest Hearn is his brother. Sharon I. Hearn is his sister-in-law who has known him for 20 years.

Subsequently, Hearn provided character reference letters from:

⁵ In the Matter of the Application of Leonard James Hearn, Respondent, No. H-32020 LA, L-2005070886. The decision was effective November 29, 2005.

⁶ See Attachment 6 to the application.

Rhonda C. Allen;
Catherine Elder;
John Connors; and
Jeffery L. Smith.

Allen is a friend who has known Hearn for over 30 years. Elder is Hearn's sister. Connors is a coworker at Ace Relocations Systems, Inc. Smith is a friend who has known Hearn for over 16 years.

6. Discussion

The record shows that Hearn has made significant efforts to rehabilitate and improve himself while in prison and since his release. This, combined with the fact that we have granted permits to applicants with prior criminal records tends to support granting a permit. However, Hearn is still on parole. Thus, his efforts at rehabilitation have been while he was incarcerated or on parole. The record contains no evidence of his behavior without such supervision. This was recognized in the ALJ's decision regarding his application for a real estate salesperson license that led to the granting of a restricted license. The restrictions imposed on Hearn's real estate salesperson license will apply until late 2014, approximately three years after the scheduled end of his parole period.

We have not issued a permit to a person on parole and, as a general practice, we would not do so because we would have no evidence of the applicant's actions or character without such supervision. However, this application presents an unusual situation.

The record demonstrates that Hearn has made exceptional efforts towards rehabilitation. But for the fact that he is on parole, we would have no reservations about issuing a permit. However, the record does not contain any information on Hearn's behavior without the supervision provided under his parole. Thus, it is reasonable to accumulate some experience with Hearn after

his parole concludes before issuing an unrestricted permit. Therefore, we will grant a permit with conditions until January of 2015.

The first condition addresses the circumstances under which we would suspend or revoke the permit.⁷ If Hearn were to be involved in criminal activities, it would be inappropriate for Applicant to continue to have a permit. Therefore, we will suspend the permit if he is indicted for a criminal offence. Additionally, it would be appropriate to revoke the permit if he is convicted of a criminal offence or has his parole revoked and we will do so.

The second condition concerns Applicant's compliance with the rules and regulations applicable to a permit holder. Such compliance is relevant to Applicant's fitness to have a permit. Therefore, if the Commission issues an Order Instituting Investigation regarding Applicant, we will suspend the permit. Whether the permit is revoked would be addressed in the investigation.

The third condition concerns Applicant's treatment of its customers. We will require Applicant to submit a quarterly report to the Director of CPSD listing the name, address, telephone number, and date of each customer who filed a claim for loss and/or damage.⁸ The report shall also describe the nature and date of Applicant's response to each customer's claim, in accordance with

⁷ As we use the term in this proceeding, suspension of the permit would mean that Hearn would have to immediately cease operations until the reason for the suspension is resolved. Hearn would be allowed to complete any move that is physically in progress so that the customer will not be disadvantaged.

⁸ The report is required whether Applicant is an independent carrier or a sub-hauler. For any quarter in which Applicant is not in operation, it must file a quarterly report and state therein that it was not in operation.

the requirements of Maximum Rate Tariff 4.⁹ CPSD may specify the format of the quarterly report.

7. Comments on Proposed Decision

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. No comments were filed.

8. Assignment of Proceeding

Timothy Alan Simon is the assigned Commissioner and Jeffrey P. O'Donnell is the assigned ALJ in this proceeding.

9. Categorization and Need for Hearings

In Resolution ALJ 176-3206, dated January 10, 2008, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. Although CPSD protested the application, there are no issues of fact requiring hearings. Given these developments, a public hearing is not necessary, and it is not necessary to disturb the preliminary determinations.

Findings of Fact

1. In September 2007, Applicant submitted an application for a permit.
2. Applicant is owned by Leonard James Hearn and Kathleen Phair.
3. By letter dated October 18, 2007, the CPSD Director notified Applicant that the application was denied.

⁹ Maximum Rate Tariff 4 contains rates and rules for the transportation of used household goods over public highways in California by household goods carriers.

4. Hearn is on probation.

5. Section 5135(f) states that the Commission “shall issue a permit only to those applicants who it finds have demonstrated they possess sufficient knowledge, ability, integrity and financial resources and responsibility to perform the service within the scope of their application.”

6. Section 5135(e) states that the Commission may refuse to issue a permit “if it is shown that an applicant or an officer, director, partner or associate thereof has committed any act constituting dishonesty or fraud; committed any act which, committed by a permit holder would be grounds for suspension or revocation of the permit; misrepresented any material fact on the application; or, committed a felony, or crime involving moral turpitude.”

7. As discussed herein, there are grounds for denying the application.

8. The record demonstrates that Hearn has made exceptional efforts towards rehabilitation.

Conclusions of Law

1. The Commission may issue a household goods carrier permit to an applicant owned all or in part by a person on probation.

2. A permit should be issued to Applicant subject to the conditions set forth herein.

3. Hearings are not necessary.

O R D E R

IT IS ORDERED that:

1. The Commission’s Consumer Protection and Safety Division (CPSD) shall issue a Household Goods Carrier Permit (permit) to Regional Relocations, LLC (Applicant), upon completion of the other requirements for such permit not

specifically addressed herein, and subject to Applicant's filing of a written acceptance of the conditions imposed herein.

2. Applicant's written acceptance of the conditions imposed herein shall be filed no later than 60 days after the effective date of this decision.

3. In addition to the requirements otherwise imposed on all holders of a permit, the permit shall be subject to the conditions listed in Ordering Paragraphs 3-8.

4. Applicant shall submit a quarterly report to the Director of CPSD listing the name, address, telephone number, and date of each customer who filed claim for loss and/or damage as provided for in Maximum Rate Tariff 4. The report shall also describe the nature and date of Applicant's response to each customer's claim. The first quarterly report shall be due January 15, 2009. Quarterly reports shall be due on the 15th day of January, April, July and October of each year. The last report shall be due January 15, 2015. In the event the Commission is closed on any of the dates specified in this order, the date shall be the next day the Commission is open for business.

5. Failure to submit the quarterly report on time shall be, at the Commission's sole discretion, sufficient grounds for suspension of the permit.

6. The permit shall be suspended if Hearn is indicted for a criminal offence.

7. The permit shall be revoked if Hearn is convicted of a criminal offence or has his supervised release, also called probation or parole, revoked.

8. If the Commission issues an Order Instituting Investigation regarding Applicant, the order shall include suspension of the permit.

9. Suspension or revocation of the permit shall be by written order of the Commission.

10. The conditions on Applicant's permit, other than those imposed on all holders of a permit, shall terminate on January 16, 2015, provided Applicant has satisfied all of the requirements of Ordering Paragraph 3 and the permit had not been suspended. Otherwise, the conditions shall continue subject to further order of the Commission.

11. Application 07-12-027 is closed.

This order is effective today.

Dated July 31, 2008, at San Francisco, California.

MICHAEL R. PEEVEY

President

DIAN M. GRUENEICH

JOHN A. BOHN

RACHELLE B. CHONG

TIMOTHY ALAN SIMON

Commissioners