

Docket No.: 92 RTV-R s17
100139 MC
Bench Date: 6/12/2019
Deadline: 6/13/2019

MEMORANDUM

TO: The Commission

FROM: Latrice Kirkland-Montaque, Chief Administrative Law Judge

DATE: June 5, 2019

SUBJECT: Protective Parking Service Corporation d/b/a Lincoln Towing Service

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

RECOMMENDATION: Deny Motion for Reconsideration, Rehearing, and Reopening of Proceedings

I. PROCEDURAL HISTORY

By Order entered February 24, 2016, the Commission initiated a hearing to inquire into the relocation towing operations of Protective Parking Service Corporation d/b/a Lincoln Towing Service ("Lincoln Towing") to determine whether it is fit, willing, and able to properly perform the service of a commercial vehicle relocator and to conform to the provisions of the Illinois Commercial Relocation of Trespassing Vehicles Law ("ICRTVL"). The hearing took place before an Administrative Law Judge ("ALJ") over multiple dates.

On July 2, 2018, the ALJ issued a Proposed Order finding that Lincoln Towing was fit, willing and able to hold a Commercial Vehicle Relocators License.

On August 15, 2018, the ALJ presented to the Commission her recommended Order finding that Lincoln Towing was fit, willing and able to hold a Commercial Vehicle Relocators License.

On September 12, 2018, the Commission entered an Order finding that Lincoln Towing was unfit to hold a Commercial Vehicle Relocators License and immediately revoked its license to operate a relocation towing business in the State of Illinois.

On September 13, 2018, Lincoln Towing filed a Verified Complaint for Temporary Restraining Order and Preliminary Injunction before the Circuit Court of

Cook County, County Department, Chancery Division, in the case captioned Protective Parking Service Corporation d/b/a Lincoln Towing Service v. Illinois Commerce Commission, 2018-CH-11531. The Complaint was subsequently amended. Count I of the complaint sought to enjoin the Commission from revoking Lincoln's license pending administrative review and Count II sought administrative review.

On September 17, 2018, the Court entered an order granting Lincoln Towing a stay of the Commission's Order.

On May 23, 2019, the Circuit Court dismissed Count I of Lincoln's First Amended Complaint with prejudice and dismissed Count II of the Complaint without prejudice finding that Lincoln Towing had not exhausted its administrative remedies at the Commission by filing a motion for rehearing pursuant to 83 Ill. Adm. Code 200.880. The Court noted that although the time for filing a motion for rehearing has expired, the Commission has the authority to reopen the proceedings pursuant to 625 ILCS 5/18c-2110(2). The Court also stated that "while the Plaintiff should have filed a motion for rehearing prior to filing this action, the ICC's own actions significantly contributed to the Plaintiff failing to do so within the required 30 days. The ICC asserted, presumably by mistake, that it could not stay the revocation of Plaintiff's license pending rehearing. Contrary to the ICC's assertion, its decision was already automatically stayed."

The Court cites Brandt Truck Line, Inc. v. Illinois Commerce Commission, 173 Ill. App. 3d 209 (1st Dist. 1988) as established law that decisions rendered under the Illinois Commercial Transportation Law ("ICTL") are subject to an automatic stay upon a filing of a request for rehearing. Section 5/18a-307 of the Illinois Commercial Relocation of Trespassing Vehicles Law ("ICRTVL") adopts the enforcement provisions of Article VII of subchapter 1 of the ICTL. 625 ILCS 5/18a-307. Section 5/18c-2206 of the ICTL states that where the ICTL is silent, proceedings for judicial review of a Commission action, regulation or order shall be governed by the provisions of the Administrative Review Law ("ARL"). 625 ILCS 5/18c-2206.

The Court further states that had the Commission not expressed its refusal to stay the September 12th Order, Lincoln Towing could have filed a timely motion for rehearing. The Court states that under these circumstances, if the Commission now refuses to consider Lincoln Towing's motion for rehearing, Lincoln Towing would have an argument for excusing its failure to exhaust its administrative remedies that would be heard by the Court.

The Court essentially remands the case to the Commission for consideration of a motion for rehearing by Lincoln Towing.

On May 24, 2019, Lincoln Towing filed with the Commission Respondent Protective Parking Service Corporation D/B/A Lincoln Towing Service's Motion for Reconsideration, Rehearing, and Reopening of Proceedings ("Motion for Rehearing").¹

II. ISSUE

A. Motion for Rehearing

1. Analysis

In its Motion for Rehearing, Lincoln Towing requests that the Commission reconsider this proceeding, set the matter for rehearing, and/or otherwise re-open the underlying proceedings, finding that it 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. The Motion cites the Administrative Law Judge's recommended order finding that Lincoln Towing is fit to hold a license but does not state with specificity the issues for which rehearing is sought nor does it allege new facts to be considered.

2. Recommendation

The Administrative Law Judge notes that 83 Ill. Adm. Code 200.880 provides in part that:

- a) After issuance of an order on the merits by the Commission, a party may file an application for rehearing. The application shall state the reasons therefore and shall contain a brief statement of proposed additional evidence, if any, and an explanation why such evidence was not previously adduced. The application shall be filed within 30 days after service of the order on the party.
- b) Applications for rehearing must state with specificity the issues for which rehearing is sought. Incorporation of arguments made in prior pleadings and briefs must be specific as to document and page.
- c) If an application for rehearing alleges new facts, then the application must be filed with a verification. A verification need not be filed with an application for rehearing if the application does not allege new facts.
- d) No appeal shall be allowed from any order or decision of the Commission unless and until an application for rehearing thereof shall first have been filed and finally disposed of by the Commission. The Commission shall

¹ The ALJ notes that Lincoln Towing uses the words "Reconsideration, Rehearing and Reopening of Proceedings" in the filing as they appear in 625 ILCS 5/18c-2110 of the ICTL. This provision of the ICTL is not applicable to the ICRTVL, and the filing shall therefore be treated as a motion for rehearing.

grant or deny the application in whole or in part within 20 days from the date of receipt by the Commission.

The Administrative Law Judge also notes that 83 Ill. Adm. Code 200.900 provides in part that:

After issuance of an order by the Commission, the Commission may, on its own motion, reopen any proceeding when it has reason to believe that conditions of fact or law have so changed as to require, or that the public interest requires, such reopening. No party may petition the Commission to reopen on its own motion until after the time to petition for rehearing has expired.

The 30-day period to request a rehearing has passed; however, the Administrative Law Judge notes that the Commission may waive, suspend or modify its administrative rules pursuant to 83 Ill. Adm. Code 200.30 which provides:

To the extent permitted by law, any provision of this Part may be waived, suspended or modified by the Commission, for good cause shown, either upon its own motion or upon motion by any person.

The Circuit Court has made it clear that under the circumstances it is appropriate for the Commission to allow Lincoln Towing to file its Motion for Rehearing at this time. The Administrative Law Judge believes the Commission should invoke Section 200.30 of the rules and modify the application of 83 Ill. Adm. Code 200.880(a) in this proceeding to allow Lincoln Towing to file its Motion for Rehearing at this time.

The Administrative Law Judge also believes that the Motion for Rehearing should be denied for failure to state with specificity the issues for which rehearing is sought. Lincoln Towing cites the Administrative Law Judge's recommendation but makes no argument as to why it seeks reconsideration of the Commission's Order entered on September 12, 2018. Nor does Lincoln Towing provide any argument as to why the Commission should reopen the proceeding.

III. CONCLUSION

The Administrative Law Judge recommends that the Commission deny Respondent Protective Parking Service Corporation D/B/A Lincoln Towing Service's Motion for Reconsideration, Rehearing, and Reopening of Proceedings. The deadline for Commission action on the matter is June 13, 2019.