

ATTACHMENT A

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of William M. Gavin
(Affordable Home & Apartment Movers)
to Operate as Household Goods Carrier in
State of California.

Application 04-10-036
(Filed October 29, 2004)

SETTLEMENT AGREEMENT

The Parties (jointly Parties) to the Settlement Agreement (Agreement) are as follows:

Consumer Protection And Safety Division (CPSD or Staff) of the
California Public Utilities Commission (Commission)

William M. Gavin, an individual using the business name of Affordable
Home & Apartment Movers.

I. INTRODUCTION AND BACKGROUND

Pursuant to Article 13.5 of the Commission Rules of Practice and Procedure, the Respondent named above (Gavin) and the Consumer Protection and Safety Division (CPSD) hereby agree to settle, by joint recommendation to the CPUC, all issues in A.04-10-036. The Parties agree it may be settled without an evidentiary hearing. A summary of the background of this settlement follows:

1. William M. Gavin, dba Affordable Home & Apartment Movers, filed an application on October 29, 2004 to operate a household goods moving company.
2. CPSD filed a protest to the application on November 29, 2004. The protest requests that the Commission reject and deny the application, until Gavin complies with Decision (D.) 02-08-052, as modified by D.03-08-011.
3. The January 6, 2005, prehearing conference, and the January 14, 2005 assigned Commissioner and Administrative Law Judge's Ruling and Scoping Memo, established a schedule for processing the application and for processing any agreement concerning the application reached by the parties.

4. D.02-08-052 found that Gavin, doing business as Affordable Apartment Movers (AAM), had violated various sections of the California Public Utilities Code and Commission regulations applicable to household goods carriers.
5. D.02-08-052 required that Gavin obey all laws, pay all due reparations to customers within 60 days of the order, file a report with CPSD within 60 days. The decision places AAM on probation for 3 years, and ordered AAM to pay a fine of \$26,000, with all but \$6,500 suspended if AAM paid all reparations within 180 days of the order. The decision requires the payment of the fine by February 18, 2003.
6. The Parties agree AAM made no fine payment and filed no report, as required by D.02-08-052.
7. The Commission issued D.02-08-052 on August 21, 2003. D.03-08-011 modifies D.02-08-052, and granted CPSD's request to impose further sanctions because of AAM's failure to comply with D.02-08-052.
8. D.03-08-011 directs the following:
 - A. D.03-08-011 rescinds the portions of D.02-08-052 that suspend portions of AAMs fines. D.03-08-011 requires AAM to immediately pay the Commission a fine of \$26,000, for deposit to the State of California's General Fund
 - B. D.03-08-011 permanently revokes AAM's household goods carrier permit with prejudice. D.03-08-011 requires that any request for new operating authority by AAM or its principals must be made via the formal application process and must demonstrate compliance with D.02-08-052, as modified.
 - C. D.03-08-011 orders that AAM shall comply with D.02-08-052, as modified.
 - D. D.03-08-011 orders that AAM immediately cease and desist providing or advertising to provide household goods moving services in California.
 - E. D.03-08-011 mandates that AAM comply with all applicable provisions of the Public Utilities Code and Commission regulations.
9. Gavin failed to comply with the requirements of D.02-08-052, by failing to pay any of the fines ordered by the decision.
10. After Gavin filed application 04-10-036, and CPSD filed its protest, a prehearing conference was held on January 6, 2005. CPSD and Gavin entered into settlement discussions by telephone, and agreed to the settlement below:

II. SETTLEMENT TERMS AND CONDITIONS

In consideration of the mutual covenants and promises contained in this Settlement, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, CPSD and Gavin agree as follows:

1. Gavin agrees to pay for the good and valuable consideration, a fine of \$26,000, as ordered by Decision 02-08-052 as modified by Decision 03-08-011. Gavin will deposit the \$2000 in the form of a cashier check made payable to the California Public Utilities Commission and delivered to CPSD Transportation Enforcement Supervisor, Suong T. Le, 505 Van Ness Avenue, San Francisco, CA 94102. Such checks will be delivered no later than the date when the Commission orders adoption of this Settlement.
2. Gavin shall pay each remaining eighteen (18) consecutive monthly installment of \$1,000 each thereafter, until he has paid a total of \$20,000. CPSD agrees to recommend the Commission suspend the remaining \$6,000 of the \$26,000 fine ordered in D.03-08-011.
3. CPSD acknowledges that Gavin has paid in full the \$660 balance of the small claims court judgment to Plaintiff Don Driscoll, as required by D.02-08-052. CPSD and Gavin are aware of no other previously unsatisfied judgment listed in D.02-08-052.
4. Gavin agrees to two-year Probation. The Probation period shall begin on the date when the Commission orders adoption of this Settlement. Gavin will continue to file such reports until the conclusion of the two-year Probation period. During the Probation period, Gavin shall:

File semi-annual written reports containing information relating to the current financial status of Gavin's business (Balance Sheet, Profit and Loss Statement etc.), PL & PD, Cargo, Workers' Compensation insurance coverage in effect, and consumer complaints received by Gavin. The first report is due on the 30th calendar day after the date of the Commission order adopting this Settlement. Each subsequent report must be filed no later than 180 calendar days thereafter. Each report must be signed by Gavin under penalty of perjury, and delivered to CPSD Transportation Enforcement Supervisor, Suong T. Le, 505 Van Ness Ave., San Francisco, CA 94102. Each consumer complaints report must contain or attach the following data:

A summary of all consumer complaints made against Gavin or any of his employees for the preceding 180 days;

The subject of each complaint and the name, address, and telephone number of the complainant;

The disposition of the complaint by Gavin;

A copy of all correspondence or other written communication between the complainant and Gavin and/or any of his employees;

A copy of any court judgment rendered final against Gavin and proof of payment thereof.

5. **The parties acknowledge that this Settlement is subject to approval by the Commission. As soon as practicable after all the Parties have signed this Settlement, CPSD will file a Motion requesting Commission adoption. The Parties must furnish such additional information, documents, and/or testimony as the Commission may require in granting said Motion and adopting this Settlement.**
6. **The provisions of this Settlement are not severable. If any Party fails to perform its respective obligations under this Settlement, the Settlement may be regarded as rescinded.**
7. **The Parties acknowledge and stipulate that they are agreeing to this Settlement freely, voluntarily, and without any fraud, duress, or undue influence by any Party. Each Party hereby states that it has read and fully understands its rights, privileges and duties under this Settlement. Gavin further acknowledges full understanding of his right to discuss this Settlement with his legal counsel, and has availed himself of that right to the extent deemed necessary. In executing this Settlement, each Party declares that the provisions herein are fair, adequate, reasonable, and mutually agreeable. Respondent further acknowledges that as set forth in this Settlement, no promise or inducement has been made or offered them.**
8. **Each Party further acknowledges that after the execution of this Settlement, discovery may continue of facts that are in addition to or different from those known or believed to be true by any of the Parties. Gavin agrees to cooperate fully with such inquiries. However, it is the intention of each Party to settle, and each Party does settle, fully, finally, and forever,**

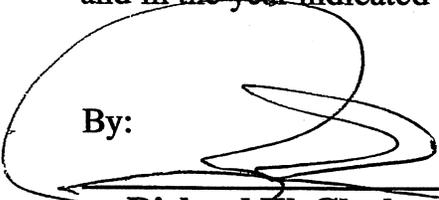
the matters set forth in this Settlement notwithstanding such discovery.

9. This Settlement constitutes the Parties' entire Settlement, which cannot be amended or modified without the express written and signed consent of all of the Parties hereto.
10. This Settlement shall be binding upon the respective Parties hereto, their legal successors, assigns, agents, or corporations (e.g., parent, subsidiaries, affiliates, divisions, units, officers, directors, and/or shareholders).
11. This Settlement shall become effective and binding on the Parties as of the date it is fully executed.
13. Gavin agrees to comply with all terms and conditions of the settlement, including without limitation, those relating to record keeping, fine payment, reporting, insurance, advertising, and rules in Maximum Rate Tariff No. 4 (MAX 4). Gavin's failure to comply with each and all terms of the settlement, including timely fine payments, will result in automatic suspension, with subsequent revocation in one week of your conditional household goods carrier permit. In such circumstances, the total remaining balance of the fine, including the suspended portion, be immediately due and payable by Gavin.
14. If Gavin violates or fails to comply with any provision of this Settlement, Commission rules and regulations, or any Commission judicial decision, the parties agree that CPSD may petition to reopen this or initiate another Commission proceeding for purposes of, but not limited to, imposing fines and penalties and suspension or revocation of operating authorities pursuant to Pub. Util. Code § 5285(b).
15. The Parties agree that the Commission possesses primary jurisdiction over any interpretation, enforcement, or remedies pertaining to this Settlement, as indicated by California Constitution, Article XII, Section 8. No Party may bring an action pertaining to this Settlement in any local, state, or federal court or administrative agency without first having exhausted its administrative remedies at the Commission.

IN WITNESS WHEREOF, the Parties, hereto have set their hands on the day
and in the year indicated below:

By:

Date: 2/25/05


Richard W. Clark
Director
Consumer Protection and Safety Division

By:

Date: 2/25/05


Robert C. Cagen
Staff Counsel
Attorney for the Consumer Protection and Safety Division

By:

Date: _____

William M. Gavin
dba Affordable Home & Apartment Movers
Respondent

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Richard W. Clark
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Consumer Protection and Safety Division

By:

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Robert C. Cagen
Staff Counsel
Attorney for the Consumer Protection and Safety Division

By:

William M. Gavin Date: *2.24.05*

William M. Gavin
dba Affordable Home & Apartment Movers
Respondent

(END OF ATTACHMENT A)