

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

In re the matter of: :
: :
Protective Parking Service Corporation d/b/a :
Lincoln Towing Service, : 92 RTV-R Sub 17
Respondent. : 100139 MC
: :
Hearing on fitness to hold a Commercial Vehicle : Honorable Latrice Kirkland-Montaque
Relocator's License pursuant to Section 401 of :
the Illinois Commercial Relocation of :
Trespassing Vehicles Law, 625 ILCS 5/18a-401. :

NOTICE OF FILING

To: See attached service list.

PLEASE TAKE NOTICE that on the **18th day of June, 2018**, the Respondent, **Protective Parking Service Corporation d/b/a Lincoln Towing Service**, by and through its attorneys, PERL & GOODSNYDER, LTD., filed its **RESPONDENT PROTECTIVE PARKING SERVICE CORPORATION D/B/A LINCOLN TOWING SERVICE'S POST-HEARING BRIEF IN SUPPORT OF ITS FITNESS TO HOLD A COMMERCIAL VEHICLE RELOCATOR'S LICENSE PURSUANT TO SECTION 401 OF THE ILLINOIS COMMERCIAL RELOCATION OF TRESPASSING VEHICLES LAW**, with the Office of the Processing and Information Section by mailing a copy to 527 East Capitol Avenue, Springfield, Illinois 62701 pursuant to 83 Ill. Adm. Code 200.70.



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CERTIFICATE OF SERVICE

TO: See attached Service List.

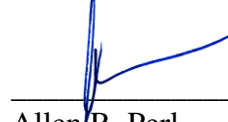
I, an attorney under oath, hereby certify under penalties as provided by law pursuant to §1-109 of the Illinois Code of Civil Procedure, that I caused the following documents of the Defendant, **PROTECTIVE PARKING SERVICE CORPORATION, an Illinois Corporation d/b/a LINCOLN TOWING SERVICE:**

- (1) **Notice of Filing**
- (2) **Certificate of Service**
- (3) **Service List**
- (4) **Respondent Protective Parking Service Corporation d/b/a Lincoln Towing Service's Post-Hearing Brief in Support of its Fitness to Hold a Commercial Vehicle Relocator's License Pursuant to Section 401 of the Illinois Commercial Relocation of Trespassing Vehicles Law**

to be served upon each attorney to whom directed at their respective addresses via:

 X **Via Electronic Mail**, by transmitting a copy in PDF format to the email addresses listed herein with consent of the recipient where permissible under 83 Ill. Adm. Code 200.1050, before 11:59 P.M. on the **18th day of June, 2018.**

Respectfully submitted,



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ADMINISTRATIVE LAW JUDGE

Honorable Judge Latrice Kirkland-Montaque

Chief Administrative Law Judge

Review & Examination Program

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CLERK OF THE ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission

Processing and Information Section

527 East Capitol Avenue

Springfield, Illinois 62701

via U.S. MAIL ONLY

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RESPONDENT PROTECTIVE PARKING SERVICE CORPORATION D/B/A LINCOLN TOWING SERVICE’S POST-HEARING BRIEF IN SUPPORT OF ITS FITNESS TO HOLD A COMMERCIAL VEHICLE RELOCATOR’S LICENSE PURSUANT TO SECTION 401 OF THE ILLINOIS COMMERCIAL RELOCATION OF TRESPASSING VEHICLES LAW

NOW COMES the Respondent, PROTECTIVE PARKING SERVICE CORPORATION d/b/a LINCOLN TOWING SERVICE (hereinafter referred to as “Respondent”) by and through its attorneys, PERL & GOODSNYDER, LTD., and pursuant the Illinois Commerce Commission (hereinafter referred to as the “Commission”) Rules of Practice (hereinafter referred to as the “Rules”), 83 Ill. Adm. Code 200.10 *et seq.*, respectfully responds to Staff’s Post-Hearing Brief (hereinafter referred to as “Staff’s Brief” and/or “Closing Argument”) filed by attorneys for the Staff of the Illinois Commerce Commission (hereinafter referred to as the “Staff”) and submits its closing argument in support of its fitness to hold a Commercial Vehicle Relocator’s License Pursuant to Section 401 of the Illinois Commercial Relocation of Trespassing Vehicles Law based exclusively upon the evidence adduced at the fitness hearing in this matter¹. In support thereof, Respondent argues as follows:

¹ The pagination in the transcript inadvertently restarted on at least one occasion. For instance, subsequent to page 1108 of the transcript from the hearing on July 26, 2017, the transcript from September 14, 2017 continues on page 573. Accordingly, there are two distinct transcript pages for the numbers ranging from 573 through 1108.

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SUMMARY OF RESPONDENT'S POSITION

On July 8, 2015, the Commission entered an order in which it found that “The evidence shows that [Lincoln Towing] is fit, willing, and able to provide relocation towing services, in accordance with Chapter 625 of Illinois Compiled Statutes, Section 5/18a-400 through 5/18a-501.” See Commission Order dated July 8, 2015, a true and accurate copy of which is attached hereto as Exhibit 1, and which the Administrative Law Judge took judicial notice of and allowed into the record. As further set forth herein, the testimony adduced at the trial showed that Respondent continued to maintain each of the required criteria in the Fitness Test enumerated in the Rules. 92 Ill. Adm. Code 1710.10.

A commercial vehicle relocation towing license constitutes a property right that cannot be deprived without due process of law. *Pioneer Towing, Inc. v. Illinois Commerce Comm'n*, 99 Ill. App. 3d 403, 404 (1st Dist. 1981). However, in this case, Staff failed to file a formal complaint as required by 83 Ill. Adm. Code 200.170, or as required by 625 ILCS 5/18a-401. Once Staff completed its inquiry into Respondent's business practices, this proceeding was set for a hearing, without any formal charges or allegations being filed. Despite Respondent's persistent continuous demands through June of 2018, this hearing was allowed to proceed without any formal notice to Respondent of any wrongdoing.

At the hearing, Staff stipulated that Respondent met each and every one of the criteria for holding a commercial vehicle relocater's license. See Exhibit 3. In addition, Staff proffered four (4) witnesses, each of which testified that it had no opinion as to whether or not Respondent was fit, or, in the case of its sole expert witness that was certified by the Administrative Law Judge at the request of Respondent, and over the objections of Staff, who testified that Respondent was, in fact, fit to hold a commercial vehicle relocater's license during the relevant time period. Transcript, p. 891, ¶ 13. Each of the witnesses testified that the number of citations written,

twenty-eight (28) was small relative to the number of tows, which was 9,470. Officer Strand also testified that as a dispatcher license is not required to release vehicles from Respondent's lot, some of the citations actually written were improper, and should not have been written.

One of Staff's witnesses, Sergeant Sulikowski, was presented with certain documents that he had not seen prior to a deposition in this case. He read from the documents into the record, and testified as to his observations that the documents were inconsistent with each other. However, he testified at the hearing that he did not know if the documents were accurate, and that no citation could be written until an investigation was completed. He further testified that no investigation was opened for any of these inconsistencies, nor was any citation written. He concluded that a determination of violation cannot be drawn prior to a hearing. Therefore, none of the 831 alleged inconsistencies could be violations, according to Sergeant Sulikowski. He also testified that the documents themselves were full of inaccuracies that could only have been caused by the Commission, and concluded that the documents were not accurate or reliable.

Finally, Robert Munyon, the General Manager and keeper of records for Respondent, testified that he had actual knowledge of contracts Respondent had with lot owners, and confirmed that each lot that was referenced by Staff as inconsistent with the inaccurate screenshots did, in fact, have a contract, and were electronically filed with the Commission. Upon cross-examination by Staff, it was proven that Mr. Munyon was, in fact, intimately familiar with each and every address referenced by Staff.

Ultimately, the Commission's Order which opened the investigation stated conclusively that 166 investigations were opened since Respondent's license was renewed, and further stated that 28 citations were written thereupon. Therefore, assuming, *arguendo*, that Respondent was found to be guilty and liable on each and every citation issued to it, it would have violated the

administrative regulations on exactly 0.29567% of the motor vehicle relocations during the relevant time period addressed in the February 24, 2016 Order. In addition, of the 9,470 tows, 9,304 had no complaints, despite having a complaint form handed to each motorist on the backside of the receipt form that the Commission requires Respondent to use.

Although this entire hearing was unfounded procedurally in any law, and fundamentally deprived Respondent of the constitutional due process of law to which it is entitled, it did proceed. As further set forth herein, Staff failed to meet its burden and prove conclusively that Respondent is in any way not fit to hold a commercial vehicle relocator's license. On the contrary, the entirety of the evidence adduced at trial conclusively showed that Respondent was fit, willing, and able to hold a commercial vehicle relocator's license throughout the relevant time period. Accordingly, the Administrative Law Judge should enter a finding in favor of Respondent. The Administrative Law Judge should find that Respondent was fit, willing, and able to provide relocation towing services, in accordance with Chapter 625 of Illinois Compiled Statutes, Section 5/18a-400 through 5/18a-501, throughout the relevant time period of July 24, 2015 through March 23, 2016.

ARGUMENT

AS A RESULT OF STAFF'S PATTERN OF PRACTICE OF UNCONSTITUTIONAL AND HARASSING LITIGATION TACTICS, RESPONDENT WAS DEPRIVED OF ITS CONSTITUTIONALLY AFFORDED DUE PROCESS OF LAW

Respondent is entitled to due process, prior to any revocation of its license. The government cannot deprive a person of life, liberty, or property without due process of law.” *AFSCME*, 2015 IL App (1st) 133454, ¶ 13 (citing U.S. Const., amend. XIV, and Ill. Const. 1970, art. I, § 2). “Procedural due process requires that when a constitutional right is at stake, the person whose right is at issue is entitled to notice and a meaningful opportunity to be heard.” *Id.* Illinois courts have long held that a commercial relocation towing license constitutes a property right that cannot be deprived without due process of law. *Pioneer Towing, Inc. v. Illinois Commerce Comm’n*, 99 Ill. App. 3d 403, 404 (1st Dist. 1981). Despite constitutional due process requirements, Staff continued throughout this hearing to engage in a pervasive and ongoing pattern and practice of conducting improper, unconstitutional, and harassing litigation tactics intended to deprive respondent of due process under the law.

On July 8, 2015, the Commission entered an order in which it found that “The evidence shows that [Lincoln Towing] is fit, willing, and able to provide relocation towing services, in accordance with Chapter 625 of Illinois Compiled Statutes, Section 5/18a-400 through 5/18a-501.” See Commission Order dated July 8, 2015, a true and accurate copy of which is attached hereto as Exhibit 1, and which the Administrative Law Judge took judicial notice of and allowed into the record. On or about February 24, 2016, only six (6) months later, the Commission entered an order initiating an investigation, ordering “A fitness hearing should be held to inquire into Lincoln’s relocation towing operations to determine whether it is fit, willing, and able properly to perform the service of a commercial vehicle relocater and to conform to the

provisions of the ICRTVL and the Commission's Administrative Rules, 92 Ill. Adm. Code 1710.10 *et seq.*” See Commission Order dated February 24, 2016, a true and accurate copy of which is attached hereto as Exhibit 2, and which the Administrative Law Judge took judicial notice of and allowed into the record.

The Rules of the Commission mandate that subsequent to an investigation, in order to obtain relief from an Administrative Law Judge, a Formal Complaint be filed. The Rules command as follows:

A formal complaint shall be in writing and verified, and an original complaint shall be filed with the Commission, together with as many additional copies as there are parties complained against, and shall set forth the following:

- a) The name, address, telephone number, and, unless the complainant has no facsimile number or e-mail address either directly or through its attorney, facsimile number and e-mail address of each complainant and the complainant's attorney, if any. A complainant, in the complaint, shall state whether it agrees to accept service by electronic means as provided for in Section 200.1050. A complainant later may agree, or may revoke its agreement, to accept electronic service, provided that the complainant shall file and serve a notice of the later agreement or revocation.
- b) The name and address of each respondent.
- c) A plain and concise statement of the nature of each complainant's interest and the acts or things done or omitted to be done in violation, or claimed to be in violation, of any statute, or of any order or rule of the Commission.
- d) If the complainant alleges a violation of 83 Ill. Adm. Code 280 or 735, the complaint shall contain a Statement of Compliance with 83 Ill. Adm. Code 280.170 or 83 Ill. Adm. Code 735.200, whichever is applicable.
- e) The particular relief desired.

83 Ill. Adm. Code 200.170 – Formal Complaints (emphasis added).

Once a Formal Complaint is filed with the commission, an Administrative Law Judge determines if the complaint provides a clear statement on the subject matter, scope of complaint, and a valid basis thereof. Thereafter, the Respondent must answer as required by the Rules:

- a) Whenever the Hearing Examiner issues a ruling that a complaint provides a clear statement on the subject matter, scope of complaint, and basis thereof, answers to formal complaints shall be filed with the Commission within 21 days after the date on which the Commission serves notice of the Hearing Examiner's ruling upon the respondent, unless otherwise ordered. If any respondent fails to file an answer, when required under this Section, allegations of fact as to the respondent will be considered admitted. If respondent does not file an answer when no filing requirement exists, issue as to the respondent will be considered joined. Answers shall contain an explicit admission or denial of each allegation of the pleading to which they relate and a concise statement of the nature of any defense.
- b) Answers to formal applications and petitions shall be filed with the Commission within 21 days after the date on which the applications or petitions are served upon the respondent, unless otherwise ordered. If any respondent fails to file an answer, issues as to the respondent will be considered joined. Answers shall contain an explicit admission or denial of each allegation of the pleading to which they relate and a concise statement of the nature of the defense.
- c) The original of an answer to a verified pleading shall be verified.
- d) Answers to petitions for intervention and to amended or supplemental pleadings need not be made unless the party so elects; and, in case answers are not made, the issue will be considered joined. Such answers, if made, shall conform to the requirements of subsections (b) and (c) of this Section, however, such answers shall be filed within 14 days, unless otherwise prescribed by the Hearing Examiner.

83 Ill. Adm. Code 200.180 – Answers (emphasis added).

The evidence presented at the hearing adduced that neither the Staff nor the Commission have ever filed a complaint against Lincoln Towing in this matter, nor have the Staff or the Commission ever put Respondent on formal, written notice of any legitimate cause for which it may not be eligible to hold a commercial Vehicle Relocator's license. As conceded by Staff in its Staff's Response to Emergency Motion to Strike Brief of Staff, to Remove Brief from Illinois Commerce Commission's Public Website, and Post Retraction (hereinafter referred to as "Staff's Response"), the Commission has the authority to "make inquiry into the management, conduct of business, or otherwise to determine that the provisions of this Chapter 18A and the regulations of

the Commission promulgated thereunder are being observed.” 625 ILCS 5/18a-401 (emphasis added).

However, once an inquiry is initiated, and an investigation is completed, a complaint must be filed in order for a Respondent to adequately protect its property rights and be afforded due process of law, as mandated by the Constitution. In fact, the very same statute relied upon by Staff, 625 ILCS 5/18a-401, expressly mandates as follows:

If the Commission has information of cause not to renew such license, it shall so notify the applicant, and shall hold a hearing as provided for in Section 18a-400.

625 ILCS 5/18a-401 (emphasis added).

The statute itself commands that the Commission must notify Respondent of the cause not to renew such license. Despite the clear and unambiguous language of the statute, Staff maintained throughout this entire hearing that it could simply “inquire” into the business of Respondent, then proceed to a hearing without disclosing what “cause” it has to revoke Respondent’s license, what charges it has against Respondent, or why it believes Respondent does not deserve to hold its license, and then without due process, revoke Respondent’s license. Throughout the course of this proceeding, and during the hearing, Staff presented no authority to support this proposition in its closing argument, on the record at the hearing, in any pleading filed in this cause, or in any other format, oral or written.

Further throughout, Respondent repeatedly asked Staff and the Commission why they believe Respondent is not fit to hold a license. However, no written document was ever tendered to Respondent even alleging that Respondent ever violated any part of the Commission rules, state statute, or any other applicable rule, despite Respondent’s numerous requests. For example, at the first status on March 23, 2016, Respondent’s Counsel inquired as to the reason behind the hearing, and received no response. The transcript reads as follows:

22 MR. PERL: I would add, your Honor, that, you

1 know, we did have a hearing July 20- -- at the end
2 of -- mid to end of July of 2015 for the fitness
3 purpose already, which we did present our case and we
4 were granted a license.

5 So I would think in this instance,
6 where we're midstream and the Commerce Commission is
7 now coming to us saying we need another fitness
8 hearing, I think it would be more appropriate for
9 them to tell us why they believe that we're all of a
10 sudden not fit when we were less than a year ago when
11 they determined we were fit to hold a license.
12 I think it would be my client's --
13 probably due process would be better served if they
14 told us why now they feel we aren't so we can then
15 actually address the issues that they have as opposed
16 to us just giving them the information we gave them
17 in July, which they then granted us a license.

In Re Protective Parking (March 23, 2016), (Page 6:22 to 7:17)

Thereafter, at the second status date in this hearing, Respondent's counsel renewed the request for notice of what allegations are being made against Respondent. The transcript reads as follows:

3 In regard to what we did receive,
4 basically I received almost nothing. So I sent out a
5 FOIA; I got nothing. I sent out voluminous
6 discovery; I literally got two pages of a hearing
7 that they decided to have the hearing for this, and
8 maybe another 50 or 60 pages of invoices from Lincoln
9 Towing and that's it.
10 So I think the last time we were here
11 I stated that I need to know the basis for why we're
12 having this hearing since we were approved in July of
13 2015, and I requested a lot of documentation. And
14 I'm sure that Ms. Anderson and I will be able to work

15 through a lot of what was in my letter, but I do
16 understand when they say it's duplicative. We asked
17 for the same things in the FOIA, but I got nothing
18 from the FOIA either.

19 So I have nothing from the FOIA; I
20 have nothing from them. And I don't really know how
21 to proceed other than to state that I need all this
22 documentation, the written discovery, depositions, in

40

1 order to proceed and determine that I can fully have
2 a hearing on the merits of the case.

In Re Protective Parking (May 20, 2016), (Page 39:3 to 40:2)

At no time throughout the entire proceeding was Respondent ever presented with any constitutionally mandated notice of any allegations of wrongdoing nor was Respondent afforded a meaningful opportunity to respond to any such allegations, by way of admitting or denying the allegations. As such, this proceeding should never have been allowed to proceed.

On or about April 6, 2016, Respondent propounded discovery requests to Staff pursuant to the Rules. Specifically, the Rules state that "It is the policy of the Commission to obtain full disclosure of all relevant and material facts to a proceeding. Further, it is the policy of the Commission to encourage voluntary exchange by the parties and staff witnesses of all relevant and material facts to a proceeding through the use of requests for documents and information." Ill. Admin. Code 200.340. However, Staff objected to each and every request as "unduly burdensome." Staff's continued refusal to turn over documents ultimately became the subject of Respondent's Motion to Compel.² No formal complaint was ever filed and as a result, Respondent had not been informed as to any violations of any Commission rules, state statute, or any other applicable rule. Respondent specifically asked that Staff "Identify why the

² No Motion to Compel was ever propounded on Respondent as Respondent thoroughly answered all requests on its first response. In total, Staff had filed eight (8) supplemental answers, including at the order of the Administrative Law Judge in response to Respondent's Motion to Compel.

Commission is conducting this hearing on Fitness to hold Commercial Vehicle Relocator's License against Lincoln Towing at this time.” Staff provided no answer to the request, and merely restated the entire statutory text of 625 ILCS 5/18a-401 and 92 Ill. Adm. Code 1710.22, without any explanation or description.

Even Staff's own filings concede that the fitness test applies to applications for new and renewed licenses, when Staff quoted the administrative code as follows: “In determining the fitness of a licensee, the Rules mandate the Commission to ‘consider, with regard to applications for new or renewed relocator's licenses . . . the compliance record of [Respondent] . . . and other facts that may bear on their fitness to hold the license.’ ” Staff's Response, p. 2 (citing 92 Ill. Adm. Code 1710.22(a)(1))(Emphasis added). However, this case is not founded upon Respondent's application to renew its Relocator's License. The Commission has not notified Respondent that it has any legitimate cause not to renew, and has not yet scheduled a hearing on the renewal of Respondent's license. It is clear from the unambiguous language of the statute, that while the Commission has authority to investigate any relocator at any time, should it determine that a relocator is not fit, it must provide notice to the relocator of such cause and hold a hearing prior to renewing its license. However, nowhere in the statute or the administrative code does it ever indicate that the Commission, or the Staff, can seemingly circumvent the mandated notice requirement by conducting an investigation, and proceeding directly to a hearing without ever forming any allegations for Respondent to defend itself against.

Should Staff have decided to hold a separate hearing upon its investigative findings, but prior to a renewal hearing of Respondent as set forth in 625 ILCS 5/18a-400, in order to seek relief from an administrative law judge, Staff could have opted to file a formal complaint pursuant to 83 Ill. Adm. Code 200.170, as further described heretofore. However, staff did not

file a written complaint pursuant to 83 Ill. Adm. Code 200.170, nor any informal allegations, at any time throughout the course of this proceeding.

In fact, this was discussed *ad nauseum* in this case on the first day of the hearing. Respondent's counsel noted that Section 200.570 of the Rules requires that in all cases, except tariff investigations and suspension proceedings, the petitioner, applicant, or complainant shall open and close. See 83 Ill. Adm. Code 200.570. Staff conceded several times on the record that the instant hearing was not a suspension hearing and thus, the Administrative Law Judge ordered Staff to proceed first. See Transcript, p. 185-186 (Staff conceding that it is not a suspension); see also Transcript p. 211 (Ordering Staff to proceed first).

Ultimately, the Commission has the authority pursuant to 625 ILCS 5/18a-401 to investigate Respondent at any time. Respondent has not objected to any such inquiry and has fully complied with any and all of Staff's requests for discovery and inquiry. However, should Staff uncover any issues, 625 ILCS 5/18a-401 mandates that a hearing be held at the time of the renewal. In the alternative, 83 Ill. Adm. Code 200.170 allows Staff the opportunity to file a written complaint, seeking the same remedy. In any event, Staff did neither. Staff completed its investigation, and after the close of discovery, simply proceeded to a hearing with no actual allegations or any accusations of wrongdoing being provided to Respondent.

As a result of the aforementioned, any revocation of Respondent's Commercial Vehicle Relocator's License would undeniably be an unconstitutional taking of a property right without due process of law. Consequently, the Administrative Law Judge should find that Staff and/or the Commission failed to follow the Commission Rules and failed to properly bring a *prima facie* case for revocation of Respondent's license. The Administrative Law Judge should find that Respondent is fit to hold a Commercial Vehicle Relocator's License and dismiss this case with prejudice.

**STAFF’S ARGUMENTS ARE FOUNDED UPON DOCUMENTS
THAT WERE IMPROPERLY ADMITTED**

The screenshots submitted by Staff entirely lacked foundation, were categorically identified by Staff’s witnesses as not credible, and should not have been admitted into evidence. Public records are not inherently reliable and accurate. Over Respondent’s numerous oral and written objections, various exhibits submitted by Staff were admitted into evidence. However, in order to adequately lay a foundation, Staff must have first established that the documents were reliable and accurate. Courts have held that “The proponent of a public record lays an adequate foundation for admission of the evidence when he or she establishes that the document is reliable and accurate.” *Village of Arlington Heights v. Anderson*, 2011 IL App (1st) 110748, ¶ 14. However, the testimony adduced at trial, by Staff’s only witness, Sergeant Sulikowski, was that the documents are not reliable and not accurate. Sergeant Sulikowski repeatedly testified that there were inconsistencies in the Commission’s records and the exhibits presented were not accurate. Specifically, the words “not accurate” were used throughout, including on pages 1337, 1350, 1351, 1352, 1353, 1354, and 1471 of the transcript of the hearing. In addition, although the documents were purportedly dated May 10, 2017 on the face of the documents, nothing was proffered by Staff to show that the documents were actually compiled on that day, even pertain to the relevant time period, or that the records are a complete set of all of the MCIS records as of the date of the each tow.

In fact, the Administrative Law Judge specifically noted, “Here is the problem—not problem. The issue that came up as the officer was testifying and that, to me, is what if there’s another—is there another—how do we know this is all that there is regarding these?” Transcript, p. 852, ¶ 8-12. The Administrative Law Judge also later ruled that “the certification doesn’t necessarily address that issue of whether this is the complete and total accurate record of RTO

numbers.” Transcript, p. 854, ¶ 5-8. In addition, Staff failed to lay a foundation as to the credibility of the documents, failing to present a single witness to even testify as to who compiled the records, who printed the records, when they were printed, what query was entered into the database to obtain the records, or anything else about the records. In fact, Staff’s only witness, Sergeant Sulikowski, testified under oath as follows:

1425

2 **Q. Do you know whether or not Scott**
3 **Morris viewed any of the documents contained in**
4 **A through F before he certified them?**

5 A. No.

6 **Q. Do you know whether Scott Morris**
7 **reviewed the screen at MCIS with the information**
8 **in A through F before he certified the**
9 **documents?**

10 A. No.

In Re Protective Parking, (Page 1425:2 to 1425:10)

Accordingly, as staff failed to adequately lay a foundation for the documents as reliable and accurate, they never should have been allowed into evidence.

Notwithstanding the aforementioned, even Staff conceded that although public records may be admissible, they do not necessarily hold weight as credible. Staff stated on the record on this issue that, “I think counsel’s argument goes maybe to the weight of the evidence that he can explore on cross-examination. I don’t think it goes to admissibility of the evidence.” Transcript, p. 209, ¶ 13-16. Later in the hearing, Staff again conceded that the documents may not be accurate, arguing, “That’s not saying that they’re accurate, there may be but some factual inaccuracies, but they’re saying what’s printed on those records is what’s contained in MCIS.” Transcript, p. 1365, ¶ 12-14. Finally, the Administrative Law Judge put the issue to rest

conclusively, stating just because a document is admissible does not mean it is inherently reliable. See Transcript, p. 1389-1390.

Despite the existence of the documents in the record, the evidence actually adduced at trial, which consisted of the sworn testimony of the Commission's officers and various printouts that the officers testified to, did not reflect that any of the alleged 831 violations actually occurred. Sergeant Sulikowski clearly testified under oath that he "only testified to the inconsistencies," and "not violations or anything else." Transcript, p. 1429, ¶ 9-13. The testimony adduced at trial was that the testifying officer did not complete an investigation, did not write a citation, did not testify at a hearing on a citation, and no violation was determined by an administrative law judge. The sworn testimony was that the records were not accurate, and at most, represented only inaccuracies between handwritten tow logs of Respondent and the Commission's electronic database.

In fact, Sergeant Sulikowski testified under oath at the hearing that he had no knowledge of whether Respondent did or did not have a contract for any of the lots or that any of the purported inconsistencies in Staff's Brief and Closing Argument were tantamount to a violation. Sergeant Sulikowski was clear that he had no idea who created any of the exhibits, when they were created, how they were created, or if, in fact, they were even accurate. Despite Staff's purported "syllogisms," the only testimony in the record regarding the inconsistent documents simply does not surmount the burden to prove that any violations occurred.

Sergeant Sulikowski's sworn testimony was as follows:

1435

2 **Q. You have no opinion as to whether or**
3 **not Lincoln Towing violated any ICC rules as a**
4 **result, do you?**

5 **A. No.**

6 **Q. Because prior to today -- I think**

7 yesterday you testified under oath, before you
8 could do that, you need to do an investigation,
9 correct?

10 A. Yes.

11 Q. And no investigation was done,
12 correct?

13 A. Correct.

14 Q. And if I went through every single
15 one of these so-called inconsistencies from
16 Exhibit B, the 24-hour tow sheet, and I asked
17 you the following questions: Do you know
18 whether or not Lincoln Towing actually had a
19 contract on those days with that lot
20 specifically?

21 A. The answers would all be the same.

22 Q. Okay. So you don't know, correct?

1435

1 A. Correct.

In Re Protective Parking, (Page 1435:1 to 1436:1)

As previously discussed, this matter was initiated as a mere investigation by way of a Commission Order dated February 24, 2016. See Exhibit 2. After several rounds of discovery, discovery was ultimately closed on February 1, 2017, and on February 16, 2017, this matter was set for hearing on May 11, 2017 and May 12, 2017, with one final status on April 25, 2017. Despite the disclosure deadline and the scheduling of a formal two (2) day hearing, no allegations in writing were brought against Respondent. See Transcript, p. 1029, See also February 16, 2017 Hearing Transcript, p. 231.

Unexpectedly, at the final status on April 25, 2017, Staff, for the first time, produced several hundred additional documents that had never before been disclosed to Respondent, separated into six (6) "exhibits," under the guise that they were produced in response to Respondent's initial discovery request propounded on April 6, 2016. See Transcript, p. 1657, ¶ 15-20. The unmarked documents did not disclose (1) what they were; (2) what they represented;

(3) what they purported to prove; (4) who created them; (5) why they were created; or (6) what Commission representative had knowledge of the veracity of the documents such that Respondent could cross-examine the evidence presented against it prior to the deprivation of its property rights. Transcript, p. 1658, ¶ 6-14. Over Respondent's objections, a Motion *in Limine* to exclude the documents (which was denied, see Transcript, p. 211, ¶ 3-14), and subsequently a Motion to Stay Hearing in order to conduct additional discovery as to the documents (which was also denied. See Transcript, p. 797, ¶ 15-23), the newly produced documents were allowed by the Administrative Law Judge to be introduced at the hearing. The only relief Respondent was granted was an opportunity to take a second deposition of Sergeant Sulikowski, the only witness disclosed by Staff who would be testifying to Staff's newly propounded documents. However, at his deposition, Sergeant Sulikowski testified that he would not be testifying as to the documents at trial, that he did not know who printed the documents, and he did not know if they were accurate. Specifically, Sergeant Sulikowski was asked the following questions, and answered with the following answers under oath:

728

15 ALJ MONTAQUE: Okay. I'm glad Mr. Barr
16 brought this up. Page 159 of this witness' deposition
17 testimony. "Question, Are you planning on using the
18 documents contained in Exhibit 3 when you testify at
19 the hearing for -- Answer, I personally am not
20 presenting these documents."

In Re Protective Parking, (Page 728:15 to 728:20)

As further adduced at the hearing, Sergeant Sulikowski answered consistent with the above testimony throughout his deposition, and when he was asked the following questions, he answered with the following answers under oath:

17 MR. PERL: By the way, Judge, I did find the
 18 second time when Sergeant Sulikowski said he wasn't
 19 going to use documents. That's on page 202.
 20 When I said to him line 4, "As far as you
 21 know, this document was in existence at the time of
 22 your first deposition on March 15th, 2017? Answer:
 23 The exhibit or the information? Question: The
 24 exhibit, no. Are you planning on using this

1 document when you testify at the hearing for Lincoln
 2 Towing relocation fitness?" The answer is "No."
 3 That's the second time he said he's not using them.

In Re Protective Parking, (Page 781:17 to 782:3)

In addition to claiming that he had no intention of testifying regarding these documents, Sergeant Sulikowski was unable to provide answers regarding the subject of any testimony that would be offered at the fitness hearing. See Transcript, pp. 745, 746, 753, 770, 771, 795, 1661, Accordingly, Respondent was unable to cross examine Sergeant Sulikowski as to any purportedly unintended and supposedly unplanned testimony regarding the documents. *Id.*

On or about June 1, 2017, Staff called Sergeant Sulikowski to the witness stand to testify regarding the 24-tow sheets and the recently disclosed alleged reports and/or screenshots from MCIS. For the first time since February 24, 2016, Staff identified new alleged inconsistencies to Respondent through Sergeant Sulikowski's live testimony in open court, with no opportunity for Respondent to review the inconsistencies prior to June 1, 2017, and no opportunity to subpoena knowledgeable parties, obtain records, or otherwise conduct discovery to refute the claims.

Throughout the pendency of this case, Respondent has had no access to the transcripts, motions, pleadings, or filed documents, except by way of a Freedom of Information Act request

(hereinafter referred to as “FOIA”). Despite making claims throughout the hearing that the Commission documents are “public records,” Respondent was told that cases pending before the Transportation Division of the Commission are not available on eDocket³ despite its use at the Commission for all other types of cases since January 3, 2000, and may be obtained exclusively by FOIA request.

In order to refute Staff’s allegations of these alleged inconsistencies, on June 9, 2017, Respondent submitted a FOIA request, seeking “public records” to rebut the testimony offered against Respondent. On or about June 19, 2017, the Commission demanded an additional 5 business days to respond to requests 2 and 6, and claimed that the remaining requests were “voluminous,” consisting of approximately 1,921 pages of responsive documents. Thereafter, on or about June 26, 2017, the Commission sent additional correspondence, claiming that requests 2 and 6 were also “voluminous,” consisting of approximately 1,064 emails, of single or multiple pages each, and potentially with attachments, as well as were “approximately 38 additional pages of documents” responsive to paragraph 2. Although in compliance with the statute, Respondent agreed to pay the statutory fees for voluminous data requests, the Illinois Commerce Commission ultimately denied the request in its entirety and produced no responsive documents whatsoever in response to Respondent’s requests. As a result, Respondent had no choice but to file a lawsuit in the Chancery Division of the Circuit Court of Cook County in order to compel the Commission to provide documents requested to defend itself in this hearing, captioned

³ e-Docket is the electronic docket system of the Illinois Commerce Commission. e-Docket was developed to process and manage public information about the Illinois Commerce Commission’s official cases and rule-making proceedings, referred to herein as cases or dockets. e-Docket has a variety of practical uses. Anyone interested in case proceedings conducted by the Illinois Commerce Commission may visit the e-Docket web site at <http://www.icc.illinois.gov/e-docket> and view information about opened and closed cases initiated on or after January 3, 2000. Users with e-Docket accounts may submit filings of applications, petitions, motions, and so forth, directly to the Illinois Commerce Commission over the Internet. Authorized Illinois Commerce Commission personnel use the same web site to review and process filings and manage docket information. All documents that are not confidential are available electronically to case participants and to the public.

Protective Parking Service Corporation d/b/a Lincoln Towing Service v. Illinois Commerce Commission, et al., 2017-CH-10152.

The Commission continues to defend the lawsuit and willfully continues to withhold documents, and in fact, to date, have provided none of the documents requested in the FOIA request. Clearly, each of these actions are a part of a pervasive and ongoing pattern and practice of conducting improper, unconstitutional, and harassing litigation tactics intended to deprive respondent of due process of law. Consequently, none of the MCIS printouts that were admitted into evidence should have been admitted. Even with the records admitted, the records show, at best, various inconsistencies and no actual violations. As such, the Administrative Law Judge should find that Staff and/or the Commission failed to properly bring a *prima facie* case for revocation of Respondent's license. Furthermore, the Administrative Law Judge should find that Respondent is fit to hold a Commercial Vehicle Relocator's License and dismiss this case with prejudice.

**STAFF STIPULATED THAT RESPONDENT IS FIT TO
HOLD A COMMERCIAL VEHICLE RELOCATOR'S LICENSE**

On July 8, 2015, the Commission entered an order in which it found that "The evidence shows that [Lincoln Towing] is fit, willing, and able to provide relocation towing services, in accordance with Chapter 625 of Illinois Compiled Statutes, Section 5/18a-400 through 5/18a-501." See Exhibit 1. According to the Commission's Rules, a Commercial Vehicle Relocator must be determined to be fit in accordance with a specific Fitness Test enumerated in the Rules. 92 Ill. Adm. Code 1710.10. The Fitness Test is defined specifically as requiring follows:

2) The Fitness Test.

A) No person shall be deemed fit to hold a relocator's license unless the person:

i) Owns, or has exclusive possession of under a written lease with a term of at least 1 year, at least one storage lot that meets the requirements of Subpart M;

ii) Employs sufficient full-time employees at each storage lot to comply with Section 1710.123;

iii) Owns or has under exclusive lease at least 2 tow trucks dedicated to use under the relocator's license;

iv) Employs at least 2 individuals who will work as the relocator's operators; and

v) Is in compliance with Section 4 of the Illinois Workers' Compensation Act [820 ILCS 305/4].

B) If the person is an applicant for a new relocator's license or the extension of a relocator's license, the requirements of subsection (a)(2)(A) must be met at the time of the hearing.

C) If the person is an applicant for renewal of a relocator's license, the requirements of subsection (a)(2)(A) must have been met throughout the previous year.

D) Each applicant for a relocator's license shall have the burden of proving its fitness by clear and convincing evidence.

92 Ill. Adm. Code 1710.10.

As a part of the instant hearing, Staff and Respondent have stipulated that Respondent meets each and every requirement of the required Fitness Test, which renders Respondent fit to hold a Commercial Vehicle Relocator's License. A true and accurate copy of the Stipulation Regarding Uncontested Factual Evidence (hereinafter referred to as the "Stipulation") is attached hereto and incorporated herein by reference as Exhibit 3, as was read into the record on March 21, 2018, set forth in the Transcript pages 4 through 8, and was wholly admitted into the record. The Stipulation specifically references each and every requirement set forth in the Fitness Test,

and as stipulated and executed by the Staff of the Commission, concedes that Respondent does, in fact, meet each requirement in its entirety without any dispute. The Stipulation provides as follows:

1. Respondent owns, or has exclusive possession of under a written lease with a term of at least 1 year, at least one storage lot that meets the requirements of Subpart M, 92 Ill. Adm. Code 1710.130, *et seq.*;
2. Respondent employs sufficient full-time employees at each storage lot to comply with Section 1710.123;
3. Respondent owns or has under exclusive lease at least 2 tow trucks dedicated to use under the relocator's license;
4. Respondent employs at least 2 individuals who will work as the relocator's operators;
5. Respondent is in compliance with Section 4 of the Illinois Workers' Compensation Act [820 ILCS 305/4];
6. Respondent has sufficient available assets, management with prior experience in the towing industry, possession of adequate and properly maintained equipment, and an ability and willingness to provide commercial vehicle relocation service; and
7. Respondent is in compliance with all other procedural application requirements that would be required for a legally sufficient, complete, and proper application pursuant to of 92 Ill. Adm. Code 1710.10, *et seq.* and 625 ILCS 5/18a-100, *et seq.*

Exhibit 3, Stipulation Regarding Uncontested Factual Evidence.

Based upon the stipulation alone, the Administrative Law Judge should find that Respondent is fit, willing, and able to hold a Commercial Vehicle Relocator's license and should dismiss this proceeding with prejudice. The Administrative Law Judge should also make a finding that Staff has presented no additional evidence to the contrary, or any evidence that Respondent is otherwise unfit to hold a Commercial Vehicle Relocator's license.

**THE EVIDENCE ADDUCED AT TRIAL CONCLUSIVELY DETERMINED
THAT RESPONDENT IS FIT, WILLING, AND ABLE TO HOLD
A COMMERCIAL VEHICLE RELOCATOR'S LICENSE**

The evidence adduced at trial showed resoundingly that Respondent is fit, willing, and able to provide relocation towing services, in accordance with Chapter 625 of Illinois Compiled Statutes, Section 5/18a-400 through 5/18a-501. As set forth in the Stipulation and the facts read into the record, there is no dispute as to whether or not Respondent meets the criteria set forth in the Fitness Test. In addition, none of the evidence presented at trial by Staff showed any contrary evidence.

On July 8, 2015, the Commission entered an order in which it found that “The evidence shows that [Lincoln Towing] is fit, willing, and able to provide relocation towing services, in accordance with Chapter 625 of Illinois Compiled Statutes, Section 5/18a-400 through 5/18a-501.” See Exhibit 1. All of the evidence adduced at trial showed that Respondent continued to meet the criteria set forth in the Fitness Test and did not receive a greater number of citations, or otherwise violate any part of the Commission rules, state statute, or any other applicable rule.

The evidence adduced at the hearing showed that Respondent relocated 9,470 vehicles during the relevant time period, based upon the bates stamped 24-hour tow sheets that were admitted into the record and based upon the trial testimony adduced at trial. See Transcript, p. 1606, ¶ 12-19. The Commission’s February 24, 2016 Order which mandated that an investigation be opened, specifically cited the number of investigations and citations Respondent had received since its license renewal. See Exhibit 2. Specifically, the Order stated that, “Since the July 24, 2015 renewal of Lincoln’s operating authority, the Commission Police Department has opened 166 investigations into Lincoln’s relocation towing operations, 28 of which have both been completed and resulted in administrative citations issued against Lincoln.” Exhibit 2.

The record does not reflect how many of the citations Respondent was actually found liable for, if any.

To be perfectly clear, this means that even if, *arguendo*, Respondent was found to be guilty and liable on each and every citation issued to it, it would have violated the administrative regulations on exactly 0.29567% of the motor vehicle relocations during the relevant time period addressed in the February 24, 2016 Order. In addition, of the 9,470 tows, 9,304 had no complaints, despite having a complaint form handed to each motorist on the backside of the receipt form that the Commission requires Respondent to use. As stated by Officer Strand under oath, “Nobody is happy they got towed.” Transcript, p. 716, ¶ 6. Officer strand agreed that, as far as he is aware, nobody calls the Commission and says, “Hey, thanks so much for towing me, I was wrong, I should not have parked there.” See Transcript, p. 716, ¶ 7-11. Accordingly, some few do complain, and 166 investigations were opened during the relevant time period. See Exhibit 2. However, of the 166 investigations, only 28 resulted in an administrative citation.

In support of its case founded on no complaint, with no allegations, and no written or oral charges against Respondent, Staff presented merely four (4) witnesses in support, namely three (3) sworn Illinois Commerce Commission police officers, and one Commission investigator assigned exclusively to relocation towing.

One of Staff’s witnesses, Officer Bryan Strand, was certified as an expert witness by the Administrative Law Judge at Respondent’s request, and over Staff’s objections, on the limited issue of “fitness as it relates to citations only from that perspective, and not from whether, you know, they meet the financial requirement or anything of that nature.” Transcript, p. 887, ¶ 1-4. The only qualified expert witness opinion rendered in this entire proceeding was the following:

6 Q. Based on the fact that of all of
7 those -- also, you basically stated you don't
8 really know whether Lincoln violated any of
9 those because you didn't input the information
10 to the MCIS, you don't know any of that, you
11 don't through any violations.

12 Based upon all of that, do you
13 believe that Lincoln Towing was fit to hold a
14 relocater's license during the relevant time
15 period?

16 A. Based on everything that we have
17 gone through today?

18 Q. Yeah.

19 A. I mean, it's mostly just technical
20 stuff that I issued citations for. So if it's
21 based on that alone during that time period when
22 I wrote, I can't say that they wouldn't be fit

1 to hold a license on whatever criteria you are
2 going off of because I'm not using a fitness
3 standard --

4 Q. Well, let's go on this criteria:
5 9,500 tows. Let's split the difference.

6 A. Oh, no, I was just saying like
7 based on, like, the whole fitness criteria, so
8 we can put that to bed, but based on what we
9 went over --

10 Q. Do you believe Lincoln Towing based
11 upon what we went over is fit to hold a license
12 during the relevant time period?

13 A. Yes.

In Re Protective Parking, (Page 890:6 to 891:13)

In addition, Officer Bryan Strand testified under oath throughout the hearing that he would not have written many citations having learned that the Rules do not require a person to have a dispatcher's license to release a vehicle. Specifically, Officer Strand testified as follows:

- 13 A. That is for an old dispatcher without an
14 active permit.
- 15 Q. And we realized subsequent to that that you
16 don't need to have a dispatcher's license to release
17 a vehicle, do you?
- 18 A. No.
- 19 Q. So knowing that, would you have still
20 written a citation today?
- 21 A. No.

In Re Protective Parking, (Page 1541:13 to 1541:21)

The same testimony was proffered by Officer Strand later in the hearing on other citations. See Transcript, p. 1547, ¶ 11-13; see also Transcript, p. 1581:22 – 1582:3.

In addition, Staff's second witness, Investigator Scott Kassal, offered the following testimony regarding his opinion whether Respondent should have a Commercial Vehicle Relocator's license:

- 14 Q. And you don't have an opinion otherwise, do
15 you?
- 16 A. No.
- 17 Q. And if the order of this Commerce
18 Commission was that they were fit, do you agree with
19 that?
- 20 A. Yes.
- 21 Q. And you have nothing else to say or an
22 opinion that they were not fit?
- 23 A. Correct.

In Re Protective Parking, (Page 935:14 to 935:23)

In fact, as to the number of citations written during the relevant time period, Investigator Kassal testified that they were a low number.

2 Q. So taken as truthful, because we do believe
3 this order, that during the relevant time period only
4 28 citations were written on 9,000 or 10,000 tows?

5 A. Correct.

6 Q. Do you think that is a high number or a low
7 number?

8 A. Low number.

9 Q. This does not tell you that these citations
10 were actually found liable, right?

11 A. Correct.

In Re Protective Parking, (Page 937:2 to 937:11)

Similarly, Officer Geisbush did not offer any opinions on whether or not Respondent was fit during the relevant time period. When asked, “Do you or do you not have an opinion as to whether or not Lincoln Towing was fit to hold a license during the relevant time period?” Officer Geisbush testified, “No, I don’t have an opinion.” Transcript, p. 1128, ¶ 12-15.

At the hearing, Sergeant Sulikowski was shown the order initiating this proceeding. See Exhibit 2. As set forth in the Order, “Since the July 24, 2015 renewal of Lincoln’s operating authority, the Commission Police Department has opened 166 investigations into Lincoln’s relocation towing operations, 28 of which have both been completed and resulted in administrative citations issued against Lincoln.” Exhibit 2. When asked if 166 investigations were a lot based upon approximately 10,000 tows, Sergeant Sulikowski testified that they were not a lot. See Transcript, pp. 1271-1272. Sergeant Sulikowski agreed that Respondent had its license renewed for two years. Transcript, p. 1275, ¶ 15. Sergeant Sulikowski also confirmed that the order initiating the proceeding, despite Respondent being renewed, cited to merely twenty-eight (28) citations. Transcript, p. 1275, ¶ 11. However, when finally asked if 28 citations out of 10,000 tows was a “really small amount,” (Transcript, p. 1272, ¶ 8-11), Sergeant Sulikowski agreed, and testified, “Yes.” Transcript, p. 1274, ¶ 19.

The only evidence argued in Staff's brief relates to mere inconsistencies identified by Staff, on documents described as inaccurate by Staff's own witnesses, for which there was no proper foundation laid or adequate disclosure to Respondent's counsel. The only witness presented by Staff in support of the alleged "violations" that are inconsistencies was Sergeant Sulikowski. However, his actual testimony adduced at trial was as follows:

1341

15 **Q. We are still looking at Exhibit C. You**
16 **stated earlier on cross-examination for me that you**
17 **wouldn't write a citation before doing an**
18 **investigation, correct?**

19 A. Correct.

20 **Q. So just looking at the documentation on**
21 **Exhibit C, you have no idea whether or not Lincoln**
22 **violated any ICC rules, would you?**

1342

1 A. No.

2 **Q. You would have to do an investigation,**
3 **correct?**

4 A. Yes.

5 **Q. You would have to look at -- maybe look**
6 **at the actual license because that paperwork does**
7 **come to the ICC?**

8 A. It does.

9 **Q. And you could do that, correct?**

10 A. Correct.

11 **Q. You didn't do that in this case, did**
12 **you?**

13 A. I didn't write any citations in this
14 case.

15 **Q. You didn't do it?**

16 A. No.

17 **Q. So you don't have an opinion as to**
18 **whether or not this document shows any violations**
19 **on the part of Lincoln Towing during the relevant**
20 **time period, do you?**

21 A. I do not have an opinion.

22 **Q. Because you didn't do the investigation?**

1 A. I don't have an opinion.

2 **Q. If you did an investigation, then you**
3 **could formulate an opinion, correct?**

4 A. Yes.

5 **Q. But you didn't do it?**

6 A. Correct.

7 **Q. So for all of the times that you**
8 **testified on direct examination a couple months**
9 **ago, all of that testimony was just you saying this**
10 **is what the document shows. Do you recall that?**

11 A. Yes, and I believe that's in the record.
12 It was just me reading what the document says.

13 **Q. And no opinion on whether or not there**
14 **was a violation?**

15 A. Correct.

In Re Protective Parking, (Page 1341:15 to 1343:15)

Even though the purported “violations” were inconsistencies, and even though the evidence adduced at trial conclusively demonstrated that no investigations were opened, no citations were written, and no violations were adjudicated by an administrative law judge, Staff still improperly argued that Respondent had 831 violations throughout Staff’s Brief and Closing Argument. Interestingly, this was predicted by Respondent’s counsel from the very beginning. Specifically, Respondent’s counsel argued as follows:

3 And as far as I know, and at closing
4 argument, although in past history repeats itself,
5 they think they can argue things at closing, he
6 didn't present things in the cases, which they can't
7 do.

8 They won't be able to present this at
9 closing, because they didn't put in any evidence the
10 documents are truthful or accurate anyway. So they
11 would be stuck with no closing argument for any of
12 it, as opposed to now they're setting this up to

13 have at least some closing argument, even though
14 they can't say that testimony will show Sergeant
15 Sulikowski has an opinion, because he doesn't.
16 When I cross examine him, that will be
17 even clearer. Beyond that, Judge, it's just not
18 fair to do it to anybody. I don't know of any other
19 forum where it would possibly even fly.

In Re Protective Parking, (Page 773:3 to 773:19)

In response, the Administrative Law Judge ruled, "I mean, I know how things work. I'm not saying that predisposes me to make any type of decision, but I know that having a screen shot is entirely different from presenting a citation and having a hearing on a citation." Transcript, p. 774, ¶ 20-24. The Administrative Law Judge later determined conclusively that "Because something is admitted doesn't mean it's accurate. That's the whole purpose of the trial." Transcript, p. 1284, ¶ 3-5. However, despite the Administrative Law Judge's ruling, Staff proceeded to argue that the "inconsistencies" should be considered violations, and Respondent should lose its license as a result.

Thereafter, the only witness that testified regarding the inconsistencies set forth in Staff's exhibits only testified as to the text contained in the reports, but not their accuracy. As the Administrative Law Judge stated, "I understand your argument. And I think when I allowed the documents in the testimony, the testimony is clear that he is not—that he is just reading the report." Transcript p. 787, ¶ 14-17. Staff conceded this at the hearing several times, including when Staff argued, "It is not an attestation. That's what Sergeant Sulikowski's testimony has been the whole time, 'According to the MCIS report. According to the MCIS report.' " Transcript, p. 794, ¶ 18-21.

However, despite not having any evidence as to whether or not Respondent actually had a contract or followed the rules, Staff insisted on proceeding with merely purported

inconsistencies. At one point during the hearing, the Administrative Law Judge asked Staff, “Wait a minute. Are you going to make—we’re getting to the crux of the matter. The is (sic) the Commission’s staff strategy to categorically say all these things that Sergeant Sulikowski testified to were illegal?” See Transcript, p. 798, ¶ 17-21. Thereafter, the Administrative Law Judge asked, “How can you say they are illegal, if there is no citation, no hearing, no findings?” Transcript, p. 799, ¶ 2-4. The Administrative Law Judge also asked Staff, “How do you know it’s true? How do you know it’s accurate?” noting also that “they don’t issue a citation.” Transcript, p. 799, ¶ 6-7, 8-16.

Clearly, it was established and acknowledged by even the Administrative Law Judge, that the only things presented as evidence were mere inconsistencies, and not actual citations, or even actual violations that had been adjudicated. However, Staff improperly argues that they were “violations,” despite no evidence adduced at the trial to support its conclusion.

In reality, Sergeant Sulikowski testified under oath about investigations not being violations. The Sergeant testified as follows:

1231

2 Q. I meant when an investigation comes in,
3 there is no determination made yet that a violation
4 is committed, is there?

5 A. No.

6 Q. So there is a difference between an
7 investigation versus something that was
8 investigated already and there is a citation or
9 ticket, correct?

10 A. Yes.

11 Q. That would mean an officer or an
12 investigator did an investigation and determined
13 they were going to write a citation or ticket,
14 correct?

15 A. Correct.

16 Q. Or not?

17 A. Correct.
18 Q. So there is not much that you can do to
19 glom from knowing that there is an investigation
20 regarding Lincoln Towing as to whether or not
21 Lincoln Towing committed a violation, is there,
22 until you do an investigation?

1232

1 A. No.

In Re Protective Parking, (Page 1231:2 to 1232:1)

Answering further, Sergeant Sulikowski was asked, “Would you agree that an investigation is necessary for determining whether or not Lincoln Towing or any relocater has actually violated any of the ICC rules or regulations?” Transcript, p. 1238, ¶ 2-5. He replied that he would agree. Transcript, p. 1238, ¶ 6. Sergeant Sulikowski testified that this is necessary because sometimes, he does not write a citation. He was asked and answered under oath as follows:

1244
16 Q. Have you ever been assigned an
17 investigation where you didn't write a citation?
18 A. Yes.
19 Q. Happens all of the time?
20 A. It happens.
21 Q. That's because after you do your
22 investigation, you determine that, in your opinion,

1245

1 the violation didn't occur, correct?
2 A. Yes.

In Re Protective Parking, (Page 1244:16 to 1245:2)

Thereafter, Sergeant Sulikowski specifically testified that “Not every complaint results in a citation.” Transcript, p. 1246, ¶ 13-14.

At the hearing, Sergeant Sulikowski was unable to identify any single inconsistency on his own in the documents, and claimed to know nothing about the accuracy of the documents. Accordingly, it became impossible for Respondent to examine evidence brought against it and to cross-examine the only witness that Staff proffered, in order to challenge his testimony with other evidence or documents. Specifically, Sergeant Sulikowski was asked the following questions, and answered with the following answers under oath:

1428

19 Q. So you looked at the report -- and
20 we'll pull out that exhibit, which it was -- and
21 it's accurate to state that just looking at the
22 report, you can't garner anything, correct?

1429

1 A. I was only reading the report.

2 Q. Right. But if I showed you a
3 document from Exhibit A and didn't show you a
4 24-hour tow sheet when a tow occurred, you
5 wouldn't know anything -- you wouldn't know if
6 there was a violation or an inconsistency -- you
7 wouldn't know about an inconsistency?

8 A. Correct.

9 Q. Because you only testified to the
10 inconsistencies, correct?

11 A. Correct.

12 Q. Not violations or anything else?

13 A. Yes.

14 Q. So you wouldn't know if there was an
15 inconsistency from anything in Exhibits A, B, C,
16 D, E, or F without looking at something else?

17 A. Yes.

In Re Protective Parking, (Pages 1428:19 to 1429:17)

However, Sergeant Sulikowski testified repeatedly throughout the hearing that he did not conduct an investigation, and did not interview any lot owners, or conclude whether or not Respondent actually had a contract to tow from any given lot. Specifically, pertaining to the 24-

hour tow sheets, Sergeant Sulikowski was asked the following questions, and answered with the following answers under oath:

1433

2 Q. Now, you don't know whether or not
3 Lincoln Towing actually had a contract on
4 July 24th, 2015 for 111 South Halsted, do you?

5 A. No.

6 Q. And you didn't check anywhere to make
7 that determination, did you?

8 A. No.

In Re Protective Parking, (Pages 1433:2 to 1433:8)

Throughout his testimony, Sergeant Sulikowski perpetuated the resounding testimony that he was unable to identify any violations. He was asked the following questions, and answered with the following answers under oath:

1434

21 Q. Based upon these documents, you're
22 only saying there's an inconsistency, correct?

1435

1 A. Yes.

2 Q. You have no opinion as to whether or
3 not Lincoln Towing violated any ICC rules as a
4 result, do you?

5 A. No.

6 Q. Because prior to today -- I think
7 yesterday you testified under oath, before you
8 could do that, you need to do an investigation,
9 correct?

10 A. Yes.

11 Q. And no investigation was done,
12 correct?

13 A. Correct.

14 Q. And if I went through every single
15 one of these so-called inconsistencies from
16 Exhibit B, the 24-hour tow sheet, and I asked
17 you the following questions: Do you know

18 **whether or not Lincoln Towing actually had a**
19 **contract on those days with that lot**
20 **specifically?**

20 A. The answers would all be the same.

In Re Protective Parking, (Pages 1434:21 to 1434:20)

In fact, Sergeant Sulikowski clarified that no citations were actually written by him. He was asked the following questions, and answered with the following answers under oath:

1250

10 Q. **During the relevant time period, did you**
11 **write any citations of an administrative nature?**

12 A. **None specifically that I can recall.**

In Re Protective Parking, (Pages 1250:10 to 1250:12)

Even if Sergeant Sulikowski would have been able to identify any alleged inconsistency, Sergeant Sulikowski was unable to confirm the accuracy of any of the documents. Sergeant Sulikowski was asked the following questions at the hearing, and answered with the following answers under oath:

1287

22 Q. **Do you know whether the information**

1288

1 **contained in Exhibit A has been altered?**

2 A. I do not know.

3 Q. **Do you know whether the information in**
4 **Exhibit A is accurate?**

5 A. I do not know.

6 Q. **Do you know positively who inputs this**
7 **information into the MCIS?**

8 A. No.

9 Q. **Do you know who at the ICC Illinois**
10 **Commerce Commission has access to this information**
11 **in the MCIS?**

12 A. Viewing or editing?

13 Q. **Either one. Let's talk about editing.**

14 A. I do not know who was the capabilities
15 of editing MCIS.

16 **Q. Do you know the answer to that question**
17 **for the relevant time period?**

18 A. No, I do not know who would have had
19 that access.

20 **Q. Do you know who actually input this**
21 **information into the MCIS?**

22 A. No.

1289

1 **Q. If in fact it was put in the MCIS. You**
2 **don't know that, do you?**

3 A. No.

In Re Protective Parking, (Page 1287:22 to 1289:3)

Sergeant Sulikowski testified consistently throughout the hearing over the span of multiple days of hearings, that he has no idea if the records are accurate. See Transcript, p. 1301-1525. In fact, although Sergeant Sulikowski could not independently determine inconsistencies in Respondent's tow sheets, Sergeant Sulikowski was able to identify inaccuracies in the MCIS records submitted into evidence by Staff. Sergeant Sulikowski testified under oath as follows:

1316

1 **Q. Is it all accurate?**

2 A. We know it's not.

3 **Q. We know it's not, don't we?**

4 A. Just because 1889 appears.

5 **Q. We'll get to that.**

6 **About 15 different times we see on these**
7 **documents later that either a dispatcher or a**
8 **relocator started towing in 1899?**

9 A. Correct.

10 **Q. And you already told me at your dep that**
11 **can't be accurate, correct?**

12 A. Correct.

13 **Q. So the information on these documents**
14 **isn't accurate, is it?**

15 A. Not all of it.

In Re Protective Parking, (Page 1316:1 to 1316:15)

Throughout his testimony, Sergeant Sulikowski continued to testify profusely that the MCIS records were inaccurate.

1494

15 Q. Not to beat it to death, but we saw
16 where the ICC was incorrect on some other dates,
17 on the 1899, correct?

18 A. Yes.

19 Q. It's also possible they could be
20 incorrect about the dates Mr. Negron was
21 licensed, correct?

22 A. Yes.

1495

1 Q. So for all the testimony regarding
2 Jose L. Negron that you gave prior to today, you
3 didn't know whether or not he actually had a
4 license on those dates and times in question?

5 A. Correct.

6 Q. And you have no opinion as to whether
7 or not any of those amount to a citation for
8 Lincoln Towing, do you?

9 A. Correct.

10 Q. And, in fact, no citation was ever
11 written, was it?

12 A. Not to my knowledge.

12 Q. And, in fact, no investigation was even
13 started?

14 A. Correct.

In Re Protective Parking, (Page 1494:15 to 1495:14)

Sergeant Sulikowski also testified that the inconsistencies and/or inaccuracies were caused by the Commission itself, and not Respondent.

1499

18 Q. So when you talk about an
19 inconsistency, these for sure are
20 inconsistencies as a result of something the
21 Commerce Commission did, not Lincoln Towing,
22 correct?

1 A. Yes.

In Re Protective Parking, (Page 1499:18 to 1500:1)

The testimony regarding the inaccuracies continued throughout the hearing.

Thereafter, Respondent called its General Manager, Robert Munyon to the stand, who is the keeper of records for Respondent. Mr. Munyon consistently testified that Lincoln had contracts for all of the lots throughout the relevant time period. See Transcript, p. 1813-26. In addition, Mr. Munyon testified that all of the lots listed in Exhibits A and B were properly filed with MCIS. See Transcript, p. 1827, ¶ 19. Mr. Munyon testified as follows:

1828

1 Q. The final responsibility for all these
2 contracts being entered into and entered into the
3 e-filing system is yours, isn't it?

4 A. Yes, it is.

5 Q. And you have direct knowledge of these
6 contracts being e-filed because that's your job and
7 your responsibility, correct?

8 A. Correct.

9 Q. And when a contract is e-filed, how do you
10 know the information you put in actually came back --
11 comes back to you as being e-filed properly with the
12 Commerce Commission?

13 A. We're issued a control number. They call
14 it "contract number."

15 Q. For every contract that you e-file,
16 correct?

17 A. Correct.

18 Q. And to the best of your recollection, is
19 that control number contained on every one of the
20 contracts that you testified earlier were in
21 existence during the relevant time period?

22 A. Yes, it was.

In Re Protective Parking, (Page 1828:1 to 1828:22)

In fact, when Mr. Munyon was cross-examined by Staff, it was determined that Mr. Munyon was, in fact, familiar with each lot and each contract. The cross examination testimony was as follows:

1890

19 **Q. Okay. And you also testified about your**
20 **familiarity with the addresses in Exhibits A and B,**
21 **and I think you gave an example of a business at one**
22 **location.**

1891

1 **Now, can you tell me what type of**
2 **business is at 223 Custer Avenue?**

3 A. It's a condominium building, I'm pretty
4 sure.

5 **Q. And how about 834 West Leland?**

6 A. 834 West Leland is a parking lot for an
7 apartment building.

8 **Q. And how about 2622 North Lincoln?**

9 A. 2622 North Lincoln, I'm pretty sure is
10 behind a building that has some retail on the ground
11 level and apartments above.

12 **Q. Now, you also testified that Lincoln did**
13 **not receive any citations for these addresses, during**
14 **the relevant time period, for not having an active**
15 **contract, correct?**

16 A. Correct.

In Re Protective Parking, (Page 1890:19 to 1891:16)

Throughout the entire hearing, Staff presented no witnesses or evidence that had any actual knowledge that Respondent did not have a contract for any lot during the relevant time period, or any actual knowledge that any of Respondent's operators and/or dispatchers did not have valid licenses during the relevant time period for any of the alleged 831 violations argued in Staff's Post-Hearing Brief and Closing Argument. In addition, Staff proffered no documents that conclusively showed that Respondent did not have a contract to tow from any of the lots

contained in the purported printouts from MCIS. The screenshots merely showed inconsistencies, as testified to *ad nauseum* by Sergeant Sulikowski. In fact, Staff's own witness, qualified as an expert witness, gave the opinion that Respondent was, in fact, fit to hold a Commercial Vehicle Relocator's license during the relevant time period.

STAFF'S IMPROPER POST-HEARING BRIEF IS SANCTIONABLE AND SHOULD BE STRICKEN FROM THE RECORD IN THIS PROCEEDING

Staff's Brief and Closing Argument, and the posting of Staff's Brief and Closing Argument on the Commission's public website, are collectively an unlawful attempt to substantially harm Respondent's business reputation and practice by slandering its operations through its false statements, inaccuracies, and mischaracterizations of the evidence adduced at the hearing, in addition to improper "syllogisms," not substantiated by any facts adduced, nor admitted into evidence in this hearing. A statement in closing argument regarding facts not in evidence is improper and constitutes reversible error if so prejudicial as to deprive a party of a fair trial. *Watkins v. Am. Serv. Ins. Co.*, 260 Ill. App. 3d 1054, 1067 (1st Dist. 1994)(Emphasis added). It is reversible error for counsel to comment on inadmissible or excluded evidence. *Hunter v. Chicago & N. W. Transp. Co.*, 200 Ill. App. 3d 458, 470 (1st Dist. 1990). A trial properly conducted is a dignified procedure. *Regan v. Vizza*, 65 Ill. App. 3d 50, 53 (1st Dist. 1978). Counsel in the case are officers of the court and owe a duty to the court, to opposing counsel, to the cause of justice and to themselves. *Id.* An attorney in his final argument is permitted only to make reasonable comments upon evidence. *Id.* It is not improper for an attorney to question either the credibility or judgment of a witness upon any legitimate ground, but an attorney has no right to indulge in violent or inflammatory language for the purpose of arousing the prejudice and passions of the jury nor to insult or abuse a witness without cause. *Id.*

On May 2, 2018, Staff filed their written closing argument, purporting to comport with Section 200.800 of the Rules. However, in violation of the Rules, the 32 page brief lacked appendices, a table of contents, and a summary of the position of the party filing, despite the strict requirements of Section 200.800. See 83 Ill. Adm. Code 200.800(b). Notwithstanding the procedural omissions, Staff's Brief and Closing Argument is riddled with inaccuracies and improper conclusory allegations, which are not only wholly unsupported by anything in the record, but which are also directly contradicted by the evidence contained in the record and the hearing testimony.

Early in Staff's Brief and Closing Argument, Staff acknowledges that "the Commission has the authority to weigh the evidence adduced at a fitness hearing and make a determination whether the evidence establishes violations of the ICRTVL and the Commission's Administrative Rules." See Staff's Brief and Closing Argument, p. 5. However, despite acknowledging that the Commission may only take into account evidence "adduced at a fitness hearing," Staff relies upon the "logical syllogism [which] leads to the inevitable conclusion that a violation of the ICRTVL and Administrative Rules occurred in each instance." However, logical syllogisms are not evidence. Furthermore, the actual evidence adduced at trial did not show that these violations occurred. The allegations were mere inconsistencies disclosed for the first time at trial, for which Respondent had no opportunity to conduct any discovery as to the veracity of the inconsistencies, and ones which Staff's own witnesses admitted under oath were not accurate records of the Commission. The allegations contained in Staff's Brief and Closing Argument were actually proven to not be violations at the hearing. Despite the sworn testimony that no citations were written, no hearings were held, no due process lead to a finding of violations, Staff improperly referred to each alleged inconsistency as a violation all throughout its Brief. The

only witness that Staff presented at the hearing regarding the alleged 831 “violations” identified in Staff’s Brief and Closing Argument was Sergeant Sulikowski. However, contrary to the contentions in Staff’s Brief and Closing Argument, Sergeant Sulikowski testified under oath that none of the 831 alleged “inconsistencies” were actually a violation of either the ICRTVL or Commission regulations. Even the Administrative Law Judge ruled that Staff cannot claim there was a violation until there is a hearing on a citation for that alleged inaccuracy, which to date has never occurred. See Transcript, p. 799. More to the point, on the first day of the hearing, the Administrative Law Judge sustained Respondent’s counsel’s objection, and held that “No one has adjudicated whether or not this is a violation.” See Hearing Transcript, p. 200, lines 3-4. The Administrative Law Judge continued to say that making any claims that there were violations would require a hearing, saying, “But that would require me to evaluate whether or not the proposed violations are actually violations, which is an administrative citation hearing. There’s been no administrative citation issues(sic).” See Hearing Transcript, p. 201, lines 8-12. Despite the aforementioned rulings, and the continued sustained objection to Staff’s reference throughout the entire hearing of “violations,” Staff repeatedly used the term, “violation,” in its closing argument without even so much as specifying that any such claims are mere allegations for which no investigations were ever conducted, no citations were ever written, no hearings were ever held, and no adjudications were ever made by a tribunal having jurisdiction over the matter.

For instance, on page 8 of Staff’s Brief and Closing Argument, Staff has a table, with the bold print column headers, “**Violations | Property Address,**” which is followed up with a list of 176 purported “violations,” for each one claiming that Respondent towed vehicles “in violation of” a statute or regulation. However, no such statements are supported by the facts contained in the record. For example, the first entry in the table claims the following:

111 S. Halsted: Lincoln towed a total of ten vehicles on July 24, 2015; August 28, 2015; November 14-15, 2015; and November 20 - 21, 2015. *Staff's Ex. J, pgs. 2, 4, 135, 136, 137, 144, 145, 146.*

Lincoln's contract for 111 S. Halsted was not filed with the Commission until April 3, 2016. *Staff's Ex. B, pg. 1.*

Lincoln towed the ten vehicles prior to filing the contract; therefore, without an effective authorization or contract to tow in violation of 92 Ill. Admin. Code 1710.91 (f)(1).

Staff's Brief and Closing Argument, p. 8.

However, this directly contradicts Sergeant Sulikowski's testimony at the hearing.

Sergeant Sulikowski, the only witness to testify about these exhibits, testified as follows:

1432

21 Q. And from that I believe you stated
22 you saw there was an inconsistency, correct?

1433

1 A. Yes.

2 Q. Now, you don't know whether or not
3 Lincoln Towing actually had a contract on
4 July 24th, 2015 for 111 South Halsted, do you?

5 A. No.

6 Q. And you didn't check anywhere to make
7 that determination, did you?

8 A. No.

9 Q. You didn't contact the lot owner,
10 Teddy Baric, B-a-r-i-c-, did you?

11 A. No.

12 Q. And that's who it says on Exhibit B
13 is the owner of the lot at 111 South Halsted,
14 correct?

15 A. Yes.

16 Q. And, actually, there's even a phone
17 number for the owner, correct?

18 A. Yes.

19 Q. So you didn't do any investigation to
20 determine whether or not Lincoln Towing had a
21 contract for that lot at 111 South Halsted,
22 correct?

1434

1 A. Yes.

In Re Protective Parking (January 31, 2018), (Page 1432:21 to 1434:1)

Specifically concluding as to whether there was a violation for this lot, Sergeant Sulikowski testified under oath at the hearing as follows:

1435

2 Q. You have no opinion as to whether or
3 not Lincoln Towing violated any ICC rules as a
4 result, do you?

5 A. No.

6 Q. Because prior to today -- I think
7 yesterday you testified under oath, before you
8 could do that, you need to do an investigation,
9 correct?

10 A. Yes.

11 Q. And no investigation was done,
12 correct?

13 A. Correct.

14 Q. And if I went through every single
15 one of these so-called inconsistencies from
16 Exhibit B, the 24-hour tow sheet, and I asked
17 you the following questions: Do you know
18 whether or not Lincoln Towing actually had a
19 contract on those days with that lot
20 specifically?

21 A. The answers would all be the same.

22 Q. Okay. So you don't know, correct?

1436

1 A. Correct.

2 Q. And you didn't do any investigation,
3 correct?

4 A. Correct.

5 Q. And you don't know whether or not
6 that implies any violations by Lincoln Towing,
7 correct?

8 A. Yes.

In Re Protective Parking (January 31, 2018), (Page 1435:2 to 1436:8)

Sergeant Sulikowski's testimony continues to adduce into the record that no violations occurred.

1441

15 Q. Nobody ever complained that Lincoln
16 Towing was improperly towing a vehicle from
17 a lot regarding these tows, correct?

18 A. Yes.

19 Q. And, in fact, in not one of these
20 tows you testified to on direct was -- was there
21 a citation ever written, was there?

22 A. No.

1442

1 Q. And not one of them was there even an
2 investigation opened, was there?

3 A. No.

In Re Protective Parking (January 31, 2018), (Page 1441:15 to 1442:3)

Despite Sergeant Sulikowski's sworn testimony adduced under oath at trial, Staff's Brief and Closing Argument boldly makes the following false statements against Respondent, "Cross-referencing the dates and addresses of tows contained in [Respondent's] Tow Reports for the Armitage Lot with the contract activity dates for property addresses in the MCIS Contract Listing by Property Address reveals [Respondent] violated the ICRTVL and the Commission's Administrative Rules one-hundred seventy-six (176) times between July 24, 2015 and March 23, 2016." See Staff's Brief and Closing Argument, ¶ 23. However, this is blatantly false. The

testimony adduced at trial regarding the 831 alleged violations conclusively established that no property owner ever complained that Respondent was towing cars without authority, no investigations were ever opened, no citations were ever written, and no violations were adjudicated at any hearings.

Staff writes on page 2 of Staff's Brief and Closing Argument, "A relocater's failure to comply with the ICRTVL, Commission regulations, and orders constitutes a violation of the ICRTVL." Staff's Brief and Closing Argument, p. 2. However, a violation may only be determined by an administrative law judge, after weighing evidence presented and after determining that a relocater failed to comply. Mere allegations do not constitute violations, not to mention that none of the 831 were even alleged to have been violations.

The highlighted false statements discussed herein are merely examples, and are not a comprehensive list of all of Staff's inconsistent statements. Staff's Brief and Closing Argument is replete with inconsistencies. In total, Staff used the word, "violation," approximately 98 times throughout Staff's Brief and Closing Argument, although most, if not all of the alleged violations were never even alleged to have been violations prior to Staff's Brief and Closing Argument, nor were any findings made by any trier of fact, but merely inconsistencies first disclosed and identified at the hearing. In addition, Staff's Brief and Closing Argument contained unnecessary attacks at Respondent and Respondent's counsel, such as for example, when Staff argued "The implication of Lincoln's argument strains logic." Staff's Brief and Closing Argument, p. 29. Such disparaging remarks have no purpose in furthering the position of the Commission, Staff's client, but are direct attacks on Respondent and Respondent's counsel.

As Staff's Brief and Closing Argument was riddled with inflammatory language for the purpose of arousing prejudice and based upon claims unsupported by any evidence adduced at

the hearing, the Administrative Law Judge should find that Staff and/or the Commission failed to follow the Commission Rules and failed to properly bring a *prima facie* case for revocation of Respondent's license. The Administrative Law Judge should find that Respondent is fit to hold a Commercial Vehicle Relocator's License and dismiss this case with prejudice.

REQUEST FOR SANCTIONS AGAINST STAFF

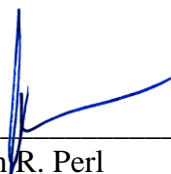
This entire proceeding, replete with Staff's unconstitutional and harassing litigation tactics, including Staff's improper Brief and Closing Argument which was laden with false statements, inaccuracies, and arguments not supported by any facts in the record, was wholly improper, not well grounded in fact, nor warranted by any existing legal basis, nor was Staff and/or the Commission's unprecedented dissemination of its Brief and Closing Argument to the media. Despite Respondent's Counsel consistently demanding a fair hearing, and demanding notice of what allegations Respondent is supposedly on trial for, demanding the right to confront evidence presented against Respondent, and repeatedly begging for constitutional due process, Staff continued throughout to engage in a pervasive and ongoing pattern and practice of conducting improper, unconstitutional, and harassing litigation tactics intended to deprive respondent of due process of law. Absent sanctions against Staff, the fairness and legitimacy of the tribunal in the eyes of the public are threatened.

Due to the pervasive and ongoing pattern and practice of conducting unconstitutional and harassing litigation tactics intended to deprive respondent of due process of law, and Staff's failure to file a verified complaint, pursuant to 83 Ill. Adm. Code 200.170, alleging under oath a "plain and concise statement of the nature of each complainant's interest and the acts or things done or omitted to be done in violation, or claimed to be in violation, of any statute, or of any order or rule of the Commission," as required by the Rules. 83 Ill. Adm. Code 200.170, the Administrative Law Judge should enter a finding in favor of Respondent, based upon the

evidence adduced at the hearing. In addition, the Administrative Law Judge should award Respondent's Counsel attorneys' fees for defending against Staff's improper, pervasive and ongoing pattern and practice of conducting unconstitutional and harassing litigation tactics intended to deprive respondent of due process of law.

WHEREFORE, Respondent, Protective Parking Service Corporation d/b/a Lincoln Towing Service (heretofore referred to as "Respondent"), by and through its attorneys, PERL & GOODSNYDER, LTD., respectfully requests that the Administrative Law Judge enter an order finding that Respondent was fit, willing, and able to provide relocation towing services, in accordance with Chapter 625 of Illinois Compiled Statutes, Section 5/18a-400 through 5/18a-501 throughout the relevant time period of July 24, 2015 through March 23, 2016; award sanctions in favor of Respondent and against Staff for the reasons set forth heretofore; award Respondent reasonable attorneys' fees incurred in defending this action; and any such other and further relief as the Administrative Law Judge deems just and proper.

Respectfully submitted,



Allen R. Perl
PERL & GOODSNYDER, LTD.
Attorneys for Protective Parking Service
Corporation d/b/a Lincoln Towing Service

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EXHIBIT 1

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION
Transportation Division**

RELOCATOR'S LICENSE

Protective Parking Service Corporation
dba Lincoln Towing Service
4882 N. Clark St.
Chicago, IL 60640

ILCC 92 RTV-R
July 24, 2015

Pursuant to the order of the Commission issued on the above date and Sections 18a-400 and 18a-401 of the Illinois Commercial Relocation of Trespassing Vehicles Law, the above-named carrier is hereby issued a Relocator's License conveying with it the privilege of operating as a commercial vehicle relocator in accordance with the Commission Order referenced above and Chapter 18a of the Illinois Vehicle Code.

The privilege conveyed by this license is conditioned upon compliance with any terms stated herein, as well as upon compliance with applicable provisions of the Law and regulations or orders adopted thereunder, as the same now exist or may hereafter be adopted or amended. Failure to do so may result in imposition of criminal and civil sanctions, as well as suspension or revocation of this license.

This license expires two (2) years from the date of issuance and must thereafter be renewed by order of the Commission.

Date of Issue: July 24, 2015

Processing Section of the
Illinois Commerce Commission

Expires: July 24, 2017

EXHIBIT 2

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

In re the matter of:

Protective Parking Service Corporation
d/b/a Lincoln Towing Service,
Respondent.

Docket No. 92 RTV-R Sub 17
100139 MC

Hearing on fitness to hold a Commercial
Vehicle Relocator's License pursuant to
Section 401 of the Illinois Commercial
Relocation of Trespassing Vehicles Law,
625 ILCS 5/18a-401.

ORDER

By the Commission:

On July 24, 2015, Protective Parking Service Corporation d/b/a Lincoln Towing Service ("Lincoln") was issued a renewal of its authority to operate as a commercial vehicle relocator under the Illinois Commercial Relocation of Trespassing Vehicles Law ("ICRTVL"), 625 ILCS 5/18a-100 *et seq.* Pursuant to Section 401 of the Law, all relocator licenses expire every two years. 625 ILCS 5/18a-401. That Section further provides that the Commission may at any time during the term of the license make inquiry into the management, conduct of business, or otherwise determine that the provisions of the ICRTVL and the Commission's Administrative Rules promulgated thereunder, 92 Ill. Adm. Code 1710.10 *et seq.* are being observed. *Id.*

Commission Staff has reviewed Commission records to ascertain Lincoln's compliance with Commission regulations and statutory requirements. Since the July 24, 2015 renewal of Lincoln's operating authority, the Commission Police Department has opened 166 investigations into Lincoln's relocation towing operations, 28 of which have both been completed and resulted in administrative citations issued against Lincoln. Commission Police Investigation # 15-0088 alleges that during the time period between October 15, 2014 and November 23, 2014, Lincoln committed 54 violations of issuing incomplete or inaccurate tow invoices in violation of 92 Ill. Adm. Code 1710.170(c), 3 violations of using tow trucks to perform relocations without an equipment lease on file with the Commission as required by 625 ILCS 5/18a-300(16), and 19 violations of using a dispatcher with an expired relocation towing employment permit as required by 625 ILCS 5/18a-300(3). Investigation # 15-0088 remains pending. Currently there are 92 pending administrative citations issued to Lincoln alleging similar and other violations of the ICRTVL and its Administrative Rules.

A fitness hearing should be held to inquire into Lincoln's relocation towing operations to determine whether it is fit, willing, and able properly to perform the service

of a commercial vehicle relocater and to conform to the provisions of the ICRTVL and the Commission's Administrative Rules, 92 Ill. Adm. Code 1710.10 *et seq.*

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that License 92 RTV-R be set for hearing pursuant to 625 ILCS 5/18a-401.

By Order of the Commission this 24th day of February 2016.



BRIEN SHEAHAN
CHAIRMAN

JUDGE
SECTION CHIEF
ORDERS SUPERVISOR

EXHIBIT 3

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

In re the matter of:	:	
	:	
Protective Parking Service Corporation d/b/a	:	
Lincoln Towing Service,	:	92 RTV-R Sub 17
Respondent.	:	100139 MC
	:	
Hearing on fitness to hold a Commercial Vehicle	:	Honorable Latrice Kirkland-Montaque
Relocator’s License pursuant to Section 401 of	:	
the Illinois Commercial Relocation of	:	
Trespassing Vehicles Law, 625 ILCS 5/18a-401.	:	

STIPULATION REGARDING UNCONTESTED FACTUAL EVIDENCE

WHEREAS, Respondent, PROTECTIVE PARKING SERVICE CORPORATION d/b/a LINCOLN TOWING SERVICE (hereinafter referred to as “Respondent”), is a Commercial Vehicle Relocator as defined in the Illinois Commercial Relocation of Trespassing Vehicles Law, 625 ILCS 5/18a-100, *et seq.* (hereinafter referred to as the “Law”), and currently holds a relocator’s license from the Illinois Commerce Commission (hereinafter referred to as the “Commission”) pursuant to Section 1710 of the Illinois Commerce Commission regulations on Relocation Towing, 92 Ill. Adm. Code 1710.10, *et seq.*;

WHEREAS, the Commission has initiated this proceeding pursuant to 625 ILCS 5/18a-401, in order to “make inquiry into the management, conduct of business, or otherwise to determine that the provisions of this Chapter 18A and the regulations of the Commission promulgated thereunder are being observed;” and pursuant to the Commission’s February 24, 2016 Order, “to inquire into [Respondent’s] relocation towing operations to determine whether it is fit, willing, and able properly to perform the service of a commercial

vehicle relocater and to conform to the provisions of the ICRTVL and the Commission's Administrative Rule, 92 Ill. Admin. Code 1710.10 *et seq.*”

WHEREAS, the Staff of the Illinois Commerce Commission has conducted its inquiry into the management and conduct of business of Respondent for the relevant time period of July 24, 2015, through March 23, 2016, and introduced the results thereof;

WHEREAS, the Commission has jurisdiction over the Respondent and the subject-matter of this proceeding, in accordance with Section 18a-200(1) of the relocation towing law (625 ILCS 5/18a-200(1)); and

WHEREAS, counsel for Respondent and the Staff of the Illinois Commerce Commission are desirous of expediting this proceeding to the extent possible, as requested by Honorable Judge Latrice Kirkland-Montaque.

NOW, THEREFORE, IT IS HEREBY STIPULATED, by and between the Staff of the Illinois Commerce Commission, on the one hand, and counsel for Respondent Protective Parking Service Corporation d/b/a Lincoln Towing Service, on the other hand, subject to the approval and order of Chief Administrative Law Judge, Honorable Latrice Kirkland-Montaque, as follows:

1. Respondent owns, or has exclusive possession of under a written lease with a term of at least 1 year, at least one storage lot that meets the requirements of Subpart M, 92 Ill. Adm. Code 1710.130, *et seq.*;

2. Respondent employs sufficient full-time employees at each storage lot to comply with Section 1710.123;

3. Respondent owns or has under exclusive lease at least 2 tow trucks dedicated to use under the relocater's license;

4. Respondent employs at least 2 individuals who will work as the relocater's operators;

5. Respondent is in compliance with Section 4 of the Illinois Workers' Compensation Act [820 ILCS 305/4];

6. Respondent has sufficient available assets, management with prior experience in the towing industry, possession of adequate and properly maintained equipment, and an ability and willingness to provide commercial vehicle relocation service; and

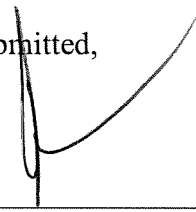
7. Respondent is in compliance with all other procedural application requirements that would be required for a legally sufficient, complete, and proper application pursuant to of 92 Ill. Adm. Code 1710.10, *et seq.* and 625 ILCS 5/18a-100, *et seq.*

Respectfully submitted,



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Respectfully submitted,



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