

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

COMMISSIONERS:

**Timothy J. Muris, Chairman
Sheila F. Anthony
Mozelle W. Thompson
Orson Swindle
Thomas B. Leary**

In the Matter of)	
)	
)	
KENTUCKY HOUSEHOLD)	Docket No. 9309
GOODS CARRIERS)	
ASSOCIATION, INC.,)	
)	
a corporation.)	
)	

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act (15 U.S.C. § 41, et seq.) and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Kentucky Household Goods Carriers Association, Inc. (hereinafter sometimes referred to as “respondent” or “KHGCA”), a corporation, has violated and is now violating the provisions of Section 5 of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges as follows:

NATURE OF THE CASE

This matter concerns horizontal agreements among competing household goods movers that, through respondent, file tariffs for intrastate moving services in Kentucky. The tariffs contain collective rates that participating movers charge consumers for moving services. Through these tariffs, the participating movers engage in a horizontal agreement to fix prices for their services.

RESPONDENT AND ITS MEMBERS

PARAGRAPH 1. Respondent Kentucky Household Goods Carriers Association, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of Kentucky, with

its office and principal place of business located at P.O. Box 22204, Louisville, Kentucky 40252.

PARAGRAPH 2. Respondent is an association organized for and serving its members' interests, including their economic interests, by promoting, fostering, and advancing the household goods moving industry in Kentucky. One of the primary functions of respondent is the initiation, preparation, development, dissemination, and filing with the Kentucky Transportation Cabinet's Division of Motor Carriers of tariffs and supplements thereto on behalf of and as agent for its members. Said tariffs and supplements contain rates and charges for the intrastate and local transportation of household goods and for related services, including, among other things, transporting bulky articles; packing cartons and crates; and extra charges for elevator, stair, and long distance carrying of items. (For purposes of this complaint, the term "tariff" means the publication stating the rates of a carrier for the transportation of property between points within Kentucky, including updates, revisions, and/or amendments, including general rules and regulations.)

PARAGRAPH 3. Pursuant to Kentucky state law, each household goods mover is required to file a tariff with the Division of Motor Carriers containing the carrier's rates, fares, or charges for the intrastate transportation of household goods. By Kentucky law, a household goods mover is not permitted to charge a rate, fare, or charge different from those contained in its tariff or supplements thereto once the Division of Motor Carriers has accepted it.

PARAGRAPH 4. Members of respondent are engaged, among other things, in the business of providing transportation and other services for compensation as household goods movers between points within Kentucky. Except to the extent that competition has been restrained as herein alleged, members of respondent have been and are now in competition among themselves and with other household goods movers.

PARAGRAPH 5. The membership of KHGCA consists of approximately 93 household goods movers that conduct business within Kentucky. KHGCA members receive compensation for intrastate and local moves. KHGCA's Tariff Committee conducts KHGCA's tariff-related activities. The control, direction and management of KHGCA are vested in the directors and the President, the Vice President, the Secretary, and the Treasurer.

JURISDICTION

PARAGRAPH 6. The acts and practices of respondent set forth in Paragraph 7 have been and are now in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, as amended, and respondent is subject to the jurisdiction of the Federal Trade Commission. Among other things, the aforesaid acts and practices:

- (A) Affect the flow of substantial sums of money from the federal government, business, and other private parties to the respondent's members for rendering transportation services, which

money flows across state lines;

(B) Affect the purchase and use of equipment and other goods and services by respondent's members that are shipped in interstate commerce;

(C) Include the use of the United States mail and other instruments of interstate commerce in furthering the agreements described below; and

(D) Are supported by the receipt of dues and fees for publications and services from out-of-state members and others.

THE CHALLENGED CONDUCT

PARAGRAPH 7. For many years and continuing up to and including the date of the filing of this complaint, respondent, its members, its officers and directors, and others have agreed to engage, and have engaged, in a combination and conspiracy, an agreement, concerted action or unfair and unlawful acts, policies and practices, the purpose or effect of which is, was, or may be to unlawfully hinder, restrain, restrict, suppress or eliminate competition among household goods movers in the intrastate Kentucky household goods moving industry.

Pursuant to, and in furtherance of, said agreement and concert of action, respondent, its members and others have engaged and continue to engage in the following acts, policies, and practices, among others:

(A) Initiating, preparing, developing, disseminating, and taking other actions to establish and maintain collective rates, with the purpose or effect of fixing, establishing, stabilizing or otherwise tampering with rates and charges for the transportation of household goods between points within Kentucky;

(B) Participating in and continuing to participate in the collectively set rates;

(C) Filing collectively set rates with the Division of Motor Carriers; and

(D) Initiating, organizing, coordinating, and conducting meetings or providing a forum for any discussion or agreement among competing carriers concerning or affecting rates charged or proposed to be charged for the intrastate transportation of household goods; or otherwise influencing its members to raise their rates, charge the same or uniform rates, or participate or continue to participate in the collectively set rates.

PARAGRAPH 8. The acts and practices of respondent, its members and others, as alleged in Paragraph 7, have had and are now having the effects, among others, of:

- (A) Raising, fixing, stabilizing, pegging, maintaining, or otherwise interfering or tampering with the prices of household goods moves;
- (B) Restricting, restraining, hindering, preventing, or frustrating price competition in the household goods moving industry; and
- (C) Depriving consumers of the benefits of competition.

THE VIOLATION CHARGED

PARAGRAPH 9. The acts, policies and practices of respondent, its members and others, as herein alleged, were and are to the prejudice and injury of the public and constituted and constitute unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended. The acts and practices, as herein alleged, are continuing and will continue in the absence of the relief herein requested.

Notice

Notice is hereby given to the Respondent that the eighth day of October, 2003, at 10:00 a.m., or such later date as determined by an Administrative Law Judge of the Federal Trade Commission, is hereby fixed as the time and Federal Trade Commission offices, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, as the place when and where a hearing will be had before an Administrative Law Judge of the Federal Trade Commission, on the charges set forth in this complaint, at which time and place you will have the right under the FTC Act to appear and show cause why an order should not be entered requiring you to cease and desist from the violations of law charged in the complaint.

You are notified that the opportunity is afforded to you to file with the Commission an answer to this complaint on or before the twentieth (20th) day after service of it upon you. An answer in which the allegations of the complaint are contested shall contain a concise statement of the facts constituting each ground of defense; and specific admission, denial, or explanation of each fact alleged in the complaint or, if you are without knowledge thereof, a statement to that effect. Allegations of the complaint not thus answered shall be deemed to have been admitted.

If you elect not to contest the allegations of fact set forth in the complaint, the answer shall consist of a statement that you admit all of the material facts to be true. Such an answer shall constitute a waiver of hearings as to the facts alleged in the complaint and, together with the complaint, will provide a record basis on which the Administrative Law Judge shall file an initial decision containing

appropriate findings and conclusions and an appropriate order disposing of the proceeding. In such answer, you may, however, reserve the right to submit proposed findings and conclusions under § 3.46 of the Commission's Rules of Practice for Adjudicative Proceedings and the right to appeal the initial decision to the Commission under § 3.52 of said Rules.

Failure to answer within the time above provided shall be deemed to constitute a waiver of your right to appear and contest the allegations of the complaint and shall authorize the Administrative Law Judge, without further notice to you, to find the facts to be as alleged in the complaint and to enter an initial decision containing such findings, appropriate conclusions, and order.

The ALJ will schedule an initial prehearing scheduling conference to be held not later than 14 days after the last answer is filed by any party named as a Respondent in the complaint. Unless otherwise directed by the ALJ, the scheduling conference and further proceedings will take place at the Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Room 532, Washington, D.C. 20580. Rule 3.21(a) requires a meeting of the parties' counsel as early as practicable before the prehearing scheduling conference, and Rule 3.31(b) obligates counsel for each party, within 5 days of receiving a Respondent's answer, to make certain initial disclosures without awaiting a formal discovery request.

Notice of Contemplated Relief

Should the Commission conclude from the record developed in any adjudicative proceedings in this matter that respondent's conduct violated Section 5 of the Federal Trade Commission Act as alleged in the complaint, the Commission may order such relief as is supported by the record and is necessary and appropriate, including but not limited to:

1. Requiring respondent to cease and desist from preparing, developing, disseminating or filing a proposed or existing tariff that contains collective rates for the intrastate transportation of property or other related services, goods or equipment.
2. Requiring respondent to cease and desist from providing information to any carrier about rate changes considered or made by any other carrier employing the publishing services of respondent prior to the time at which such rate changes become a matter of public record.
3. Requiring respondent to cease and desist from inviting, coordinating or providing a forum (including maintaining any rate or tariff committee) for any discussion or agreement between or among competing carriers concerning rates charged or proposed to be charged by carriers for the intrastate transportation of property or related services, goods or equipment.

4. Requiring respondent to cease and desist from suggesting, urging, persuading or in any way influencing members to charge, file or adhere to any existing or proposed tariff provision which affects rates, or otherwise to charge or refrain from charging any particular price for any services rendered or goods or equipment provided.
5. Requiring respondent to cease and desist from preparing, developing, disseminating or filing a proposed or existing tariff containing automatic changes to rates charged by two or more carriers.
6. Requiring respondent to cancel all tariffs and any supplements thereto on file with the state that establish rates for transportation of property or related services, goods or equipment.
7. Requiring respondent to cancel those provisions of its articles of incorporation, by-laws and procedures, tariff service agreements and every other rule that has the purpose or effect of permitting, announcing, explaining or agreeing to any business practice enjoined by the terms of any order, and to amend its by-laws to require members to observe the provisions of any order.
8. Requiring respondent to make public, in a manner likely to reach as many members as possible, the nature of the relief ordered by the Commission.
9. Such additional relief as is necessary to correct or remedy the violations alleged in the complaint.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this eighth day of July, 2003, issues its complaint against KHGCA.

By the Commission.

Donald S. Clark
Secretary

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