

Decision **DRAFT DECISION OF ALJ BEMESDERFER** (Mailed 4/16/2003)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Order Instituting Investigation on the Commission’s Own Motion into the Operations and Practices of Laurie Rose Nelson-Akst, an Individual Doing Business As All America Express Moving and Storage (T-189, 147), and of All America Express Moving and Storage Services, Inc., a California Corporation, and its President, Laurie Rose Nelson-Akst, and Vice-President, Etay Akst,

Respondents.

Investigation 02-09-001
(Filed September 5, 2002)

DECISION REVOKING RESPONDENT’S HOUSEHOLD GOODS CARRIER PERMIT, IMPOSING FINES AND OTHER CONDITIONS

Background

On September 5, 2002 the Commission adopted an order initiating investigation (OII) on its own motion of the business practices of Respondents. Based on the declaration and prepared testimony of Consumer Product Safety Division (CPSD) staff investigator Toni D. Crowley (CPSD Declaration), the OII states the following:

- Respondent Laurie Rose Nelson-Akst was licensed to do business as a household goods carrier on June 21, 1999 under Permit T-189147. Respondent Nelson-Akst initially did business under the name “All America Express Moving and Storage, a sole proprietorship.” From January 29, 2000 to March 5, 2000 and again from April 26, 2000 to May 7, 2000, the

Commission suspended Respondent's license for failure to meet insurance requirements. On July 27, 2000 Respondent Nelson-Akst applied to transfer her permit to All America Moving and Storage Services, Inc. (All America). On February 14, 2002, the transfer application was denied for failure to meet insurance requirements.

- Respondents allegedly committed at least 1,953 violations of the Household Goods Carrier Act (Act) and/or the Commission's rules and regulations during the period from June 21, 1999 through November 2000. 167 alleged violations involve All America performing carrier services without a valid permit, in violation of Pub. Util. Code § 5133; 23 alleged violations involve performing carrier services while a license was suspended in violation of Pub. Util. Code § 5286; 47 alleged violations involve operating without required insurance coverage in violation of Pub. Util. Code §§ 5139 and 5161 and Commission General Orders 139-M and 136-C; and 1,716 alleged violations involve failure to comply with Commission rules for performance of household goods moving services in violation of Pub. Util. Code § 5139.
- No individual, corporation, or other person may engage in the business of transporting household goods without first having a valid Commission permit authorizing its carrier operations.¹ Every household goods carrier and every officer, employee, or agent of a carrier, is subject to a fine of \$500 for each offense.² Any individual, corporation, or other person operating or holding themselves out as a household goods carrier without having a valid permit in force, is subject to a

¹ Pub. Util. Code § 5133.

² Ibid. § 5313

fine of \$5,000 for each offense.³ Each violation is a separate and distinct offense, as well as each day's continuance of the offense.⁴

- For operating in corporate form as a household goods carrier, All America and each of its two officers could be held liable for a fine of \$5,000 per violation. CPSD alleges 167 violations which if proven could result in a fine of \$835,000 per Respondent or \$2,505,000 collectively.
- For operating with a suspended Permit, Respondents could be liable for a fine of not more than \$5,000 per violation. CPSD alleges 23 violations which if proven could result in a total fine of \$115,000. Pub. Util. Code § 5313 provides for an additional fine of \$500 for each Respondent for each day during which the violations continued. CPSD alleges the violations continued for 11 days which if proven could result in a total additional fine of \$16,500.
- For operating without proper insurance coverage, Respondents could be liable for a fine of \$500 per violation. CPSD alleges 47 separate violations which if proven could result in a total fine of \$23,500.
- For failure to comply with rules for the performance of household goods carrier services, Respondents could be liable for a fine of \$500 for each such violation. CPSD alleges 1,716 separate violations which if proven could result in a total fine of \$858,000.

On September 17, 2002 Respondent Nelson-Akst was personally served with a copy of the Order Instituting Investigation and a copy of the CPSD

³ Ibid. § 5313.5

⁴ Ibid. §§ 5315 and 5316

Declaration. The CPSD Declaration specifically documents the results of the CPSD investigation.

After being served with a copy of the OII and the CPSD Declaration, Respondent Nelson-Akst telephoned the assigned Administrative Law Judge (ALJ) Karl J. Bemesderfer to state that she desired to settle the complaint with CPSD. ALJ Bemesderfer advised her that if no settlement were to be reached within a reasonable period of time, the proceeding would actively resume its course toward a formal resolution. No settlement having been reached by the beginning of December 2002, ALJ Bemesderfer set a Pre Hearing Conference (PHC) for December 18, 2002. Respondents were informed of the time and place of the PHC by a Notice sent on December 9, 2002. Neither Respondents nor their representatives appeared at the PHC.

Following the PHC, Assigned Commissioner Geoffrey F. Brown and ALJ Bemesderfer issued a Scoping Memo and Ruling that gave Respondents until January 31, 2003 to reply to the allegations made in the OII. By a letter dated December 16, 2002, but not received until after the issuance of the Scoping Memo and Ruling, Respondent Nelson-Akst advised the Commission that Respondent All America had ceased operations; that her estranged husband, Respondent Etay Akst, had returned to Israel; and that she was financially unable to appear at the PHC or in any subsequent hearing.

On January 6, 2003, CPSD Supervising Investigator William G. Waldorf unsuccessfully attempted to contact Respondent Nelson-Akst by telephone. On January 7, 2003 staff Investigator Deborah R. Zundel went to the business address on file for All America and found the facility locked, the offices empty of furniture, and no signs of business activity of any kind. On January 8, 2003,

Supervising Investigator Waldorf executed a declaration setting out the above facts.

On January 9, 2003, Attorney Cleveland W. Lee, staff counsel for CPSD, sent a letter to ALJ Bemederfer setting out the above facts, enclosing declarations from Investigators Waldorf and Zundel, and recommending that as of January 31, 2003 the Commission dismiss any further proceedings in this matter, admit into evidence CPSD's prepared testimony, impose CPSD's recommended fines, revoke Respondents' household goods carrier permit with prejudice, and make any future entry into the household goods moving business by any of the Respondents conditional upon payment of the fines to be imposed and compliance with the Commission's formal application process.

On January 29, 2003 ALJ Bemederfer received a letter from Respondent Nelson-Akst dated January 15, 2003, in which she stated that the business had closed, its assets had been repossessed and she was filing for personal bankruptcy. She asked that any further hearings be cancelled.

The time for responses to the allegations in the OII having passed without any testimony from Respondents, ALJ Bemederfer admitted the allegations into evidence and accepted them as proven.

Discussion

The history of this proceeding leaves two issues to be decided. How extensive should the fines imposed on the Respondents be? And what effect, if any, does the purported personal bankruptcy of the permit holder have on our decision?

In D.98-12-075 we discussed at length the criteria to be applied in determining the appropriate level of fines to impose on a regulated entity that violates our rules and regulations.⁵ The two principal considerations discussed in that decision are the severity of the offense and the conduct of the utility. In this case, the CPSD Declaration and its accompanying exhibits demonstrate a pattern of willful disregard for Commission rules, for example, by operating in corporate form without approval and operating without insurance. The record also discloses a pattern of deliberate intimidation of customers, for example, by refusing to unload household goods until the customer has paid an amount substantially in excess of the estimate presented at the time the contract was signed. The exhibits to the Crowley declaration include numerous letters from customers of the Respondents detailing their illegal strong-arm tactics and other serious violations of our rules and regulations. In D.98-12-075 we made it clear that each of these types of behavior constituted serious offenses.

The Respondents also made little, if any, effort to detect, prevent or rectify their inappropriate behavior. This type of conduct also invites a greater, rather than a lesser fine.

Against these considerations arguing for a relatively severe fine, we need to set the very limited financial resources of the Respondents. In D.98-12-075, we noted that for a fine to be effective it has to balance the financial resources of the utility, the need for deterrence, and the constitutional limitations on excessive fines:

⁵ See generally Section D.2 of D.98-12-075 entitled “Principles to Apply to the Imposition of Fines” at pp 34 –39.

“Some California utilities are among the largest corporations in the United States and others are extremely modest one-person operations. What is accounting rounding error to one is annual revenue to another. The Commission intends to adjust fine levels to achieve the objective of deterrence, without becoming excessive, based on each utility’s financial resources.”⁶

Were we to impose all fines requested by CPSD, the total would exceed \$3 million, an amount that is clearly excessive without regard to the purported bankruptcy of the permit holder. On the other hand, a nominal fine is not a sufficient response to the serious violations committed by Respondents, nor does it have a deterrent effect on others. The fines described in the order that accompanies this opinion are intended to achieve a deterrent effect without becoming excessive.

Although we have made no independent investigation to verify that Nelson-Akst has filed for personal bankruptcy nor received any notice to that effect from a bankruptcy court, we believe that our decision would be unaffected by such a filing. While the licensee may have filed for protection under the federal Bankruptcy Act, we have authority under the Bankruptcy Act, 11 U.S.C. § 362(b)(4), to continue in the exercise of our police and regulatory power. Our enforcement action against her results from violations of the California Public Utilities Code as well as from violations of our orders, decisions, rules, regulations, directions, demands, or requirements. Our enforcement action is not the result of her filing under the Bankruptcy Act, obtaining a discharge, or for any reason that is impermissible under 11 U.S.C. § 525(a).

⁶ Ibid., pp. 38-39,

Comments on Draft Decision

The draft decision of the 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 _____, and reply comments were filed on _____.

Assignment of Proceeding

Geoffrey Brown is the Assigned Commissioner and Karl Bemederfer is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Since June 21, 1999, Respondent Laurie Rose Nelson-Akst has operated a household goods carrier business as a sole proprietor under Permit T-189147.
2. Commencing on or about August 1, 2000, Respondent Nelson-Akst operated the business through an unlicensed corporation, All America Express Moving and Storage Services, Inc.
3. On at least 167 occasions between August 1, 2000 and December 15, 2002 Respondents offered household goods moving services through an unlicensed corporation.
4. On at least 23 occasions between January 29, 2000 and May 7, 2000, Respondents provided household goods moving services with a suspended license.
5. On at least 46 occasions between January 29, 2000 and December 15, 2002, Respondents provided household goods moving services while failing to meet insurance requirements.
6. Between June 21, 1999 and December 15, 2002 respondents committed at least 1,716 violations of Commission rules and regulations governing the conduct of a household goods carrier business.

7. On or about December 15, 2002, Respondents ceased doing business as a household goods carrier and closed the offices of All America.

8. Respondents have not responded to the allegations in the OII within the time period specified in the Scoping Memo and Ruling.

9. The allegations in the OII are admitted into evidence and accepted as proven.

Conclusions of Law

1. Respondents Laurie Rose Nelson-Akst, Etay Akst and All America Express Moving and Storage Services, Inc. have operated in corporate form as a household goods carrier without a valid permit in violation of Pub. Util. Code Section 5133.

2. Respondents Laurie Rose Nelson-Akst, Etay Akst and All America Express Moving and Storage Services, Inc. have operated as a household goods carrier with a suspended permit in violation of Pub. Util. Code Section 5286.

3. Respondents Laurie Rose Nelson-Akst, Etay Akst and All America Express Moving and Storage Services, Inc. have operated as a household goods carrier without proper insurance coverage in violation of Pub. Util. Code Sections 5139 and 5161 and Commission General Orders 139-M and 136-C.

4. Respondents Laurie Rose Nelson-Akst, Etay Akst and All America Express Moving and Storage Services, Inc. have operated as a household goods carrier without complying with Commission rules for performance of household goods moving services in violation of Pub. Util. Code Section 5139.

5. Permit T-189147 should be revoked.

6. Respondents should be fined in accordance with Commission rules and decisions.

O R D E R**IT IS ORDERED** that:

1. Household goods moving permit T-189147, issued to Laurie Rose Nelson-Akst, is revoked with prejudice.
2. Respondents Laurie Rose Nelson-Akst, Etay Akst and All America Express Moving and Storage Services, Inc. are jointly fined \$10,000 for operating in corporate form as a household goods carrier without a valid permit.
3. Respondents Laurie Rose Nelson-Akst, Etay Akst and All America Express Moving and Storage Services, Inc. are jointly fined \$10,000 for operating as a household goods carrier with a suspended permit.
4. Respondents Laurie Rose Nelson-Akst, Etay Akst and All America Express Moving and Storage Services, Inc. are jointly fined \$5,000 for operating as a household goods carrier without proper insurance coverage.
5. Respondents Laurie Rose Nelson-Akst, Etay Akst and All America Express Moving and Storage Services Inc. are jointly fined \$25,000 for failure to comply with Commission rules and regulations for the performance of household goods carrier services.
6. Imposition of these fines is stayed so long as none of the named respondents engages in the business of transporting household goods in the State of California.
7. If any respondent applies for a permit to conduct a household goods moving business in the State of California at any future time, such permit may be denied based upon the record made in this proceeding or its issuance may be conditioned on payment of the fines levied by this Order or such lesser amount as the Commission may then determine.
8. This proceeding is closed.

9. This order is effective today.

Dated _____, at San Francisco, California

ATTACHMENT A
Service List

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