

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

In the Matter of)
)
)
 KENTUCKY HOUSEHOLD)
 GOODS CARRIERS)
 ASSOCIATION, INC.,)
)
 a corporation.)
)

Docket No. 9309

**REPLY MEMORANDUM OF RESPONDENT KENTUCKY
HOUSEHOLD GOODS CARRIERS ASSOCIATION, INC.
IN SUPPORT OF MOTION FOR SUMMARY DECISION**

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TABLE OF AUTHORITIES

FEDERAL CASES

California Retail Dealers Association v. Midcal Aluminum, Inc., 445 U.S. 97
(1980).....6,7.

F.T.C. v. Ticor Title Insurance Co., 504 U.S. 621 (1992)6,7

U.S. v. Southern Motor Carriers Rate Conference, 467 F. Supp. 471 (N.D. Ga.,
(1979).....7

I. INTRODUCTION

The headings and subject matter of this Reply Memorandum follow the headings and respond to claims and arguments raised in corresponding sections of “Complaint Counsel’s Memorandum in Opposition to Respondent’s Motion for Summary Decision” (hereinafter referred to as “CCM”).

Complaint Counsel’s claim that “[the] movers in the Kentucky Association agree upon what price will be charged to consumers” [CCM; p.1] finds no basis in the record in this proceeding. The rates charged by members of the Kentucky Association are established by the Kentucky Transportation Cabinet based on proposals submitted by the Kentucky Association.

Complaint Counsel’s suggestion that state officials “passively observe and rubber-stamp the rates agreed-upon by the movers” [CCM; page 1] is tantamount to a suggestion of untruthfulness on the part of the State official who offered deposition testimony in this proceeding - - a suggestion appearing throughout Complaint Counsel’s opposition which should be disregarded in its entirety due to, among other things, Complaint Counsel’s failure to develop a factual record which would support such a finding.

II. LEGAL STANDARD FOR SUMMARY DECISION

The evidence identified in Respondent’s motion papers clearly confirms the availability of the “State Action Defense” to Respondent and Complaint

Counsel has failed to come forward with evidence which suggests that the defense is not available in this proceeding.

III. FACTUAL BACKGROUND

Respondent's motion papers conclusively establish that KTC has designated William Debord, a regulatory professional with thirty (30) years of experience in matters pertaining to the regulation of intrastate household goods carriers in Kentucky, as a person who reviews "the substance of the tariffs" [CCM; page 3]; collects business data, protects the public interest in reviewing rates, and actively supervises the Kentucky Association in its tariff filing activities. Complaint Counsel's assertions to the contrary are unsupported.

A. Kentucky Household Goods Carriers Association

The Kentucky Association does not set rates, collective or otherwise; only KTC can do this.

There is no evidence that the Kentucky Association has applied "pressure" on any member with regard to rates; Complaint Counsel developed no testimony or evidence to support this absurd allegation.

B. Kentucky Statutes Regarding Household Goods Carriers

A simple reading of the Kentucky statutes and regulations described in Respondent's motion papers and Complaint Counsel's Opposition discloses that the statutes themselves contain the standards required to be met by rates. KTC

has the responsibility to comply with those standards; KTC has designated a representative to do so. This is consistent with the requirements of F.T.C. v. Tigor Title Insurance Co., 504 U.S. 621 (1992) and California Retail Liquor Dealers Association v. Midcal Aluminum, Inc., 445 U.S. 97 (1980).

C. State Supervision

Tigor and Midcal do not require hearings.

Tigor and Midcal do not require written decisions.

Tigor and Midcal do not require “formal economic analysis” of a type that satisfies the undisclosed standards of federal agencies.

Tigor and Midcal do not require KTC to subject itself to arbitrary requirements invented by Complaint Counsel.

Complaint Counsel’s reference to a letter written by the Kentucky Association’s local counsel, unfamiliar with antitrust proceedings, has been disavowed by both Respondent’s President and its Counsel in this proceeding. It is not evidence in this proceeding, was written prior to its commencement, and should be disregarded on this motion [CCM; pp.7-8]

Neither Ticor nor Midcal addresses the commitment of resources by the State. [CCM; p.8]

The record demonstrates that KTC receives data which it believes is sufficient to achieve its regulatory purpose. [CCM; p. 10]

IV. LEGAL DISCUSSION

Complaint Counsel's Memorandum contains repeated reference to the District Court Decision in U.S. v. Southern Motor Carriers Rate Conference, 467 F. Supp. 471, *aff'd*, 702 F. 2d 543 (5th Cir., 1983), *rev'd*, 471 U.S. 48 (1985). By the time this pre-*Midcal*/pre-*Ticor* case reached the Supreme Court, as Complaint Counsel quietly notes at their fifth citation of the case, "***THE GOVERNMENT CONCEDED THAT PRONG TWO OF MIDCAL WAS MET.*** . . ." [emphasis added][CCM; p.22] In other words, the Government *conceded* that "active supervision" was present in the case, leaving the Supreme Court to decide on the principal issue - - whether the federal antitrust laws required that applicable state law *compel* a motor carrier to publish rates through a rate bureau in order to succeed on a claim of antitrust immunity.

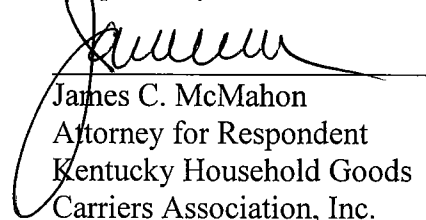
References to Southern Motor Carriers, as well as to the other judicial and administrative decisions raised by Complaint Counsel, have no application in this proceeding where Ticor and Midcal provide the only applicable legal standard.

V. CONCLUSION

For all the foregoing reasons, Respondent respectfully requests that its motion for summary decision dismissing the complaint be in all respects granted, and that the Administrative Law Judge grant such other and further relief as shall be appropriate.

Dated: New York, NY
January 23, 2004

Respectfully submitted,



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CERTIFICATE OF SERVICE

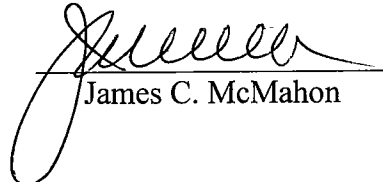
This is to certify that on January 21, 2004, I caused a copy of the attached **Reply Memorandum in Support of Respondent's Motion for Summary Decision** to be served upon the following persons by U.S. Express Mail:

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Dated: New York, NY
January 21, 2004


James C. McMahon