

**BEFORE THE DIRECTOR
DEPARTMENT OF CONSUMER AFFAIRS
BUREAU OF HOUSEHOLD GOODS AND SERVICES
STATE OF CALIFORNIA**

In the Matter of the Citation Against:

WBN HOME DESIGN, INC.,

KARA P. KELLY, CEO/CFO/DIRECTOR

Case No.: HHM-2020-59

OAH Case No.: 2021080748

Respondent.

DECISION AND ORDER

The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted by the Director of the Department of Consumer Affairs as the Decision in the above-entitled matter.

This Decision shall become effective on April 27, 2022.

It is so ORDERED March 22, 2022.



RYAN MARCROFT
Deputy Director
Legal Affairs Division
Department of Consumer Affairs

**BEFORE THE
DEPARTMENT OF CONSUMER AFFAIRS
FOR THE BUREAU OF HOUSEHOLD GOODS AND SERVICES
STATE OF CALIFORNIA**

In the Matter of the Citation Against:

**WBN HOME DESIGN, INC.; KARA P. KELLY,
CEO/CFO/DIRECTOR, Respondent.**

Agency Case No. HHM 2020-59

OAH No. 2021080748

PROPOSED DECISION

Chris Ruiz, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on January 10, 2022.

Seth A. Curtis, Deputy Attorney General, represented Oliver Manila (complainant or Manila), a Special investigator for the Department of Consumer Affairs, Bureau of Household Goods and Services (Bureau).

Anthony B. Gordon, Esq., of Gordon & Gordon, APC, represented WBN Home Design, Inc. (WBN) and Kara P. Kelly (Kelly), Chief Executive Officer (CEO), the Chief Financial Officer (CFO), and Director of WBN (collectively, respondent).

Testimony and documents were received into evidence. The record closed and the matter was submitted for decision on January 10, 2022.

FACTUAL FINDINGS

Jurisdictional Matters

1. WBN is a "contents restoration" business, as indicated in its Statement of Information, filed with the Secretary of State (exhibit 2). WBN's facility is located in the city of Sun Valley. Kelly serves as WBN's CEO, COO, and Director.

2. On May 27, 2021, complainant issued a citation to WBN, pursuant to Business and Professions Code (Code) section 19237, subdivision (a), alleging that WBN operated a restoration company which transported a homeowner's household goods from his residence to WBN's storage facility without holding a Bureau-issued permit. Complainant alleges that WBN's actions required a Bureau-issued permit, which WBN does not hold. The citation included a \$2,000 fine.

3. WBN does not hold a license issued by the Bureau or the California Public Utilities Commission (PUC).

4. On June 22, 2021, WBN requested an administrative hearing to dispute the citation.

5. All jurisdictional requirements have been met.

The Applicable Law

6. On July 1, 2018, the "Household Movers Act" (Act) became operative. The Act is stated in Business and Professions Code (Code) sections 19225 through 19294.

7. Code section 19237 provides, in pertinent part, that a household mover shall not engage in the business of the transportation of used household goods and

personal effects by motor vehicle over any public highway in this state, unless that household mover holds Bureau-issued permit.

The Complaint of Homeowner Bill Starkov

INITIAL CONTACT BETWEEN HOMEOWNER AND WBN

8. In September 2018, Bill Starkov (homeowner) suffered water damage in his home, which is located in the city of Tarzana.

9. In February 2019, respondent's personnel met with homeowner to discuss inventorying his household goods. The underlying circumstances regarding how the parties met is in dispute. Homeowner contends that respondents misrepresented that they were sent by AAA Insurance Company, his homeowner's insurance company. Respondent contends that homeowner solicited their restoration services.

THE TRANSPORT OF HOMEOWNER'S HOUSEHOLD GOODS

10. WBN personnel packed homeowner's household goods, which were transported to WBN's facility for restoration and storage. Homeowner's household goods are presently in WBN's possession. Homeowner and WBN are embroiled in litigation, which is not relevant to this proposed decision

11. Shortly after his first meeting with WBN personnel, homeowner testified that WBN transported his household goods to WBN's facility. Homeowner was not present at his residence when his household goods were transported by WBN. Homeowner testified that he received a phone call from his neighbor, during evening hours, informing him stated that the contents of his house were being placed on trucks for transport.

12. WBN contends the evidence presented did not establish that WBN transported homeowner's household goods over public highways. However, WBN acknowledged packing homeowner's household goods for transport. It was also established that homeowner's household goods were transported to WBN's facility, and that WBN remains in possession of homeowner's goods

13. Kelly testified that WBN performed the packing of homeowner's household goods for transport. However, she denied that WBN transported homeowner's household items to WBN's facility. Instead, Kelly contended that she used a subcontractor to transport homeowner's goods. However, Kelly did not provide a bill for transporting homeowner's goods from a subcontractor, nor did she know the name of the subcontractor. Kelly's testimony on this issue was not supported by any other evidence, such as a bill from the subcontractor for transporting homeowner's goods and was not credible.

14. Given the established facts, circumstances, and evidence presented, it was established that WBN transported homeowner's goods.

15. The route which WBN used to transport homeowner's goods to WBN's facility was not established.

The Bureau's Prior Contact with WBN

16. Prior to July 1, 2018, the California Public Utilities Commission (PUC) was responsible for issuing permits to household movers operating in California (see Finding 6). However, beginning on July 1, 2018, the Bureau became responsible for issuing permits to household movers.

17. In November 2019, the Bureau issued an "Industry Advisory" (exhibit 11) entitled "Moving Household Goods – Who is Required to Hold a Permit?" which stated that restoration companies that move household goods, as part of the restoration process, is required to obtain a Bureau-issued permit.

18. On March 9, 2020, Manila contacted Kelly regarding a prior complaint filed by another WBN customer, Keith Shane (Shane). While investigating Shane's complaint, Manila advised Kelly that WBN, as a restoration company which transports household goods, is considered a household mover and is required to hold a permit issued by the Bureau. Kelly disputed Manila's advice, stating the PUC previously informed her that WBN was not considered a "household mover" as described in Code sections 19237, subdivision (a), and 19225.5, subdivision (h), and therefore, WBN was previously not required to obtain a household mover permit. Manila provided Kelly with the November 2019 Industry Advisory, as detailed in Finding 17, which stated that restoration companies must obtain a household mover permit. Kelly stated that she would have her legal team review the law and licensing requirements. Manila followed-up with emails to Kelly on June 12, 2020, and May 19, 2021, in an attempt to convince Kelly to apply for a permit. Kelly did not respond.

Complainant's Investigation

19. On October 2, 2020, Manila was assigned to investigate homeowner's complaint. Manila has been employed as a special investigator with the Bureau for three years.

MAY 27, 2021 VISIT TO WBN

20. On May 27, 2021, Manila traveled to 8647 San Fernando Road, Sun Valley, 91352, WBN's business address. Manila spoke with Lynette Hjelmstad-Thomas

(Thomas), a WBN receptionist. Thomas testified that she works also works with WBN in her capacity as the owner of First Point Connection, a company which occasionally works with WBN.

21. Thomas confirmed that WBN is a restoration business that provides pack-in and pack-out services, where damaged household goods are removed from a customer's home and transported to the WBN's facility for restoration services and storage until the homeowner is ready for the items to be returned.

22. Thomas was at homeowner's residence during the first meeting between the parties. The parties discussed packing the household goods and creating an inventory. Thomas stated that WBN was scheduled to do the pack-out for homeowner.

23. Thomas telephoned Kelly and Manila spoke to Kelly by speakerphone. Kelly stated she did not recall having prior discussions with Manila regarding the need to obtain a permit. Kelly asked Manila to leave any paperwork with Thomas and she would review it with her legal team.

Citation Review Conference

24. On June 10, 2021, Thomas requested a Citation Review Conference (CTC), which was scheduled for June 22, 2021.

25. At the June 22, 2021 CTC, Manila showed Kelly his notes and e-mail correspondence regarding their prior discussions regarding the need for WBN to obtain a household mover permit. Manila also showed Kelly WBN's internet advertising, and Thomas' statements, which supported the conclusion that WBN engaged in transporting homeowner's household items as part of WBN's restoration business. Kelly did not offer any evidence to the contrary.

Other Findings

26. Kelly testified that WBN applied for a household mover's permit with the PUC on three prior occasions. The PUC responded by informing WBN that WBN was not required to hold a household movers permit, because the PUC had determined WBN's transportation of household goods was incidental to the restoration services offered by WBN.

27. Kelly contends WBN applied for a permit with the PUC, on three occasions, despite being told that WBN did not require a permit in each instance. Those attempts to obtain a permit, despite being told a permit was not required, stand in contrast to WBN's conduct since Kelly became informed the WBN needed to obtain a permit issued by the Bureau. Despite having multiple opportunities to obtain a permit, WBN has resisted obtaining a permit.

28. WBN did not contend that the Bureau's Industry Advisory is unlawful. Instead, WBN contended it does not need a permit because WBN never acts as a household mover. WBN raised this contention for the first time at the instant administrative hearing.

29. However, it strains credibility to believe that WBN could not, or would not, produce evidence supporting its contention that subcontractors are always used when a consumer's household goods need to be moved. Kelly was unable to provide the name of the subcontractor who allegedly moved homeowner's goods. Further, Kelly did not offer any bill or correspondence from the subcontractor, which would have supported her testimony. For these reasons, Kelly's testimony did not establish that a subcontractor transported homeowner's household goods.

30. WBN also contends that homeowner's goods were moved in February 2019, which was prior to the issuance of the Industry Advisory in November 2019. Therefore, respondent contends, WBN had no knowledge of its obligation to obtain a permit at the time WBN moved homeowner's goods. This fact would have been given greater weight, as mitigation evidence, if WBN subsequently obtained a permit. In any event, the Household Movers Act became effective July 1, 2018. Regardless of when the Bureau issued its Advisory Opinion, respondent became liable under the law on the date it became effective.

Investigation Costs Incurred by Complainant

31. Complainant's costs of investigation is \$1,040 and complainant requested an award of those costs against respondent. Respondent did not contest the costs or provide information regarding WBN's ability to pay those costs.

LEGAL CONCLUSIONS

Burden of Proof

1. Complainant has the burden of proving the alleged ground for the citation by a preponderance of the evidence. (See *Owen v. Sands* (2009) 176 Cal.App.4th 985, 992.) A preponderance of the evidence means "'evidence that has more convincing force than that opposed to it.' [Citation.]" (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

Statutory Authority

2. Code section 19237, subdivision (a), states, in pertinent part, that a household mover shall not engage in the business of the transportation of used

household goods and personal effects by motor vehicle over any public highway in this state. Further, household movers are prohibited from, by any means or media, advertising, soliciting, offering, arranging as a broker, or entering into an agreement regarding the transportation of used household goods and personal effects. These prohibitions do not apply if the household mover holds a Bureau-issued permit and moves household goods solely within California.

3. "Whenever the bureau finds that any person or corporation is operating as a household mover without a valid permit or is holding itself out as such a household mover without a valid permit in contravention of Section 19279.3, the bureau may issue a citation and fine of not more than five thousand dollars (\$5,000) for each violation." (Bus. & Prof. Code, § 19279.1.) Further, "[t]he bureau may assess the person or corporation an amount sufficient to cover the reasonable expense of investigation incurred by the bureau." (*Ibid.*)

Analysis

4. WBN is a restoration business which transported homeowner's household goods. Therefore, WBN is a household mover, as defined by Code section 19237.

5. However, Code section 19237 only prohibits the transportation of household goods "by motor vehicle over any public highway in this state." It was not established what route was utilized when WBN transported homeowner's goods from Tarzana to Sun Valley. Therefore, the term "public highway" must be examined.

6. Streets and Highways Code section 8308 defines the term "highway" as including "all or part of, or any right in, a state highway or other public highway, road, street, avenue, alley, lane, driveway, place, court, trail, or other public right-of-way or

easement, or purported public street or highway, and rights connected therewith, including, but not limited to, restrictions of access or abutters' rights, sloping easements, or other incidents to a street or highway." Therefore, whatever route WBN used, to transport homeowner's goods, it qualifies as a public highway.

7. The \$2,000 fine assessed in the citation is reasonable. The fine is proportional to the gravity of the violation and is appropriate. Respondent had numerous opportunities to apply for a permit and has failed to act. The amount is also below the \$5,000 maximum fine for a single violation. (Bus. & Prof. Code, § 19279.1.)

8. The Bureau may assess an amount sufficient to cover its reasonable expense of investigation costs. (Bus. & Prof. Code, § 19279.1.) Complainant presented evidence the Bureau incurred \$1,040 in investigative expenses, which is a reasonable amount given the nature and extent of the investigation. Respondent did not challenge the reasonableness of the expenses or object to complainant requesting the expenses. Therefore, these costs will be assessed against respondent in addition to the fine.

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ORDER

The citation against respondent WBN Home Design, Inc., and Kara P. Kelly is affirmed. WBN Home Design, Inc., and Kara P. Kelly shall pay the administrative fine of \$2,000, plus \$1,040 in costs, to the Bureau, within 30 days of the effective date of this order.

DATE: 02/03/2022


Christopher Ruiz (Feb 3, 2022 12:09 PST)

CHRIS RUIZ

Administrative Law Judge

Office of Administrative Hearings