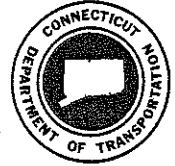


File

STATE OF CONNECTICUT
DEPARTMENT OF TRANSPORTATION



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DOCKET NO. 0609-N-75-HG AND DOCKET NO. 0706-TR-79-HG

RE:APPLICATION OF SIMON GAGNON MOVING & STORAGE, INC. TO OPERATE MOTOR VEHICLES IN THE TRANSPORTATION OF HOUSEHOLD GOODS FOR HIRE, AS A HOUSEHOLD GOODS CARRIER OVER IRREGULAR ROUTES, BETWEEN ALL POINTS IN CONNECTICUT UPON CALLS RECEIVED FROM A HEADQUARTERS IN SOUTHWINGTON, CONNECTICUT.

FINAL DECISION

July 3, 2007

I. INTRODUCTION

A. Application

By application filed on August 22, 2006, in accordance with Section 13b-389 of the Connecticut General Statutes, Simon Gagnon Moving & Storage, Inc. (hereinafter "applicant" or "Simon Gagnon"), located at 100 Smoron Court, Southington, seeks authorization from the Connecticut Department of Transportation (hereinafter "department") to operate motor vehicles in the transportation of household goods for hire, as a household goods carrier over irregular routes, between all points in Connecticut from a headquarters in Southington, Connecticut.

During the hearing, the applicant was ordered to submit a sale and transfer application with the supporting documentation. This application filed with the Regulatory and Compliance Unit and assigned Docket No. 0706-TR-79-HG. Both applications are herein consolidated. This decision incorporates both applications - for new authority and transfer of authority.

B. Hearing

Pursuant to Connecticut General Statutes Section 13b-390, a hearing on this application was held at the administrative office of the department, in Newington, Connecticut on May 1, 2007.

Notice of the application and of the hearing to be held thereon was given to the applicant and to other parties as required by General Statutes Section 13b-390. Legal notice to the public was given by publication in the Record Journal, a newspaper having a circulation in the area of concern.

The matter was heard by a hearing officer designated by the Commissioner of Transportation pursuant to General Statutes Section 13b-17.

C. Appearances

The applicant appeared through Robin Leduc, the applicant's owner and was represented by Franklin G. Pilicy, of the Law Office of Franklin G. Pilicy, P.C. located at 365 Main Street, Watertown, Connecticut.

Sheldon Lubin, public utilities examiner for the department, was present at the hearing.

After due notice to the parties in interest, no opposition was filed to the application.

II. FINDINGS OF FACT

1. Simon Gagnon Moving, Inc. has been in operation since 1936 under household moving certificate number 26.
2. In mid-July 2002, the owners of Simon Gagnon Moving, Inc. sold the company, through stock transfer, to Robin Leduc.
3. Robin Leduc has been in the moving business for 20 years. He owns several moving companies in Connecticut.
4. Dennis and Elaine Gagne, transferors of Simon Gagnon Moving, Inc., did not seek approval from the department for the transfer.
5. The insurance filing for Simon Gagnon Moving, Inc. was due in 2004 and 2005.
6. The department did not receive any insurance filings for Simon Gagnon Moving, Inc. in 2003 and 2004.
7. Michael Abacherli, Simon Gagnon's insurance agent, testified that he, personally, filed the insurance documentation for 2003 and 2004.
8. The insurance documentation was filed with the Department of Motor Vehicles, but erroneously, not with the Department of Transportation.
9. On February 23, 2004 Simon Gagnon was cited by the Department of Transportation for failure to file insurance documentation.
10. Simon Gagnon failed to respond to the citation because it did not receive its mail since it moved after the transfer was effectuated in 2002.
11. A hearing on the citation was held by the Department of Transportation on March 23, 2004. The company failed to appear and certificate number 26, in the name of Simon Gagnon Moving, Inc., was revoked.
12. In early 2005, Leduc was advised by Sheldon Lubin, utilities examiner with the Regulatory & Compliance Unit of the Department of Transportation, that Simon Gagnon's certificate was revoked due to its failure to file insurance documentation.
13. Prior to the 2004 revocation, Leduc had no citations or incidents with his moving companies.
14. Based on information from Lubin, Leduc ceased the moving portion of Simon Gagnon Moving, Inc. but maintained its storage operations and attempted to get

the company's certificate re-instated.

15. On January 25, 2006 Leduc sent by fax to Lubin copies of the insurance filings in question (for 2004 and 2005 -- with the proper fax dates of 2004 and 2005).

16. Leduc's attempts at reinstatement were unsuccessful. Leduc was advised that it would be easier to apply for new authority.

17. On August 22, 2006, the Simon Gagnon, Inc. filed an application for new household goods moving authority.

18. Based on the fact that the stock transfer from Dennis and Elaine Gagne to Robin Leduc was not approved by the department, the department did not recognize Leduc as the owner of Simon Gagnon Moving, Inc.

19. Based on the fact that the department did not know of the stock transfer and that Leduc did not notify the department of the company's change of address, the department mail was sent to the address of record, which was not the company's Southington, Connecticut address.

20. On June 7, 2007, the Simon Gagnon Moving, Inc. filed with this hearing officer an application for the transfer of authority from Dennis and Elaine Gagne, an affidavit attesting that Leduc does not know the whereabouts of the Dennis and Elaine Gagne, an executed agreement for the sale of stock, a list of equipment to be transferred, a criminal conviction form for Leduc and financial documentation.

21. Simon Gagnon Moving, Inc. changed its name with the Connecticut Secretary of the State's Office to Simon Gagnon Moving & Storage, Inc. on April 6, 2006.

22. Simon Gagnon Moving & Storage, Inc. has a mailing address of 100 Smoron Court, Southington, Connecticut.

23. Simon Gagnon Moving & Storage, Inc. estimates its repairs and maintenance at approximately \$3,000 to \$4,000 per year for two straight box trucks, property taxes for the two trucks are \$250 per year, with the insurance premium of \$7,363. Each of the box trucks has a market value of \$6,000.

24. The criminal conviction history form for Robin Leduc, the owner/manager of the company, shows that in 1995, Leduc was arrested for driving under the influence, for which Leduc lost his license for 90 days and after a probationary period, the charge was dismissed.

25. Simon Gagnon has a client base that it established over the past 60 years for local moves.

26. No opposition was filed to the application for new service, after due notice to all parties of interest and notice to the public.

III. DEPARTMENT ANALYSIS AND CONCLUSIONS OF LAW

The Department of Transportation has jurisdiction over any person operating any motor vehicle in the transportation of household goods for hire as a household goods carrier pursuant to Section 13b-389 of the Connecticut General Statutes. Further, no person shall operate as a household goods carrier within Connecticut without first obtaining a certificate of public convenience and necessity to so operate.

In determining whether such a certificate shall be granted, the Commissioner of Transportation shall take into consideration the existing motor transportation facilities and the effect upon them of granting such a certificate, the public need for the proposed service, the suitability of the applicant, the financial responsibility of the applicant, the ability of the applicant efficiently to perform the service for which the authority is requested, the condition of and effect upon the highways involved and the safety of the public using such highways, pursuant to Section 13b-392 of the General Statutes.

This matter, however, brings with it an unusual situation and set of facts. The history of this case is as follows:

Simon Gagnon Moving, Inc. was established in 1936 and began operating under Certificate No. 26. This company was purchased by Robin Leduc in 2002. The insurance filing for household goods movers, Form E, was due in 2003 and 2004. A notice was sent to the company that the Form E was due. The notice was returned to the department by the post office. The notice was not received by the respondent. A citation hearing was scheduled on March 23, 2004 and Simon Gagnon Moving, Inc.'s certificate of public convenience and necessity was revoked on March 24, 2004 for failing to file a Form E and for failure to obey the order of the department by failing to appear at the citation hearing. See In the Matter of the Citation of Simon Gagnon Moving Company, Inc., Department of Transportation Final Decision Docket No. 0312-C-31-HG (March 24, 2004).

In 2005, Sheldon Lubin, with the Regulatory and Compliance Unit, who began as the overseer of insurance filings for household goods movers, became aware that the applicant in this matter had lost its operating authority. Lubin contacted the applicant (because he was aware that Simon Gagnon's owner owned other household goods moving companies). Lubin advised Robin Leduc, Simon Gagnon Moving, Inc.'s owner that household goods moving Certificate No. 26 was revoked.

As a result of the conversation with Lubin, Leduc ceased the moving portion of its operation. Leduc attempted to speak to Regulatory & Compliance personnel

regarding reinstatement of Certificate No. 26.

On January 23, 2006 Simon Gagnon Moving, Inc. sent a facsimile to Sheldon Lubin which included the insurance filings for the years in question (appropriately dated by fax in 2004 and 2005). However, because the certificate was revoked, the insurance filings were not accepted. Leduc was advised to reapply for a new household goods authority, for which the instant hearing is being held.

Research of the permanent records for Certificate No. 26 showed that the mailing address of record with the department was not the same as the current address that Leduc provided for the company. When Leduc was made aware of the differences in address he testified that he purchased the company, through stock transfer, on July 31, 2002 from Dennis and Elaine Gagne. Neither the transferor nor the transferee filed an application for transfer of the company. Moreover, when transferee, Robin Leduc, moved the company, he failed to notify the department of the company's new address, thereby causing official mail from the department to be returned to the department because it was undeliverable as addressed.

The applicant argues that it has been trying to reinstate its certificate and it is only because the department did not have the proof of a Form E (insurance) filing that the applicant was cited and lost its certificate. However, a closer look at this case shows that the applicant has failed, on several counts, to keep the department informed of its actions.

Section 16-304-F2 of the Regulations of Connecticut State Agencies provides in pertinent part:

"Transfer of a certificate or permit may not be accomplished until (1) Application for such transfer has been made to the commission on the commission-prescribed form; (2) the transferor of intrastate authority has demonstrated that he is performing a reasonable service under his certificate or permit as is required by the commission's regulations; (3) the commissioner has issued its approval of the terms and conditions of the proposed transfer of an intrastate authority, and has determined that the transferee can reasonably meet the statutory standards prescribed for an application for commission authority; (4) the commission has reissued the certificate or permit in the name of the transferee."

In addition to the above, the applicant failed to notify the department of a change in its address, which would not have been an issue had the company been transferred in accordance with the statutory requirements. Section 16-304-F3 of the Regulations requires that each carrier notify the commission in writing of any change of address within forty-eight hours of such change. This was not done by the applicant. Reasonably, when Simon Gagnon Moving, Inc. did not respond to the department's inquiries, its certificate was revoked.

Although it is clear that Leduc did not contact or have communication with the department relative to the transfer of the company, it is also clear that neither did the transferor contact the department to ensure a proper transfer.

Leduc and Sheldon Lubin both testified that Leduc has been in communication with the department since 2005 and Leduc has been attempting to have the company's certificate reinstated. Leduc was advised by the department to apply to the department for new household goods moving authority because doing so would be the easiest way to resume the company's business. For that reason the instant hearing is being held.

Based on the above, and in light of the notice that was provided to all household goods movers within the area of concern, and because no opposition was filed, this matter will be considered as a request for transfer. The company filed its application for transfer along with the supporting documentation.

During the hearing, the requirements of suitability were satisfied along with the financial wherewithal to operate this moving business. The company's reinstatement will have no negative effect on the existing motor transportation facilities or the condition of, or effect on, the highways. The company has been in operation for the past 60 years, with an established client base that it has built over those 60 years.

Accordingly, household goods moving Certificate of public convenience and necessity No. 26, originally standing in the name of Simon Gagnon Moving, Inc., will be reinstated in the name of Simon Gagnon Moving & Storage, Inc. in accordance with the Connecticut Secretary of the State's filing.

IV. ORDER

Pursuant to Sections 13b-389(a) and 13b-391 of the Connecticut General Statutes and Section 16-304-F2 of the Regulations of Connecticut State Agencies, the application of Simon Gagnon Moving, Inc. is hereby approved based on the foregoing reasons and Certificate No. 26 is hereby reinstated and re-issued in the name of Simon Gagnon Moving & Storage, Inc. as follows:

CERTIFICATE NO. 26

TO OPERATE MOTOR VEHICLES FOR THE TRANSPORTATION OF HOUSEHOLD GOODS FOR HIRE AS A HOUSEHOLD GOODS CARRIER

Simon Gagnon Moving & Storage, Inc. 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 household goods common carrier over irregular routes as follow:

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

PRE-REGISTRATION REQUIREMENT:

Simon Gagnon Moving & Storage, Inc. must file with the Administrative Law Unit of the Department of Transportation proof that the bank accounts for the company are in the proper name of "Simon Gagnon Moving & Storage, Inc." within 15 days from the date of this final decision.

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.**

This final decision constitutes notice in accordance with Connecticut General Statutes Section 4-182(c).

Dated at Newington, Connecticut, on this the 3rd day of July 2007.

CONNECTICUT DEPARTMENT OF TRANSPORTATION



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