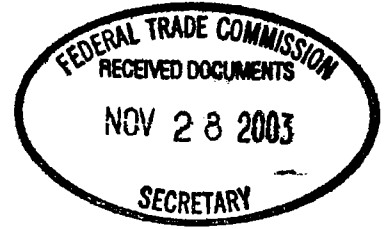


UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION



In the Matter of)
)
)

KENTUCKY HOUSEHOLD)
GOODS CARRIERS)
ASSOCIATION, INC.,)
)

a corporation.)
)

Docket No. 9309

**RESPONDENT'S RESPONSE TO
COMPLAINT COUNSEL'S REQUESTS FOR ADMISSIONS**

Pursuant to the Federal Trade Commission ("FTC") Rules of Practice for Adjudicative Proceedings § 3.32, and the Scheduling Order issued in this matter, Respondent Kentucky Household Goods Carriers Association, Inc. ("KHGCA") hereby responds to Complaint Counsel's Request for Admissions.

DEFINITIONS

For the purpose of this Response to Complaint Counsel's Request for Admissions, the following definitions apply:

- A. "Kentucky Household Goods Carriers Association" or "KHGCA" means the Kentucky Household Goods Carriers Association, Inc., its directors, officers, employees, committees, boards, offices, departments, chapters, and affiliates.
- B. "KYDVR TARIFF NO.5" means the Kentucky Household Goods Carriers Association tariff applicable to Kentucky intrastate traffic issued 3-1-88 with an effective date of 4-1-88 and all supplements thereto.

**RESPONSES TO REQUESTS
FOR ADMISSIONS**

1. Admit that each document produced to Commission staff by Respondent during the investigation (Part II) (KEN-*Assoc*-0000001 - 0001003) and/or litigation (Part III) (KHGCA 0001-10256) phases of this matter (a "Respondent Document") is authentic, genuine, and a true and correct copy of what it purports to be.

Response: Admits.

2. Admit that each Respondent Document was prepared and kept in the regular course of business by Respondent.

Response: Admits.

3. Admit that each document produced to Commission staff by the Kentucky Transportation Cabinet during the investigation (Part II) (KEN-ST-0000001 - 0000118) and/or litigation (Part III) (KTC 0001 - 2318) phases of this matter (a "State Document") is authentic, genuine, and a true and correct copy of what it purports to be.

Response: Admits.

4. Admit that each State Document was prepared and kept in the regular course of business by the Kentucky Transportation Cabinet.

Response: Admits.

5. Admit that each document produced to Respondent by Complaint Counsel from the Oregon Draymen & Warehousemen's Association (ORE-*Assoc*-0000001 - 0001377) (an "Oregon Draymen Document") is authentic, genuine, and a true and correct copy of what it purports to be.

Response: Denies.

6. Admit that each Oregon Draymen Document was prepared and kept in the regular course of business by the Oregon Draymen & Warehousemen's Association.

Response: Denies.

7. Admit that each document produced to Respondent by Complaint Counsel from the Oregon Department of Transportation (ORE-ST-0000001 - 0000018) (an "Oregon State Document") is authentic, genuine, and a true and correct copy of what it purports to be.

Response: Denies.

8. Admit that each Oregon State Document was prepared and kept in the regular course of business by the Oregon Department of Transportation.

Response: Denies.

9. Admit that the document attached in Appendix A constitutes KYDVR TARIFF NO.5 (KHGCA 6931-7054).

Response: Admits.

10. Admit that Respondent caused KYDVR TARIFF NO.5 to be prepared.

Response: Admits.

11. Admit that Respondent caused KYDVR TARIFF NO.5 to be published.

Response: Admits.

12. Admit that Respondent provides a copy of proposed supplements to Respondent's KYDVR TARIFF NO.5 to all of the participating carriers listed in Appendix B (to provide the participating carriers the opportunity to request rates different than those contained in the supplement) prior to the time Respondent submits that supplement to the Division of Motor Carriers of the Department of Vehicle Regulation of the Kentucky Transportation Cabinet. (*See e.g.* KHGCA 4734)

Response: Denies; except that respondent provides docket containing information to be included in supplement to all participating carriers; carriers have 10 days to request changes; this procedure occurs prior to submission of supplement to KTC.

13. Admit that Respondent caused KYDVR TARIFF NO.5 to be filed with the Division of Motor Carriers of the Department of Vehicle Regulation of the Kentucky Transportation Cabinet.

Response: Admits.

14. Admit that Respondent's KYDVR TARIFF NO.5, inclusive of its supplements, is presently in effect.

Response: Admits.

15. Admit that the participating carriers listed in Appendix B are members of KHGCA. (KHGCA 6935-47).

Response: Admits.

16. Admit that Respondent's KYDVR TARIFF NO.5 contains rates and charges for the intrastate and local transportation of household goods for the participating carriers listed in Appendix B.

Response: Admits.

17. Admit that the participating carriers listed in Appendix B have authorized Respondent to file with the Division of Motor Carriers of the Department of Vehicle Regulation of the Kentucky Transportation Cabinet the rates contained in Respondent's KYDVR TARIFF NO.5.

Response: Admits.

18. Admit that the participating carriers listed in Appendix B are required to charge the rates contained in Respondent's KYDVR TARIFF NO.5.

Response: Admits.

19. Admit that the participating carriers listed in Appendix B have collectively established the rates contained in Respondent's KYDVR TARIFF NO.5.

Response: Denies; rates are established by KTC.

20. Admit that the participating carriers listed in Appendix B have agreed to have Respondent submit to the Division of Motor Carriers of the Department of Vehicle Regulation of the Kentucky Transportation Cabinet the rates contained in Respondent's KYDVR TARIFF NO.5.

Response: Admits.

21. Admit that Respondent files KYDVR TARIFF NO.5. with the Division of Motor Carriers of the Department of Vehicle Regulation of the Kentucky Transportation Cabinet with the knowledge and understanding that, unless the rates are disapproved, the participating carriers listed in Appendix B will charge the rates contained in Respondent's KYDVR TARIFF NO.5.

Response: Denies; except to the extent that Respondent is aware that its member carriers are required to comply with applicable laws and regulations.

22. Admit that Respondent's activities with respect to KYDVR TARIFF NO.5. constitute "formulating and filing collective motor carrier rates" as that term is used in *In Re New England Motor Rate Bureau, Inc.*, 112 F.T.C. 200, 263 (1989) (*overturned on other grounds, New England Motor Rate Bureau v. FTC*, 908 F.2d 1064 (1st Cir. 1990)).

Response: Deny; except Respondent reserves the right to admit after examination of these cases.

23. Admit that on or about October 13, 1999 Respondent, on behalf of its members (through its Board of Directors), agreed to seek a 10% increase in the transportation rates and charges then in effect in Sections II and VI of KYDVR TARIFF NO.5. (See KHGCA 0295-96).

Response: Admit; Supplement No. 61; effective date 01/01/01; contained 10% increase in rates and charges in Sections II and VI of Tariff.

24. Admit that on or about October 11, 2000 Respondent, on behalf of its members (through its Board of Directors), agreed to seek an 8% increase in the intrastate transportation rates and charges then in effect in Sections II and VI of KYDVR TARIFF NO.5. (See KHGCA 0330-32).

Response: Admit; Supplement No. 66; effective 01/01/01; contained 8% increase in rates and charges in Sections II and VI of Tariff.

25. Admit that all participating carriers listed in Appendix B, except Hammond-Pennyrile Mov/Stg. Co., Inc., have authorized Respondent to file with the Division of Motor Carriers of the Department of Vehicle Regulation of the Kentucky Transportation Cabinet a provision in KYDVR TARIFF NO.5 that defines "peak" and "off-peak" as running from May 15th through September 30th.

Response: Admit; except that only "peak rates" apply from 05/15 to 09/30.

26. Admit that under the terms of KYDVR TARIFF NO.5 all participating carriers listed in Appendix B, except Hammond-Pennyrile Mov/Stg. Co., Inc., define their "peak" and "off-peak" season as running from May 15th through September 30th.

Response: Admit; except that carriers define only "peak" season as running from 05/15 to 09/30.

27. Admit that under the terms of KYDVR TARIFF NO.5 all participating carriers listed in Appendix B, except Hammond-Pennyrile Mov/Stg. Co., Inc., have collectively established their "peak" and "off-peak" season as running from May 15th through September 30th.

Response: Deny; tariff provision established by KTC; "peak" season only established as 05/15 to 09/30

28. Admit that under the terms of KYDVR TARIFF NO.5 all participating carriers listed in

Appendix B, except Hammond-Pennyryle Mov/Stg. Co., Inc., have agreed to have Respondent submit to the Division of Motor Carriers of the Department of Vehicle Regulation of the Kentucky Transportation Cabinet a provision that defines their "peak" and "off-peak" as running from May 15th through September 30th.

Response: Deny; Pennyryle exception filed in Supplement No. 42; effective 04/01/96.

29. Admit that Respondent files KYDVR TARIFF NO.5 with the Division of Motor Carriers of the Department of Vehicle Regulation of the Kentucky Transportation Cabinet with the knowledge and understanding that all participating carriers listed in Appendix B, except Hammond-Pennyryle Mov/Stg. Co., Inc., define their "peak" and "off-peak" season as running from May 15th through September 30th, unless that provision is disapproved.

Response: Deny; only "peak" season is defined as indicated; except to extent that Respondent is aware that its member carriers are required to comply with applicable laws and regulations.

30. Admit that under the terms of KYDVR TARIFF NO.5, with the exception of movers Planes Moving and Storage, Inc. and CLA Enterprises, dba Moves Are Us, all participating carriers listed in Appendix B have authorized Respondent to file with the Division of Motor Carriers of the Department of Vehicle Regulation of the Kentucky Transportation Cabinet the rate of \$134.70 to move an automobile.

Response: Admit.

31. Admit that under the terms of KYDVR TARIFF NO.5, with the exception of movers Planes Moving and Storage, Inc. and CLA Enterprises, dba Moves Are Us, all participating carriers listed in Appendix B are required to charge the rate of \$134.70 to move an automobile.

Response: Admit

32. Admit that under the terms of KYDVR TARIFF NO.5, with the exception of movers Planes Moving and Storage, Inc. and CLA Enterprises, dba Moves Are Us, all participating carriers listed in Appendix B have collectively set the rate of \$134.70 to move an automobile.

Response: Denied; rates are set by KTC.

33. Admit that under the terms of KYDVR TARIFF NO.5, with the exception of movers Planes Moving and Storage, Inc. and CLA Enterprises, dba Moves Are Us, all participating carriers listed in Appendix B have agreed to have Respondent submit to the Division of Motor Carriers of the Department of Vehicle Regulation of the Kentucky Transportation Cabinet the rate of \$134.70 to move an automobile.

Response: Deny

34. Admit that Respondent files KYDVR TARIFF NO.5 with the Division of Motor Carriers of the Department of Vehicle Regulation of the Kentucky Transportation Cabinet with the knowledge and understanding that all participating carriers listed in Appendix B, with the exception of movers Planes Moving and Storage, Inc. and CLA Enterprises, dba Moves Are Us, will charge \$134.70 to move an automobile, unless that rate is disapproved.

Response: Denied; except to the extent that Respondent is aware that its member carriers are required to comply with applicable law and regulations.

35. Admit that under the terms of KYDVR TARIFF NO.5, with the exception of movers Planes Moving and Storage, Inc. and CLA Enterprises, dba Moves Are Us, all participating carriers listed in Appendix B have authorized Respondent to file with the Division of Motor Carriers of the Department of Vehicle Regulation of the Kentucky Transportation Cabinet the rate of \$84.15 to move jet skis.

Response: Admit

36. Admit that under the terms of KYDVR TARIFF NO.5, with the exception of movers Planes Moving and Storage, Inc. and CLA Enterprises, dba Moves Are Us, all participating carriers listed in Appendix B are required to charge the rate of \$84.15 to move jet skis.

Response: Admit to the extent that applicable law and regulations require carriers to comply with the Tariff.

37. Admit that under the terms of KYDVR TARIFF NO.5, with the exception of movers Planes Moving and Storage, Inc. and CLA Enterprises, dba Moves Are Us, all participating carriers listed in Appendix B have collectively set the rate of \$84.15 to move jet skis.

Response: Denies; rates are set by KTC.

38. Admit that under the terms of KYDVR TARIFF NO.5, with the exception of movers Planes Moving and Storage, Inc. and CLA Enterprises, dba Moves Are Us, all participating carriers listed in Appendix B have agreed to have Respondent submit to the Division of Motor Carriers of the Department of Vehicle Regulation of the Kentucky Transportation Cabinet the rate of \$84.15 to move jet skis.

Response: Denies.

39. Admit that Respondent files KYDVR TARIFF NO.5 with the Division of Motor Carriers

of the Department of Vehicle Regulation of the Kentucky Transportation Cabinet with the knowledge and understanding that all participating carriers listed in Appendix B, with the exception of movers Planes Moving and Storage, Inc. and CLA Enterprises, dba Moves Are Us, will charge \$84.15 to move jet skis, unless that rate is disapproved.

Response: Denies.

40. Admit that each of the following firms has authorized Respondent to file with the Division of Motor Carriers of the Department of Vehicle Regulation of the Kentucky Transportation Cabinet the intrastate transportation rates contained in Section II-B of KYDVR TARIFF NO.5:

A-1 Equipped Veteran's Mov/Stg., Inc.

Howard Ball Mov/Stg.

Carl Boyd, dba Harrison Movers

Brentwood Properties, LLC, dba Brentwood Mov/Stg.

Clark's Moving Co. dba Clarks Moving

Dahlenburg Trucking Co., Inc.

Ecton Movers, Inc.

Fallon Mov/Whsg.

Hall's Mov. Serv., Inc.

Hardin Mov/Del. Svc.

Shelby Hedger

H & O Transport, Inc.

Miller Mov/Stg., Inc.

Moyers Transfer, dba Leeman M. Moyer

Odle Movers (Robert Sadler, dba)

Paducah Mov/Stg.

T. Peavler Mov. Sys., LLC

Sexton & Sons Mov/Stg., Inc.

Stevens Van Lines, Inc., dba Stevens Worldwide Van Lines

Whitis & Whitis, Inc., dba William H. Johnson Mov/Stg.

June Webb

Kimberley June Webb & Sharon Kay Webb (Webb Mov/Stg., dba).

Response: Admit

41. Admit that the carriers listed in Request for Admission number 40 are required to charge the intrastate transportation rates contained in Section II-B of KYDVR TARIFF NO.5.

Response: Admit

42. Admit that the carriers listed in Request for Admission number 40 have collectively set the intrastate transportation rates contained in Section II-B of KYDVR TARIFF NO.5.

Response: Denied; proposals are made by KHGCA; rates are set by KTC.

43. Admit that the carriers listed in Request for Admission number 40 have agreed to have Respondent submit to the Division of Motor Carriers of the Department of Vehicle Regulation of the Kentucky Transportation Cabinet the intrastate transportation rates contained in Section II-B of KYDVR TARIFF NO.5.

Response: Admit

44. Admit that Respondent files KYDVR TARIFF NO.5 with the Division of Motor Carriers of the Department of Vehicle Regulation of the Kentucky Transportation Cabinet with the knowledge and understanding that the carriers listed in Request for Admission number 40 will charge the intrastate transportation rates contained in Section II-B of KYDVR TARIFF NO.5, unless those rates are disapproved.

Response: Denied; except to the extent that Respondent is aware of the obligation of its member carriers to comply with applicable laws and regulations.

45. Admit that in preparing and filing KYDVR TARIFF NO.5, Respondent, its members, its officers and directors, initiated, prepared, developed, and took other actions to establish and maintain collective rates and charges relating to the transportation of household goods between points within Kentucky.

Response: Denied.

46. Admit that in preparing KYDVR TARIFF NO.5, Respondent, its members, its officers and directors entered into an agreement which hindered, restrained, restricted, suppressed or eliminated competition among household goods movers for the transportation of household goods between points within Kentucky.

Response: Denied.

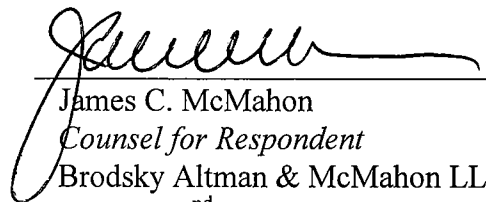
47. Admit that Respondent, its members, its officers and directors, on occasion, by holding meetings of its board of directors, its general membership, and its tariff committee, initiated, organized, coordinated, and conducted meetings or provided a forum for the agreement among competing carriers relating to the rates and charges for the transportation of household goods between points within Kentucky.

Response: Denied.

47. Admit that Respondent, its members, its officers and directors on occasion, by holding meetings of its board of directors, its general membership, and its tariff committee, influenced its members to raise their rates, charge the same or uniform rates, or to participate in collectively set rates relating to the transportation of household goods between points within Kentucky.

Response: Denied.

Respectfully submitted,



James C. McMahon
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Dated: November 28, 2003

CERTIFICATE OF SERVICE

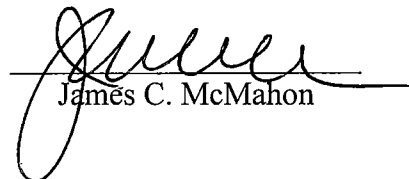
This is to certify that on November 26, 2003, I caused a copy of the attached **Respondent's Response to Complaint Counsel's Request for Admissions** to be served upon the following persons by fax and U.S. First Class Mail:

Hon. D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

Hon. Richard Dagen
Associate Director
Federal Trade Commission
601 New Jersey Ave., N.W.
Room 6223
Washington, DC 20580

Dana Abrahamsen, Esq.
Bureau of Competition
Room 5229
Federal Trade Commission
601 New Jersey Avenue, N.W.
Washington, D.C. 20580

Dated: New York, NY
November 26, 2003


James C. McMahon