

II. POSITIONS OF THE PARTIES AND UNDISPUTED FACTS

A. Summary of Arguments Raised by the Parties

The Complaint in this proceeding alleges that the conduct of Respondent in submitting

proposed tariff rates for the transportation of household goods to the Kentucky Transportation Cabinet ("KTC") constitutes unlawful price fixing in violation of Section 5 of the Federal Trade

Commission Act. In its motion for summary decision, Respondent asserts that the challenged

The Kentucky Association has one paid employee, who functions as an Executive Director, and one compensated independent contractor, who functions as an Administrative Consultant and serves as Chairman of the Kentucky Association's Tariff Committee. No other person connected with the Kentucky Association is compensated, and it is managed by a voluntary Board of Directors comprised of representatives of member firms elected by the membership. Respondent's Statement of Facts ¶ 3; Complaint Counsel's Response ¶ 3.

Every household goods carrier operating in the Commonwealth of Kentucky is required to file a tariff containing its rates, charges, and rules with the Kentucky Transportation Cabinet. Respondent's Statement of Facts ¶ 4; Complaint Counsel's Response ¶ 4.

Kentucky intrastate household goods transportation rates are required to be open to the public and maintained in a public place in the offices of household goods carriers. Respondent's Statement of Facts ¶ 27; Complaint Counsel's Response ¶ 27.

Response ¶ 27.

KTC has collective ratemaking procedures for household goods transportation rates. Respondent's Statement of Facts ¶ 20; Complaint Counsel's Response ¶ 20.

III. SUMMARY DECISION STANDARD

Commission Rule of Practice 3.24(a)(2) provides that summary decision "shall be rendered . . . if the pleadings and any depositions, answers to interrogatories, admissions on file, and affidavits show that there is no genuine issue as to any material fact and that the moving

[REDACTED]

IV. RESPONDENT'S MOTION RAISES GENUINE ISSUES OF MATERIAL FACT

The U.S. Supreme Court first announced the state action doctrine in *Parker v. Brown*

where the "state itself exercise[d] its legislative authority in making the [challenged] regulation

and in prescribing the conditions of its application." 317 U.S. 341, 352 (1943). In *California Retail Liquor Dealers Assn. v. Midcal Aluminum, Inc.*, 445 U.S. 97 (1980), the Supreme Court established a two prong test for determining whether private conduct was immune from antitrust liability under *Parker v. Brown*.

V. CONCLUSION AND ORDER

An analysis of whether the state has played a sufficient role in determining the specifics of the economic policy requires a review of the evidence. Whether or not evidence will show that the policy is actively supervised by the Commonwealth of Kentucky is a genuine issue as to a material fact. Accordingly, Respondent's motion for summary decision is DENIED.

as a matter of law. Respondent's motion for summary decision is DENIED.

ORDERED:

Dm Chappell