**Docket No.:** 92 RTV-R s17
**Bench Date:** 9/12/18
**Deadline:** N/A

**M E M O R A N D U M**

**TO:** The Commission

**FROM:** Latrice Kirkland-Montaque, Chief Administrative Law Judge

**DATE:** August 9, 2018

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

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

**RECOMMENDATION:** Enter Order finding Respondent fit to hold license.

## I. Procedural History

By Order entered February 24, 2016, the Commission initiated the instant proceeding to inquire into the relocation towing operations of Protective Parking Service Corporation d/b/a Lincoln Towing Service ("Protective Parking" or "Respondent") 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") and the Commission's Administrative Rules, 92 Ill. Adm. Code 1710.10 et seq."

At a pre-hearing conference on February 1, 2017, the ALJ ruled that the relevant time period for the Commission's investigation of Protective Parking's towing operations is July 24, 2015, through March 23, 2016.

On April 5, 2016, discovery began. Multiple data requests and answers were exchanged, and a final deposition of one of Staff's witnesses occurred on May 3, 2017.

Evidentiary hearings were held on multiple dates between May 31, 2017, and March 21, 2018. The record was marked "Heard and Taken" on March 21, 2018.

Motions were filed by Protective Parking during the course of the evidentiary hearings. At the July 10, 2017 evidentiary hearing, Protective Parking filed an Emergency Motion to Strike Testimony and Continue Hearing. The Motion was denied. On July 26, 2017, Protective Parking filed a Motion to Stay these proceedings pending action by the Circuit Court on a review of the Commission's response to a FOIA request

made by Protective Parking to the Commission. The Motion to Stay was denied but Protective Parking was allowed instead to request the information through additional formal discovery with responses to be provided by mid-October. Evidentiary hearings resumed on January 16, 2018 and concluded on March 21, 2018.

The Staff of the Commission appeared by the Office of Transportation Counsel and presented the testimonies of Sergeant Timothy Sulikowski, Officer Bryan Strand, Officer John Geisbush, and Investigator Scott Kassal. The Respondent was represented by counsel and presented the testimony of Robert Munyon, General Manager of Lincoln. Each party cross-examined the opposing parties' witnesses.

## II. Issue

At issue in this case is whether Protective Parking is fit, willing and able to perform the service of a commercial vehicle relocator and to conform to the provisions of the Illinois Commercial Relocation of Trespassing Vehicles Law and the Commission's Administrative Rules.

## III. Applicable Law

**a.** 625 ILCS 5/18a-401. Relocator's licenses – Expiration and renewal
**b.** Illinois Administrative Code Title 92 § 1710.22

The Commission's analysis of whether a relocator is fit to hold a license is prescribed by Section 1710.22 of the Administrative Rules. Staff and Respondent have stipulated that Protective Parking meets the requirements of the fitness test established by the Section 1710.22(a)(2). 92 Ill. Adm. Code 1710.22 (a)(2).

The only other standard to use in evaluating whether Protective Parking is fit to hold a license is Section 1710.22(a)(1), which allows the Commission to consider the equipment, facilities and storage lots of the applicant; and other facts that may bear on their fitness to hold the license. 92 Ill. Adm. Code 1710.22 (a)(1). The evidence presented by Staff is considered as "other facts" that may bear on the fitness of Protective Parking.

## IV. Conclusion

The record reflects that Sergeant Sulikowski identified 308 inconsistencies between the MCIS reports of addresses under relocation contracts and Protective Parking's 24-hour tow sheets from its Clark and Armitage lots. The Sergeant identified 203 inconsistencies between the 24-hour tow sheets and the MCIS reports of three operators. In all, there were 511 inconsistencies identified by Sergeant Sulikowski.

There is a discrepancy of 320 tows between the tows cited in Staff's post hearing brief (831) and the count of tows supported by the testimony of Sergeant Sulikowski (511). Staff argues that the number of 831 tows is supported by the record because of the admission into evidence of the MCIS reports and of the 24-hour tow sheets,

notwithstanding the lack of testimony regarding 320 tows. However, it is the lack of supporting testimony on the 320 tows that creates a meaningful distinction regarding their reliability. In many instances, Sergeant Sulikowski was unable to identify an alleged inconsistency between the MCIS report and the 24-hour tow sheets because of some issue within either of the exhibits he was comparing. Without the testimony, those issues would have gone unnoticed. While a review of the records admitted into evidence may substantiate Staff's assertion of the existence of 320 other potential inconsistencies, they have not been identified on the record and cross-examination at hearing revealed that the accuracy of the data cannot be relied upon as presumptively accurate. Without any corroborating testimony, and hence cross-examination of such testimony, less weight is afforded to the 320 tows.

The argument that the inconsistencies identified by Sergeant Sulikowski constitute violations of the ICRTVL is without merit and not supported by the record. There were no citations written or other action to initiate a hearing process on these items and therefore no disposition, no hearing, no finding of violation or finding of no violation, and no disposition by plea agreement.

The record does reflect that during the relevant time period, Officers Strand, Geisbush and Investigator Kassal issued 154 citations to Protective Parking. Of those, 21 received guilty findings, 66 were dismissed pursuant to a settlement agreement of February 23, 2017, 45 were dismissed by ALJ Ruling, and 22 were voluntarily settled without adjudication pursuant to a settlement agreement of February 23, 2017.

The record also reflects that Protective Parking towed 9,470 vehicles during the relevant time period.

The record reflects that, pursuant to stipulation, Protective Parking meets the requirements under the fitness test established by 92 Ill. Adm. Code 1710.22 (a)(2). The only other facts that bear on its fitness to hold a relocator's license during this proceeding are the 21 guilty findings on citations it was issued between July 24, 2015, and March 23, 2016. The number of guilty findings during the relevant time period in conjunction with compliance with Section 1710.22(a)(2) render Protective Parking fit to hold a relocator's license.

I recommend that the Commission enter the attached Order finding Protective Parking Service Corporation d/b/a Lincoln Towing Service fit to hold a relocator's license.

**STATE OF ILLINOIS**

**ILLINOIS COMMERCE COMMISSION**

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|---|---|---|
| Protective Parking Service Corporation d/b/a Lincoln Towing Service, Respondent | : | 92 RTV-R Sub 17 100139 MC |
| Hearing on fitness to hold a Commercial 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:

### Procedural History

By Order entered February 24, 2016, the Illinois Commerce Commission ("Commission") initiated a hearing to inquire into the relocation towing operations of Protective Parking Service Corporation d/b/a Lincoln Towing Service ("Protective Parking" or "Respondent") 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").

In the February 24, 2016 Order, the Commission noted that Protective Parking was issued a renewal of its authority to operate as a commercial vehicle relocator under the ICRTVL on July 24, 2015. 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.

On April 5, 2016, discovery began when Respondent propounded discovery requests to the Office of Transportation Counsel ("OTC" or "Staff") and also submitted a Freedom of Information Act ("FOIA") request. Multiple data requests and answers were exchanged, and a final deposition of one of Staff's witnesses occurred on May 3, 2017.

Pursuant to notice given in accordance with the Law and the rules and regulations of the Commission, this matter came to be heard before a duly-authorized Administrative Law Judge ("ALJ") of the Commission at its office in Chicago, Illinois on multiple dates between May 31, 2017, and March 21, 2018. The Staff of the Illinois Commerce

Commission appeared by the Office of Transportation Counsel and presented the testimonies of Sergeant Timothy Sulikowski, Officer Bryan Strand, Officer John Geisbush, and Investigator Scott Kassal. The Respondent was represented by counsel and presented the testimony of Robert Munyon, General Manager of Lincoln. Each party cross-examined the opposing parties' witnesses. The record was marked "Heard and Taken" on March 21, 2018.

Motions were filed by Protective Parking during the course of the evidentiary hearings. At the July 10, 2017 evidentiary hearing, Protective Parking filed an Emergency Motion to Strike Testimony and Continue Hearing. The Motion was denied. On July 26, 2017, Protective Parking filed a Motion to Stay these proceedings pending action by the Circuit Court on a review of the Commission's response to a FOIA request made by Protective Parking to the Commission. The Motion to Stay was denied but Protective Parking was allowed instead to request the information through additional formal discovery with responses to be provided by mid-October. Evidentiary hearings resumed on January 16, 2018 and concluded on March 21, 2018.

After the conclusion of the evidentiary hearings, Staff and Respondent each submitted written briefs, and on June 27, 2018, the ALJ heard closing arguments of Staff and Respondent.

At a pre-hearing conference on February 1, 2017, the ALJ ruled that the relevant time period for the Commission's investigation of Protective Parking's towing operations is July 24, 2015, through March 23, 2016.

## I. ISSUE PRESENTED

At issue in this case is whether Protective Parking is fit, willing and able to perform the service of a commercial vehicle relocator and to conform to the provisions of the Illinois Commercial Relocation of Trespassing Vehicles Law and the Commission's Administrative Rules.

## II. APPLICABLE LAW

A. 625 ILCS 5/18a-401. Relocator's licenses – Expiration and renewal

Relocator's licenses--Expiration and renewal. All relocator's licenses shall expire 2 years from the date of issuance by the Commission. The Commission may temporarily extend the duration of a license for the pendency of a renewal application until formally approved or denied. Upon filing, no earlier than 90 days nor later than 45 days prior to such expiration, of written application for renewal, verified under oath, in such form and containing such information as the Commission shall by regulation require, and accompanied by the required application fee and proof of security, the Commission shall, unless it has received information of cause not to do so, renew the license. 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. The Commission

may at any time during the term of the license 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.

B. Illinois Administrative Code Title 92 § 1710.22

92 Ill. Adm. Code 1710.22. Policy on Applications

a) Relocator's Licenses.

1) The Commission shall consider, with regard to applications for new or renewed relocator's licenses, the criminal conviction records (see Section 1710.22(b)(1)) of the applicant, its owners or controllers, directors, officers, members, managers, employees and agents; the safety record of those persons; the compliance record of those persons; the equipment, facilities and storage lots of the applicant; and other facts that may bear on their fitness to hold the license.

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].

## III. EVIDENCE

A. Stipulated Evidence

Protective Parking and Staff have stipulated that Protective Parking meets the requirements of the fitness test established by Section 1710.22(a)(2) of the Administrative Code. 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 employees 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 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 92 Ill. Adm. Code 1710.10, *et seq.* and 625 ILCS 5/18a-100, *et seq.*

B. Staff's Evidence

1. Sergeant Sulikowski

Sergeant Timothy Sulikowski, the Acting Sergeant with the Illinois Commerce Commission Police Department, testified on behalf of the Commission. Sergeant Sulikowski has been an officer with the Commission since July of 2012. As Acting Sergeant, he is responsible for supervising three officers, one investigator, and other civilian employees. Tr. 264, 277.

Sergeant Sulikowski testified Commission police and investigators are authorized to enforce the ICRTVL and the Commission's administrative rules by writing administrative citations which are heard by a Commission Administrative Law Judge ("ALJ"). Commission police officers are also authorized to write tickets to the motoring public for violations that are not regulated by the Commission, these tickets are brought to hearing before the Circuit Court. Investigators are not authorized to write tickets. Tr. of 1-30-18 pg. 1225.

During the relevant time period, any investigations regarding Protective Parking would have been initiated in response to a consumer complaint. When a consumer's vehicle is towed, the consumer receives a copy of the tow invoice that has a preprinted complaint form on the reverse side. The consumer may fill out the complaint form and mail it to the Commission's Des Plaines office. The complaint form is date stamped when received and assigned an investigation number. The investigation is then assigned to an officer or an investigator. Tr. of 1-30-18 pg. 1226-1228.

Once an officer or investigator receives an investigation assignment, they typically call the complainant to get additional information. The officer or investigator should then go to the lot from which the vehicle was towed to check the signage. They would also check the Commission's Motor Carrier Information System ("MCIS") to see whether there is a valid contract on file for the property on the tow invoice. They would also look at whether the contract is listed as a patrol or call contract and compare that information to what appears on the tow invoice. They would also check the validity of the operator and dispatcher permits, whether the tow occurred within the proper air mileage range of the relocator's assigned territory, and whether the tow was communicated to the local police department within an hour of the tow. Tr. of 1-30-18 pg. 1232-1233. MCIS also lists the date that a summary of the contract was received by the Commission and the cancellation date of a contract. Tr. of 5-31-17 pgs. 274-275.

Sergeant Sulikowski testified that the Commission Police officers utilize MCIS daily. In addition to being used for investigations, MCIS is also used to check officer activity, such as how many citations they have written or how many traffic stops they have made. Tr. of 5-31-17 pg. 271. Sergeant Sulikowski explained that when he enters an operator's number into MCIS, data regarding the operator will appear on a screen such as when a permit was issued and when it expires. The same information is available for dispatchers. Tr. of 5-31-17 pgs. 273- 274.

Sergeant Sulikowski reviewed the 24-hour tow sheets of Protective Parking during the relevant time period. 24-hour tow sheets are logs of daily tows by Protective Parking that include the address from where a vehicle was towed, the date of the tow, the year make and model of the vehicle, and the operator who towed the vehicle. Different tow sheets are maintained for each of the lots Protective Parking maintains to store the towed cars. Protective Parking has one lot at 4601 W. Armitage Street ("Armitage Lot") and another lot at 4882 N. Clark Street ("Clark Lot"). Staff's Exhibit J comprises tow sheets for the Armitage Lot. Staff's Exhibit K comprises tow sheets for the Clark Lot. The date of the tow is located at the top right of the page. The "Driver" column identifies the operator conducting the tow.

Sergeant Sulikowski entered property address information from the 24-hour tow sheets into MCIS and looked for inconsistencies between the 24-hour tow sheets and the information in MCIS. Tr. of 5-31-17 pg. 287. At the hearing, Sergeant Sulikowski was presented with a printed out report from MCIS ("MCIS report") of the addresses that were highlighted by Staff on the 24-hour tow sheets. Staff's Exhibit A is the MCIS report of

addresses that appear on the 24-hour tow sheets of tows to the Clark Lot. Staff's Exhibit B is the MCIS report of addresses that appear on the tow sheets of tows to the Armitage Lot. Sergeant Sulikowski was not certain but believed that the information in MCIS regarding the contracts between relocators and private property owners is input into MCIS by the relocation towing companies. Tr. of 5-31-17 pg. 382.

Sergeant Sulikowski testified that there were inconsistencies between the 24-hour tow sheets and the MCIS report regarding vehicles towed from the following addresses:

10 tows 111 S. Halsted According to the MCIS report, the Commission did not receive a contract from Protective Parking on the lot until April 3, 2016. Tr. 397. According to the 24-hour tow sheets, Protective Parking towed ten vehicles from that address in August and November of 2015. Tr. 394-397, Staff's Exs. B & J.

1 225 N. Columbus According to the MCIS report, Protective Parking had a contract on the lot from June 8, 2009 through January 25, 2016. Tr. 410 Another relocator's contract was received on January 26, 2016. Protective Parking's 24-hour tow sheet indicates that one vehicle was towed from the lot on January 29, 2016. Tr. 410-412, Staff's Exs. B & J.

1 344 N. Canal According to the MCIS report, the Commission does not have a Protective Parking contract on file. Protective Parking's 24-hour tow sheet indicates a vehicle was towed from the lot on November 18, 2015. Tr. 422, Staff's Exs. B & J.

1 345 N. Canal According to the MCIS report of the address, another relocator had a contract with the lot owner during the relevant time period of July 24, 2015 through March 23, 2016. Protective Parking's 24-hour tow sheet indicates that a vehicle was towed from the lot on July 31, 2015. Tr. 436-437, Staff's Exs. B & J.

1 400 E. South Water According to the MCIS report of the address, another relocator had a contract with the lot owner during the relevant time period of July 24, 2015 through March 23, 2016. Protective Parking's 24-hour tow sheet indicates that a vehicle was towed from the lot on August 7, 2015. Tr. 439, Staff's Exs. B & J.

3 405 N. Wabash Ave. According to the MCIS report of the address, the Commission received notice of a Protective Parking contract on March 27, 2008 and a cancellation on February 11, 2010. Tr. 442 Protective Parking's 24-hour tow sheets indicate that three vehicles were towed between August and December of 2015. Tr. 445, Staff's Exs. B & J.

1 440 N. LaSalle According to the MCIS report of the address, another relocator had a contract with the lot owner during the relevant time period of July 24, 2015 through March 23, 2016. The MCIS report also shows that the Commission received notice of a Protective Parking contract on March 7, 2007 and of the cancellation of the contract on September 4, 2014. Protective Parking's 24-hour tow sheet indicates that a vehicle was towed from the lot on July 24, 2015. Tr 447, Staff's Exs. B & J.

1 800 N. Kedzie According to the MCIS report of the address, the Commission received notice of a Protective Parking contract on March 7, 2007 and of the cancellation of the contract on June 27, 2015. Protective Parking's 24-hour tow sheet indicates a vehicle was towed from the lot on September 30, 2015. Tr. 448-449, Staff's Exs. B & J.

1 831 N. Damen Ave. According to the MCIS report of the address, the Commission received notice of a Protective Parking contract on December 15, 2015. Protective Parking's 24-hour sheet indicates a vehicle was towed from the lot on November 27, 2015. Tr. 452, Staff's Exs. B & J.

1 1801 N. St. Louis Ave. The 24-hour tow sheets indicate a vehicle was towed from the lot on September 19, 2015, March 8, 2016, and March 14, 2016. According to the MCIS report of the address, no relocator held a contract during the time the vehicles were towed. Tr. 454-458, Staff's Exs. B & J.

34 1900 N. Austin Ave. According to the MCIS report of the address, the Commission received notice of a Protective Parking patrol lot contract on January 5, 2007 and a cancellation notice on November 6, 2009. The report also indicates the Commission received notice of a Protective Parking call lot contract on March 7, 2007 and a cancellation notice on October 27, 2009. The 24-hour tow sheets indicate 34 vehicles were towed from the lot between September 27, 2015 and March 11, 2016. Tr. 460-469, Staff's Exs. B & J.

1 2030 S. State According to the MCIS report of the address, the Commission received notice of a Protective Parking contract on July 12, 2016 that is currently in effect. The 24-hour tow sheets indicate a vehicle was towed on July 31, 2015. Tr. 472-475, Staff's Exs. B & J.

12 2111 S. Clark According to the MCIS report of the address, another relocator had a contract with the lot owner during the relevant time period of July 24, 2015 through March 23, 2016. The 24-hour tow sheets indicate 12 vehicles were towed from the lot between November 2, 2015 and February 20, 2016. Tr. 475-482, Staff's Exs. B & J.

2 2113 N. Spaulding Ave. According to the MCIS report of the address, the Commission received notice of a Protective Parking contract on February 2, 2016. The 24-hour tow sheets indicate two vehicles were towed from the lot on January 30, 2016. Tr. 483-484, Staff's Exs. B & J.

0 2201 S. Halsted According to the MCIS report of the address, there is conflicting information on file. The Commission received notice of a contract held by another relocator on May 1, 2006 and there is no cancellation notice received for that contract, thus the contract would appear to be in effect. The Commission, however, also received notice of a Protective Parking contract on March 7, 2007 and notice of cancellation on February 1, 2010. The 24-hour tow sheets indicate a vehicle was towed from the lot on August 27, 2015. Sergeant Sulikowski stated that he would have to investigate further to determine the reason for the overlapping contract dates. Tr. 485-498, Staff's Exs. B & J.

1 2233 S. Canal According to the MCIS report of the address, another relocator had a contract with the lot owner during the relevant time period of July 24, 2015 through March 23, 2016. The 24-hour tow sheets indicate a vehicle was towed from the lot on February 5, 2016. Tr. 489-491, Staff's Exs. B & J.

1 2249 N. Milwaukee Ave. According to the MCIS report of the address, another relocator has a contract with the lot owner beginning July 19, 2007 to the present. The 24-hour tow sheets indicate a vehicle was towed from the lot on August 26, 2015. Tr. 491-493, Staff's Exs. B & J.

1 2421 W. Madison According to the MCIS report of the address, another relocator has a contract with the lot owner beginning August 16, 2011, to the present. The 24-hour tow sheets indicate a vehicle was towed from the lot on November 12, 2015. Tr. 493-495, Staff's Exs. B & J.

1 2451 N. Clybourn According to the MCIS report of the address, the Commission received notice of a Protective Parking contract on March 24, 2016 that is currently in effect. The 24-hour tow sheets indicate a vehicle was towed from the lot on March 16, 2016. Tr. 495-496, Staff's Exs. B & J.

0 2600 S. Michigan Ave. According to the MCIS report of the address, there is conflicting information on file. The Commission received notice of a contract held by another relocator on March 19, 2007 and there is no cancellation notice received for that contract, thus the contract would appear to be in effect. The Commission, however, also received notice of a Protective Parking contract on August 21, 2008 and notice of cancellation on February 1, 2010. The 24-hour tow sheets indicate six vehicles were towed from the lot between January 21, 2016 and March 23, 2016. Sergeant Sulikowski stated that he would have to investigate further to determine the reason for the overlapping contract dates. Tr. 497-507, Staff's Exs. B & J.

6 2750 W. Grand Ave. According to the MCIS report of the address, the Commission received notice of a Protective Parking contract on September 22, 2015 that is currently in effect. The 24-hour tow sheets indicate six vehicles were towed from the lot between July 26, 2015 and August 19, 2015. Tr. 507-511, Staff's Exs. B & J.

1 2801 N. Linder Ave. According to the MCIS report of the address, the Commission received notice of a Protective Parking contract on March 18, 2016 that is currently in effect. The 24-hour tow sheets indicate a vehicle was towed from the lot on March 9, 2016. Tr. 511, 524-526, Staff's Exs. B & J.

8 2805 N. Linder Ave. According to the MCIS report of the address, the Commission received notice of a Protective Parking contract on March 18, 2016 that is currently in effect. The 24-hour tow sheets indicate eight vehicles were towed from the lot between August 16, 2015 and September 12, 2015. Tr. 526-529, Staff's Exs. B & J.

3 2805 N. Lotus Ave. According to the MCIS report of the address, the Commission received notice of a Protective Parking contract on March 18, 2016 that is currently in

effect. The 24-hour tow sheets indicate three vehicles were towed from the lot between August 18, 2015 and September 4, 2015. Tr. 529-531, Staff's Exs. B & J.

1 2908 W. Fullerton According to the MCIS report of the address, the Commission received notice of a Protective Parking contract on September 8, 2015 that is currently in effect. The 24-hour tow sheets indicate a vehicle was towed from the lot on September 2, 2015. Tr. 532-533, Staff's Exs. B & J.

1 2844 W. Armitage According to the MCIS report of the address, the Commission received notice of a Protective Parking contract on August 2, 2016 that is currently in effect. The 24-hour tow sheets indicate a vehicle was towed from the lot on January 24, 2016. Tr. 534-535, Staff's Exs. B & J.

36 3100 N. Central Ave. According to the MCIS report of the address, the Commission received notice of a Protective Parking contract on May 16, 2006 and a notice of cancellation on May 14, 2015 effecting a cancellation on May 24, 2015. The 24-hour tow sheets indicate 36 vehicles were towed from the lot between July 25, 2015 and March 12, 2016. Tr. 536-559, Staff's Exs. B & J.

1 3901 W. Madison Ave. According to the MCIS report of the address, another relocator had a contract with the lot owner during the relevant time period of July 24, 2015 through March 23, 2016. The 24-hour tow sheets indicate a vehicle was towed from the lot on January 16, 2016. Tr. 560, Staff's Exs. B & J.

1 4946 S. Drexel According to the MCIS report of the address, the Commission received notice of a Protective Parking contract on November 3, 2015 that is currently in effect. The 24-hour tow sheets indicate a vehicle was towed from the lot on October 23, 2015. Tr. 561-562, Staff's Exs. B & J.

1 5531 W. North Ave. According to the MCIS report of the address, there were no relocator contracts on file with the Commission for the lot owner during the relevant time period. The 24-hour tow sheets indicate a vehicle was towed from the lot on August 15, 2015. Tr. 564-566, Staff's Exs. B & J.

1 7118 W. Grand Ave. According to the MCIS report of the address, another relocator had a contract with the lot owner during the relevant time period. The 24-hour tow sheets indicate a vehicle was towed from the lot on February 6, 2016. Tr. 567-567, Staff's Exs. B & J.

2 834 W. Leland Ave. According to the MCIS report of the address, the Commission received notice of a Protective Parking contract on March 24, 2016 that is currently in effect. The 24-hour tow sheets indicate two vehicles were towed from the lot on November 19, 2015 and December 3, 2015. Tr. 582-585, Staff's Exs. A & K.

3 850 W. Eastwood Ave. According to the MCIS report of the address, the Commission received notice of a Protective Parking contract on March 9, 2017 that is

currently in effect. The 24-hour tow sheets indicate three vehicles were towed from the lot between October 19, 2015 and December 22, 2015. Tr. 587-589, Staff's Exs. A & K.

1 1730 W. Terra Cotta Place According to the MCIS report of the address, the Commission received notice of cancellation of a Protective Parking contract on December 21, 2015, effectuating a cancellation on December 31, 2015. The 24-hour tow sheets indicate a vehicle was towed from the lot on February 6, 2016. Tr. 590, Staff's Exs. A & K.

11 2001 W. Devon Ave. According to the MCIS report of the address, the Commission received notice of a Protective Parking contract on December 14, 2015 that is currently in effect. The 24-hour tow sheets indicate 11 vehicles were towed from the lot between July 25, 2015 and November 8, 2015. Tr. 582-598; Staff's Exs. A & K.

1 2626 N. Lincoln Ave. According to the MCIS report of the address, the Commission received notice of a Protective Parking contract on December 7, 2016 that is currently in effect. The 24-hour tow sheets indicate a vehicle was towed from the lot on August 6, 2015. Tr. 598-599, Staff's Exs. A & K.

43 2801 W. Devon Ave. According to the MCIS report of the address, there were no relocator contracts on file with the Commission during the relevant time period. The 24-hour tow sheets indicate 43 vehicles were towed from the lot between August 1, 2015 and February 6, 2016. Tr. 599-616, Staff's Exs. A & K.

1 3214 N. Kimball Ave. According to the MCIS report of the address, the Commission received notice of cancellation of a Protective Parking contract on February 9, 2009, effectuating a cancellation on February 19, 2009. The 24-hour tow sheets indicate a vehicle was towed from the lot on December 16, 2015. Tr. 616-617, Staff's Exs. A & K.

24 3620 N. Clark According to the MCIS report of the address, another relocator had a contract with the lot owner during the relevant time period. The 24-hour tow sheets indicate 24 vehicles were towed from the lot between August 22, 2015 and February 13, 2016. Tr. 617-625, Staff's Exs. A & K.

4 3700 N. Broadway According to the MCIS report of the address, the Commission received notice of a Protective Parking contract on March 18, 2016 that is currently in effect. The 24-hour tow sheets indicate four vehicles were towed from the lot between July 26, 2015 and March 9, 2016. Tr. 625-627, Staff's Exs. A & K.

1 3923 N. Clarendon Ave. According to the MCIS report of the address, the Commission received notice of a Protective Parking contract on October 7, 2016 that is currently in effect. The 24-hour tow sheets indicate a vehicle was towed from the lot on December 31, 2015. Tr. 628, Staff's Exs. A & K.

19 4102 N. Sheridan According to the MCIS report of the address, there were no relocator contracts on file with the Commission during the relevant time period. The 24-

hour tow sheets indicate 19 vehicles were towed from the lot between July 26, 2015 and March 22, 2016. Tr. 628-635, Staff's Exs. A & K.

2 4801 N. Ravenswood Ave. According to the MCIS report of the address, the Commission received notice of a Protective Parking contract on August 11, 2016 that is currently in effect. The 24-hour tow sheets indicate two vehicles were towed from the lot on July 26, 2015 and August 16, 2015. Tr. 635-638, Staff's Exs. A & K.

5 5440 N. Clark According to the MCIS report of the address, another relocator had a contract with the lot owner during the relevant time period. The 24-hour tow sheets indicate five vehicles were towed from the lot between August 14, 2015 and February 23, 2016. Tr. 638-640, Staff's Exs. A & K.

3 5501 N. Kedzie According to the MCIS report of the address, another relocator had a contract with the lot owner during the relevant time period. The 24-hour tow sheets indicate three vehicles were towed from the lot in January of 2016. Tr. 641-642, Staff's Exs. A & K.

5 5623 N. Clark According to the MCIS report of the address, another relocator had a contract with the lot owner during the relevant time period. The 24-hour tow sheets indicate five vehicles were towed from the lot in between October 18, 2015 and January of 2016. Tr. 642-645, Staff's Exs. A & K.

4 5713 N. Kenmore According to the MCIS report of the address, another relocator had a contract with the lot owner during the relevant time period. The 24-hour tow sheets indicate four vehicles were towed from the lot in between October 18, 2015 and January of 2016. Tr. 645-647, Staff's Exs. A & K.

6 5754 N. Western Ave. According to the MCIS report of the address, another relocator had a contract with the lot owner during the relevant time period. The 24-hour tow sheets indicate six vehicles were towed from the lot on August 22, 2015 and December 27, 2015. Tr. 647-649, Staff's Exs. A & K.

30 6105 N. Broadway According to the MCIS report of the address, another relocator had a contract with the lot owner during the relevant time period. The 24-hour tow sheets indicate 30 vehicles were towed from the lot between July 26, 2015 and March 22, 2016. Tr. 649-659, Staff's Exs. A & K.

2 6550 N. Sheridan According to the MCIS report of the address, the Commission received notice of a Protective Parking contract on October 21, 2016 that is currently in effect. The 24-hour tow sheets indicate two vehicles were towed from the lot in July of 2015. Tr. 660, Staff's Exs. A & K.

6 6700 N. Greenview According to the MCIS report of the address, there were no relocator contracts on file with the Commission during the relevant time period. The 24-hour tow sheets indicate six vehicles were towed from the lot between July 26, 2015 and March 22, 2016. Tr. 661-664, Staff's Exs. A & K.

1 7000 N. Ridge According to the MCIS report of the address, the Commission received notice of a Protective Parking contract on January 4, 2016 that is currently in effect. The 24-hour tow sheets indicate a vehicle was towed from the lot on December 15, 2015. Tr. 665, Staff's Exs. A & K.

Sergeant Sulikowski testified on cross examination that no investigations were conducted for any of the inconsistencies he identified between the MCIS reports and Protective Parking's 24-hour tow sheets. Tr. of 1-31-18 pg. 1436, 1442. There were no consumer complaints made on these tows to trigger an investigation. Id. 1441. No citations were written for any of the tows cross-referenced on the 24-hour tow sheets contained in Staff's Exhibits J and K, and the MCIS Reports contained in Staff's Exhibits A and B. Id. 1441.

Operator Permits

Sergeant Sulikowski testified that there were inconsistencies between the 24-hour tow sheets and the MCIS report regarding the validity of the permits of operators who towed vehicles during the relevant time period. Sergeant Sulikowski cross-referenced the 24-hour tow sheets from the Clark and Armitage lot with the MCIS print out of operator license information contained in Staff's Exhibit F.

Sergeant Sulikowski testified that an operator may continue to work on an existing operator's permit during the pendency of a renewal application if the renewal application is filed prior to the expiration of the existing permit. Tr. 671.

Sergeant Sulikowski was presented the MCIS report's relocator operator permit screenshots for three of Protective Parking's relocation operators, Ronald Phillips with operator number 4394, Jose Negron with operator number 2515, and Albert Solano with operator number 4190.

Operator No. 4394 – Ronald Phillips – 194 tows

According to the MCIS report, Ronald Phillips' initial operator's permit was received by the Commission on August 13, 2013, and effective from August 16, 2013 to August 16, 2015. The Commission received a renewal application on September 17, 2015, which became effective February 16, 2016 and expired on February 16, 2018. Tr. 668-669, Staff's Ex. F. Sergeant Sulikowski testified that according the MCIS report, Mr. Phillips did not have an operator's permit from August 16, 2015 to February 16, 2016 because the renewal application was not received before the original permit expired. Tr. 671. Sergeant Sulikowski's review of Protective Parking 24-hour tow logs between August 16, 2015 and February 16, 2016, indicate Mr. Phillips performed 194 tows during that time. Tr. 671-717, Staff's Ex. F.

Sergeant Sulikowski testified on cross-examination that he did not have personal knowledge regarding whether Ronald Phillips relocated vehicles between August 16, 2015 and February 16, 2016. No investigation was done to determine if Mr. Phillips had a license during that time. No citations were issued regarding tows conducted by Mr.

Phillips during that time and no complaints were received regarding any such tows. Tr. of 1-31-18 pgs. 1488-1489.

Operator No. 2515 – Jose Negron – 1 tow

According to the MCIS report, the Commission received Jose Negron's initial operator permit application on November 5, 2013. The permit was issued with an effective date of November 8, 2013 to November 8, 2015. A renewal Application was received on June 27, 2016, and it was issued and effective from December 6, 2016 to December 6, 2018. Sergeant Sulikowski testified that according to the MCIS report, Mr. Negron did not have an operator's permit from November 8, 2015 to December 6, 2016. Tr. 820-822. Sergeant Sulikowski's review of Protective Parking 24-hour tow logs between November 8, 2015 and December 6, 2016 indicate Mr. Negron performed one tow on November 21, 2015. Tr. 825, Staff Ex. J pg. 145. Although Staff contends another vehicle was towed on December 4, 2015, the handwritten operator number on the tow log appears to be 2575, not 2515. Staff Ex. J pg. 161.

Sergeant Sulikowski testified on cross-examination that he did not know whether Mr. Negron was actually licensed on November 21, 2015. No investigation was initiated and no citation was issued for the tow. Tr. of 1-31-18 pg. 1495.

Operator No. 4190 – Albert Solano – 8 tows

According to the MCIS report, the Commission received Albert Solano's initial operator permit application on February 11, 2014. The permit was issued with an effective date of February 14, 2014 to February 14, 2016. A renewal application was received on March 7, 2016 and issued with an effective date of April 22, 2016 to April 22, 2018. Sergeant Sulikowski testified that according to the MCIS report, Mr. Solano did not have an operator's permit between February 14, 2016 and April 22, 2016. Sergeant Sulikowski's review of Protective Parking 24-hour tow logs between February 14, 2016 and April 22, 2016, indicate Mr. Solano performed eight tows during that period of time. Tr. 829-833, Staff Ex. J.

Sergeant Sulikowski testified on cross-examination that he did not know when Mr. Solano sought to renew his license or whether he Mr. Solano had a license between February 14, 2016 and April 22, 2016. No investigations were initiated and no citations were issued for the tows. Tr. of 1-31-18 pg. 1496.

**Summary of Tow Sheet and Operator Inconsistencies Noted by Sulikowski**

In sum, Sergeant Sulikowski testified that there were 308 inconsistencies between the MCIS reports of addresses under relocation contracts and the 24-hour tow sheets from the Clark and Armitage lots. There were 203 inconsistencies between the 24-hour tow sheets and the MCIS reports of three operators. In all, there were 511 inconsistencies identified by Sergeant Sulikowski.

2. Investigator Scott Kassal

Investigator Scott Kassal testified that he is a Transportation Investigator with the Illinois Commerce Commission Police. He has been an Investigator since 1996. During the relevant time period, Investigator Kassal reviewed consumer complaints regarding relocation towing companies. Tr. 7-26-17 pg. 905. He explained the guidelines typically followed when investigating consumer complaints. Once a consumer complaint is received, it is assigned to an investigator or officer who will then use MCIS to check the validity of the operator and dispatcher permits and whether the relocation company has a contract with the property from which a vehicle was towed. Tr. of 7-26-17 pg. 906. If any of the required fields on the tow invoice, which is on the reverse side of the consumer complaint, are found to be incorrect or expired, the officer or investigator would issue an administrative citation to the towing company. The three outcomes of an investigation are finding in favor of the towing company with no further action by the Commission; finding an alleged violation and issuing an administrative citation; or reaching an agreement with the towing company whereby the towing company agrees to refund the complainant's money instead of receiving an administrative citation. Tr. of 7-26-17 pg. 908. Administrative citations are issued with a fine and the recipient company can either pay the fine imposed or request an administrative hearing on the citation. Tr. of 1-17-18 pg. 910.

Investigator Kassal testified that he issued 16 administrative citations to Protective Parking during the relevant time period for various alleged violations. Tr. of 1-17-18 pgs. 912-930; Staff's Exs. L, M, & N.

On cross-examination, Investigator Kassal testified that during the relevant time period, he opened 12 investigations relating to Protective Parking and issued 16 administrative citations. Tr. of 1-17-18 pgs. 1006-1007. Four of the sixteen citations were issued for improper signage (one of which regarding a lot under the Chicago Transit Authority elevated train track); one was issued because the tow truck driver's operator's permit was expired; one was issued because the contract summary between Protective Parking and the lot owner was not e-filed; eight were issued because the tow invoices were not accurately completed. The eight citations for inaccurate invoices were issued because the invoices lacked either or both the contract number or tow truck license plate number. In each instance where a contract number was omitted from the invoice, Investigator Kassal determined that a contract existed between the lot owner and Protective Parking. Tr. of 1-17-18 pgs. 993-994.

Two of the sixteen administrative citations issued by Investigator Kassal for invalid dispatcher permits should not have been written because there is no requirement that the person who releases a vehicle to its owner have a dispatcher permit. Tr. of 1-17-18 pg. 1006; 625 ILCS 5/18a-100(6).

3. Officer Bryan Strand

Officer Bryan Strand testified that he has been employed by the Illinois Commerce Commission Police Department for five years. Officer Strand described the consumer complaint process for relocation towing. Consumer complaints are received by the Commission via U.S. mail, assigned an investigation file number, and assigned to an officer or investigator. Once he receives a complaint, he reviews the invoice on the reverse side of the complaint for accuracy and completeness. Tr. of 7-26-17 pgs. 938-939. At the end of an investigation, Officer Strand will either close it without issuing any administrative citations or issue citations of alleged violations. Tr. of 7-26-17 pgs. 944-945.

Officer Strand testified that he issued 52 administrative citations to Protective Parking during the relevant time period for various alleged violations. Tr. of 7-26-17 pgs. 946-992, Staff's Exs. L, M, & N. Six of the 52 administrative citations issued by Officer Strand for expired dispatcher permits should not have been written because there is no requirement that the person who releases a vehicle to its owner have a dispatcher permit. Tr. of 7-26-17 pgs. 962, 973, 974,976, 978, 979, 991; Tr. of 2-13-18 pgs. 1541, 1542, 1547, 1581; 625 ILCS 5/18a-100(6).

On cross-examination, Officer Strand testified that he may decide that a consumer complaint is unfounded after investigation but he could write citations for other issues that appear while investigating the complaint, such as incomplete invoices or expired operator permits. Whether these issues in fact constitute a violation of the law is determined at a hearing on a citation. Tr. of 1-16-18 pgs. 702-704, 765. Officer Strand did not know if there was a determination of a violation at hearings on any of the citations he wrote to Protective Parking during the relevant time period. Tr. of 1-16-18 pg. 704.

4. Officer John Geisbush

Officer Geisbush testified that he has been employed by the Illinois Commerce Commission since July of 2012. One of his duties is to enforce relocation towing regulations. The relocation towing industry is primarily regulated through investigating consumer complaints. When he receives a consumer complaint he will review it and the information on the tow invoice on the reverse side of the complaint. He may then go to the location of the tow, call the tow company and ask them about the incident, or ask the complainant for additional information. Tr. 7-26-17 pgs. 1005-1006. In the course of his investigation, he may find issues that the consumer did not complain about. Id. 1009. The possible outcomes of an investigation are that citations are issued to the towing company, no citations are issued and the investigation is closed; or the towing company agrees to refund the consumer's money. Id. 1010.

Officer Geisbush testified on direct examination that he issued 86 administrative citations to Protective Parking during the relevant time period for various alleged violations. Tr. of 7-26-17 pgs. 1011-1096, Staff's Exs. L, M, & N.

On cross-examination, Officer Geisbush testified that 85 citations were issued by him (a difference of one from direct examination), 22 were for improper signage Tr. of 1-25-18 pgs. 1148-1150; 13 were for improper invoices Id. 1159; 10 were for overcharges Id. 1174; 10 were for no equipment lease on file Id. 1177; 2 were for towing while owner present Id. 1189; 4 were for patrolling from a call lot Id. 1193; 1 was for towing from a cancelled lot; 11 were for not having written authorization to relocate Tr. of 1-25-18 pg. 1199; and 12 were for removing authorized vehicles. Tr. of 1-25-18 pgs. 1199-1201. Officer Geisbush testified that an administrative citation is an allegation of a violation, not an adjudication that there is a violation. He did not know if any hearings were held on the citations he issued. Tr. of 1-25-18 pgs. 1041, 1213.

5. Administrative Notice of Citations Issued, Administrative Law Judge Rulings, and Commission Order

Staff Exhibits G, H, I, L, M and N were admitted under administrative notice pursuant to 83 Ill. Adm. Code 200.640(2). Tr. of 2-14-18 pgs. 1728, 1731. Exhibit G consists of Administrative Law Judge Rulings of guilty on citations issued by Officers Strand, Geisbush and Investigator Kassal during the relevant time period. Exhibit H consists of Administrative Law Judge Rulings dismissing citations issued by the Officers and Investigator. Exhibit I consists of Administrative Law Judge Rulings acknowledging voluntary settlement of citations without adjudication. Exhibits L, M and N contain copies of citations issued by the Officers and Investigator during the relevant time period.

Of the 16 citations written to Protective Parking by Investigator Kassal, five were found guilty by ALJ ruling, one was dismissed by settlement agreement of February 23, 2017, five were dismissed by ALJ Ruling, and five were voluntarily settled without adjudication pursuant to a settlement agreement of February 23, 2017. Tr. of 7-26-17 pgs. 912-930; Staff's Exs. G, H, I, L, M, & N.

Of the 52 citations written to Protective Parking by Officer Strand, 14 were found guilty by ALJ ruling, 11 were by dismissed by ALJ Ruling, 24 were dismissed pursuant to a settlement agreement of February 23, 2017, and three were voluntarily settled without adjudication pursuant to a settlement agreement of February 23, 2017. Tr. of 7-26-17 pgs. 946-992; Staff's Exs. G, H, I, L, M, & N.

Of the 86 citations issued to Protective Parking by Officer Geisbush, two were found guilty by ALJ ruling, 41 were dismissed pursuant to a settlement agreement of February 23, 2017, 29 were dismissed by ALJ Ruling, and 14 were voluntarily settled without adjudication pursuant to a settlement agreement of February 23, 2017. There is a discrepancy of one citation between the testimony and the ALJ rulings. Tr. of 7-26-17 pgs. 1011-1096; Staff's Exs. G, H, I, L, M, & N.

In sum, of the 154 citations issued to Protective Parking during the relevant time period, 21 received guilty findings, 66 were dismissed pursuant to a settlement agreement

of February 23, 2017, 45 were dismissed by ALJ Ruling, and 22 were voluntarily settled without adjudication pursuant to a settlement agreement of February 23, 2017.

The ALJ also admitted under administrative notice pursuant to 83 Ill. Adm. Code 200.640(2), the Commission Order entered on July 8, 2015 in the matter of Protective Parking Service Corporation: Application for Renewal of a Commercial Relocators License. 92 RTV-R Sub 15. This Order is the Commission's decision granting Protective Parking's last renewal application.

C. Protective Parking's Evidence

Robert Munyon testified that he currently is, and was during the relevant time period, general manager of Protective Parking. He has worked for Protective Parking for 32 years and as the general manager for 17 years. He stated Protective Parking has approximately 20,000 contracts with private property owners to tow from their lots.

Mr. Munyon testified that, according to the 24-hour tow sheets provided to the Commission, Protective Parking towed 9,470 vehicles during the relevant time period. Tr. of 3-15-18 pgs. 1799-1801. Staff's Exs. J and K.

## IV. PARTIES' POSITIONS

Staff's Position

Staff argues in its post hearing brief that the testimony of Sergeant Sulikowski regarding inconsistencies between the MCIS reports and the 24-hour tow sheets establishes that Protective Parking towed vehicles without property owner authorization, or prior to filing the tow contract with the Commission, or on a patrol basis when the contract was filed as a call lot 462 times between July 24, 2015, and March 23, 2016. Specifically, Staff argues there were 176 unauthorized tows to the Armitage Lot and 286 unauthorized tows to the Clark Lot.

Staff also argues that Protective Parking used the services of an operator without a valid or current operator's permit 369 times during the relevant time period. The 462 claimed unauthorized tows and the 369 claimed operator violations lead Staff to claim there were a total of 831 violations of the ICRTVL.

Staff's argues that a "logical syllogism" leads to the inevitable conclusion that a violation of the ICRTVL and Administrative Rules occurred in each instance of an inconsistency. Staff Br. 23. Staff further argues that Protective Parking's pattern and practice of conducting unauthorized relocations support a finding that it is unfit to hold a relocators license.

Staff does not refer to any of the testimony provided by Officer's Strand, Geisbush, or Investigator Kassal in its post hearing brief.

Protective Parking's Position

Protective Parking argues that the evidence adduced did not reflect that any of the 831 alleged violations actually occurred. Sergeant Sulikowski only testified to the inconsistencies between the 24-hour tow sheets and the MCIS reports. The testimony adduced at trial was that the testifying officer did not initiate or complete any investigation, did not write any citations, did not testify at a hearing on a citation, and no violation was determined by an Administrative Law Judge on any of the inconsistencies.

Protective Parking also argues that Staff has stipulated that Protective Parking meets each and every requirement of the required fitness test enumerated by 92 Ill. Adm. Code 1710.22(a)(2), and based on the stipulation alone, it should be determined that it is fit, willing, and able to hold a Commercial Vehicle Relocator's License.

## V. ANALYSIS AND CONCLUSION

The issue presented in this case is whether Protective Parking is fit, willing and able to perform the service of a commercial vehicle relocator and to conform to the provisions of the Illinois Commercial Relocation of Trespassing Vehicles Law and the Commission's Administrative Rules.

The Commission's analysis of whether a relocator is fit to hold a license is prescribed by Section 1710.22 of the Administrative Rules. Staff and Respondent have stipulated that Protective Parking meets the requirements of the fitness test established by the Section 1710.22(a)(2). 92 Ill. Adm. Code 1710.22 (a)(2).

The only other standard to use in evaluating whether Protective Parking is fit to hold a license is Section 1710.22(a)(1), which allows the Commission to consider the equipment, facilities and storage lots of the applicant; and other facts that may bear on their fitness to hold the license. 92 Ill. Adm. Code 1710.22 (a)(1). The evidence presented by Staff is considered as "other facts" that may bear on the fitness of Protective Parking.

The record reflects that Sergeant Sulikowski identified 308 inconsistencies between the MCIS reports of addresses under relocation contracts and the 24-hour tow sheets from the Clark and Armitage lots. The Sergeant identified 203 inconsistencies between the 24-hour tow sheets and the MCIS reports of three operators. In all, there were 511 inconsistencies identified by Sergeant Sulikowski.

Staff's claim that Protective Parking committed 831 violations of the ICRTVL is not supported by the record. In order to identify an inconsistency, Sergeant Sulikowski had to compare two sources of information, the addresses of contracts in the MCIS reports against the handwritten addresses on the 24-hour tow sheets. The Sergeant did not compare the information in Exhibits A and B to 16 addresses in Exhibits J and K cited in Staff's post hearing brief, and therefore, did not establish any inconsistencies for these addresses: 1041 N. Harding; 1919 N. Cicero; 2002 S. Wentworth; 2734 S. Wentworth; 4000 W. Grand; 4032 W. Armitage; 4645 W. Belmont; 5000 W. Madison; 5200 W. North;

223 N. Custer; 1415 W. Morse; 2245 N. Halsted; 2454 W. Peterson; 2828 N. Broadway; 4420 N. Winchester; and 5853 W. Artesian.

In addition, the Sergeant was unable to read the dates on several pages of the 24-hour tow sheets, and therefore, unable to comment on several of the tows appearing in the tow sheets. Tr. of 7-7-17 pgs. 592, 594, 601, 602, 603, 639, 640. In some instances, the Sergeant's testimony covers fewer vehicles towed from an address than reported by Staff. (ex., 3700 N. Broadway, Staff claims there were eight tows but testimony on four; 4102 N. Sheridan, Staff claims there were 23 tows but testimony on 19; and 5501 N. Kedzie, Staff claims there were six tows but testimony on three).

Sergeant Sulikowski also testified that there was conflicting information in the MCIS report regarding the status of contracts at 2201 S. Halsted and 2600 S. Michigan. He would have to do further investigation to determine the status of the contracts. Tr. of 6-1-17 pgs. 485, 497.

There is a discrepancy of 320 tows between the tows cited in Staff's post hearing brief (831) and the count of tows supported by the testimony of Sergeant Sulikowski (511). Staff argues that the number of 831 tows is supported by the record because of the admission into evidence of the MCIS reports and of the 24-hour tow sheets, notwithstanding the lack of testimony regarding 320 tows. However, it is the lack of supporting testimony on the 320 tows that creates a meaningful distinction regarding their reliability. In many instances, Sergeant Sulikowski was unable to identify an alleged inconsistency between the MCIS report and the 24-hour tow sheets because of some issue within either of the exhibits he was comparing. Without the testimony, those issues would have gone unnoticed. While a review of the records admitted into evidence may substantiate Staff's assertion of the existence of 320 other potential inconsistencies, they have not been identified on the record and cross-examination at hearing revealed that the accuracy of the data cannot be relied upon as presumptively accurate. Without any corroborating testimony, and hence cross-examination of such testimony, less weight is afforded to the 320 tows.

Staff's argument that the inconsistencies identified by Sergeant Sulikowski constitute violations of the ICRTVL is without merit and not supported by the record. There were no citations written or other action to initiate a hearing process on these items and therefore no disposition, no hearing, no finding of violation or finding of no violation, and no disposition by plea agreement. Staff's four witnesses testified that when they have reason to believe a violation has occurred, they will issue an administrative citation. An administrative citation is an allegation of a violation. Sergeant Sulikowski testified that no investigations were conducted for any of the inconsistencies he identified between the MCIS reports and Protective Parking's 24-hour tow sheets. No citations were written for any of the tows cross-referenced on the 24-hour tow sheets and the MCIS reports containing information about operator permits or relocation contracts by address.

The record does reflect that during the relevant time period, Officers Strand, Geisbush and Investigator Kassal issued 154 citations to Protective Parking. Of those,

21 received guilty findings, 66 were dismissed pursuant to a settlement agreement of February 23, 2017, 45 were dismissed by ALJ Ruling, and 22 were voluntarily settled without adjudication pursuant to a settlement agreement of February 23, 2017.

The record also reflects that Protective Parking towed 9,470 vehicles during the relevant time period. This means that Protective Parking was found guilty of violating the Illinois Commercial Relocation of Trespassing Vehicles Law or its Administrative Rules 21 times in an eight month period when it towed a total of 9,470 vehicles, which is a violation on less than one percent of all tows conducted.

The record reflects that Protective Parking meets the requirements under the fitness test established by 92 Ill. Adm. Code 1710.22 (a)(2). The only other facts that bear on its fitness to hold a relocator's license during this proceeding are the 21 guilty findings on citations it was issued between July 24, 2015, and March 23, 2016. The number of guilty findings during the relevant time period in conjunction with compliance with Section 1710.22(a)(2) render Protective Parking fit to hold a relocator's license.

The evidence supports a finding that Protective Parking is fit, willing and able to provide relocation towing services, in accordance with Chapter 625 of the Illinois Compiled Statutes, Sections 5/18a-400 through 5/18a-501.

## VI. PROPOSED ORDER

A Proposed Order was served on the Parties on July 2, 2018. Staff filed a Brief on Exception on July 16, 2018. Protective Parking filed a Brief in Reply to Exceptions on July 23, 2018.

## VII. FINDINGS AND ORDERING PARAGRAPHS

The Commission, having considered the entire record, finds that:

(1) the Commission has jurisdiction over the Respondent and the subject-matter of this proceeding pursuant to Section 18a-200(1) of the ICRTVL (625 ILCS 5/18a-200(1);

(2) The recitals of fact set forth in the prefatory portion of this Order are supported by the evidence of record, and are hereby adopted as findings of fact;

(3) The relevant time period for the Commission's investigation of Protective Parking Service Corporation is July 24, 2015, through March 23, 2016;

(4) during the relevant time period, Officers Strand, Geisbush and Investigator Kassal issued 154 citations to Protective Parking. Of those, 21 received guilty findings, 66 were dismissed pursuant to a settlement agreement of February 23, 2017, 45 were dismissed by ALJ Ruling, and 22 were

voluntarily settled without adjudication pursuant to a settlement agreement of February 23, 2017;

(5) during the relevant time period, Protective Parking Service Corporation towed 9,470 vehicles;

(6) by stipulation, Respondent Protective Parking meets the requirements of the fitness test established by 92 Ill. Adm. Code 1710.22(a)(2); and

(7) The evidence supports a finding that Protective Parking is fit, willing and able to provide relocation towing services, in accordance with Chapter 625 of the Illinois Compiled Statutes, Sections 5/18a-400 through 5/18a-501.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that Protective Parking Service Corporation d/b/a Lincoln Towing Service, with principal office and place of business at 4882 N. Clark Street, Chicago, Cook County, Illinois, is found to be fit, willing, and able to perform a commercial relocation service in intrastate commerce within the State of Illinois under the Illinois Commercial Relocation of Trespassing Vehicles Law (625 ILCS 5/18a-400 *et seq.)*.

IT IS FURTHER ORDERED that the Commercial Vehicle Relocator's License of Protective Parking Service Corporation d/b/a Lincoln Towing Service shall expire two years from the date of this Order. Upon Applicant filing a verified Application in such form and containing such information as the Commission requires, and accompanied by the required Application fee, the Commission shall renew the Application in two years, unless it has received information of cause not to do so.

IT IS FURTHER ORDERED that the Commission retains jurisdiction over Respondent and the subject-matter of this proceeding for the purpose of issuing such other Orders as it may deem appropriate.

IT IS FURTHER ORDERED that this is a final Order subject to the Administrative Review Law, 735 ILCS 5/3-101 *et seq.*, in accordance with Chapter 625 ILCS 5/18c-2201 through 2206 of the Illinois Commercial Transportation Law.

By Order of the Commission this 12th day of September 2018.

BRIEN SHEAHAN
CHAIRMAN