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BEFORE THE
ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF:)
)
Protective Parking Service)
Corporation d/b/a Lincoln Towing,))No. 92 RTV-R Sub 17
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.)

Chicago, Illinois
January 10, 2017

Met pursuant to notice at 1:30 p.m.

BEFORE:
LATRICE KIRKLAND-MONTAQUE, Administrative Law Judge.

1 APPEARANCES:

2 PERL & GOODSNYDER LTD, by
3 MR. ALLEN R. PERL
4 MR. VLAD V. CHIRICA
5 14 North Peoria Street, Suite 2C
6 Chicago, Illinois 60607
7 (312) 243-4500
8 aperl@perlandgoodsnyder.com

9 Appearing on behalf of Protective Parking
10 Service d/b/a Lincoln Towing;

11 ILLINOIS COMMERCE COMMISSION, by
12 MR. BENJAMIN BARR
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17 Appearing on behalf of the Staff of the
18 Illinois Commerce Commission.

19 SULLIVAN REPORTING COMPANY, by
20 Brad Benjamin, CSR
21 License No. 084-004805
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I N D E X

| <u>Witnesses:</u> | <u>Direct</u> | <u>Cross</u> | <u>Re-</u> <u>direct</u> | <u>Re-</u> <u>cross</u> | <u>By</u> <u>Examiner</u> |
|-------------------|---------------|--------------|-----------------------------|----------------------------|------------------------------|
| None. | | | | | |

E X H I B I T S

| <u>Number</u> | <u>For Identification</u> | <u>In Evidence</u> |
|--------------------------------|---------------------------|--------------------|
| None so marked or admitted. | | |

1 JUDGE KIRKLAND-MONTAQUE: By the power vested
2 in me by the State of Illinois and the Illinois
3 Commerce Commission, I now call for status hearing
4 Docket No. 92RTV-R Sub 17 for hearing. This is in
5 the matter of Protective Parking Service Corporation
6 doing business as Lincoln Towing Service, and this is
7 the hearing on fitness to hold a commercial vehicle
8 relocator's license.

9 May I have appearances, please. Let's
10 start with Staff.

11 MR. BARR: Good afternoon, your Honor. My name
12 is Benjamin Barr. I appear on behalf of Staff of the
13 Illinois Commerce Commission. My office is located
14 at 160 North LaSalle Street, Suite 800, Chicago,
15 Illinois 60601, and my telephone number is
16 (312) 814-2859.

17 JUDGE KIRKLAND-MONTAQUE: Okay.

18 Lincoln?

19 MR. PERL: Thank you, your Honor. Any.

20 For the record, my name is Allen Perl,
21 P-E-R-L; 14 North Peoria Street, Suite 2C, Chicago,
22 Illinois 60607. My telephone number is

1 (312) 243-4500. With me is Vlad Chirica,
2 C-H-I-R-I-C-A, from my office as well.

3 JUDGE KIRKLAND-MONTAQUE: Okay. Thank you.

4 Mr. Barr, I'll give you the floor.
5 Can you give me an update on where we stand.

6 MR. BARR: Thank you, your Honor.

7 On the 19th of December, your Honor, I
8 tendered everything that was ruled against Staff in
9 the motion to compel. I tendered those answers to
10 Protective Parking.

11 I did receive an e-mail that week
12 regarding some questions or issues they had with
13 the -- what we turned over. The first issue was an
14 e-mail that -- in regards to a question that was
15 asking what we reviewed in preparing the document.
16 There was an e-mail that was reviewed in redacted
17 form that we turned over that they were -- requested.
18 I think there was some confusion that we were
19 claiming attorney/client privilege on it. That is
20 not the case, but in the interest of just moving that
21 issue along, I did bring the whole e-mail with me
22 today. I've tendered that to Counsel.

1 The second issue that was outlined in
2 their e-mail, your Honor, was one of their questions
3 asks, you know, who helped prepare these documents.
4 I did not list myself since I signed it. I think it
5 made it sound from the e-mail that they would like me
6 to list myself so I can send an amended response to
7 their request.

8 There was the -- I'm going to jump
9 over one issue to another smaller issue. There was
10 another issue in terms of -- we listed about 89
11 different investigation files in our answers. I
12 think those were first listed in our September 21st
13 answer. It's my understanding that a CD-ROM or a
14 flash drive was provided either via mail or FedEx to
15 Counsel with all those investigation files on it.

16 I haven't asked if they have received
17 those. I just assumed since I haven't heard anything
18 since this e-mail, they've been received. I suppose
19 that if they aren't -- if they didn't receive them, I
20 can have IT make another copy and put it on a CD-ROM
21 for them, and just make sure that they get those
22 documents, but those should have been sent to them on

1 the 21st of September.

2 The last issue was in regards to a --
3 Staff's witness list. Basically, they did not like
4 the -- thought my witness list was too general, where
5 I listed all the officers and just reserved the right
6 to call anyone from any investigation files that stem
7 from this time period. What I can do is provide to
8 counsel a list of the investigation files in the
9 complaint, and names that will be potential
10 witnesses.

11 MR. PERL: So in addressing the first issue
12 with the e-mail with Phyllis Price, I haven't seen
13 what Ben's going to give me. Phyllis Price was an
14 attorney that I dealt with directly. You know,
15 Lincoln Towing -- because her clients sued Lincoln
16 Towing. That's why I had said to them, You know, you
17 can't have -- you can't redact a document that's not
18 privileged unless there's a basis for it now --

19 MR. BARR: We weren't claiming privilege. I
20 don't know how it got redacted at some point, but
21 that should -- it's on the back too.

22 MR. PERL: So I'm assuming, Judge, that this is

1 the redacted one -- this is not redacted, so if this
2 is the same one that was redacted, that's fine.

3 MR. BARR: It should be the whole e-mail chain.

4 MR. CHIRICA: There was one from Jennifer
5 Anderson to Phyllis Price that was a bigger block.
6 I'm not sure which is the one that was redacted
7 initially, but --

8 MR. BARR: This is the one --

9 MR. CHIRICA: -- the redacted one was from --

10 MR. BARR: This is Jennifer's only reply.

11 MR. PERL: That's not the one that was redacted
12 because it was a longer e-mail.

13 MR. BARR: It should have been -- this is what
14 was redacted.

15 MR. PERL: So we'll line these up, Judge. I
16 don't have the copy of the redacted e-mail.

17 JUDGE KIRKLAND-MONTAQUE: Okay. Well, let's
18 see.

19 MR. PERL: We'll line it up, we'll figure it
20 out.

21 JUDGE KIRKLAND-MONTAQUE: All right.

22 MR. PERL: The other issue of who assisted in

1 preparation of the response. We were just curious.
2 We thought if they were the only two people,
3 literally, if it was only Jennifer Anderson and Steve
4 Matrisch, that would mean -- and that's fine with
5 us -- that those are the only two individuals that
6 they could possibly call that have any knowledge of
7 what's going on here because they're the only ones
8 they listed. So we were just kind of making sure,
9 you know, are these the only two individuals that
10 helped prepare the responses, those would be the
11 people with knowledge then and no one else.

12 And so if there are others, we just
13 wanted to know now, which kind of falls in line with
14 the who are you going to call as witnesses. And one
15 of the things I keep saying is it's not trial by
16 ambush. You just can't say to me there's 133 people
17 that I might call. How am I supposed to get prepared
18 for a hearing?

19 Usually, what we do is we actually
20 figure out who we're going to call and then we put
21 those people as witnesses, and sometimes we depose
22 them, sometimes we don't. But just saying, like,

1 Well, here's a list of everyone that lives in the
2 city of Chicago; we might call them, and saying that
3 should be enough for you. It's just overly broad.
4 It's not really a list. Then it just becomes, We
5 might call anyone that we want to call.

6 When do they have to decide at a
7 hearing who they're going to actually going to call,
8 if anybody? I mean, I'm not sure they're going to
9 call -- I'm not sure they're calling anyone, but I
10 think we should know -- at the point in time when
11 you're getting prepared for a hearing, you should
12 know who you're going to call at that point in time.

13 MR. BARR: The two issues with that, your
14 Honor, one is we did list all the officers and
15 investigators that we plan on calling. So really,
16 the only issue in terms of witnesses would be any
17 complainants that have filed an investigation.

18 It's very hard, given that we don't
19 know the certainty of when the actual fitness hearing
20 is going to be called, to call up a witness and say,
21 You know, would you be willing to come to a fitness
22 hearing? They're going to say, "Okay. Yeah. When?"

1 And I'm going to be, like, could be -- could be --
2 just for throwing out days, it could be February, it
3 could be June, it could be, you know, whenever. It's
4 hard to tell those people and then put together a
5 witness list saying, Could you potentially come? And
6 then basically backing our staffs into a corner when
7 those people say, Well, I can't come because it's on
8 this date. So it's very hard to put together a
9 certain list of every witness that we may call.

10 MR. PERL: So this would be my suggestion then:
11 At some point in time we're going to choose a hearing
12 date. I would request that it be 90 days out from
13 whenever we request a date, and then at that point in
14 time, Staff has to give me exactly who they'll call.

15 JUDGE KIRKLAND-MONTAQUE: By the 90 days after
16 that --

17 MR. PERL: Yes.

18 So then I can determine if I want to
19 do some investigation into any of things because --
20 and, again, if this was just a routine case, Judge,
21 you know I wouldn't be doing this. This is something
22 where they're looking to take our license away or

1 potentially take our license away. So it requires a
2 little bit more investigation than just coming and
3 having a hearing.

4 So if that's the real issue that they
5 have, then once we've set a date, let's set it at
6 least 90 days out. They -- Staff can then give me
7 the list of who they're going to call, and then I can
8 either depose them, not depose them, call them, not
9 call them, whatever I'm going to do.

10 MR. BARR: Just so I'm clear, make sure I have
11 the understanding correct, is that we'll set a date,
12 and then from that date, Staff has 90 days to
13 identify our witnesses and present them to Counsel.

14 Is that what you're suggesting?

15 MR. PERL: Well, if you do that, then I'm going
16 to want 90 days from then to have a hearing, yeah.
17 That's fine with me. I need time -- I need time to
18 prepare my case.

19 JUDGE KIRKLAND-MONTAQUE: I understand, but I
20 want to make sure we're all on the same page.

21 You're saying we'll set a hearing
22 da- -- an evidentiary, and then Staff would have --

1 MR. PERL: You know, I don't need 90 and 90. I
2 think that Ben -- if that's what Ben needs, that's
3 fine with me.

4 MR. BARR: That's not what --

5 MR. PERL: My point was -- let's back up for a
6 second.

7 So let's decide how long Staff will
8 need to give me a list of their witnesses once we
9 determine the date we're going to have the hearing.

10 MR. BARR: I think 60 days is reasonable. 45
11 to 60 days would be reasonable to identify any
12 witnesses, to make contact with them. Assuming that
13 we obviously don't get ahold of them the first time,
14 for them to come back and, you know, do the
15 back-and-forth on trying to get ahold of someone.

16 MR. PERL: I have no objection to however many
17 days that want. That's fine with me. 60 days is
18 fine.

19 So then what I would say, Judge, is
20 that we take 60 days, you need to add 90 days to that
21 so I can actually make sense of it. I don't know if
22 there's going to be 3, 5, 10, 80, 90 people, so I would

1 take 150 days from then.

2 So what we would do is we'd set a
3 hearing date 90 days out, Staff would have 60 days to
4 identify their witnesses, and I would have 90 days to
5 then do my discovery.

6 JUDGE KIRKLAND-MONTAQUE: I see.

7 MR. PERL: And that's fine with me.

8 And as far as the officers, I
9 understood --

10 JUDGE KIRKLAND-MONTAQUE: Sure.

11 MR. PERL: -- the officers are -- you know,
12 they may or may not comment. I have no issue with
13 that.

14 JUDGE KIRKLAND-MONTAQUE: So basically what
15 you're saying is when we're at the point to set the
16 evidentiary hearing, we need to set it 150 days out
17 to give them 60 days to provide the witness list and
18 you 90 days thereafter to do what they you need to do
19 in terms of discovery.

20 MR. PERL: Yes, Judge.

21 JUDGE KIRKLAND-MONTAQUE: Okay. Fair enough.

22 MR. PERL: And then getting back to the

1 discovery, we are closing in on it. I think, Ben,
2 that I would like -- I think -- if you sent me
3 something September 21st, we can't find it.

4 MR. BARR: Uh-huh.

5 MR. PERL: And to be honest with you, Judge,
6 there's so much stuff going back and forth it's
7 possible they did, I just can't find it. So if you
8 can give me -- this is in regard to Discovery
9 Response No. 22.

10 MR. BARR: Yeah. And it's 22 and 29.

11 So what happened is 29 -- Question
12 No. 29 encompasses the investigation files from 22,
13 so it's one long document that was marked as
14 Question 29. So any investigation file, I think in
15 the first portion of that third paragraph in that
16 e-mail, is all in the same document.

17 So I mean I can -- it's not a problem.
18 Those have been turned over. We have no problem.
19 You know, it's just a matter of IT putting them on a
20 CD-ROM drive or however they have to -- because I
21 think it's 1,000 pages of documents, you know, so I
22 don't have -- either a CD drive or some type of flash

1 drive, some type of way to get it to them.

2 MR. PERL: And that's fine. We don't need the
3 written documents. We could take a flash drive or a
4 CD, however they want to do it electronically.
5 Either is fine.

6 JUDGE KIRKLAND-MONTAQUE: Do you have any idea
7 how long that's going to take?

8 MR. BARR: I mean, if it's a matter of sending
9 an e-mail to Paul and having him put it on a CD
10 drive, so it's based around his schedule. So I don't
11 see why by next week or the end of this week he can't
12 do that.

13 JUDGE KIRKLAND-MONTAQUE: Well, let's shoot
14 for -- let's push for the end of the week to have
15 that resent.

16 MR. CHIRICA: Part of my concern with that,
17 too, is that -- I think we might have gotten that
18 stuff in different segments, and I'm not sure if
19 that's the case; It might have all been one -- would
20 it be possible for you to Bates stamp them?

21 MR. BARR: They're all Bates stamped with the
22 investigation number. So every one of them is going

1 to have an investigation number on it that you will
2 be able to match up --

3 MR. PERL: No. I think what Vlad means, Ben,
4 is that -- you know, so in the ordinary course of
5 litigation we Bates stamp everything because it's
6 really the only way to prove what you sent to
7 somebody and when you sent it.

8 So it's 0001 through 999. The next
9 one would be 1000 through 1200. They are marked with
10 investigation numbers, but there's no way to prove or
11 show when those came to us on what date, through what
12 discovery process. So if on the bottom they were
13 Bates stamped 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, it would
14 be easier. If you can't do it, you can't do it.

15 MR. BARR: Yeah, I mean, I can look into it
16 with IT. We'll see if there's some way to do it.

17 MR. PERL: Because there's like -- we have a
18 computer software program in our office where we
19 don't mark anything anymore. When you want to Bates
20 stamp something, you input the --

21 MR. CHIRICA: We just Adobe Acrobat -- Adobe
22 Acrobat Reader.

1 MR. PERL: And it just Bates stamps it.

2 MR. BARR: I don't know if we have it or not.
3 I can try to do it. I can't make any promises,
4 obviously, because I don't know what our software
5 capabilities are.

6 JUDGE KIRKLAND-MONTAQUE: Well, you can check
7 into it.

8 MR. PERL: If they have it, they have it; if
9 they don't, they don't, Judge. I'm not expecting
10 them to go out and purchase a software program or do
11 anything out of the ordinary. But if you have the
12 ability, it just makes it that much easier to
13 organize everything. And then you don't run into the
14 problem of I think I sent it to you, I'm not sure I
15 sent it to -- it was also related to those issues.

16 So maybe, now, we should set a date to
17 come back to finalize -- one other thing: When I'm
18 looking at this now, we had said that there was a
19 July 20th, 2015, e-mail from Jennifer Anderson to
20 Phyllis Price that was redacted. The only e-mail
21 here --

22 MR. CHIRICA: So I figured it out. I think

1 this document that you've tendered to us today
2 contains one, two, three e-mails that were never
3 previously produced, and just the one on the top is
4 the one that was redacted. And then there's one
5 additional one above that that was previously turned
6 over.

7 MR. PERL: Because --

8 MR. BARR: It's not on this.

9 MR. PERL: Yeah. Because there was an e-mail
10 here --

11 MR. BARR: Can I see that -- well, yeah. Just
12 so I can --

13 MR. PERL: Yeah. Take a look at that.

14 (Tendered document.)

15 MR. CHIRICA: So that's 2016.

16 MR. PERL: Okay.

17 MR. BARR: I mean, I have no problem turning
18 over that document. I thought that was the right
19 document, but I can -- I mean, with this CD-ROM, I
20 can give you -- I'm just going to copy down the date,
21 because I thought when I printed that off this
22 afternoon, that was the correct document. And I can

1 go back and search "Phyllis Price" through the e-mail
2 and find it fairly quickly.

3 MR. PERL: And maybe just giving us all the
4 communications, which is what we asked for, between
5 Phyllis Price or any third parties and the ICC --
6 without privilege, because these are third parties --
7 might be easier than just giving us that one e-mail.

8 MR. BARR: I mean, and that was the discussion
9 of the e-mail -- you know, the whole hour-and-a-half
10 long status hearing last time we met -- as the
11 e-mails, which has been ruled upon in the motion to
12 compel, which was denied, if that's what you
13 reference in that question.

14 MR. PERL: Well, we're asking you for copies of
15 certain documents that you have and you're going to
16 be using. And, certainly if we narrowed it down to
17 any e-mails between you and Phyllis Price, that's not
18 20,000 e-mails. That's a really easy search to do.
19 So if all you did was limit it to e-mails to Phyllis
20 Price or from Phyllis Price, there can't be that
21 many.

22 MR. BARR: But the e-mail you have there is in

1 response to the question that -- what did we use to
2 prepare our answers to the discovery requests.

3 The other issue was, you know, the
4 question of third part- -- between -- e-mail
5 communications between what was listed as the
6 petitioner and third parties, which that request was
7 denied in the motion to compel.

8 MR. PERL: Well --

9 JUDGE KIRKLAND-MONTAQUE: Are you saying
10 that --

11 MR. BARR: My point is, by giving them -- that
12 e-mail was part of the -- what we reviewed in the
13 process. It was actually a very shorter e-mail -- or
14 a much shorter e-mail. But in the interest of just
15 moving this along and realizing there's no relevance
16 behind that e-mail, we'd just give them the whole
17 e-mail that they want to just prevent future
18 arguments and to move discovery along.

19 JUDGE KIRKLAND-MONTAQUE: Can you give them
20 that full e-mail, Ben?

21 MR. BARR: Yeah. And that's what I thought I
22 was giving them, and that's why I brought it with me

1 today, but I think --

2 JUDGE KIRKLAND-MONTAQUE: All right. So you
3 just -- raising your -- an issue of your objection,
4 so to speak.

5 MR. PERL: And so, for the record, we did not
6 get the unredacted e-mail yet. It's not contained in
7 this document here.

8 JUDGE KIRKLAND-MONTAQUE: Right. But he's
9 going to get it.

10 MR. PERL: If he could get it to us.

11 JUDGE KIRKLAND-MONTAQUE: So where is it?

12 MR. BARR: I'm going to search for it. I mean,
13 I can't -- I don't know if -- where it is if it's in
14 unredacted form, but I am going to search for it.

15 MR. PERL: It's -- we have it right there, or
16 we could subpoena Phyllis Price probably, because
17 it's an e-mail between her and Jennifer Anderson.
18 I'm guessing that somewhere it lives without being
19 re- --

20 MR. BARR: Yeah.

21 MR. PERL: E-mails don't get sent redacted.

22 MR. BARR: I mean, I don't know where it

1 exists. That's why I'm saying I can search for it.
2 I can't promise that there's an e-mail on our server,
3 the unredacted e-mail, because it wasn't from my
4 e-mail.

5 MR. PERL: Here's where I'll tell you it
6 exists. It's from Jennifer Anderson,
7 janderson@icc.il.gov, sent to Phyllis Price, so it
8 should be on the e-mail. Unless the Commerce
9 Commission routinely deletes them, it should be
10 there.

11 JUDGE KIRKLAND-MONTAQUE: I'm sure it's --

12 MR. BARR: It wasn't me; I assume it was
13 Jennifer.

14 MR. PERL: But I know -- hold on a second.
15 We're going to have to back up on this whole thing.
16 It is this e-mail.

17 MR. BARR: Okay.

18 MR. PERL: Now that I'm looking at it, it
19 appears to me that it just didn't print out the same
20 way as it --

21 MR. BARR: I printed it from my e-mail account.

22 MR. PERL: Yeah.

1 MR. BARR: And that's why it put my name at the
2 top of it.

3 MR. PERL: So I think, Ben, this might be the
4 e-mail because it says, "From Anderson, Jennifer, at
5 3:22 p.m." unless there's another one --

6 MR. CHIRICA: There's just one.

7 MR. PERL: -- I think this might be the e-mail.
8 Just -- you know, Ben --

9 MR. BARR: I'll check.

10 MR. PERL: -- take a look, double check, but
11 this might be the e-mail.

12 JUDGE KIRKLAND-MONTAQUE: All right. So where
13 does that leave us?

14 MR. PERL: So I think we need one more date so
15 we have everything finalized with the discovery stuff
16 and then on that date, maybe we can actually set the
17 hearing date.

18 JUDGE KIRKLAND-MONTAQUE: Okay.

19 MR. PERL: And that 60-day -- the 90-day thing,
20 I think we can do that.

21 JUDGE KIRKLAND-MONTAQUE: Sounds good.

22 MR. BARR: I'm in agreement with that.

1 JUDGE KIRKLAND-MONTAQUE: How -- "when?" Shall
2 I say.

3 MR. PERL: Okay. Couple weeks?

4 MR. BARR: That's fine by me. Maybe another
5 month? February?

6 MR. PERL: Yeah. How about -- let's look at
7 the beginning of February.

8 MR. BARR: Is that the 30th through the 3rd
9 you're looking at?

10 MR. PERL: So...

11 JUDGE KIRKLAND-MONTAQUE: How about the 2nd?

12 MR. PERL: The 2nd I am in -- I have an
13 emergency motion in DuPage at 1:30.

14 JUDGE KIRKLAND-MONTAQUE: 31st or the 3rd?

15 MR. PERL: Let's see. The 31st --

16 JUDGE KIRKLAND-MONTAQUE: Or the 1st in the
17 morning.

18 MR. PERL: The 1st in the morning, I could do.

19 MR. BARR: Yeah, I could do the 1st in the
20 morning.

21 JUDGE KIRKLAND-MONTAQUE: 10:00 a.m. I'll see
22 you at 10:00 a.m.

1 Okay. Sounds good. And this -- just
2 doing a recap in my mind -- oh. Because you have got
3 to send that.

4 MR. BARR: The CD-ROM.

5 JUDGE KIRKLAND-MONTAQUE: The CD-ROM with
6 the -- okay. So hopefully we're nearing --

7 MR. PERL: Yes. So if we get all that done and
8 I don't foresee any other issues or difficulties,
9 then on the 1st we should be able to set a hearing
10 date.

11 JUDGE KIRKLAND-MONTAQUE: Okay. Sound good.
12 So this -- we're going to continue to another status
13 hearing on February 1st at 10:00 a.m. here in Chicago
14 and we will reconvene at that time.

15 Thank you very much.

16 (Whereupon the matter above was
17 continued to February 1, 2017,
18 at 10:00 a.m.)

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