

Decision **DRAFT DECISION OF ALJ BUSHEY (Mailed 9/9/2004)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Order Instituting Investigation and Order to Show Cause on the Commission's own motion into the operations and practices of Stanley King Chee Wong and Xiu Ping Cui, a partnership doing business as K & T Moving Co. and KW Moving, K & T Moving/K.W. Moving Inc., a California corporation, its Agent for Service of Process Stanley King Chee Wong, and ABC Moving, Inc., a California corporation, its President Su Fen Wu and its Manager Stanley King Chee Wong,

Applicants/Respondents.

Investigation 04-04-002
(Filed April 1, 2004)

OPINION DENYING APPLICATIONS AND IMPOSING FINE

I. Summary

This decision denies the pending applications of two of the respondents for household goods carrier permits, imposes a fine of \$2,000 on certain respondents, and, consistent with a Superior Court stipulation and judgment (discussed below), imposes no further sanctions on the other respondents.

II. Background

A. Enforcement History

Staff became aware of unauthorized operations as a household goods carrier by K&T Moving Company and KW Moving (K&T). Staff sent a series of letters, dated from June 27, 2002 to April 2003, to K&T requiring that K&T cease

and desist such operations. When K&T failed to comply, staff obtained an order from Superior Court requiring SBC California, Inc., and AT&T Wireless Service, Inc., to terminate services to K&T for telephone lines used in K&T's advertisements. Despite the disconnection order, K&T subsequently obtained four new telephone lines and resumed advertising moving services in two newspapers.

On July 31, 2003, staff filed a complaint in Superior Court seeking a temporary restraining order, preliminary injunction, permanent injunction, and recovery of civil penalties. On August 26, 2003, the staff and all defendants named in staff's Superior Court complaint filed a stipulation with the court providing that all defendants to the proceeding are restrained from operating as household goods carriers in California pending authorization from the Commission. Defendants are also required to pay this Commission \$4,500 in penalties and \$9,500 to cover the costs of investigation.¹ The court entered a Final Judgment in the complaint pursuant to the stipulation.

B. Applications for Household Goods Carrier Permits

Respondents have applied for household goods carrier permits both as a partnership and a corporation. Unfortunately, as discussed below, neither application successfully demonstrated compliance with the requirements provided in § 5135.²

¹ The stipulation set a payment schedule, and the Commission's Fiscal Office confirms that as of July 2004 respondents were making timely payments.

² Unless otherwise indicated, all citations are to the Public Utilities Code. It should also be noted that the statutory definition of "household goods carrier" is a corporation or person who, for compensation or hire, transports used household goods and personal effects in California. (§ 5109.) Consistent with the statute, references in this decision to

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1. K&T Moving Company, a Partnership

On July 11, 2002, shortly after staff's first cease and desist letter, Stanley King Chee Wong (aka King Wong or Ken Wang) and Xiu Ping Cui (aka Tina Cui), a partnership doing business as K&T Moving Company, filed an application with the Commission for authority to operate as a household goods carrier. Due to failure to include evidence of public liability insurance and required documentation, the application was denied on December 3, 2002.

On July 3, 2003, the applicants refiled their application. Wong took the written MAX 4³ examination twice and failed to pass both times.

2. ABC Moving, Inc. (ABC)

On October 2, 2003, ABC filed Articles of Incorporation with the California Secretary of State. ABC filed an application for a household goods carrier permit on October 16, 2003. Su Fen Wu (aka Suzanne Sufen Wong and Suzanne Sufen Wu) is listed as the President of this corporation. The application lists King Wong as the Manager and person designated to take the MAX 4 examination. Wong took the examination on November 19, 2003, and failed.

household goods should be understood as pertaining only to used household goods unless otherwise directed.

³ Pursuant to § 5191, the Commission sets maximum rates for household goods carriers to charge, as well as other rules and regulations applicable to transporting household goods. The "MAX4 tariff" is the version of the tariff currently applicable to household goods movers. The MAX4 examination tests an applicant's knowledge of these rules and regulations.

3. Other Fitness Issues

In addition to unauthorized operations and failures to pass the MAX 4 examination, staff presented evidence here that Wong had been convicted of a series of misdemeanors, including driving with a suspended license and false impersonation of another (1995), petty theft (1998), and driving without a valid driver's license (2000). Staff also alleged that the applicants had failed to divulge the convictions in the household goods carrier application as required.

C. Objectives of the Order Instituting Investigation

In the order initiating this proceeding, the Commission directed the respondents to appear and show cause why the two pending applications for household goods carrier permits should not be denied for lack of fitness. The Commission also stated that fines and other sanctions might be imposed for the unauthorized operations and violations of statutes and rules.

D. Prehearing Conference (PHC)

On May 20, 2004, the assigned Administrative Law Judge (ALJ) convened a PHC. The respondents appeared and were represented by counsel. No disputed issues of material fact were identified. Commission staff, however, requested statements, under oath, from Ms. Cui and Ms. Wu regarding Mr. Wong's present and future participation in their respective businesses. Both Ms. Cui and Ms. Wu stated that Mr. Wong is not currently affiliated with either of their businesses. Ms. Cui stated that she might consider hiring him as an employee in the future. A briefing schedule to address the issue of fines and other penalties was also set at the PHC.

E. Descriptions of the Respondents, Their Business, and Language Barrier They Face in Obtaining Household Goods Carrier Permits

Ms. Cui owns a furniture business – Door to Door Furniture – and owns a truck to deliver furniture for the business. The business sells new furniture but it appears that the respondents would like to use the truck to expand their business to include the transportation of used household goods. Ms. Cui, Ms. Wu, and Mr. Wong are friends. Ms. Cui is a signatory on ABC Moving’s checking account, which was set up at by a local bank manager known to Ms. Cui and Ms. Wu. Ms. Cui intends to have her name removed from ABC’s account. Ms. Wu and ABC do not own a moving truck or other moving company assets and ABC is not currently a functioning business.

Ms. Cui’s primary language is Mandarin and Ms. Wu’s primary language is Cantonese; neither is fluent in written or spoken English. An interpreter assisted them in offering testimony for the record. Observation of the several individual respondents at the PHC, and the history of failed attempts to pass the MAX4 examination, suggest that the lack of proficiency in English is a major, if not the only, hurdle to respondents’ obtaining the permits for which they have applied.

III. Positions of the Parties

The respondents have not disputed staff’s factual allegations throughout this proceeding.

In the declarations attached to the OII, staff alleged that the respondents had:

1. Violated § 5314.5 by advertising and holding out to the public that it is in operation as a household goods carrier, without a valid permit issued under Chapter 7 of the Public Utilities Code;

2. Violated §§ 5139 and 5161 and General Order (GO) 100-M by failing to procure, and to continue on file and in effect while conducting operations as a household goods carrier, adequate protection against liability, as imposed by law upon carriers;
3. Violated § 5133 by conducting operations as a household goods carrier without a permit in force from the Commission authorizing those operations; and
4. Demonstrated lack of fitness to hold operating authority under § 5135 by failing to divulge to the Commission the criminal record and misdemeanor convictions of Stanley King Chee Wong, a partner of K & T, and Manager/Associate of ABC.

Staff presented nine exhibits for the formal record in this proceeding.⁴ Relying on this evidence, staff's brief included a summary of the uncontested factual allegations. Staff separated the respondents into two groups for purposes of setting out the allegations and making specific recommendations for sanctions.

Staff listed the following violations for Respondents Wong, Cui, K&T Moving and KW Moving (both as partnership and corporation):

1. Advertising without a valid Households Good Carrier permit in violation of § 5314.5 for 379 days;
2. Operating without required insurance coverage in violation of § 5161 and GO 100-M for 379 days, and of GO 136-C (cargo insurance) for 31 days; and,
3. Operating without a permit in force in violation of § 5133 for 379 days.

⁴ The exhibits were distributed to the parties, and staff included a proposed list of its exhibits in its brief. These exhibits will be accepted for the record.

Based on these violations, staff concluded that these respondents are unfit to operate under § 5135.

Staff noted that these respondents are required to pay the Commission \$9,500 in costs and \$4,500 in penalties pursuant to the Superior Court stipulation. In addition, staff recommended that the Commission prohibit respondents Cui and Wong from applying for a household goods carrier permit or serving as an officer, director, agent, associate, or managing employee for any entity seeking such a permit for one year. Finally, staff recommended that these business entity names be permanently barred from operating as household goods carriers: K&T Moving Co., KW Moving, K&T Moving/KW Moving Inc., as well as other business names associated with Cui and Wong (Door to Door Mattress Co., Family Moving, Widely Reached Moving, and S & W Legal Associates).

These respondents filed a brief opposing staff's recommendation. Although not disputing staff's factual allegations, these respondents did object to staff seeking sanctions beyond those set out in the Superior Court stipulation. These respondents stated that the stipulation does not provide for additional sanctions, that they have fully complied with all terms of the stipulation, and that they have not committed any further violations of the Public Utilities Code or the Commission's regulations. They conclude that it is "unfair" for staff, a party to the stipulation, to now seek further sanctions, and they seek re-imbursement of their attorney fees (\$2,000) to oppose staff's request.

For the other respondents, ABC Moving and Su Fen Wu, staff has presented uncontested evidence that:

1. ABC/Wu violated § 5314.5 by advertising household goods moving services in the San Francisco Valley Yellow Pages and on Superpages.com, and internet website directory; and,

2. Ms. Wu violated Rule 1 of the Commission's Rules of Practice and Procedure by misrepresenting to the Commission that she was unaware of Wong's criminal convictions when staff's evidence shows that she posted bail for him in 1997.

Staff recommended that the Commission impose a fine of \$10,000 on Ms. Wu and ABC for advertising without a permit. Staff calculated a fine of up to \$141,000 based on §§ 5314.5 and 5315, but concluded that this amount was too high.

Ms. Wu and ABC did not file a responsive brief.

IV. Discussion

Staff recommends that we deny the pending household goods carrier applications, impose additional sanctions on Wong/Cui and K&T, and fine Wu and ABC. We evaluate each recommendation below.

A. Household Goods Carrier Applications

As set out above, K&T Moving Company, a partnership, and ABC Moving, Inc., have currently pending applications for household goods carrier permits. The person designated to take the MAX4 examination, however, has failed the exam. All applicants are required to demonstrate their qualifications to operate as a household goods carrier on this examination. See § 5135(a). Having failed to so demonstrate the required qualifications, we find that applicants K&T Moving and ABC Moving, Inc., are not presently qualified to be household goods carriers, and we deny the applications.⁵

⁵ We also require, pursuant to § 5135, that Mr. Wong disclose his participation in any way in any business that submits an application for household goods carrier permit,

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B. Respondents Wong, Cui, K&T, et al

We deny staff's request for a one-year prohibition on these respondents applying for a household goods carrier permit. The Superior Court order adopting the parties' stipulation contains no such prohibition, and indeed seems to contemplate that respondents would apply for such a permit in order to enter this business properly.⁶ Specifically, the court prohibited the defendants from operating as a household goods carrier or advertising such services, among other things, "until such time as they have been granted a permit duly issued" by this Commission. The court went on to state that "in the event one or more of the named defendant(s) qualify for a household goods carrier's permit and so obtain such operating authority from the California Public Utilities Commission, the permanent injunction entered herein shall automatically dissolve with respect to such defendant(s)." Thus, the Final Judgment expressly contemplates that defendants could successfully obtain a household goods carrier permit from this Commission, and places no limitations on defendants' right to seek such a permit.

and that he disclose, explain, and demonstrate rehabilitation on all the criminal convictions.

⁶ On March 4, 2004, the San Francisco County Superior Court entered a Final Judgment and Permanent Injunction in Case No. CGC03422959 (Final Judgment), the Commission's complaint against Wong, Cui, and K & W.⁶ (The additional named parties are K&T Moving, K&T Company, KW Moving, Door to Door Mattress Co., Family Moving, Widely Reached Moving, and S&W Legal Associates.) The Final Judgment states that it "dispose[s] of all claims stated in plaintiff's complaint." (Emphasis added.) The claims stated in the Commission's complaint, filed on July 31, 2003, are that the defendants were advertising and operating as a household goods carrier without a valid operating permit. These claims are substantially identical to those made by staff in this proceeding.

Staff signed the stipulation, and the resulting Final Judgment binds both the staff and the defendants in that complaint. Therefore, we deny staff's request to prohibit respondents Wong and Cui from applying for a household goods carrier permit for one year.⁷ For the same reasons, we deny staff's request that the following business entity names be permanently barred from operating as household goods carriers: K&T Moving Co., KW Moving, K&T Moving/KW Moving Inc., Door to Door Mattress Co., Family Moving, Widely Reached Moving, and S&W Legal Associates. Each of these business entity names is also addressed in the Final Judgment.

C. Respondents Wu and ABC

Staff recommends a fine of \$10,000 against these respondents, but provided no analysis to support this amount. Consistent with § 5314.5, the Commission's guidelines for determining fines, and other Commission precedent, we conclude that a fine of \$2,000 is warranted on the facts of this case.

To provide guidance in setting fines, the Commission has distilled the principles that it has historically relied upon in assessing fines and restated them such that they may form the basis for future decisions. (Rulemaking to Establish Rules for Enforcement of the Standards of Conduct Governing Relationships between Energy Utilities and Their Affiliates Adopted by the Commission in Decision 97-12-088, 84 CPUC 2d 155, 188 (D.98-12-075, App. A.) Those principles begin by stating that the purpose of fines is to deter further violations. In

⁷ We also grant respondents' request for \$2,000 in attorney fees necessary to oppose staff's recommendation. This amount shall be credited against their monthly payment obligations of \$500. Respondents may select the four months in which to use these credits, and shall so notify the Commission's Fiscal Office.

determining whether to impose a fine and, if so, at what level, the Commission will consider five factors, namely, the severity of the offense, the carrier's conduct, the financial resources of the carrier, the role of precedent, and the totality of circumstances in furtherance of the public interest.

Turning to the first factor, the severity of the offense includes consideration of the economic harm imposed as well as the economic benefit gained. Here, the uncontested facts show that Ms. Wu and ABC purchased an advertisement in the Yellow Pages and placed an advertisement on an internet site. Staff has presented no evidence that Ms. Wu or ABC actually moved any household goods. Thus, we conclude that that Ms. Wu and ABC had no economic gains from their advertisement, and, similarly, no economic harm was imposed on customers. Accordingly, we conclude that, relatively speaking, Ms. Wu's and ABC's violations did not constitute serious violations.

The next factor is the carrier's efforts to prevent, detect, and rectify the violation. In this case, Ms. Wu and ABC did not prevent or detect the violation. At best, they were careless in starting to advertise in anticipation of a permit they had not obtained. We conclude that this factor is an aggravation of the offense.

The next factor is the financial resources of the carrier. The record includes a bank statement for ABC Moving, Inc., which shows a balance of \$3,115.00. Ms. Wu testified that ABC is not currently functioning. We conclude Ms. Wu and ABC have limited financial resources.

Regarding Commission precedent, no party has provided a citation to any comparable decision where a household goods carrier advertised but did not move customers. We have located two other decisions where the Commission imposed at least a \$10,000 fine, but the facts of both cases show a pattern of harmful conduct to consumers, facts that are not present here. For example, in

Ace of Bace Moving Company, D.01-08-035, the Commission found that Ace of Bace had: (1) a practice of extracting unlawful additional amounts by refusing to unload household goods, including the unlawful retention and disposal of an antique piano, despite full payment from the owner; (2) eight complaints with the Commission, five with the Better Business Bureau, and one small claims action; and (3) convictions for trespass – injury to property, theft of property, and driving under the influence. The Commission ordered full reparations to the wronged customers, and, if reparations were successfully completed, then Ace of Bace would pay a fine of \$10,000.⁸

The facts of the instant case are far less egregious than Ace of Bace. Here, no customers have been moved, much less harmed in any way. No complaints have been submitted and no other violations of law alleged. In comparison to Ace of Bace, Wu's and ABC's violations are far less severe.

Similarly, in D.02-08-052 the Commission found that Affordable Apartment Movers had operated without a permit, failed to timely process claims for loss or damage, assessed charges in excess of the price quoted, and failed to comply with a lawful order of the court.⁹ The Commission imposed a fine of \$26,000 but suspended it to \$6,500, if full and timely reparations were made.¹⁰

⁸ If reparations were not paid, then the fine was \$40,000.

⁹ There were a total of 130 counts for all violations.

¹⁰ In D.03-08-011, the Commission found that reparations had not been paid and re-instituted the full fine as well as revoking Affordable's operating authority.

The Commission noted that reparations serve the dual purpose of ensuring that the respondent disgorges all benefits and that the victims incur no economic harm. Here, Ms. Wu and ABC have not provided moving services. Consequently, these respondents, unlike Affordable or Ace of Base, have not economically benefited from their violations of the Public Utilities Code and this Commission's regulations. Moreover, no victims have been harmed.

In sum, the two cited Commission decisions show that the Commission has imposed fines in the range of \$10,000 for repeated violations that have harmed consumers. Here, no such pattern is present.

The final factor is the totality of the circumstances in furtherance of the public interest. The public interest is best served by household goods carriers that comply with applicable law and regulations. Where violations do occur, prompt remedial actions are required. The totality of the circumstances in this case includes the fact that Ms. Wu and ABC are novices with regard to applying for a household goods carrier permit, and Ms. Wu testified that it was this inexperience with the requirements that resulted in the advertisements being placed prior to obtaining the permit. The circumstances here also include the aggravating factor of Ms. Wu's factual misrepresentation to the Commission. Exhibit 8 is a letter from Ms. Wu's counsel to "Commission and staff" which states that Ms. Wu "was not aware of Mr. Stanley Wong's record." Ms. Wu's lack of knowledge of Mr. Wong's criminal convictions is directly contradicted by Exhibit 2, which shows that Ms. Wu was a co-defendant with Mr. Wong in a criminal action, and that Ms. Wu posted bail for Mr. Wong in another instance. Staff has not recommended a separate penalty for this misrepresentation so we will treat it as an aggravating factor. We find that this intentional

misrepresentation of fact to be a serious violation of Commission Rule 1, and that it substantially aggravates the other violations.

In sum, we find that Ms. Wu's and ABC's conduct, relative to others we have investigated, does not reach the status of a grave violation of the laws applicable to household goods carriers. Their conduct does, however, violate § 5314.5, which prohibits advertising household goods moving services without a valid permit.

Pursuant to § 5314.5, the Commission may assess a fine of up to \$1,000 each time a person advertises household goods moving services without having a valid permit. While § 5315 gives us the discretion to count each day of the advertisement as a continuing offense, based on the facts of this case, we decline to do so here. We will treat each publication as a single violation. Thus, for the Yellow Pages advertisement and internet listing, we will assess a fine of \$1,000 each for a total of \$2,000. Due to the substantial aggravating factor of the factual misrepresentation, we will not suspend any portion of this amount, and the full amount will be due 90 days after the effective date of this order.

We find that this is a sufficient sum to draw the attention of a new household goods carrier business, such as ABC, to the absolute need to be aware of and comply fully with applicable regulations. Our purpose in imposing this fine is to deter future violations by this carrier and others.

Accordingly, pursuant to § 5314.5, Ms. Wu and ABC, jointly and severally, are ordered to pay the sum of \$2,000. All payments shall be payable to the California Public Utilities Commission for deposit to the General Fund, and remitted to the Commission's Fiscal Office at 505 Van Ness Avenue, Room 3000, San Francisco, CA 94102. The number of this decision shall be included on the face of the check.

V. Comments on Draft Decision

The draft decision of the Administrative Law Judge (ALJ) in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed on _____.

VI. Assignment of Proceeding

Geoffrey F. Brown is the Assigned Commissioner and Maribeth A. Bushey is the assigned ALJ in this proceeding.

VII. Need for Hearing

The parties have presented no disputed issues of material fact, and we conclude that hearings are not necessary. Accordingly, as provided in Rule 6.6 of the Commission's Rules of Practice and Procedure, Article 2.5 of those Rules ceases to apply to this proceeding. However, the *ex parte* communication prohibition found in Rule 7(b) shall continue to apply.

Findings of Fact

1. K&T's representative failed the MAX4 examination.
2. K&T conducted unauthorized operations as a household goods carrier.
3. Staff and respondents Wong and Cui executed and filed a joint stipulation resolving all issues in the Superior Court litigation.
4. The allegations in the OII are based on the same conduct as the claims in the staff's Superior Court complaint.
5. ABC's representative failed the MAX4 examination.
6. ABC placed two advertisements for household goods carrier services without a valid permit.
7. ABC provided no moving services.
8. ABC has limited financial resources.

9. The record directly contradicts Ms. Wu's representation that she was unaware of Mr. Wong's criminal history.

Conclusions of Law

1. K&T and ABC have failed to demonstrate that they are qualified to be household goods carriers, and their applications for permits should be denied.

2. By the terms of the Superior Court stipulation and Final Judgment, the Commission should not impose further sanctions for the same conduct.

3. Respondents Wu and ABC violated Commission Rule 1 by making a factual misrepresentation to the Commission.

4. Respondents Wu and ABC violated § 5314.5 twice, and, as provided in § 5314.5, should be fined \$1,000 for each violation. Due to the aggravating factors, the total fine of \$2,000 should be payable 90 days after the effective date of this decision.

5. The payment obligation of Stanley King Chee Wong and Xiu Ping Cui to the Commission should be reduced by \$2,000. These respondents should select the four monthly payments they wish to have credited, and should notify the Commission's Fiscal Office accordingly, and today's order should be made effective immediately.

6. This proceeding should be closed.

O R D E R

Therefore, it is ordered that:

1. The pending household goods carrier permit applications of Stanley King Chee Wong (aka King Wong or Ken Wang) and Xiu Ping Cui (aka Tina Cui), a partnership doing business as K&T Moving Company (filed July 11, 2002), and of ABC Moving, Inc. (filed October 2, 2003) are denied.

2. Stanley King Chee Wong (aka King Wong or Ken Wang) shall disclose his participation in any way in any business that submits an application for household goods carrier permit, and disclose, explain, and demonstrate rehabilitation for all the criminal convictions.

3. No later than 90 days after the effective date of this order, respondents Su Fen Wu and ABC Moving, Inc., jointly and severally, shall pay the sum of \$2,000, to the California Public Utilities Commission for deposit to the General Fund, and remitted to the Commission's Fiscal Office at 505 Van Ness Avenue, Room 3000, San Francisco, CA 94102. The number of this decision shall be included on the face of the check.

4. The payment obligation to the Commission under Case No. CGC 03422959 of Stanley King Chee Wong and Xiu Ping Cui is reduced by \$2,000. These respondents shall notify the Commission's Fiscal Office which four monthly payments they elect to have credited.

5. Exhibits one through nine as identified in Staff's brief, and previously distributed to the parties, are admitted into the formal record of this proceeding.

6. This proceeding is closed.

This order is effective today

Dated _____ 2004, at San Francisco, California.