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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF WASHOE

GREGORY JAMES dba TWO COLLEGE  
GUYS,

Case No.: CV11-02195

Dept. No.: B7

Petitioner,

vs.

STATE OF NEVADA, DEPARTMENT OF  
BUSINESS AND INDUSTRY, NEVADA  
TRANSPORTATION AUTHORITY, and  
DOES 1 through 10, inclusive,

Respondents.

**ORDER**

Currently before this Court is Petitioner GREGORY JAMES dba TWO COLLEGE GUYS (“TCG”) with a *Petition for Judicial Review* filed on July 26, 2011 as the Second Cause of Action contained in a *Complaint*.<sup>1</sup> TCG brings the *Petition* pursuant to NRS 233B.130.

TCG filed an *Opening Brief* on March 2, 2012. Respondent STATE OF NEVADA, DEPARTMENT OF BUSINESS AND INDUSTRY, NEVADA TRANSPORTATION AUTHORITY (“the State” or “the NTA,” depending on the context) filed an *Answering Brief* on May 2, 2012. TCG filed a *Reply Brief* on June 27, 2012 and the matter was submitted for decision on July 2, 2012. This *Order* now follows.

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<sup>1</sup> TCG alleged two additional causes of action (the First and Third) in that *Complaint*. In an *Order* dated January 19, 2012, this Court dismissed those causes of action but permitted the instant *Petition* to proceed.

1 **BACKGROUND**

2 In March of 2011, the NTA issued Citation 14481 (“the citation”) against TCG for  
3 violations of certain Nevada statutes governing the transportation of household goods by motor  
4 vehicle, to wit: NRS 706.386 (operating as a carrier of intrastate commerce without a license)  
5 and NRS 706.758 (unlawful advertising). On July 19, 2011, the NTA issued a *Findings of Fact,*  
6 *Conclusions of Law, and Order* (“the NTA Order”) upholding the citation after holding a hearing  
7 on July 7, 2011. TCG appealed that decision to this Court. The following facts giving rise to the  
8 citation and the administrative proceedings that followed are taken from the *Original Record on*  
9 *Appeal in Accordance with the Nevada Administrative Procedure Act (Chapter 233B of NRS)*  
10 (“ROA”) filed on September 20, 2011.

11 TCG is a Nevada business that provides services related to the transport of household  
12 goods. According to TCG’s owner Gregory Black, TCG provides loading/unloading services  
13 and a moving truck, but TCG does not drive the truck for the customer. “Once the truck is  
14 loaded, our customer is required to drive the truck to their new location.” (ROA at p. 17.) If the  
15 client cannot or is unable to drive, TCG advises the client that he has “the option of contracting a  
16 driver separate from [TCG] and paying [that driver] directly.” (*Id.*) According to TCG, this  
17 arrangement is communicated to the client and the client must sign their initials to that effect on  
18 TCG’s contract. TCG advertises its services in the yellow pages.

19 Craig Jacobs hired TCG for a move in March of 2011 after discovering another moving  
20 company he allegedly contacted, Carney’s Full Service Movers (“Carney’s”), was unavailable.  
21 TCG’s two-man crew arrived at Mr. Jacobs’s residence with their truck to begin loading his  
22 items. Carney’s, however, also arrived believing Mr. Jacobs wanted its services, too. Upon  
23 receiving a phone call from Carney’s, the NTA’s investigator, Investigator Holbrook, came to  
24 Mr. Jacobs’s residence to sort out the confusion and assess the legal propriety of the move.

25 When Investigator Holbrook arrived he observed a U-Haul truck parked in Mr. Jacob’s  
26 driveway and TCG’s employees performing loading activities. According to Investigator  
27 Holbrook, Mr. Jacobs indicated that TCG would be “doing the move for him.” (ROA at p. 47.)  
28

1 Investigator then spoke with TCG's employees, one of which indicated "there was another  
2 driver" and "when the loading and packing was done [TCG would] call the other driver." (Id.)

3       Upon Investigator Holbrook's request, one of the TCG employees provided him an  
4 invoice. The "job type" on the invoice stated "pack and move" and the job description contained  
5 the truck rental fee, which included "local gas and insurance." (ROA at p. 123, Ex. A.) In that  
6 same category on the invoice the following language with an adjacent space for the client's  
7 initials also appears: "Nevada State requires that rental trucks be driven by the customer. Two  
8 College Guys does not provide drivers." Mr. Jacobs never initialed the invoice because the on-  
9 scene investigation commenced before TCG's employees had a chance to provide it to him.

10       After reviewing the invoice, Investigator Holbrook sought to verify Mr. Jacobs's  
11 understanding about the driver situation. "[Mr. Jacobs] indicated that it was Two College Guys  
12 was [sic] going to drive the truck." (ROA at p. 48.) Mr. Jacobs also explained he could not  
13 drive due to vision impairment in one of his eyes. TCG's phone operator, Chandra Valker,  
14 however, testified that she notifies every prospective customer that "you or somebody on your  
15 behalf is required to drive [the truck] from point A to point B . . . ." (ROA at p. 65.) Further, she  
16 testified that she was "aware of [Mr. Jacobs's] disability, so we knew he would not be driving  
17 the truck. So, of course, I recommended to him have someone else drive the truck or you can  
18 provide your own." (ROA at p. 66.) She also testified Mr. Jacobs called her before the move to  
19 ask about the cost of an additional stop, and that she told him it would be an additional cost but  
20 no problem.

21       Mr. Black arrived at Mr. Jacobs's residence and spoke with Investigator Holbrook, who  
22 asked for the phone number of the third-party driving company. Mr. Black declined to provide  
23 that number but asserted the driving company listed on the invoice, Adams Transport, was  
24 unaffiliated with TCG. Investigator Holbrook researched Adams Transport and found no  
25 Nevada business operating under that name. Ultimately, Investigator Holbrook decided to issue  
26 the citation, and Carney's completed the move for Mr. Jacobs.

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**STANDARD OF JUDICIAL REVIEW**

When a party petitions the district court to review an administrative agency's determination, the court must "review the evidence presented to the agency and ascertain whether the agency abused its discretion by acting arbitrarily or capriciously." Father & Sons & a Daughter Too v. Transp. Servs. Auth. of Nevada, 124 Nev. 254, 259, 182 P.3d 100, 103 (2008) (en banc) (per curiam) (citation omitted). The district court may reverse or set aside the agency's final decision only if the decision "prejudices the appellant's substantial rights . . ." Id., 182 P.3d at 104 (citation omitted). The decision is prejudicial when it is "affected by error of law or clearly erroneous in view of the reliable, probative, and substantial evidence in the record." Id. (citation omitted). "Substantial evidence is evidence which a reasonable mind might accept as adequate to support a conclusion." Id. (citing Schepcoff v. SIIS, 109 Nev. 322, 325, 849, P.2d 271, 273 (1993)).

**DISCUSSION**

TCG avers it did not hold itself out as a carrier willing to transport household goods for hire because its employees took steps—in both oral and written form—to inform Mr. Jacobs, and indeed all of its customers, that TCG does not provide driving services. Moreover, TCG points out that it did not provide driving services in this case. TCG also avers its advertisement does not state TCG is a full-service *intrastate* mover of household goods, and the placement of the advertisement under "Movers & Full Service Storage" is not controlling because no section for "Loading & Packing" exists in the phone book. For the reasons set forth below, this Court agrees.<sup>2</sup>

**Fully Regulated Common Motor Carrier under NRS 706.386**

**Legal Standards**

The NTA's power and duty to regulate "fully regulated carriers" comes from NRS Chapter 706. NEV. REV. STAT. § 706.151(1)(a). Under NRS 706.386, "[i]t is unlawful . . . for

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<sup>2</sup> TCG concedes Nevada's Code of Judicial Ethics does not apply expressly to judges like the NTA Chairman. (See Pet. at p. 13 n. 7) This Court agrees and therefore concludes TCG's request to set aside the NTA Order on "appearance of impropriety" grounds is unsupported by Nevada law.

1 any fully regulated common motor carrier to operate as a carrier of intrastate commerce . . .  
2 without first obtaining a certificate of public convenience and necessity from the [NTA].”

3 A “fully regulated carrier” is a “common carrier . . . of household goods who is required  
4 to obtain . . . a certificate of public convenience and necessity . . . and whose rates, routes and  
5 services are subject to regulation by the [NTA].” NEV. REV. STAT. § 706.072. A “common  
6 motor carrier of property” is “any person or operator . . . who holds himself out to the public as  
7 willing to transport by motor vehicle from place to place . . . the property of all who may choose  
8 to employ him.” NEV. REV. STAT. § 706.046. The “transportation of household goods” by motor  
9 vehicle is defined as “[a]ny movement of household goods accomplished through the use of a  
10 rented or other vehicle not owned by the shipper which is driven by someone associated with an  
11 entity that has a commercial or financial interest in providing services related to the movement of  
12 household goods which are being transported.” NEV. REV. STAT. § 706.137.

13 Combining these provisions, the Nevada Supreme Court has defined a “fully regulated  
14 common motor carrier”—as used in NRS 706.386—in part as “one who (1) holds himself out to  
15 the public as (2) willing to transport household goods for hire.” Father & Sons & a Daughter  
16 Too, 124 Nev. at 260, 182 P.3d at 104 (citation omitted).

17 Legal Analysis

18 Father & Sons & a Daughter Too contains similar facts to those presented here. In that  
19 case, the company (“FSD2”) operated a referral service that referred customers to loader/packers  
20 for local household moving services. Id. at 256, 182 P.3d at 102. FSD2 facilitated the entire  
21 move by requiring the customer to rent a moving vehicle from FSD2’s truck company, and  
22 providing the loader/packer with a mobile phone for contact, several contracts and other  
23 documents, and moving supplies. Id. The loader/packer also agreed to drive the vehicle to the  
24 destination point. Id. at 257 n. 1, 182 P.3d at 102.

25 FSD2 received two citations on two separate occasions. On each occasion, the State’s  
26 agent observed FSD2’s employees carry household goods from an apartment, load them into the  
27 moving vehicle, drive the vehicle to a second residence, and unload the goods. Id. at 257-58,  
28 182 P.3d at 102-03. On appeal, the Court held FSD2’s facilitation and coordination of truck

1 rentals, loader/packers, and driving services supported the State’s determination that FSD2 “held  
2 itself out to the public as willing *to transport* property [intrastate] by vehicle [without a license].”  
3 Id. at 260-61, 182 P.3d at 104-05 (emphasis added).

4 While Father & Sons & a Daughter Too controls this case, one critical fact distinguishes  
5 it from this case. Here, the State does not allege TCG’s employees *actually drove* the vehicle  
6 containing Mr. Jacobs’s household goods. The parties agree Investigator Holbrook issued the  
7 citation *before* TCG’s employees even finished loading the truck. In short, the record contains  
8 no evidence supporting a finding that TCG transported Mr. Jacobs’s goods. Mr. Jacobs’s  
9 statement that he thought TCG would drive for him—standing alone—does not constitute the  
10 substantial evidence required to support a finding that TCG violated NRS 706.386.

11 As mentioned above, NRS 706.386 clearly contemplates the *transportation* of household  
12 goods. And NRS 706.137 clearly defines the transportation of household goods as any  
13 movement of household goods by a rental vehicle that is driven by someone. The absence of any  
14 evidence in the record that TCG transported or otherwise moved Mr. Jacobs’s goods should have  
15 precluded the NTA from affirming Investigator Holbrook’s decision to cite TCG for violation of  
16 NRS 706.386. This Court reaches this conclusion notwithstanding the existential ambiguity of  
17 Adams Transport as a commercial entity, the nebulous relationship between TCG and Adams  
18 Transport, and TCG’s refusal to illuminate these factual uncertainties.

19 Accordingly, the NTA’s decisions to cite and fine TCG for operating a moving service  
20 without first obtaining a certificate of public convenience and necessity, as required by NRS  
21 706.386, were clearly erroneous, unsupported by substantial evidence, and constituted an abuse  
22 of discretion.

23 **Advertising under NRS 706.758**

24 “It is unlawful for any person to advertise services for which a certificate of public  
25 convenience and necessity or a contract carrier’s permit is required . . . unless the person has  
26 been issued such a certificate or permit.” NEV. REV. STAT. § 706.758(1). “If, after notice and a  
27 hearing, [the NTA] determines that a person has engaged in advertising in a manner that violates  
28 the provisions of [NRS 706.758], [the NTA] may, in addition to any penalty, punishment or

1 disciplinary action. . . issue an order to the person to . . . [c]ause any telephone number included  
2 in the advertising, other than a telephone number to a provider of paging services, to be  
3 disconnected. NEV. REV. STAT. § 706.758(1), (a).

4 After reviewing the entire record, this Court concludes the record is devoid of substantial  
5 evidence supporting a finding that TCG advertised services for which a certificate of public  
6 convenience and necessity is required. The advertisement language at issue reads, in relevant  
7 part: "Full Service *Interstate Moves*." (ROA at p. 140, Ex. G.) (Emphasis added.) Because NRS  
8 706.386's certification requirement "essentially applies to all types of public *intrastate* moving  
9 services," Father & Sons & a Daughter Too, 124 Nev. at 260, 182 P.3d at 104, this advertisement  
10 fails to fall under the NTA's jurisdiction. This conclusion is further supported by the fact that  
11 TCG actually performed *no* services in this case that required a certificate. The NTA abused its  
12 discretion with regard to this alleged violation as well.

13 **CONCLUSION**

14 Accordingly, the NTA Order is **REVERSED** and TCG's *Petition for Judicial Review* is  
15 **GRANTED**.<sup>3</sup>

16 **IT IS SO ORDERED.**

17 **DATED** this 20 day of August, 2012.

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20 PATRICK FLANAGAN  
21 District Judge  
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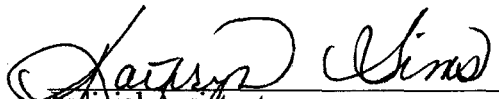
28 <sup>3</sup> TCG filed a *Request for Oral Argument on Defendant's Petition for Judicial Review* on July 6, 2012. In light of  
the decision here, this Court **DENIES** that request as moot.

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second Judicial  
3 District Court of the State of Nevada, County of Washoe; that on this 20 day of August,  
4 2012, I electronically filed the following with the Clerk of the Court by using the ECF system  
5 which will send a notice of electronic filing to the following:

6 Ellen Winograd, Esq. for Gregory Black dba Two College Guys; and  
7 Sarah Bradley, Esq. for the State.

8 I deposited in the Washoe County mailing system for postage and mailing with the  
9 United States Postal Service in Reno, Nevada, a true copy of the attached document addressed  
10 to:

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12 Judicial Assistant  
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