

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

In the Matter of the Citation Against:

DIMBAS LLC

DZMITRY SHABLIUK, CEO

Respondent

Agency Case No. CR 0923

OAH No. 2020110612

CORRECTED PROPOSED DECISION

Thomas Heller, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on March 8, 2021.

Seth A. Curtis, Deputy Attorney General, represented complainant Oliver Manila, Supervising Special Investigator, Department of Consumer Affairs (Department), Bureau of Household Goods and Services (Bureau).

Jeffrey D. Nadel, Esq., represented respondent Dimbas LLC (Dimbas).

The parties presented documentary evidence and stipulated to facts. The record was closed and the matter was submitted for decision on March 8, 2021.

The initial Proposed Decision was issued on April 7, 2021. This Corrected Proposed Decision is issued under California Code of Regulations, title 1, section 1048, subdivision (c), to correct mistakes in the initial Proposed Decision. A Notice and Order of Correction listing the changes is being issued concurrently with this Corrected Proposed Decision.

FACTUAL FINDINGS

Background and Procedural History

1. Dimbas is a California limited liability company that provides intrastate and interstate moving services.
2. In late June 2020, consumer/customer Curtis Hicks, Jr. hired a company named American Choice Van Lines (American Choice), based in Horseheads, New York, to move Hicks's household goods from Massachusetts to Hicks's new residence in Temecula, California. The original expected delivery date for the goods was June 23, 2020, but Hicks did not receive the goods as scheduled. Instead, American Choice solicited Hicks to pay more than he had previously agreed upon for the delivery. Hicks refused to pay additional fees, and American Choice did not deliver Hicks's goods.
3. Hicks complained to the Bureau and to the Federal Motor Carrier Safety Administration (FMCSA). Department Special Investigator Dale Chasse investigated the complaint for the Bureau. After several months, Chasse and FMCSA were able to mediate delivery of the household goods to Hicks on October 2, 2020, for the agreed-upon price in Hicks's contract with American Choice. Chasse asked Department Special Investigator Oliver Manila to oversee the release of the goods to Hicks on that date.

4. Manila drove to Hicks's residence in Temecula on the morning of October 2, 2020. At about 2:30 p.m., while Manila was waiting outside in his vehicle, a semi-trailer freight truck arrived. Manila observed that the driver-side door of the truck was labeled "Dimbas LLC," with a United States Department of Transportation number (3217080) and FMCSA Motor Carrier number (1005992) below that name. Manila photographed the truck and the two men in it, who met briefly with Hicks and then began unloading his household goods. As the men were unloading, Manila approached Hicks and pretended to be his neighbor while taking photos of the movers inside the residence. Manila also contacted Chasse to check for licensing records for Dimbas, and Chasse reported that the company did not have a permit from the Bureau to transport household goods within the state.

5. When all the goods were unloaded, Manila approached the man who appeared to be the foreman and identified himself as a state investigator. Manila stated the Bureau had been investigating American Choice for rendering unlicensed moving services in California, including for Hicks's move. The man replied he did not work directly for American Choice but was dispatched to pick up Hicks's shipment in Los Angeles. Manila asked for the man's driver license, which identified the man as Dzmitry Shabliuk, a resident of Los Angeles. Shabliuk stated he owned Dimbas, which transported the shipment from Los Angeles to Temecula.

6. Shabliuk stated Dimbas was based in Los Angeles and conducted interstate and intrastate moving services. Shabliuk also stated Dimbas did not have a "PUC license," referring to the California Public Utilities Commission. Until recently, the California Public Utilities Commission issued permits to household movers operating in California. The Bureau now issues permits to household movers operating in the state.

7. Based on the facts and information obtained, Manila issued a citation to Dimbas for operating a moving service for used household goods in California without a permit from the Bureau. The citation included a \$2,000 fine. Manila handed the citation to Shabliuk, explained the citation appeal process, and gave Shabliuk an application packet for a permit from the Bureau. Manila also advised Shabliuk to cease rendering moving services in California until fully permitted to do so.

8. Dimbas timely requested a hearing on the citation.

Hearing

9. Complainant presented Bureau investigation reports and other documentary evidence establishing the facts described above. Complainant also presented certifications stating that the Bureau incurred \$1,610 in costs during its investigation, and complainant requests an award of those costs against Dimbas. The certifications also state the Bureau incurred \$210 in hearing preparation costs, but complainant does not request an award of those costs.

10. Dimbas admits it moved Hicks's household goods from Los Angeles to Temecula without a permit from the Bureau. But Dimbas asserts the permit requirement in Business and Professions Code section 19237, subdivision (a) violates the United States Constitution as applied to an interstate mover like Dimbas. Dimbas also asserts the permit requirement conflicts with federal law. Dimbas's counsel has filed a pending federal lawsuit in the United States District Court for the Central District of California on behalf of another moving company to enjoin the Bureau from enforcing its permit requirement against interstate carriers engaged in an interstate relocations of used household goods.

LEGAL CONCLUSIONS

Legal Standards

1. The Bureau administers and enforces the Household Movers Act (Act), Business and Professions Code division 8, chapter 3.1. (Bus. & Prof. Code, §§ 9810, 19283.1, subd. (a).) Under the Act, “[a] household mover shall not engage, or attempt to engage, in the business of the transportation of used household goods and personal effects by motor vehicle over any public highway in this state, including 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, unless both of the following are satisfied: [¶] (1) For transportation of household goods and personal effects entirely within this state, there is in force a permit issued by the bureau authorizing those operations. . . . [¶] (2) For transportation of household goods and personal effects from this state to another state or from another state to this state, there is in force a valid operating authority issued by the Federal Motor Carrier Safety Administration.” (Bus. & Prof. Code, § 19237, subd. (a).)

2. “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.*) “A citation or fine assessment issued pursuant to a citation shall inform the household mover that, if he or she desires a hearing to contest a finding of a violation, the hearing shall be requested by written

notice to the bureau within 30 days of the date of issuance of the citation or assessment. . . . Hearings shall be held pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.” (Bus. & Prof. Code, § 19268, subd. (b).)

3. Complainant has the burden of proving the alleged grounds 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.)

Analysis

4. Complainant satisfied his burden of proof with respect to the citation. Dimbas transported Hicks’s used household goods by motor vehicle on public highways from Los Angeles to Temecula, which was “entirely within this state.” (Bus. & Prof. Code, § 19237, subd. (a)(1).) Dimbas was required to have a valid permit from the Bureau for the transportation under Business and Professions Code section 19237, subdivision (a). Dimbas did not have a permit, and the violation is cause for the citation.

5. In addition, the \$2,000 fine assessed in the citation is reasonable. The amount of fine is proportional to the gravity of the violation and is appropriate for a first-time offense. The amount is also below the \$5,000 maximum fine for a single violation. (Bus. & Prof. Code, § 19279.1.)

6. Further, the Bureau may assess an amount sufficient to cover its reasonable expense of investigation. (Bus. & Prof. Code, § 19279.1.) Complainant presented evidence the Bureau incurred \$1,610 in investigative expenses, which is a

reasonable amount given the nature and extent of the investigation. Dimbas did not challenge the reasonableness of the expenses or object to complainant requesting the expenses for the first time during the hearing on the citation. Therefore, they will be assessed against Dimbas in addition to the fine.

7. Finally, Dimbas's constitutional arguments and other arguments about alleged conflicts with federal law are beyond the power of an administrative agency to adjudicate. There is a "strong presumption" favoring the constitutionality of the Legislature's acts (*People v. Lopez* (2020) 51 Cal.App.5th 589, 596), and an administrative agency has no power to declare a statute unconstitutional or unenforceable, or to refuse to enforce a statute, on the basis of it being unconstitutional or in conflict with federal law unless an appellate court has determined it is. (Cal. Const., art. III, § 3.1.) Accordingly, neither the Department nor the Bureau may adjudicate those arguments.

ORDER

The citation against respondent Dimbas LLC is affirmed. Dimbas LLC shall pay the fine of \$2,000 to the Bureau, plus \$1,610 in investigation expenses, within 30 days of the effective date of this order.

DATE: 04/14/2021

Thomas Heller
Thomas Heller (Apr 14, 2021 12:20 PDT)

THOMAS HELLER

Administrative Law Judge

Office of Administrative Hearings

