

SERVICE DATE - JULY 14, 2000

SURFACE TRANSPORTATION BOARD

DECISION

Ex Parte No. 481¹

IN THE MATTER OF DOYLE G. OWENS

Decided: July 13, 2000

This case is before the Board on appeal from the May 17, 1993 initial decision of an ICC Administrative Law Judge (ALJ) to disbar Doyle G. Owens (Mr. Owens or petitioner) and to deny his petition for reinstatement. On appeal, we reverse the ALJ's decision and will allow Mr. Owens to practice before the Board.²

BACKGROUND

Petitioner was admitted to practice before the Commission, as a non-attorney practitioner in 1974. He began representing clients before the ICC in 1980, and established the transportation consulting business of Doyle Owens d/b/a Owens & Associates, at Bridge City, TX, in October

¹ The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (ICCTA) abolished the Interstate Commerce Commission (Commission or ICC) and transferred certain functions and proceedings to the Surface Transportation Board (Board) and others to the Secretary of Transportation (DOT), effective January 1, 1996. Section 204(b)(1) of the ICCTA provides, in general, that proceedings pending before the ICC on the effective date of that legislation shall be decided under the law in effect prior to January 1, 1996, insofar as they involve functions retained by the ICCTA. Citations in this decision are to the former (pre-ICCTA) sections of the statute and regulations unless otherwise noted. A related proceeding, Doyle Owens - Property Broker Application, Docket No. MC-258593, was transferred to DOT on March 26, 1996, because jurisdiction to decide property broker applications had been transferred to DOT by ICCTA. See new 49 U.S.C. 13904.

² As discussed infra, Mr. Owens' administrative practice involved largely motor carrier licensing work, which is now handled by DOT. As the Board's responsibilities involve no motor carrier licensing issues, any activities that Mr. Owens might conduct before the Board would be very different from those that he pursued before the ICC. Nevertheless, as holders of valid ICC practitioner licenses were automatically authorized to practice before the Board, Mr. Owens will now be licensed to practice before the Board.

1981. He was the owner and sole ICC practitioner for that firm from the time of its establishment until its apparent sale in August 1990, shortly before the effective date of his suspension from practice before the Commission. Owens & Associates was engaged in the solicitation, preparation, processing, and filing of applications at the Commission for motor carrier and broker authorities on behalf of clients.³

In a decision served July 25, 1990, in this proceeding (ICC Suspension Decision),⁴ the Commission affirmed a February 15, 1990 decision of an ALJ that Mr. Owens had engaged in “trafficking in authorities” by establishing and selling shell motor carriers for which he obtained motor carrier authorities through false and fraudulent representations.⁵ ICC Suspension Decision at 1. The Commission ordered that he be “suspended . . . from the privilege of practicing and representing others before the Commission . . .” *Id.* at 3. This suspension was for a period of 1 year, commencing August 24, 1990, with leave, after the expiration of the suspension period, to apply for reinstatement. Under the terms of that decision, Mr. Owens would be permitted to resume representing others before the Commission if he satisfactorily demonstrated good conduct during the suspension and an appreciation of a practitioner’s responsibilities. The Commission directed its Office of Compliance and Consumer Assistance (OCCA)⁶ to participate as a party in any reinstatement proceeding.

On May 6, 1992, Mr. Owens filed a petition for reinstatement, to which OCCA replied. By decision served August 4, 1992, the Commission reopened this proceeding to consider the reinstatement petition and to determine whether Mr. Owens had engaged in any unauthorized

³ Mr. Owens and his firm also were engaged in other transportation-related activities, including providing state permitting services, obtaining state licenses and state fuel permits, preparing interstate tariffs, providing agents for service of process in connection with regulated operations, and arranging for insurance coverage for carriers.

⁴ By complaint and order served May 4, 1989, the ICC Vice Chairman had instituted a formal investigation to determine whether Mr. Owens continued to possess the requisite qualifications to provide representation before the Commission or whether he had failed to conform with the Canons of Ethics for Practitioners, in 49 CFR 1103, Subpart B (the “Canons of Conduct” or “the Canons”).

⁵ The ALJ concluded that Mr. Owens had engaged in improper professional conduct, and had failed to comply with the generally accepted standards of ethical conduct for practitioners, as well as the specific requirements of the Commission’s Canons. The ALJ suspended Mr. Owens from practicing before the Commission for a term of 1 year.

⁶ While the name of this office was later changed to the Office of Compliance and Enforcement, we refer to it as OCCA for consistency.

practice in violation of the suspension order, the Commission's Canons and the Commission's rules and regulations.

On October 27, 1992, Doyle Owens d/b/a Owens & Associates, filed a broker application in No. MC-258593. That application (which, as noted, was later transferred to DOT) and the reinstatement petition were consolidated for hearing on the same record and oral hearings were held in Texas and Washington, DC in January 1993.

In an initial decision served May 17, 1993, the ALJ denied both the petition for reinstatement and the broker application, and disbarred Mr. Owens from further practice before the Commission. On May 27, 1993, petitioner filed an appeal to the ALJ's initial decision on the ground that it contains material errors of fact and law. OCCA filed a reply. Mr. Owens then requested a final decision.

SUSPENSION PERIOD ACTIVITIES

The period between the beginning of Mr. Owens' suspension (August 1990) and the ALJ decision (May 1993) can be divided into two phases: the "Dowden period" and the "Barrett period."

Dowden Period (August 1990-September 1991).

Immediately prior to the effective date of his suspension, Mr. Owens purportedly arranged for the sale of his ICC practice to Lairon W. Dowden, Jr., a relatively new attorney with no prior experience in transportation law, who maintained a general practice in a city about 30 miles from Mr. Owens' Bridge City office. Under the agreement, petitioner transferred the Owens & Associates' ICC practice to a new corporation called Trux Profit, Inc. (Trux).⁷ Mr. Dowden became the president and sole shareholder of Trux. The agreement called for Dowden to be paid \$1,000 per month. Trux was to operate from the Owens & Associates building under

⁷ Although Trux was purportedly sold to Mr. Dowden, no money actually changed hands. Trux would do business under the trade name "Owens and Associates ICC Authority." Consolidated Appeal at 2. A second corporation, Road Legal, Inc., was formed to receive and perform the remaining State permitting and related functions formerly carried on by Doyle Owens d/b/a/ Owens & Associates. Road Legal was owned and operated by members of the Owens family. Road Legal did business under the trade name "Owens and Associates State Permits." Id. at 2 n.2.

lease. Petitioner continued to occupy office space in the Owens & Associates building, where he carried on other businesses and was paid \$250 each week on the lease.⁸

In January and February 1991, OCCA investigated the activities of Owens & Associates to determine whether Owens was in compliance with the suspension order. See OCCA Exhibit 4. The investigator, Loyd O. Addy, interviewed petitioner, Mr. Dowden, Janette LeMaire (office manager for Owens & Associates) and several customers of Owens & Associates. He learned that paralegals, such as Ms. LeMaire, consulted with clients and prepared applications and other documents to be filed with the Commission. Mr. Dowden said he often traveled to the Owens office to review and sign the documents, although on occasion one of the paralegals would take them to Mr. Dowden's office for review and signature.⁹ No one indicated that Mr. Owens himself was involved in the process of consulting with clients or preparing and reviewing ICC documents. He was, however, often present at the Owens facility, either to handle his non-ICC business or to run errands (allegedly as a "gofer") to assist the employees (such as going to the bank and post office and picking up supplies).¹⁰ Clients who were interviewed uniformly stated that they had had no contact with Mr. Owens (during the suspension), and some said they had talked to Mr. Dowden. In sum, the investigator in his February 28, 1991 report "found no evidence that Doyle Owens is continuing to run the business. Brenda Guidroz and Jan LeMaire appear to be performing all functions in the application process, except for placing [Mr.]

⁸ The checks to petitioner were originally designated as "salary" (purportedly in error), but later checks were designated as payment for "rent".

⁹ Mr. Dowden testified that "the business runs itself. The ladies take the information, type the papers, send it to the clients, get them signed. I signed. Then they go to Washington. What do I need to do to stand over them while they do that.? They know what they are doing better than I do." Transcript of hearings held in Texas (Texas Tr.) at 437. "Brenda Guidroz and Jan LeMaire appear[] to be performing all functions in the application process, except for placing DOWDEN'S name as the applicant's representative, and having him sign the certificate of service." Exhibit 4 at 11. See testimony of Ellen Ayers, who testified that her company used Owens and Associates beginning in 1988, that prior to the suspension, she had never had dealings with Doyle Owens, and that her only contact was with Brenda Guidroz. Texas Tr. at 501-03. See also Transcript of hearing held in Washington, D.C. (Washington Tr.) at 147-48, where Colin Barrett, an ICC practitioner who succeeded Mr. Dowden, was asked, "Would it be a fair statement that most applications now a days involve pretty much a clerical function?" Mr. Barrett responded, "It's very clerical in nature." See, however, testimony of Kenneth Plyler, who complained about the service he received from a paralegal when he sought expedited authority. Texas Tr. at 517-18.

¹⁰ He also deposited brochures at truck stops around the country.

DOWDEN's name as the applicant's representative and having him sign the certificate of service." See Texas Tr. at 110-11, Exh. 4, p. 11; Consolidated Appeal at 10-11.¹¹

Shortly after these interviews, Ms. LeMaire was accused of falsifying accounts for personal gain and she was fired from Owens & Associates on February 26, 1991. She then contacted OCCA and changed her story. Texas Tr. at 282. She told the investigator, and later testified, that, although petitioner was often present at the office, Mr. Dowden was not. She also testified to instances where Mr. Owens directed her and others in preparing applications for filing with the ICC.¹²

Barrett Period (September 1991 to close of record).

Colin Barrett of Great Falls, VA, a non-attorney ICC practitioner, was consulted by Mr. Owens in the summer of 1991 regarding a petition for reinstatement to practice. Mr. Owens also terminated his relationship with Mr. Dowden and reacquired the stock and 100% ownership in Trux.¹³ He then entered a new arrangement with Mr. Barrett for processing Commission applications.

¹¹ Aside from the testimony of Ms. LeMaire, see infra, the testimony from witnesses presented at the hearing is consistent with their initial statements to OCCA's investigator. See testimony of Levert Young, Sharon Fields, and Alvin T. Sparks, Texas Tr. at 564, 553, and 493, respectively.

¹² Frances Reece, who did not work on applications, confirmed much of Ms. LeMaire's testimony. Like Ms. LeMaire, who was fired from Trux, Ms. Reece was dismissed from Road Legal on May 17, 1991.

¹³ Mr. Owens claims that Brenda Guidroz, a paralegal, had problems getting help and guidance about ICC related matters from Mr. Dowden. "On some occasions we had to turn away clients who had questions she couldn't answer herself, since my suspension made it improper for her to turn to me or for me to get involved." May 6, 1992 verified statement of Mr. Owens, pp. 5-11. There is also evidence in the record that Mr. Barrett found the Dowden-Owens practices "to be questionable under the circumstances of Mr. Owens' suspension at the ICC." Ex. 41. However, Mr. Barrett denied telling certain OCCA investigators "that Mr. Owens was in control of Owens & Associates during the time period when Mr. Dowden was signing the ICC authority applications[.]" Washington Tr. at 161.

Under this arrangement, Mr. Owens was not involved in processing applications.¹⁴ Owens & Associates paralegals were required to use a computer program designed by Mr. Barrett to help them in preparing ICC authority applications. These applications were prepared in Bridge City by Owens & Associates employees, who forwarded them to Mr. Barrett in Virginia. Mr. Barrett then reviewed the applications and filed them with the Commission. He was more directly involved in applications that were not routine. Washington Tr. at 152. Clients were informed of Mr. Barrett's participation in the process by Owens & Associates' employees. Mr. Barrett sometimes spoke with applicants on the telephone. Correspondence was prepared and signed by Owens & Associates' Bridge City employees. Mr. Barrett testified that he supervised Trux employees by telephone and fax. *Id.* at 140-41. For his services, Mr. Barrett was paid an hourly fee.

Mr. Barrett sought guidance from OCCA on the appropriateness of the arrangement. In September 1991, Mr. Barrett initiated contact with OCCA, giving a brief description of how he would represent Owens & Associates clients before the Commission. At OCCA's initiative and request, Mr. Barrett met with OCCA at Mr. Barrett's office on October 30, 1991. Mr. Barrett claims (May 26, 1993 Appeal at 3) that he fully described the arrangement to OCCA and asked whether OCCA found anything improper with it. Mr. Barrett repeated this inquiry in a letter to an OCCA attorney dated November 5, 1991, and again by telephone in April 1992. Mr. Barrett's Request for Admission No. 10 states that "at no time did [the OCCA attorney] or any other representatives of OCCA respond to these inquiries with any expression or statement that, in his or their opinion, [Mr. Owens'] activities were in any way inconsistent with the requirements of the Canons of Ethics or the terms of his suspension"¹⁵

¹⁴ According to Brenda Guidroz, "[d]uring this time neither I nor, to my knowledge, any other employee of Owens & Associates has talked or worked with Doyle in any way in connection with our ICC work; and as far as I know Doyle has not taken part in that work. Doyle is out of the office a lot, and even when he's in he doesn't talk to us or have anything to do with the work we're doing for Colin." May 6, 1992 verified statement of Brenda Guidroz at 3. See also Appeal at 3: Under the Owens-Barrett arrangement, Mr. "Owens would have no part in the ICC practice on behalf of clients of Trux Profit, Inc., or in any other regard."

¹⁵ In its response, OCCA denied the admission, but only discussed the October 30, 1991 meeting:

In the course of OCCA's meeting with [Mr. Owens'] representative on October 30, 1991, [OCCA's attorney] strongly indicated to Colin Barrett that, without voicing any conclusion regarding the propriety of Respondent Owens' conduct as of that date, OCCA considered the earlier conduct of the Respondent prior to the date of the meeting highly questionable and that the prior improper conduct would be an element closely considered by

(continued...)

ALJ DECISION

In his initial decision, the ALJ found that, during the suspension, Mr. Owens continued to participate in activities constituting ICC practice, that he accomplished this by deceiving the Commission, and that he had also deceived the Commission by falsely representing that a certain client, Lazaro Zazueta, was eligible for motor carrier authority,¹⁶ and by submitting a shipper supporting statement that was “highly suspect.” Initial decision at 19.¹⁷

The ALJ concluded that Mr. Owens’ conduct in arranging for the sale of his ICC practice to Mr. Dowden, while continuing to direct and influence the day-to-day operations of the firm in its preparation of applications for Commission authority, constituted a serious violation of the Commission’s suspension decision: “In my opinion, Owens & Associates was and is an operation controlled by Mr. Owens.” *Id.* at 22. The Judge found that Mr. Dowden’s function was merely to place his signature on applications and that Mr. Owens controlled Owens & Associates at all times, while using Mr. Dowden as a front and a conduit to conceal petitioner’s involvement while deriving substantial financial benefits. Moreover, the ALJ concluded, “Mr. Owens’ ‘reacquisition’ of his ICC practice from Dowden and his entry into a new arrangement with Colin Barrett is equally devoid of substance.” *Id.* at 20.

The ALJ found that Mr. Owens owned “everything in the Owens & Associates office except its name and good will.” *Id.* at 21. He found that Mr. Owens came to work at his office regularly, received compensation from Trux, and continued to talk to clients and potential clients and continued to hire and fire employees. *Id.* at 22. In short, the ALJ concluded that Mr. Owens

¹⁵(...continued)

OCCA if and when a Petition for Reinstatement was submitted to the Commission in behalf of Owens. [OCCA’s attorney] advised Mr. Barrett that all of Doyle Owens’ conduct during the period of his suspension would be reviewed, not just that embarked upon as the end of that period approached.

¹⁶ As a citizen of Mexico, Mr. Zazueta was not eligible to receive operating authority from the Commission in view of the statutory prohibition at 49 U.S.C. 10922(l). The application prepared by the firm incorrectly certified that the applicant’s status did not fall under the prohibition. Subsequently, when confronted with this inaccurate certification, Mr. Zazueta attributed the misstatement to incorrect advice from Owens & Associates.

¹⁷ According to the ALJ, this conduct violated 49 CFR 1103.12(a) (maintaining a respectful attitude toward the Commission); section 1103.15 (deceiving the Commission or the public); section 1103.21 (being involved in fraud or chicanery for his client); and section 1103.27 (practicing candor and fairness before the Commission) of the Canons of Ethics.

continued to practice before the Commission during the period of his suspension, contrary to the terms of the ICC Suspension Decision.

The ALJ not only denied the reinstatement petition, but also ordered petitioner disbarred from further practice before the Commission,¹⁸ pursuant to the disciplinary provisions of 49 CFR 1103.5 and the Commission's powers under 49 U.S.C. 10308. The ALJ cited as support In the Matter of Kenneth R. Davis, Ex Parte No. 315 (Sub-No.1) (May 2, 1977, and Nov. 3, 1977) (Davis), and In the Matter of William Sheridan, Ex Parte No. 470 (Sub-No.1) (Dec. 27, 1990, and Aug. 23, 1991) (Sheridan).

In Davis, ICC practitioner Davis, who had been suspended by the ICC, had entered into an arrangement with another ICC practitioner who would review for accuracy papers to be filed with the ICC for the clients of Mr. Davis, sign them, and send them to the Commission. The ICC found that Mr. Davis had practiced before the Commission "by advising clients as to their legal rights and responsibilities before the Commission, and by preparing applications and documents for clients, whose preparation called for the legal and technical skills of a practitioner." Initial decision at 6.

In Sheridan, suspended ICC practitioner William Sheridan had engaged another practitioner, Robert McDonnell, and argued that he (Mr. Sheridan) was not practicing before the ICC because he did not sign and submit applications. The agency found that Mr. Sheridan had improperly engaged in practice before the Commission during the suspension. Mr. Sheridan had

¹⁸ The terms of the disbarment were broad and detailed (ALJ decision at 30-31):

Mr. Owens henceforth must cease and desist from engaging or participating in activities constituting the conduct of practice before the Commission, including but not limited to participating in performing duties or services with regard to preparation of ICC applications under the authority or direction of another ICC practitioner, referral of applications for ICC authority to other ICC practitioners, association or employment with any entity engaged in preparing or filing authority applications with this Commission, acceptance of payments of any type with regard to ICC applications work, or maintenance, acquisition, or accrual of financial interest in transportation firms performing work on ICC applications.

advised clients concerning sought authorities, and collected evidence to support the application, “develop[ing] the evidentiary building blocks for the applications.” Final decision at 5.¹⁹

THE APPEAL

In his appeal, Mr. Owens raises a number of objections to the ALJ’s findings. First, petitioner contends that the ALJ based his findings on the unreliable testimony of disgruntled former employees who had been discharged from Owens & Associates, despite the ALJ’s acknowledgment that the employees’ testimony was tainted by their admitted dislike of Mr. Owens. Petitioner notes that the ALJ found the former employees’ testimony too unreliable a basis upon which to make findings concerning petitioner’s alleged “skimming” of money from Trux and petitioner’s alleged concealment of evidence from OCCA Special Agent Addy, but nevertheless gave full credence to the balance of the employees’ testimony. Mr. Owens characterizes that testimony as “merely anecdotal and largely unspecific.” Consolidated Appeal at 7.

Second, petitioner disputes the ALJ’s finding that, during the Dowden period, Mr. Owens remained in actual control of Trux, answering the telephone, advising clients, and firing employees despite his suspension. Petitioner also denies the ALJ’s finding that Mr. Owens received a salary and other financial benefits from Trux. The petitioner claims instead that he received payments from that corporation because he was owner of the building in which Trux was located.

Third, petitioner contends that the ALJ failed to acknowledge testimony that, during the Barrett period, Mr. Barrett actively supervised Trux employees by telephone and fax communication in the same manner in which he supervised his own employees at Barrett Transportation Consultants, which, similar to the situation with Trux, is not located at his Virginia office.

Fourth, petitioner states that he sought repeated assurances from OCCA as to the propriety of his arrangement with Mr. Barrett, and that OCCA, in its admissions, “offered no demur, no suggestion or even hint that the arrangement was in any way improper.” Appeal at 15.

OCCA replied to Mr. Owens’ arguments concerning the Dowden period. OCCA argues that the testimony of Ms. LeMaire and Ms. Reece was credible and corroborated by OCCA exhibits and testimony, that Mr. Owens controlled the operations of Trux, that Mr. Dowden acted

¹⁹ Mr. Sheridan apparently conferred with clients and completed “Carrier Questionnaire Worksheets,” which contained basic information about the proposed operations. He often obtained the signatures of clients on the blank application pages. *Id.* at 2. Mr. Sheridan would then forward, *inter alia*, the questionnaires and signed signature pages to Mr. O’Donnell, who would work on, complete, and file the ICC applications. *Id.*

as a front for Mr. Owens, and that Mr. Addy's report was not a legal conclusion and was based on misleading information.

For the Barrett period, OCCA contends that Mr. Barrett was, like Mr. Dowden, a front who did not actively supervise employees. OCCA claims that the verified statement of Brenda Guidroz concerning Mr. Barrett's supervision is not credible because she did not testify at the hearing. OCCA also argues that petitioner's contention that it sought guidance from OCCA as to the appropriateness of the Barrett arrangement "is inaccurate and misleading."

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10308, now recodified at 49 U.S.C. 703(e), the ICC (and now the STB) "may regulate the admission of individuals to practice before it" See generally 49 CFR 1103. The ICC's suspension order of July 25, 1990, at 3, imposed a 1-year suspension on Mr. Owens "from the privilege of practicing and representing others before the Commission" While we are troubled by some of the evidence contained in the record, on balance, we do not believe that there is adequate support for the ALJ's conclusion (at 30) that Mr. Owens "engaged in conduct constituting continued practice as an ICC practitioner during the period of his suspension." The evidence of record simply does not provide sufficient support for that finding during either the Dowden or Barrett period.

While Mr. Owens' activities have raised questions about his continuing involvement in ICC practice during at least part of the suspension period, we do not find that Mr. Owens actually "practic[ed] and represent[ed] others before the Commission" during the suspension period. To begin with, it appears that in most, particularly the routine, cases, the paralegals handled the authority work. See OCCA exhibit 4 at 11.²⁰ One client testified that, even before the suspension, she never used Mr. Owens but instead relied on a paralegal for authority work. Texas Tr. at 502. And under the terms of the suspension order, there was no stated prohibition against ICC authority work continuing in some form as long as Mr. Owens was not involved in the practice or representation of others before the Commission. The Dowden and Barrett arrangements provided a means of allowing the rest of the staff to continue the ICC work without the prohibited involvement of Mr. Owens. We do not believe that the purpose of the ICC's suspension was to shut down the Owens' ICC business with the resulting unemployment

²⁰ See also Texas Tr. at 252:

"Q Okay. You and Brenda [Guidroz] had been given authority pretty much by Mr. Owens to handle the leg work, the clerical function in the application process, and all he was doing was signing the applications prior to suspension. Correct?

A [LeMaire] Right."

possibly of some of his employees. Rather, we believe that the purpose was to prevent petitioner's personal practice and representation of others before the Commission.

We believe that this case is distinguishable from the Davis and Sheridan cases, where suspended practitioners were found to have been engaged in ICC practice while using intermediary or conduit practitioners to sign applications. Mr. Davis, through the use of another practitioner, "continue[d] to operate his office as an active practitioner. . . ." Davis, initial decision at 5. The Commission noted that Mr. Davis gave legal advice to clients about pending ICC matters and prepared applications. Id. at 6.

Mr. Sheridan was "the dominant or at least co-equal person involved in the ICC filings ultimately filed by [another practitioner]." Sheridan, initial decision at 18. The Commission noted, however, that "[h]ad Mr. Sheridan merely referred clients desiring to obtain ICC authority to Mr. O'Donnell for advice and preparation of applications, and for ancillary services, he would not have been practicing before the Commission." Sheridan final decision at 5. It also opined that "[w]e would have expected that, in an effort to demonstrate sincerity and to assure compliance with the suspension order, Mr. Sheridan would have contacted the Commission for guidance." Id. at 6.

Here, the evidence does not conclusively show that Mr. Owens was "an active practitioner" or a "dominant or at least co-equal person involved in ICC filings." The key question is whether he had contact with clients and whether he directed employees in preparing and filing documents with the Commission.²¹ But, as noted above, the ICC investigator reported on February 28, 1991, that clients had had no contact with Mr. Owens. Of the nine clients that testified, only one of them had ever spoken to Doyle Owens, and that conversation was unrelated to the substance of ICC filings. Texas Tr. at 551-52. The other clients dealt with employees of Owens & Associates, and not Mr. Owens. See, e.g., Texas Tr. at 357, 476, 493-94, 502, 517 and 528, 542 and 547, 567-68, and 572 and 574. The only two employees of Trux who were fired during the Dowden period were fired by Owens but at Dowden's direction. Texas Tr. at 452; Washington Tr. at 274-75.

²¹ Retaining ownership of office property, appearing in the office, and receiving compensation for rent do not constitute practice before the Commission. While these circumstances may support an inference of continued control by Mr. Owens, none of these activities without more actually rises to the level of advising and representing clients with business before the Commission. We do not believe the suspension order was intended to require Mr. Owens to sell or abandon his business property or cease other business activities there.

Dowden Period.

The only testimony supporting the claim that Mr. Owens was involved in Commission practice during the Dowden period comes from Janette LeMaire and Frances Reece,²² who worked during the Dowden period and whose veracity is challenged. The ALJ refused to credit part of Ms. LeMaire's and Ms. Reece's testimony based on their animosity toward petitioner and Ms. LeMaire's inconsistent statements to the investigator. Initial decision at 11, 20-21.²³ Nevertheless, on the key issue of whether Owens directed and influenced the firm's preparation of Commission authority applications, the ALJ accepted their testimony because "[m]uch of their testimony gains support from Dowden, Addy, Owens and Barrett." Id. at 21.

We disagree with the ALJ that the testimony of Messrs. Dowden, Addy, Owens, and Barrett is corroborative. A review of the record indicates that, based on the "counsel-client" privilege, Mr. Barrett did not testify concerning the Dowden period. A report of interview of Mr. Barrett (Exh. 41) prepared by an ICC investigator attributes to Mr. Barrett the statement that "Owens had, in effect, continued in control of Owens & Associates during that period of time when Mr. Dowden was signing ICC authority applications." However, Mr. Barrett denies he made this statement, and opines that OCCA misconstrued things he said about the Road Legal practice, which involved state permitting and related activities and as to which Mr. Owens was entitled to practice. Washington Tr. at 161-62.

Although Dowden admits going to the Owens & Associates office infrequently, he believed his presence there was unnecessary because the office staff did not need supervision.

²² Indeed, OCCA's investigator testified that it was his interviews of LeMaire and Reece that convinced him that Owens controlled the day-to-day application activities. Texas Tr. 112-13.

²³ On two points the ALJ questioned the testimony of Ms. LeMaire and Ms. Reece. The first concerned certain "dramatic events" concerning the movement of corporate records. While "unable to conclude that LeMaire and Reece are lying," the ALJ concluded that "given the dislike of LeMaire and Reece for Owens, I cannot find that the dramatic events described by them at Owens' office just prior to the [investigator]'s visit and just after Dowden's call actually occurred." Initial decision. at 11. See also id. at 21: "As to the 'circus' described by LeMaire and Reece on the occasion of the [investigator]'s visit to Owens' and Associates on January 30, 1991, I reach only a Scotch verdict, inconclusive."

The second issue concerned Owens' financial and character fitness. "This testimony [of Ms. LeMaire and Ms. Reece] is not otherwise supported. Without documentation, I find it insufficient to establish that Mr. Owens illegally was skimming cash from Owens & Associates. . . . Neither LeMaire nor Reece like Owens. Also, LeMaire made inconsistent statements to the investigator. I am unable to credit her testimony that Mr. Owens was skimming cash from Owens' & Associates." Id.

He stated that “[t]his corporation runs itself, ran itself. . . . [Guidroz and LeMaire] had been handling these papers. They didn’t need much supervision if any at all. I mean they handled these clients and paperwork, and so there was just not a need for me to spend time over there.” Texas Tr. at 386.²⁴

Mr. Owens denies personally directing the efforts of his office staff. He admitted answering phones when no one picked them up, but stated that if someone wanted to talk about ICC authority, he would turn the caller over to Ms. Guidroz or Ms. LeMaire. Texas Tr. at 208.²⁵

Finally, the testimony of investigator Addy does not provide an adequate corroboration for the testimony of LeMaire or Reece because he had no personal knowledge of the events in

²⁴ There is testimony from Mr. Dowden that not only did he talk to Ms. LeMaire and Ms. Guidroz by phone, but he also talked to creditors, clients, and regularly reviewed bank accounts. Texas Tr. at 445-47.

²⁵ See also Washington Tr. at 209:

“Q During the entire time period Larry Dowden owned Trux-Profits, did you ever give legal advice regarding ICC matters to any client of Owen Associates/Trux Profits?

A [Owens] No

Q Did you ever advi[s]e Brenda Guidroz or Jan LeMaire regarding how they should be handling matters before the ICC?

A No.

Q Did you ever attempt to influence Larry Dowden in his handling of matters before the ICC through his ownership of Trux-Profits?

A No, I did not.”

question.²⁶ Thus, we find that, during the Dowden period, Mr. Owens avoided the involvement in ICC practice that was criticized in Davis and Sheridan.

Barrett Period.

Similarly, we find no persuasive evidence of misconduct during the Barrett period. As noted, Mr. Barrett was an experienced ICC practitioner. He designed a computer program that Owens and Associates paralegals used to prepare ICC authority applications. Mr. Barrett then reviewed the applications and filed them with the Commission. He was more directly involved in non-routine applications, sometimes spoke with applicants on the phone, and supervised Trux employees by telephone and fax. These actions also did not run afoul of Davis and Sheridan.

In Sheridan, the ICC stated that “[w]e would have expected that, in an effort to demonstrate sincerity and to assure compliance with the suspension order, Mr. Sheridan would have contacted the Commission for guidance.” The record shows that Barrett did just that. At the beginning of the Owens relationship, Barrett initiated contact with OCCA and made three other inquiries concerning the propriety of that relationship. OCCA apparently did not advise Barrett one way or the other as to the propriety of this arrangement. (OCCA appears to have voiced disapproval only of Mr. Owens’ conduct during the earlier Dowden period. See OCCA Response to Request for Admission No. 10.)

Zazueta Case.

The ALJ found that Mr. Owens was responsible for filing a motor carrier application containing a false certification of United States citizenship by a Mexican national, and in engaging in improper shipper support practices. Because the record has not shown that Mr. Owens continued to practice during his suspension, these actions cannot be attributed to him.

²⁶ In Exhibits 18 and 19, agent Addy interviewed Ms. LeMaire and Ms. Reece, who gave names of clients who allegedly talked to Mr. Owens. None of these alleged clients corroborated these allegations. Moreover, agent Addy, who wrote the original February 28, 1991 report, gave the following testimony (Texas Tr. at 113):

“Q And those motor carriers you talked to after February 28 of 1991 told you basically the same thing as those motor carriers prior to February 28, 1991, that they didn’t know who Doyle Owens was, they had never talked to him. Correct?”

A [Addy] True.”

Finally, here OCCA has not identified specific clients whom Owens advised on ICC matters or specific applications or pleadings that Owens participated in preparing during the period of his suspension. Interrogatories, Nos. 5 and 7.

Moreover, there is testimony that Mr. Zazueta may not have received bad advice but may have deceived Owens & Associates (Washington Tr. at 127-28).

Conclusion.

In sum, we find no adequate basis for disbaring Mr. Owens. Mr. Owens submitted a verified statement attesting to his good conduct during the suspension period and his appreciation of a practitioner's responsibilities. While certain aspects of this case are troubling, absent the suspect testimony of Ms. LeMaire and Ms. Reece, the record evidence simply is not sufficient to overcome the sworn statements of Mr. Owens, Mr. Barrett and others regarding Mr. Owens' compliance with the terms of his suspension. Thus, we reinstate Mr. Owens to practice before the Board.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The appeal is granted.
2. Doyle G. Owens is admitted to practice before the bar of the Surface Transportation Board.
3. This proceeding is discontinued.
4. This decision is effective on the date of service.

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn.

Vernon A. Williams
Secretary