

ORIGINAL

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION



In the Matter of)
)
)

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

a corporation.)
)

Docket No. 9309

**COMPLAINT COUNSEL'S RESPONSE TO
RESPONDENT'S FIRST REQUEST FOR ADMISSIONS**

Pursuant to Section 3.35 of the Federal Trade Commission's Rules of Practice, 16 C.F.R. § 3.35, Complaint Counsel hereby respond to Respondent's First Request for Admissions. Complaint Counsel timely submit these responses within ten (10) days after service.

General Objections

The following general objections apply to each of Respondent's requests for admission:

1. Complaint Counsel object to Respondent's First Request for Admissions ("Respondent's Request") on the ground of timeliness. Though Respondent's counsel may have provided the Office of the Secretary with Respondent's Request by the deadline of October 31, 2003, Complaint Counsel were never served and had no knowledge that Respondent's counsel intended to issue any Request for Admissions. Additionally, because Respondent's counsel did not provide a copy of the Respondent's Request to the Administrative Law Judge ("ALJ") on or by October 31, Respondent's Request was not file-stamped by the October 31 deadline. Respondent's counsel provided a second copy of the Respondent's Request (substantively the same as the First Set) to the ALJ and the Office of the Secretary on November 17, 2003, and upon serving the ALJ, Respondent's Request was first file stamped on that day – seventeen (17) days after the October 31 deadline. However, Complaint Counsel did not receive Respondent's Request until late on November 19, 2003. (See Declaration of Dana Abrahamsen, Addendum to Complaint Counsel's Response to Respondent's First Set of Interrogatories.)

2. Complaint Counsel object to Respondent's Request to the extent that it is excessively broad and burdensome.

3. Complaint Counsel object to Respondent's Request on the grounds that it is vague, ambiguous, and uncertain. Notwithstanding these objections, Complaint Counsel have responded to the Request as they understand and interpret them. Complaint Counsel reserve the right to amend or supplement their responses should Respondent assert a different interpretation of the Request.

4. Complaint Counsel's discovery and investigation in this matter are continuing. Although Complaint Counsel undertake no obligation to supplement any of these responses, Complaint Counsel reserve the right to assert additional objections as appropriate, and to amend or supplement these objections and responses as necessary.

5. Complaint Counsel object to Respondent's Request to the extent that it calls for the disclosure of material protected by one or more of the following privileges: attorney-client privilege, work product privilege, and law enforcement investigatory records privilege.

Responses to Request for Admissions

Complaint Counsel have followed the definitions outlined in Respondent's First Request for Admissions. Any reference to Interrogatories and Responses to Interrogatories corresponds to Complaint Counsel's Responses to Respondent's First Set of Interrogatories. Complaint Counsel object to each and every request on the basis of the general objections stated above. Without waiving these general objections, Complaint Counsel provide the following answers:

REQUEST FOR ADMISSION #1

You have no knowledge of any harm suffered by any person as the result of the Kentucky Association's submission of proposed Tariff rates, charges, or other items to the Kentucky Transportation Cabinet.

RESPONSE: Deny, subject to the response and objections raised in Response to Interrogatory #1.

REQUEST FOR ADMISSION #2

You have no knowledge of any harm by any person as the result of any conduct alleged in the Complaint.

RESPONSE: Deny, subject to the response and objections raised in Response to Interrogatory #2.

REQUEST FOR ADMISSION #3

You have no knowledge of any claim by any person alleging economic harm by reason of a rate, charge, or other item contained in the Tariff.

RESPONSE: Deny, subject to the response and objections raised in Response to Interrogatory #3.

REQUEST FOR ADMISSION #4

You have no knowledge of any complaint or claim by any governmental agency or subdivision arising out of or in any way connected to the conduct alleged in the Complaint.

RESPONSE: Admit, subject to the response and objections raised in Response to Interrogatory #4.

REQUEST FOR ADMISSION #5

You have no evidence that the rates established by KTC for the intrastate transportation of household goods in the Tariff are greater or different than such rates would be in the absence of the Tariff.

RESPONSE: Deny, subject to the response and objection raised in Response to Interrogatory #5.

REQUEST FOR ADMISSION #6

You have no evidence of any agreement among members of the Kentucky Association including, without limitation, any agreement to charge the rates and charges contained in the Tariff.

RESPONSE: Deny, subject to the response provided in Response to Interrogatory #6.

REQUEST FOR ADMISSION #7

You have no evidence that KTC has failed to actively supervise the program of rate regulation which is the subject of the Kentucky Association's State Action Defense.

RESPONSE: Deny, subject to the response provided in Response to Interrogatory #7.

REQUEST FOR ADMISSION #8

You have no evidence that any person has ever read a newspaper advertisement or other notice regarding tariff rates published in connection with any proceeding before the Oregon Department of Transportation.

RESPONSE: Admit, subject to the response and objection raised in Response to Interrogatory #8.

REQUEST FOR ADMISSION #9

You have no evidence of the revenues charged or collected by Kentucky Association Members in connection with Kentucky intrastate transportation services which are listed in and/or subject to the Tariff.

RESPONSE: Admit, subject to the response in Response to Interrogatory #9.

REQUEST FOR ADMISSION #10

At no time have you communicated with KTC in an effort to bring about any changes in the KTC regulation of household goods movers.

RESPONSE: Deny, subject to the response and objections raised in Response to Interrogatory #10.

REQUEST FOR ADMISSION #11

You have communicated with representatives of the Commonwealth of Kentucky and/or KTC in connection with this proceeding.

RESPONSE: Admit, subject to the response and objection raised in Response to Interrogatory #11.

REQUEST FOR ADMISSION #12

You are opposed to the intervention of KTC in this proceeding.

RESPONSE: Deny, subject to the response and objections raised in Response to Interrogatory #12.

REQUEST FOR ADMISSION #13

You have conducted no investigation of intrastate collective ratemaking by household goods movers in States other than OR, KY, AL, MN, MS, and IA within the last five (5) years.

RESPONSE: Deny, subject to the response and objections raised in Response to Interrogatory #13.

REQUEST FOR ADMISSION #14

You have communicated with no Member of the Kentucky Association or any person associated with any such Member in connection with this proceeding or the investigation which preceded it.

RESPONSE: Deny, subject to the response and objection raised in Response to Interrogatory #14.

REQUEST FOR ADMISSION #15

You intend to put an end to collective ratemaking activity in Kentucky by movers.

RESPONSE: Deny, subject to Response to Interrogatory #15. For further response, see the contemplated relief outlined in the Complaint.

REQUEST FOR ADMISSION #16

You have conducted no investigation which would disclose the harm to the Kentucky moving public which would result from the granting of the relief sought in the Complaint.

RESPONSE: Deny, subject to the response and objections raised in Response to Interrogatory #16.

Respectfully submitted,



Dana Abrahamsen
Counsel Supporting the Complaint
Bureau of Competition
Federal Trade Commission
Washington, D.C. 20580
(202) 326-2096
Facsimile (202) 326-3496

Dated: December 2, 2003

CERTIFICATE OF SERVICE

This is to certify that on December 2, 2003, I caused a copy of the attached Complaint Counsel's Response to Respondent's First Request for Admissions to be served upon the following persons by facsimile, U.S. Mail or Hand-Carried:

The Honorable D. Michael Chappell
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

James C. McMahon
Brodsky, Altman & McMahon, LLP
60 East 42nd Street, Suite 1540
New York, NY 10165-1544
(212) 986-6905 *facsimile*

James Dean Liebman, Esquire
Liebman and Liebman
403 West Main Street
Frankfort, Kentucky 40601
(502) 226-2001 *facsimile*



Dana Abrahamsen