

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



June 27, 2003

TO: PARTIES OF RECORD IN INVESTIGATION 02-02-005

This proceeding was filed on February 7, 2002, and is assigned to Commissioner Geoffrey Brown and Administrative Law Judge (ALJ) Janice Grau. This is the decision of the Presiding Officer, ALJ Grau.

Any party to this adjudicatory proceeding may file and serve an Appeal of the Presiding Officer's Decision within 30 days of the date of issuance (i.e., the date of mailing) of this decision. In addition, any Commissioner may request review of the Presiding Officer's Decision by filing and serving a Request for Review within 30 days of the date of issuance.

Appeals and Requests for Review must set forth specifically the grounds on which the appellant or requestor believes the Presiding Officer's Decision to be unlawful or erroneous. The purpose of an Appeal or Request for Review is to alert the Commission to a potential error, so that the error may be corrected expeditiously by the Commission. Vague assertions as to the record or the law, without citation, may be accorded little weight.

Appeals and Requests for Review must be served on all parties and accompanied by a certificate of service. Any party may file and serve a Response to an Appeal or Request for Review no later than 15 days after the date the Appeal or Request for Review was filed. In cases of multiple Appeals or Requests for Review, the Response may be to all such filings and may be filed 15 days after the last such Appeal or Request for Review was filed. Replies to Responses are not permitted. (See, generally, Rule 8.2 of the Commission's Rules of Practice and Procedure.)

If no Appeal or Request for Review is filed within 30 days of the date of issuance of the Presiding Officer's Decision, the decision shall become the decision of the Commission. In this event, the Commission will designate a decision number and advise the parties by letter that the Presiding Officer's Decision has become the Commission's decision.

STEVEN KOTZ for _____
Angela K. Minkin, Chief
Administrative Law Judge

ANG:tcg

I.02-02-005 ALJ/JLG-POD/tcg

Attachment

PRESIDING OFFICER'S DECISION (Mailed 6/27/2003)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, practices and conduct of Starving Students, Inc. (Cal T-116,476), and Ethan Margalith,

Respondents.

Investigation 02-02-005
(Filed February 7, 2002)

Edward W. O'Neill and Jeffrey P. Gray, Attorneys at Law, for Starving Students, Inc. and Ethan Margalith, respondents.

Travis T. Foss, Attorney at Law, for Consumer Protection and Safety Division.

OPINION IMPOSING SANCTIONS FOR VIOLATIONS OF PUBLIC UTILITIES CODE AND COMMISSION REGULATIONS

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OPINION IMPOSING SANCTIONS FOR VIOLATIONS OF PUBLIC UTILITIES CODE AND COMMISSION REGULATIONS

Summary

We find that Starving Students, Inc. (Starving Students) violated our rules and regulations in performing intrastate moves, in paying required regulatory fees, and in maintaining proof of insurance on file with the Commission. We fine Starving Students \$20,903 in additional license fees, taxes, and penalties for 1998, 1999, and 2000, for underpaying required license fees. We fine Starving Students \$284,000 for consumer violations and operating during periods of suspension, payable in five installments of \$56,800. We reduce that fine to \$206,000, or five installments of \$41,200, if Starving Students makes restitution to all customers identified in the 58 declarations, the 150 shipping documents, the 19 Consumer Protection and Safety Division (CPSD)¹ complaints, and the Better Business Bureau (BBB) complaints. We suspend Starving Students' operating authority for 180 days and stay that suspension subject to certain conditions. We place Starving Students on probation for three years.

Starving Students had customer service problems in 1999 and 2000 but has attempted to resolve those problems. Those customer service problems recurred after an earlier enforcement action and required our staff to devote scarce resources to a second investigation of Starving Students' operations and specific violations of our rules and regulations. Starving Students is reluctant to equate these customer service problems with regulatory noncompliance. Instead, Starving Students views these problems as failures to adhere to its own

¹ CPSD was formerly the Consumer Services Division.

standards. Our finding that Starving Students violated our rules and regulations leads to the conclusion that Starving Students' customer service standards are lower than those mandated by our rules and regulations. Recidivism, in this instance, appears to stem from a company culture that tolerates a failure to comply with regulatory mandates. At the same time, Starving Students has grown from its California base to having operations in many states and is therefore providing a type of service that customers seek. Starving Students currently faces financial uncertainty, as its attempts to return to profitability after several years of losses have been elusive. A major objective in adopting a remedy for Starving Students' violation of our rules and regulations is to ensure that no investigation of Starving Students' operations is necessary in the future and that any failure to adhere to our rules and regulations will result in immediate relief for customers.

In order to prevent future recidivism and establish automatic relief, we adopt performance guarantees for activities alleged and settled in 1993 and fined in this investigation. Starving Students shall pay a \$100 credit to total shipment charges as set forth herein for each instance of:

1. Misrepresenting to customers that a move can be scheduled on a day when there are insufficient trucks to complete those moves;
2. Sending personnel untrained and/or inexperienced in the movement of used household goods on a move;
3. Failing to acknowledge receipt of a claim for loss or damage in writing within 30 days;
4. Failing to either pay a loss and damage claim, decline to pay, or make a firm compromise offer to the claimant within 60 days; and
5. Denying loss and damage claims solely because the customer did not note the damages at the time of delivery.

Background

Procedural Background

We issued this Order Instituting Investigation (OII) to determine whether Starving Students and its major shareholder, Ethan Margalith, have 1) knowingly and willfully filed false reports that understate revenues; and 2) violated Commission rules and regulations by operating during periods of suspension; improperly denying claims; losing, stealing, or damaging goods; engaging in unprofessional conduct; and failing to comply with provisions of Maximum Rate Tariff 4 (Max Tariff 4) that govern carriers' interactions with consumers in providing services. CPSD investigated. The OII set hearings for two phases to permit CPSD to continue to investigate the operations of Respondents.

Shortly after this investigation issued, three named respondents, Abigail Margalith, Elizabeth Margalith, and Sanford Margalith, filed a motion to dismiss this investigation as to them and requested an expedited hearing. CPSD filed a response in support of the motion to dismiss after entering into stipulations with the moving respondents. CPSD resolved all issues with those respondents in the stipulations. In Decision (D.) 02-04-046, we dismissed Abigail Margalith, Elizabeth Margalith, and Sanford Margalith as respondents to this proceeding.

After narrowing the number of respondents to this proceeding, a prehearing conference (PHC) was held on April 19, 2002, and Phase I hearings were held on May 1, 2002. Opening and reply briefs were filed on May 23 and June 6, 2002, respectively. After Starving Students, Inc. filed a motion to strike CPSD's Phase I reply brief, a July 24, 2002 Administrative Law Judge (ALJ) ruling denied the motion to strike but accepted the motion and responsive pleading as supplemental briefing and deemed Phase I submitted on June 28, 2002. By an October 10, 2002 ALJ ruling, CPSD was ordered to file a Phase I

Revised Summary of Audit Findings and supporting work papers by October 17, 2002. CPSD filed the Revised Summary of Audit Findings on January 24, 2003. On January 24, 2003, Starving Students sent a letter attaching a January 3, 2003 letter from the Internal Revenue Service (IRS) for the Commission's consideration.

A Phase II PHC was held on May 2, 2002, at the conclusion of Phase I hearings. Phase II hearings were held on September 16, 17, 18, 19, 20, and 23, 2002. Phase II opening and reply briefs were filed on November 1 and 18, 2002, respectively.

Factual Background

Starving Students is a licensed, statewide household goods carrier headquartered in Los Angeles, with 19 branch offices throughout the state. The Commission granted operating authority to Starving Students in January 1976. Starving Students is incorporated in California and operates nationwide. Starving Students has approximately 900 full-time employees nationwide and approximately 500 employees in California.

In 1992, the Commission issued Investigation (I.) 92-11-029 to investigate allegations of unlawful business practices by Starving Students, including failure to provide scheduled moving services, failure to provide competent and trained movers, and failure to respond to loss and damage claims. I.92-11-029 also alleged that Starving Students provided unlawful verbal estimates, misrepresented transportation and insurance charges, operated unsafe trucks, and unlawfully denied loss and damage claims because the customer did not note the damages at the time of delivery. In D.93-02-020, the Commission adopted a settlement agreement between Starving Students and staff that ordered a fine, a 30-day suspension, a two-year probation, settlement of pending

loss and damage claims, a program of vehicle repair and maintenance, following an operational plan, not allowing unlicensed drivers and enrolling in the Department of Motor Vehicle's Pull Notice Program.

Allegations

CPSD alleges that Starving Students provided poor customer service in violation of Max Tariff 4, General Orders (GO) 100-M, 139-B, 142, and Pub. Util. Code §§ 5161, 5164, and 5241 in the following areas: failing to timely acknowledge and process consumers' claims for lost, stolen or damaged goods; improperly denying consumers' claims for failure to note lost or damaged goods at the time of delivery; failing to properly supervise and train its employees resulting in untrained and unqualified workers; failing to properly supervise and manage its employees and facilities resulting in items being stolen while in the custody of Starving Students and/or its agents and employees; providing illegal verbal estimates; charging more than the provided estimate without the customer-initiated Change Order for Services; failing to provide the required "Not to Exceed Price" on shipping documents; failing to issue the "Important Information for Persons Moving Household Goods" booklet; arriving hours late or failing to provide scheduled moving services at all; failing to honor selected valuation options; and soliciting tips through extortion or intimidation. CPSD contends that Starving Students failed to have proof of liability and workers' compensation insurance on file on three occasions. CPSD further contends that Starving Students underpaid license fees in 1998, 1999, and 2000, because Starving Students' quarterly statements for those years are false.

Consumer Violations (Phase II)

CPSD obtained the declarations of 58 Starving Students customers. Those declarations contain 234 allegations of violations of our rules and regulations

concerning Starving Students' customer service.² (Exhibit 10, Attachment G.) CPSD has the burden of proving that Respondents violated our rules and regulations. (*See CTS*, D.97-05-089, 72 CPUC 2d 621, 642.)

Consumer Declarations

We summarize a sample of the 58 customer declarations presented by CPSD in order to illustrate the types of allegations raised by Starving Students' customers. Jeffrey Mazik told Starving Students his move would require special care and materials but the crew did not bring proper materials. Mazik's goods were placed in storage and when he wanted them moved, he was told that they had been stolen. The police report noted the suspects in the theft were Starving Students' employees hired to guard the truck where the goods were left instead of in a storage facility. Starving Students quoted Kim Vierra the lowest price for her move, which involved goods from a three-bedroom house. The movers arrived with too small a truck and had to wait for a second truck, which would cost extra. They intimidated her into signing a statement that they had done a good job, arrived too late to complete the work and told her she would have to pay and to sign a damage waiver before they unloaded. Her claim noted items were missing or damaged and she was offered a small amount of money and other customers' goods.

Scott Randol's mover claimed he had to rush to the scales to weigh the load in time, resulting in damage to many items. Randol paid with his credit

² Additional allegations include Penal Code violations and the filing of legal actions or police reports. We do not enforce the Penal Code in our proceedings. Of the 58 declarants, 10 filed police reports, 2 brought small claims court actions and 3 filed civil suits.

card, which had fraudulent charges for the following three days. Michelle Elemore was quoted a specific price for her move. The movers showed up a day late and the move took three days rather than the promised two days. When the movers arrived they began to fight with each other, throwing her furniture and boxes at each other and out of the truck. Every item Elemore moved was damaged. When she tried to break up the fight, the movers were verbally abusive. She purchased the extra valuation option but was only offered \$108, because she could not prove it was the movers who had damaged her goods. Kent Kruse and Kenneth Golub both had one mover divert attention from the actions of another mover and ended up having goods taken. In the civil action brought by Golub after Starving Students denied the claim, Starving Students' testimony revealed that it did not conduct background checks on movers and that one of the movers had been released from prison shortly before the move after serving time for armed robbery.

Reneda Wright's movers arrived late and made her pay \$300 in cash over the quoted price after inspecting her goods. The movers made her children assist in the move, refused to box or wrap anything, and left some goods on the ground in front of her new apartment. Wright's claim for damaged goods was denied, because the movers denied doing any damage. Anthony Branch and Maria Sandoval had to make other arrangements for their moves after Starving Students failed to show on the original and rescheduled move dates. Dolores Hoover's movers did not deliver her goods the next day as promised. When they called the following day to say they would deliver the goods in a few hours and had been asleep since the day of the move, she called Starving Students and the Highway Patrol. When the movers were unloading the truck the S.W.A.T. team arrived because there was an arrest warrant outstanding for one of the

movers. Hoover also was arrested but was released after an hour. Drug paraphernalia was found in the truck. A Starving Students manager arrived later to finish unloading the truck. Hoover was offered a discount on the move, but further relief was denied when she filed a claim because she had accepted the discount as restitution.

The Consumer Declarations Support CPSD's Allegations

Starving Students asserts we cannot rely on the declarations and complaints CPSD provides to support allegations that Starving Students violated our rules and regulations because they are inadmissible hearsay. Our rules on the admissibility of hearsay are liberal. We have noted:

Rule 64 of the Commission's Rules of Practice and Procedure provides that "although technical rules of evidence ordinarily need not be applied in hearings before the Commission, substantial rights of the parties shall be preserved." Under this rule the Commission allows admissions of hearsay although it is given less weight than other evidence. In general, hearsay in administrative proceedings is admissible if a responsible person would rely upon it in the conduct of serious affairs, regardless of its possible inadmissibility in civil actions. (*Investigation re North Shuttle Service, Inc.*, D.98-05-019, 80 CPUC 2d 223, 230.)

In this proceeding, CPSD filed the 58 customer declarations with the OII after contacting 176 customers. CPSD obtained these customers' names primarily from Starving Students' claims register, so Starving Students was familiar with these customers and their claims before this OII issued. CPSD also cross-checked the claims register with CPSD's informal complaint files. Most declarants also filed complaints at the Commission, corroborating the concerns raised in their claims.

Starving Students also had the opportunity, if it chose, to depose or subpoena the declarants or to work with CPSD on producing declarants who lived in the area. Starving Students did not avail itself of those opportunities. After a scheduling conference prior to the hearings, CPSD, at the assigned ALJ's direction, made available a list of 14 declarants who could testify in person and by telephone.³ Again, Starving Students declined to cross-examine all but one of the declarants. Starving Students cannot reasonably object to our reliance on the declarations of customers it declined to subpoena, depose, or cross-examine. It is reasonable to rely on declarations of consumers who filed complaints with a respondent in determining whether that respondent violated our rules and regulations.

In the OII, CPSD summarized a review of 150 of Starving Students' shipping documents, including customer complaint records, for the years 2000 and 2001. (Exhibit 10, Attachment P.) Because the documents comprise three boxes, CPSD did not produce those records and instead compiled a list of the alleged violations by consumer. These complaints raise an additional 388 counts of alleged violations of our rules and regulations. In a supplemental declaration, CPSD provides 19 complaints from CPSD's informal complaint files that allege 64 violations of our rules and regulations. (Exhibit 11, Attachment 1.)

Starving Students again objects that these records are inadmissible hearsay. It is not clear which allegations arise solely from CPSD's shipping

³ The available witnesses were declarants Lyn Dougherty, Betty Verhoven, Keith Yon, Patricia Sawyer, Martine Scorza, Armand Enibegian, Kathleen Bresnan, Claudia Haro, Jeanette Kodama, Stacey Williams, Walter Collins, Dolores Hoover, and Seema Sariam.

document review and which are based on the complaints and corroborated by review of the other shipping document. CPSD did not obtain sworn declarations from these customers, and Starving Students did not subpoena or depose them. Shipping documents could, on their face, illustrate violations of our rules and regulations but the voluminous documentation did not permit CPSD the opportunity to demonstrate how each of those records supported the allegations of violations. Although we have considered complaints in determining violations in other proceedings, we reluctantly find that in this proceeding these records are insufficient to find additional counts for particular violations. Unlike the declarations, informal complaints are not sworn. Although CPSD compared CPSD's records when selecting individuals to interview from Starving Students' claims register, no such comparison was done here, and CPSD did not interview these complainants. However, these documents are business records that demonstrate complaints received concerning Starving Students from late 2001 until mid-2002. In addition, the complaints do support the counts alleged in the declarations and demonstrate that Starving Students' customer service problems are ongoing. Had CPSD the time and the resources to interview these complainants, CPSD clearly could have supported additional counts for alleged violations.⁴

⁴ We note Starving Students claim that CPSD's investigation is biased because the sample of customers contained only those who had filed claims. We have not required CPSD to survey a sample of a respondent's customers in an enforcement investigation. However, we consider any evidence presented that supports a respondent's position that the allegations are untrue. Starving Students presented eight written communications sent in 2001 and 2002 from consumers expressing satisfaction with the moves provided by Starving Students. Starving Students relied on CPSD's figures that showed complaints received at the Commission regarding Starving Students declined

Footnote continued on next page

CPSD also includes 13 complaints received by the BBB from October 2001 to June 2002, which CPSD determined allege 25 violations of our rules and regulations. Although these complaints are business records, CPSD did not interview these consumers and did not obtain sworn declarations. We similarly find that these complaints are insufficient to prove additional counts for alleged violations. However, they demonstrate that complaints were received during that period and can corroborate the allegations contained in the sworn statements and the counts resulting therefrom.

**Failure to Explain Valuation Options is
Beyond the Scope of this OII**

Starving Students states that some alleged violations exceed the scope of this proceeding, that CPSD failed to file a motion to amend the scope as required in the OII, that Starving Students had no notice of the additional charges, and that this OII is limited to the charges set forth in the OII. Specifically, Starving Students claims CPSD expanded the scope of the OII to charge Starving Students with 14 counts of allegedly failing to offer or explain consumers the choice of valuation options, 9 counts of dispatching trucks of inadequate size, 85 counts of failing to provide scheduled moving services, 57 counts of failing to observe quoted rates when charging consumers a price higher than the verbal estimate, 48 counts of failing to acknowledged customer claims in a timely manner, and 54 counts of failing to complete pertinent items on shipping documents.

from a high of 118 in 2000 to 19 complaints through the first 8½ months of 2002. Similarly, complaints received at the BBB declined from a high of 34 in 2000 to 13 complaints in the first 8½ months of 2002.

The counts concerning explaining valuation options are not contained in the OII's alleged violations. Because these violations are not part of the OII, they will not be addressed in this decision. CPSD has no separate charge for failing to complete pertinent items on shipping documents, and no finding on that issue will be made in this decision. The remaining charges are part of the OII. The charges concerning dispatching trucks are an alleged violation of GO 142 and the remaining charges all are components of Max Tariff 4, concerning dishonesty, providing an estimate, and acknowledging claims. We will consider them in this proceeding.

**Starving Students Failed to Follow Standards
Re Capable Employees in Violation of
Commission Rules and Regulations**

GO 142 requires that carriers shall not permit any driver, helper, and/or packer to be used in the transportation of any household goods shipment unless such person is trained and experienced in the movement of used household goods. GO 142 also requires that carriers shall not knowingly permit drivers, helpers, and/or packers to go on duty who are under the influence of alcohol or drugs; employees are prohibited from drinking alcohol while on duty. CPSD contends that Starving Students' movers exhibited unprofessional conduct by often appearing untrained and unprofessional (Exhibit 10, 32 counts), or intoxicated (Exhibit 10, 3 counts) and that consumers' goods were damaged or lost as a result. CPSD also contends consumers were aggressively solicited or intimidated for tips or cash and many report that Starving Students movers threatened to stop moving their goods if they did not pay a tip, in contravention of the requirement to supervise employees. (Exhibit 10, 11 counts.)

CPSD contends a large number of Starving Students' customers had their personal goods stolen by Starving Students' employees (Exhibit 10, 23

counts) and that Starving Students still hires convicted felons who have a history of convictions for robbery or theft. Starving Students also dispatched trucks that were too small to complete the job in violation of GO 142 (Exhibit 10, 5 counts.)

Starving Students responds that the company trains its employees in proper moving procedures, behavior towards customers, safety, customer rights and responsibilities, and compliance with federal and state moving regulations and that newly hired employees also receive on-the-job training from the company's more experienced workers. (Exhibit 33.) Starving Students conducts background checks and will not hire anyone who has a felony conviction for robbery, theft or any violent offense. Starving Students states it did not knowingly allow any movers to go on duty while under the influence of drugs or alcohol and would terminate employees who use drugs or alcohol while on duty. Starving Students claims that customers often provide inaccurate information on the amount of goods to move and that in one instance where it was alleged it provided a truck that was too small it was accommodating a customer who was not ready on the date of her scheduled move.

A former Starving Students employee, Deborah Borrego, testified that Starving Students hired workers off the street, without any training or background checks, and used workers on moves without providing training. (Exhibit 10, Attachment K.) A review of the complaints provided and the summary documentation demonstrate a consistent pattern of conduct contrary to our rules and regulations. We find Starving Students violated GO 142 at least 50 times by not providing capable help (46 counts) and providing a truck that was too small (4 counts) as established through the declarations and corroborated by the Starving Students, CPSD, and BBB complaints and Borrego's testimony. We

cannot equate the condition of equipment and facilities with the alleged theft of consumer goods and decline to find additional violations of GO 142 on that basis.

**Starving Students Violated Commission
Rules Re Loss and Damage Claims**

Pub. Util. Code § 521 states no claim against a household goods carrier for lost or damaged goods shall be denied solely because the lost or damaged goods were not noted at the time of delivery. In addition, Max Tariff 4, Item 92, provides that consumers have nine months in which to file a claim for loss or damage. Under item 136, if no value is declared, the default protection is actual cash value up to \$20,000. A carrier shall acknowledge receipt of a claim for loss or damage in writing within 30 days and either pay the claim, decline to pay, or make a firm compromise offer to the claimant within 60 days. (Item 92, ¶15; GO 139-B, Rule 2.7.)

CPSD contends Starving Students routinely denied claims solely because the lost or damaged goods were not noted in the consumer's shipping documents. (Exhibit 10, 13 counts.) Starving Students did not apply consumers' chosen valuation option but instead limited the consumer to \$.60 per pound per article. (Exhibit 10, 5 counts.) Starving Students also did not give consumers the opportunity to review the "Agreement for Services" prior to the move, and they did not have the opportunity to declare the value of their shipment. (Exhibit 10, 18 counts.) CPSD alleges that Starving Students ignored customer claims. (Exhibit 10, 5 counts.)

Starving Students states its standard Agreement for Moving Services lists the valuation options offered by the company. Starving Students testified that it applies a valuation equal to actual cash value if the customer does not expressly declare a valuation other than \$20,000 of actual cash value. Starving

Students states that its denial letters, attached to CPSD's investigative report, demonstrate that the lack of exceptions was considered among other factors, including the lack of any evidence that damage was caused by Starving Students. Finally, Starving Students states carriers have the right to deny a claim if all charges for transportation services have not been made and the right to collect all transportation and accessorial charges prior to relinquishing physical possession of a customer's shipment. (Item 104.)

A review of the complaints provided and the summary documentation demonstrate a consistent pattern of conduct contrary to our rules and regulations. We find Starving Students violated § 521 and items 92 and 136 at least 41 times as established through the declarations and corroborated by the Starving Students, CPSD, and BBB complaints.

Starving Students Misrepresented Its Services in Violation of Commission Rules

Max Tariff 4, Item 88, prohibits carriers from misrepresenting the scope of services offered to the public. Max Tariff 4, Item 100, requires carriers to give consumers 24-hour notice, by telephone or fax, that there will be delays in pickup or delivery of the consumers' household goods.

CPSD contends consumers often had to wait hours for Starving Students movers to arrive, without any notice from Starving Students. (Exhibit 10, 15 counts.) Starving Students also failed to show up on the date schedule for the move. (Exhibit 10, 14 counts.) Consumers had to cancel and make other arrangements because Starving Students never arrived, causing unexpected expenses and loss of time. CPSD also contends Starving Students had a pattern

and practice of overbooking scheduled moves. Starving Students informed some customers that they were overbooked. (Exhibit 10, 3 counts.)⁵

Starving Students states Item 100 does not require a carrier to commit to a specific date or time for a move. Starving Students does not agree to a specific time for a pick-up but provides customers with an estimated time. Also, Item 100 does not apply to shipments weighing less than 5,000 lbs or transported less than 75 constructive miles. Starving Students makes a reasonable effort to determine the size of the truck needed for a move as required by GO 142(1)(b) by asking the customer about the goods to be moved, including the number of rooms of furniture the customer will be moving. If the customer does not provide accurate information, Starving Students could dispatch the wrong size truck for the move.

Borrego stated Starving Students consistently overbooked moves, scheduling more moves than trucks available. She was instructed to give excuses, such as the truck broke down, even though the cause of the delay or failure to show up was overbooking. (Exhibit 1, Attachment K.)

Item 100 does not apply to certain short-haul moves, and the evidence fails to establish the exact distance of the moves in the declarations and complaints. Nonetheless, a persistent pattern of scheduling moves that could not

⁵ CPSD analyzed Starving Students' "Booked versus Completed Report" for January 1999 to July 2001. (Exhibit 10, Attachment N.) These reports demonstrate that Starving Students booked many more moves than it had the capacity to complete. The report reveals that for 2000, in the East Bay, West Bay, San Diego, and Southern California regions, Starving Students booked 37,435 moves and completed 25,041 (67%). For 2001, in the East Bay, West Bay, San Diego, and Southern California regions, Starving Students booked 25,450 moves and completed 18,673 (73%).

be completed is misrepresentation. We find Starving Students violated item 88 and 100 at least 32 times as established through the declarations and corroborated by the Starving Students, CPSD, and BBB complaints, Borrego's testimony, and CPSD's analysis of booked versus completed moves.

**Starving Students Violated Commission
Rules Re Estimates**

Item 108 requires that all estimates shall be in writing upon prescribed forms, and shall be based upon visual inspection of the goods to be moved. Item 108 also provides for a maximum allowable charge for estimated shipments. Item 112 requires that carriers complete a Basis for Estimated Cost of Services after an estimator visually inspects the goods prior to determining the estimated cost of requested services. Pub. Util. Code § 5245 provides that failure to observe Commission rules and regulations regarding estimates is unlawful. Item 120 requires a carrier to prepare a change order for services if there are additional services or additional articles not covered in the estimate.

CPSD contends that Starving Students provided verbal estimates over the telephone without conducting any visual inspection. (Ex. 10, 23 counts.) Some of these estimates result from Starving Students providing consumers with a cost per hour and an estimate of the hours needed to complete the move. (Ex. 10, 2 counts.) CPSD also contends that customers were surprised by unexpected overcharges, because Starving Students did not provide a change order, particularly after providing improper verbal estimates. (Exhibit 10, 16 counts.)

Starving Students acknowledges that a computer glitch may have resulted in some Agreements for Moving Services to be sent to customers without a "not to exceed price," but this problem has been corrected. Starving

Students states it provides shippers with rate quotes but does not provide verbal estimates of the cost of a move. Finally, Starving Students asserts CPSD did not prove there was an estimate that required the preparation of a change order.

A review of the complaints provided and the summary documentation demonstrate a consistent pattern of conduct contrary to our rules and regulations. We find Starving Students violated items 108, 112 and 120 at least 25 times as established through the declarations and corroborated by the Starving Students, CPSD, and BBB complaints. We find Starving Students violated item 120 at least 7 times when it increased upfront charges (1 count) and exceeded verbal estimates (6 counts). The other declarations do not establish that there was an estimate or charge that was exceeded.⁶

Starving Students Failed to Provide Required Information in Violation of Commission Rules

Max Tariff 4, Item 28, requires carriers to provide the “Agreement for Moving Services,” which contains the rights and obligations of the consumer and carrier, no less than three days prior to the date of the move where possible. That agreement should contain a "Not to Exceed Price," which is the maximum amount the consumer can be charged for the services listed. Item 88 requires that carriers provide consumers with a booklet entitled “Important Information for Persons Moving Household Goods” prior to the move.

CPSD contends that Starving Students did not provide the “Agreement for Service” three days prior to the date of the move. (Exhibit 10, 18 counts.)

⁶ We decline to find Starving Students violated Max Tariff 4, item 340, which provides that the prohibition against carriers charging shippers for materials such as dividers, paper, tape and labels does not apply to carriers, such as Starving Students, using hourly rates.

CPSD contends that Starving Students, by providing the documents on the day of the move, prevented consumers from having a full and fair opportunity to inventory their belongings and write them on the forms, and to be fully informed about their move. CPSD contends Starving Students completely failed to provide consumers with the important information booklet. (Exhibit 10, 25 counts.)

Starving Students states it has procedures that ensure all customers are mailed an agreement the day after they call to place an order with Starving Students, unless the move is ordered less than three days before it occurs. The important information booklet is mailed with the agreement.

A review of the complaints provided and the summary documentation demonstrate a consistent pattern of conduct contrary to our rules and regulations. We find Starving Students violated items 28 and 88 at least 43 times as established through the declarations and corroborated by the Starving Students, CPSD, and BBB complaints.

Underpayment of License Fees (Phase I)

CPSD contends that Starving Students underpaid license fees in 1998, 1999, and 2000, because Starving Students' quarterly reports for those years are false. CPSD contends Starving Students did not include in those reports all applicable revenue accounts subject to license fees.

Parties' Contentions

CPSD reviewed Respondents' quarterly reports, work papers, annual financial statements, and California income tax returns for the years 1998, 1999, and 2000. Gross operating revenues were lower on Starving Students' quarterly reports filed with the Commission than on its annual financial reports. In

reviewing various sources to obtain accurate gross operating revenues for those years, CPSD found only Starving Students' California income tax returns reliable.

Starving Students included only three revenue accounts in its quarterly reports' computation of gross operating revenue—local moving, intrastate moving, and packing materials/box sales, and occasionally miscellaneous box sales. (Exhibit 1.) CPSD contends Starving Students omitted without justification revenue accounts such as intrastate moving-long haul, pick and hold intrastate revenue, and packing labor-intrastate, and others in violation of § 5201.⁷ As a result, CPSD contends that Respondents underpaid license fees for 1998, 1999, and 2000.

Starving Students admits that the sum of the gross revenues reported in its quarterly reports for 1998, 1999, and 2000 is lower than the total reported to the Commission in its annual reports or to the Franchise Tax Board in its Schedule R-1 but notes that the various reports require the reporting of different revenues. Starving Students contends that the annual reports should not include revenues derived from moves on premises, non-regulated storage services, Commission fees, and fuel charges. Starving Students claims it reports all revenue from interstate operations as California revenue on its Schedule R-1s, regardless of where the sale or move originated, because California is the location of Starving Students' corporate headquarters. (Ex. 5 at 4-5.)

⁷ On the quarterly reports, Starving Students deducted the amount of customer claims, bad debt, local unregulated revenue (moves on premises), and long distance revenues from the accounts that comprise total operating revenues.

Calculation of Operating Revenues

CPSD used two methodologies to compute Starving Students' gross operating revenues, the first based on Starving Students' California income tax returns (Table 1) and the second based on Starving Students' annual reports submitted to the Commission (Table 2).⁸

TABLE 1

Year	California Income Tax Return	Quarterly Report	Underreported Gross Operating Revenues
1998	\$14,897,273	\$10,945,072	\$3,952,201
1999	\$17,049,246	\$10,329,670	\$6,719,576
2000	\$15,352,263	\$9,149,307	\$6,202,956
Total	\$47,298,782	\$30,424,049	\$16,874,733

⁸ Starving Students objected to consideration of annual report revenues to calculate gross operating revenues, because CPSD provided the basis for that calculation in its brief. Since § 5331 requires an estimate of revenues, it is reasonable to consider more than one method of calculating those revenues.

TABLE 2

Year	Annual Report	Quarterly Report	Underreported Gross Operating Revenues
1998	\$11,654,927	\$10,945,072	\$709,855
1999	\$22,255,480	\$10,329,670	\$11,925,810
2000	\$12,070,594	\$9,149,307	\$2,921,287
Total	\$45,981,001	\$30,424,049	\$15,556,952

Although CPSD found only Starving Students’ income tax returns reliable, CPSD contends that annual report figures also can be used to estimate revenues to determine the underpayment. Starving Students claims that in at least one year the annual report contains both interstate and other state revenues. Where there is a dispute as to the amount of revenues reported, estimating revenues can present the problem found here—lack of reliability in the supporting documentation. Starving Students’ annual report revenues for 1999, \$22,255,480, are significantly higher than revenues reported on the income tax returns, \$17,049,246 and considerably higher than revenue reported for 1998, \$11,654,927, and for 2000, \$12,070,594. It would appear that other state revenues are commingled with California revenues in 1999, as Starving Students contends. Whatever the reason, the significant discrepancy between 1999 revenues reported on the income tax returns and annual reports negates any advantage of using annual report revenues to estimate gross operating revenues. Therefore,

we will use Starving Students California income tax returns to estimate gross operating revenues.⁹

Exclusions from Gross Operating Revenues are Limited

Starving Students states revenues from exempt shipments, subject to a lower regulatory fee, are included in its California income tax revenues. Starving Students also claims that revenues associated with moves on premises, bad debt, non-regulated storage services, and Commission fees and fuel charges should not be included in gross operating revenues subject to the requirement to pay license fees.¹⁰ Starving Students' analysis adjusted its income tax revenues accordingly; CPSD did not verify the accuracy of those deductions. CPSD contends there is no Commission directive that permits Starving Students to exclude Commission fees and fuel charges from operating revenues. CPSD also claims revenues from moves on premises are not included in operating revenues, because Starving Students deducted them. CPSD notes that revenues for exempt shipments were not separately stated on the quarterly and annual reports, as required. Finally, CPSD states bad debt is expensed and should not be separately excluded from revenues.

⁹ After the filing of briefs, Starving Students provided a January 2, 2003 letter from the IRS that required no changes to Starving Students' federal income tax return. Although CPSD relied on Starving Students' California income tax return, the apparent reliability of Starving Students' federal income tax return corroborates CPSD's assessment that Starving Students' tax returns are reliable.

¹⁰ Starving Students submitted two estimates of gross operating revenues and resulting fees in two versions of its testimony. (Exhibits 4 and 5.) Although CPSD objected to admission into evidence of the later version, it was admitted. Because § 5331 requires an estimate of revenues, it is reasonable to consider Starving Students' updated calculation of those revenues.

The Commission collects license fees reported on quarterly revenue statements from household goods carriers. (Pub. Util. Code §§ 5328, 5003.1.) Pub. Util. Code § 5002 provides that gross operating revenue subject to payment of a license fee includes:

All revenue derived from the transportation of property having origin and destination within this state, where the revenue is derived from transportation performed under a permit issued by the commission.

It follows that gross operating revenue is broadly defined to encompass all revenues from the transportation of property within our jurisdiction. We have not exempted assessed fees and fuel charges from operating revenues. Permitting carriers to assess those fees does not remove resulting revenues from inclusion as gross operating revenue. We find that assessed fees and fuel charges are not exempt from license fees and that Starving Students cannot deduct bad debt from revenues reported to the Franchise Tax Board for the purpose of estimating gross operating revenues.

Max Tariff 4, item 160, distinguishes storage-in-transit, subject to regulation, from storage that exceeds 90 days and is not regulated. However, CPSD concluded that Starving Students appears to have improperly deducted the accounts for storage-in-transit-local and storage-in-transit intrastate. Since Starving Students refers to the storage revenues found in Exhibit 1, CPSD's investigation report, and CPSD included intrastate storage revenue accounts that did not distinguish between storage duration, we cannot determine if unregulated revenues are included in Starving Students' deduction. Thus, we will not adopt a deduction for storage-in-transit. Furthermore, under accrual accounting, estimates for bad debt are incorporated in revenues reported to

taxing authorities. If those estimates for bad debt exceed recorded debt, the remedy is to adjust the estimate, not to deduct the difference.

**Interstate and Unregulated Revenues Properly
are Excluded from Gross Operating Revenues**

Interstate and exempt revenues are not subject to Commission license fees. Starving Students demonstrated that its California income tax returns include some interstate revenues, due to income tax reporting requirements. We approve Starving Students' deductions for interstate revenues (\$3,408,678 for 1998, \$4,701,724 for 1999, and \$3,742,074 for 2000), which are excluded from our fee assessments. We also approve deductions for moves on premises (\$341,864 for 1998, \$435,928 for 1999, and \$438,559 for 2000), which are unregulated, and separate exempt shipments (\$772,324 for 1998, \$472,015 for 1999, and \$455,186 for 2000), which are assessed at a different fee level. Although CPSD did not verify Starving Students' calculations of these amounts, Starving Students' accountant testified she reviewed the underlying revenues and based her calculations of interstate revenues on amounts reported in attachments to CPSD's testimony. She obtained moves on premises and exempt shipment revenues from Starving Students' accounting files. CPSD did not review the data from those accounting files to assess its reliability. Because § 5331 requires an estimate of revenues, we can assume that those accounting files are sufficiently accurate to make that estimate. We calculate used household goods revenues in Table 3.

TABLE 3

Year	California Income Tax Return	Revenue Not Subject to Fees	Gross Operating Revenues	Exempt Shipment Revenues	Used Household Goods Revenues
1998	\$14,897,273	\$3,750,542	\$11,146,731	\$772,324	\$10,374,407
1999	\$17,049,246	\$5,137,652	\$11,911,594	\$472,015	\$11,439,579
2000	\$15,352,263	\$4,180,633	\$11,171,630	\$455,186	\$10,716,444
Total	\$47,298,782	\$13,068,827	\$34,229,955	\$1,699,525	\$32,530,430

We calculate underreported revenues in Table 4.

TABLE 4

Year	Gross Operating Revenues	Quarterly Report	Underreported Gross Operating Revenues	Underreported Exempt Shipments	Underreported Household Goods Revenues
1998	\$11,146,731	\$10,945,072	\$201,659	\$772,324	(\$570,665)
1999	\$11,911,594	\$10,329,670	\$1,581,924	\$472,015	\$1,109,909
2000	\$11,171,630	\$9,149,307	\$2,022,323	\$455,186	\$1,567,137
Total	\$34,229,955	\$30,424,049	\$3,805,906	\$1,699,525	\$2,106,381

Using California income tax returns, Starving Students underreported gross operating revenues in 1998, 1999 and 2000, by a total of \$3,805,906. Starving Students underreported used household goods revenues in 1999 and 2000 and overreported used household goods revenues in 1998, totaling \$2,106,381 in underreported household goods revenues for 1998, 1999, and 2000. Because Starving Students did not report exempt shipment revenues on its quarterly reports, Starving Students underreported exempt shipment revenues for 1998, 1999, and 2000 by \$1,699,525, using California income tax returns.

CPSD Did Not Prove Starving Students Intentionally Underreported Gross Operating Revenues

CPSD contends Starving Students' actions were intentional, because all quarterly reports include the same revenue accounts, Respondent Margalith did not oversee preparation of the quarterly reports, the reports were prepared by different individuals, and Starving Students refiled an annual report with the Washington Utilities and Transportation Committee and agreed to pay less than \$4,000 in additional fees pursuant to a settlement agreement. Starving Students asserts that CPSD has not shown that any of its actions were intentional and that the Washington settlement does not prove Starving Students misrepresented revenues in either Washington or California. Starving Students claims different individuals were responsible for preparing the Quarterly and Annual Reports and these individuals did not coordinate the preparation of these reports. (Exhibit 3 at 5.)

We may suspend the permit of a household goods carrier if the carrier knowingly and willfully files a false report that understates gross operating revenues or, in the alternative, impose a fine of not more than \$20,000. (Pub. Util. Code § 5285.) In addition, Rule 1 of our Rules of Practice and Procedure requires that any person who transacts business with the Commission agree to comply with the laws of the State of California, maintain the respect due the Commission, and never to mislead the Commission or its staff by an artifice or false statement of law.

CPSD fails to establish that Starving Students knowingly and willfully filed false quarterly reports that understated revenue. The employees who prepared those reports are no longer with Starving Students and did not testify in this proceeding. It is impossible to infer from the evidence before us that

Starving Students omitted certain revenue accounts with the intent to falsify those reports. Consistency in preparing the quarterly reports is insufficient to show intent to falsify. In addition, Starving Students' annual reports contained higher revenues, an unlikely outcome if there were intent to underreport revenues. The facts in evidence are insufficient to establish intentional conduct.

Failure to Maintain Proof of Insurance (Phase II)

CPSD contends that Starving Students did not maintain proper insurance in effect and on file with the Commission. Under Pub. Util. Code § 5286 it is unlawful for a household goods carrier to operate as a carrier when its permit is suspended. Commission staff suspended Starving Students permit on three occasions for failure to maintain proof of insurance on file. On two occasions, Starving Students failed to maintain proof of its liability insurance, and one instance involved its workers' compensation insurance.

Starving Students was suspended for failure to maintain proof of liability insurance effective October 1, 1999 and reinstated on November 3, 1999, after it filed proof of insurance. Starving Students continued to operate during that period. (Exhibit 10, Attachments S, T.) On December 8, 1999, Starving Students was suspended for failure to maintain proof of liability insurance. Starving Students was reinstated effective December 10, 1999. Starving Students continued to operate during that period. (Exhibit 10, Attachments U, V.) On August 31, 2000, Starving Students was suspended for failure to maintain proof of workers' compensation insurance. Starving Students was reinstated effective September 13, 2000. Starving Students continued to operate during that period. (Exhibit 10, Attachments W, X.)

Starving Students believed that evidence of its insurance was timely filed. Starving Students introduced insurance brokers' letters to demonstrate that it

had business auto and workers' compensation policies in effect during the above-discussed periods. (Exhibits 19, 20, 21, 34 (duplicate).) CPSD countered with notices of cancellation. (Exhibits 43, 45.) Although Starving Students' auto liability and property damage insurance changed two times between October 1 and November 25, 1999, it appears Starving Students had coverage in effect during the suspension periods.

Starving Students also provided a letter it received from its insurance agent confirming workers' compensation coverage effective January 1, 2000. CPSD introduced the Commission's license section's letter to a prior workers' compensation insurance carrier, requesting proof of insurance or cancellation and that carrier's notice of cancellation effective January 1, 1999. (Exhibits 41 and 42.) It appears Starving Students had workers' compensation coverage in effect during the period of suspension but Starving Students did not establish that it had coverage between January 2, 1999 and January 1, 2000.

The Commission did not have proof of insurance on file during the three periods, although Starving Students appears to have had insurance coverage in effect during all suspension periods. Starving Students was suspended a total of 48 days for the three policies prior to Commission receipt of proof of insurance and unlawfully continued to operate during those periods.

Remedies and Fines

In Decision (D.) 01-04-036, the Commission adopted the following priorities for enforcement proceedings:

As a general matter, the Commission's priorities in enforcement proceedings, where violations of law or regulations have been established, as here, are to: (1) bring to an end any ongoing violations, (2) provide restitution to victims of the wrongdoing,

and (3) deter future violations through the use of fines.
(*Investigation of USP&C.*)

D.01-04-036, *mimeo.*, at pages 27-28 (April 19, 2001). In Phase I of this proceeding, CPSD recommends that Starving Students pay the correct fees for underreporting gross operating revenues plus the 25% penalty. In addition, CPSD recommends that Starving Students be suspended for 30 days and pay a \$6,000 fine to deter Starving Students and other household goods carriers from filing false reports. In Phase II, CPSD recommends that Starving Students' operating authority be revoked, that Starving Students review the 58 consumer declarations and satisfy all those consumers' claims, and that the Commission fine Starving Students \$5,000 per day for each day Starving Students operated in violation of the Commission's directive to cease all operations for failure to have proof of insurance on file, for a fine of \$225,000. CPSD also recommends that we fine Starving Students \$500 per day for each of the 758 consumer violations CPSD found, for a total of \$379,000.

CPSD further recommends that Starving Students review its claims files for the past four years, determine which claims were improperly denied on the grounds that a consumer failed to note any lost or damaged items at the time of delivery, reopen those claims files, and reconsider the consumers' claims. CPSD recommends in the alternative that if the Commission declines to revoke Starving Students' operating authority that Starving Students be suspended for six months and be placed on probation for two years. If the Commission suspends Starving Students, CPSD recommends that additional restrictions and conditions on Starving Students' business operations be imposed, including adequate supervision of employees with criminal convictions, limiting employees who can be drivers to those without drug or alcohol convictions, not

rehiring terminated employees, providing a separate sheet with valuation options and a claim form, immediate revocation if insurance policies are not in effect and on file and/or Starving Students underpays regulatory fees, limiting the number of moves to 27,000 per year for two years, payment of a performance guarantee if meritorious complaints filed at the Commission exceed five in any three-month period, permitting CPSD to select a member of Starving Students' advisory board, and removing Ethan Margalith from his management position for two years.

Starving Students contends that CPSD has not met its burden of proof. Starving Students states that the sanctions, including the probationary conditions recommended by CPSD, would drive Starving Students out of business, resulting in the loss of 500 jobs in California, and are disproportionate to the few violations it asserts the evidence supports. Starving Students states that complaints filed with the Commission declined from 118 in 2000 to only 19 for the first 8 ½ months of 2002, and loss and damage claims similarly declined from 1,112 in 2000 to approximately 668 on a normalized basis for 2002. Starving Students alleges CPSD failed to consider mitigating circumstances in recommending sanctions, especially the fact that the company on its own initiative has implemented many changes at a cost of millions of dollars. Starving Students recommends that the Commission impose a two-year probationary period with reasonable terms, conditions, and performance standards.

Starving Students Shall Pay the Proper License Fees and Penalties

If a carrier is in default in the payment of its regulatory fees, Pub. Util. § 5331 requires the Commission to estimate the correct gross operating revenue,

calculate the proper fee, and impose a 25% penalty. The Commission also may suspend or revoke that carrier' license.¹¹ We have determined that Starving Students underreported gross operating revenues but that its actions were not intentional.

We calculate the required fine in Tables 5A and 5B.

TABLE 5A

LINE	DESCRIPTION	2000	1999	1998	TOTAL
	Rate Funds Fee Used Household Goods				
1	Difference	(\$570,665)	\$1,109,909	\$1,567,137	\$2,106,381
2	Fee on rate regulated revenue (multiply Line 1 by .005)	(2,853)	5,550	7,836	10,532
3	Penalty (multiply Line 2 by 25%)	-	1,387	1,959	3,346
4	Rate Funds Fee (add lines 2 and 3)	(2,853)	6,937	9,795	13,878
	Uniform Business License Tax				
5	Tax (multiply Line 1 by .001)	(571)	1,110	1,567	2,106
6	Penalty (multiply Line 5 by 25%)	-	277	392	669
7	Uniform Business License Tax (add Lines 5 and 6)	(571)	1,387	1,959	2,776
8	Total Adjustment (add Lines 4 and 7)	(\$3,424)	\$8,324	\$11,754	\$16,654

TABLE 5B

LINE	DESCRIPTION	2000	1999	1998	TOTAL
	Rate Funds Fee Exempt Shipments				
1	Difference	\$772,324	\$472,015	\$455,186	\$1,699,525
2	Fee on rate regulated revenue (multiply Line 1 by .001)	772	472	455	1,700
3	Penalty (multiply Line 2 by 25%)	193	118	114	425
4	Rate Funds Fee (add lines 2 and 3)	965	590	569	2,124
	Uniform Business License Tax				
5	Tax (multiply Line 1 by .001)	772	472	455	1,700

¹¹ Pub. Util. Code § 5331(a) provides in relevant part: If a person or corporation is in default in the payment of that license fee for 30 days or more, “the commission may suspend or revoke any permit or license of the person or corporation, shall estimate from all available information the gross operating revenue of that person or corporation, shall the compute the license fee required by Section 5328, and shall impose a penalty of 25 percent of the fee for failure, neglect, or refusal to report. . . . Upon payment of the estimated license fee and the penalty, the permit or license of the agency suspended in accordance with the provisions of this section shall be reinstated.”

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6	Penalty (multiply Line 5 by 25%)	193	118	114	425
7	Uniform Business License Tax (add Lines 5 and 6)	965	590	569	2,124
8	Total Adjustment (add Lines 4 and 7)	\$1,931	\$1,180	\$1,138	\$4,249

The total adjustment for 1998, 1999, and 2000, including fees, taxes, and penalties, is \$20,903. We will order Starving Students to pay the Commission this amount. We decline to consider an additional fine for underpayment of gross operating revenues, because CPSD did not prove that Starving Students intentionally underreported revenues.

Starving Students Shall be Suspended for One Hundred and Eighty Days and That Suspension Shall be Stayed Subject to Compliance with this Decision

The severity of the violations of our rules and regulations is a criterion we use in determining whether we should revoke the operating authority of a utility. We place great trust in household goods carriers when granting them operating authority, and customers place an equal trust in these carriers by tendering their belongings to them. Starving Students violated that trust.

Starving Students' violations were serious. Customers' possessions were lost or stolen, customers had insufficient information to make an informed choice on valuation, claims settlements were delayed, and Starving Students' employees behaved unprofessionally on many occasions. Starving Students has shown a pattern of years of noncompliance with the law, resulting in two investigations of its operations by our staff. Failure to settle loss and damage claims and unprofessional employee conduct were part of each investigation. Nonetheless, Starving Students maintained in this proceeding that proven violations were few.

Starving Students does not dispute that it violated Pub. Util. Code § 5286 by conducting operations as a household goods carrier after the suspension of its permit, although it offers as mitigation the fact that it proved it had insurance in place, if not on file, during the relevant time periods. We view our insurance requirements as the linchpin of our program to ensure that members of the

public do not suffer harm at the hands of household goods movers. Starving Students similarly admitted discrepancies between its quarterly and annual reports.

Although Starving Students' violations are serious, we do not permanently revoke Starving Students' permit at this time. Starving Students expended considerable resources and capital in an attempt to resolve its customer service issues, as Margalith and Starving Students' Chief Executive Officer, Mark Peers, testified. Although Starving Students has not succeeded in curbing all customer service problems and regulatory compliance issues, it has made progress. Instead of revocation, we will impose a 180-day suspension, as recommended by CPSD, and will stay that suspension subject to Starving Students' full compliance with this decision. In addition, we will place Starving Students on probation for three years following the effective date of this decision. Adherence to this decision's directives should ensure compliance with our rules and regulations and should deter future noncompliance. If Starving Students fails to comply with this decision's directives during the probationary period, that failure will lift the stay and Starving Students will serve the 180-day suspension. We require Starving Students to submit quarterly reports to CPSD so that we can monitor compliance with the requirements set forth in this decision.

**Starving Students Shall be Fined for Violations
of Commission Rules and Regulations**

In D.98-12-075, we established standards for the imposition of fines. We consider two general factors: (1) severity of the offense, and (2) the conduct of the utility. In addition, we consider the financial resources of the utility, the totality of the circumstances in furtherance of the public interest, and the role of

precedent. (*See Order Instituting Rulemaking on the Commission's Own Motion into Competition for Local Exchange Service*, D.01-08-019, 2001 Cal. PUC LEXIS 653 *18.)

Severity of the Offense

The size of the fine should be proportionate to the severity of the offense. To determine severity, we consider three factors: (1) physical harm; (2) economic harm; and (3) harm to the regulatory process. Respondents' violations resulted in physical harm to goods. Regarding economic harm, we consider costs imposed upon the victims of the violation and unlawful benefits gained by the public utility; we use the greater of these two amounts in setting a fine. Starving Students' customers suffered economic loss that was not promptly settled or was settled at less than the value of the damaged goods. Although customers sustained economic losses, Starving Students' operations were in such chaos during that period that Starving Students lost money, rather than securing excess profits resulting from its conduct. We accord a high level of severity to any violation that harms or undermines the regulatory process (2001 Cal. PUC LEXIS, *supra*, at **23-24). Staff has investigated Starving Students two times for similar or identical violations; recidivism inherently undermines our authority and diverts our limited investigatory resources. Starving Students also unlawfully completed at least 51 moves during the period it was suspended for failure to maintain proof of insurance.

Conduct of the Utility

In D.98-12-075, we held that the size of a fine should reflect the conduct of the utility. When assessing the conduct of the utility, we consider the following factors: (1) the utility's actions to prevent a violation; (2) the utility's actions to detect a violation; and (3) the utility's actions to disclose and rectify a violation. We expect utilities to take reasonable steps to ensure compliance with

applicable laws and regulations. Starving Students admits its management was not effectively running operations during 1999 and 2000. Thus Starving Students did not act to deter or detect violations in that timeframe. When Starving Students management uncovered the extent of the problem, Starving Students met with Commission staff, changed management, and actively worked to correct violations. Nonetheless, Starving Students is before us because it could not prevent violations of our rules and regulations despite our earlier investigation and did not comply with our directive to suspend operations when proof of insurance was not on file.

Totality of the Circumstances and Financial Resources of the Utility

In D.98-12-075, we held that the size of the fine should reflect the financial resources of the utility and should consider two factors, the need for deterrence and any adjustment to achieve deterrence without becoming excessive. We also held that a fine should be tailored to the unique facts of each case.

Starving Students is losing money, and at this time its liabilities exceed its assets. Although Starving Students has attempted to turn around its fortunes, that goal has been elusive. Any fine imposed on Starving Students should have as its primary goal the prevention of future recidivism. Starving Students already has faced our customary range of penalties voluntarily agreed to in the earlier investigation's settlement with staff. Not only did those penalties fail to deter future violations, the violations alleged in this investigation were more severe. Although we fine Starving Students for violations of our rules and regulations, we must also fashion remedies that eliminate the need for further investigations.

We fine Starving Students \$104,000, the maximum of \$500 per offense for a total of 208 consumer violations, as permitted under Pub. Util. Code § 5313. Starving Students' repeated violations of our rules and regulations concerning customer care necessitate imposing the maximum amount per offense. If Starving Students makes restitution to the declarants and the complainants identified in this proceeding (the Starving Students, CPSD and BBB complainants) and furnishes a compliance report to CPSD within 60 days of the effective date of this order, we will stay all but 25% of the fine, thereby reducing the fine to \$26,000. Starving Students maintained during the proceeding that it had made restitution to many of the declarants on its own initiative, so Starving Students should be positioned to finalize restitution after this order issues.

As permitted by § 5313.5, we fine Starving Students \$180,000 (\$4,000 per day for a total of 45 days) for operating without a valid permit. Section 5313.5 permits a maximum penalty of \$5000, which was recommended by CPSD. We impose a lesser fine. Although Starving Students operated without a valid permit, in contravention of Commission suspension of its permit, it did have the required insurance in effect during the suspension period and had no prior investigation for this offense. Nonetheless, failure to comply with Commission directives is a serious offense and will be fined accordingly. We will permit Starving Students to pay the fines for consumer violations and operating during periods of suspension in five equal installments payable to the State of California General Fund and due every 90 days after the effective date of this order.

Precedent

Finally, D.98-12-075 requires that we address previous decisions that involve reasonably comparable factual circumstances and explain any substantial differences in outcome. Both CPSD and Starving Students provide decisions

they view as precedent. CPSD cites decisions where the carrier's permit was revoked (*Re Ace of Bace Moving Co.*, D.01-08-035 (also imposes a \$40,000 fine); *Re Elite Moving and Storage, Inc.*, D.98-11-005; *Re Edwards Moving and Storage Co.*, D.00-06-090; and *Re Jone Rodley dba Moving for Less*, D.00-08-019) and decisions where fines, restitution, and probation were imposed, mostly under the terms of settlement agreements with staff (*Re Arnold Ray Baeza, dba Best Movers*, D.02-05-028; *Re Mike Amos Galam, dba Load, Lock N Roll*, D.99-02-027; *Re Nir Ben-David and Amit Mines, dba Right On Time Moving*, D.00-06-013; and *Re Mon Van Moving Services, Inc. and Gary R. Grubb*, D.03-04-004).

None of these decisions consider a recidivist carrier. Although the fines we impose on Starving Students are higher than the fines imposed in those proceedings and higher than the amounts found in the settlement agreements, the amounts here are justified in light of continuing violations. Starving Students also continues to operate, whereas in one of those proceedings we revoked the carrier's operating authority and in the other the carrier's operations were suspended. As we have done in prior proceedings, we reduce the consumer violation fine by 75 percent, provided that Starving Students makes restitution to its customers. (D.01-08-035.)

**Starving Students Shall be Subject to
Performance Guarantees**

We reach the conclusion from our prior experience with Starving Students' violations of our rules that monetary penalties and suspension alone are insufficient to deter future violations. Although Starving Students expended considerable effort to control customer care issues when they became extreme, Starving Students clearly did not have controls in place to prevent regulatory violations in the first place. Informal discussions with Commission staff to

resolve regulatory compliance issues only resulted in misunderstandings and a breakdown in communications. Thus, we consider performance guarantees as a means of ensuring that Starving Students complies with our rules and regulations.

Energy and telecommunications utilities have service performance guarantees for missed appointments and billing errors. (D.02-10-073, Resolution T-16503, D.99-05-030, D.98-12-038.) Household goods carriers that fail to furnish customers the Important Information for Persons Moving Household Goods booklet must pay the customer \$100 upon completion of the move. (Max Tariff 4, Item 88.) Automatic credits for failure to perform a promised or required activity provide customers immediate redress for perceived problems. Investigations are time-consuming and, if they result in hearings, address violations long after they have occurred. Although investigations can stop current violations, customers have no guarantee that a carrier that is suspended or put on probation for a period of time will not revert to prohibited practices once the suspension or probationary period has concluded.

Service guarantees could deter future violations where a household goods carrier, such as Starving Students, has been investigated more than once for the same violations. Those violations, alleged and settled in 1993 and fined in this investigation, are failure to provide scheduled moving services, failure to provide competent and trained movers, failure to respond to loss and damage claims, and unlawfully denying loss and damage claims because the customer did not note the damages at the time of delivery. For failure to perform required activities Starving Students will apply a \$100 credit to total shipment charges for each instance of:

- 1) Misrepresenting to customers that a move can be scheduled on a day when there are insufficient trucks to complete those moves;
- 2) Sending personnel untrained and/or inexperienced in the movement of used household goods on a move;
- 3) Failing to acknowledge receipt of a claim for loss or damage in writing within 30 days;
- 4) Failing to either pay a loss and damage claim, decline to pay, or make a firm compromise offer to the claimant within 60 days; and
- 5) Denying loss and damage claims solely because the customer did not note the damages at the time of delivery.

These credits will continue during Starving Students' three-year probationary period. No credits will apply in emergency situations, where Starving Students' failure to comply is beyond its ability to control. Starving Students will submit quarterly compliance reports to CPSD and will list both the credits paid and the complaints submitted to Starving Students, broken down by category of complaint, which will include, but will not be limited to, the five activities for which we order credits. Starving Students will track providing verbal estimates as a category of complaint reported quarterly to CPSD. Should verifiable complaints of providing verbal estimates exceed one per quarter, the stay of Starving Students' suspension automatically will be lifted.

Starving Students will provide the names and contact information for complainants in those compliance reports. After the probationary period ends, we will no longer automatically require those credits but will permit CPSD or its successor to seek an extension of one or all of the credits by filing a petition for modification of this decision. Under § 5196 we have the authority to order Starving Students to refund household goods charges. We exercise that

authority in this instance in order to ensure that Starving Students conforms its operations to practices that are in compliance with our rules and regulations.

In order to ensure performance that meets the expectations of Starving Students' customers we consider CPSD's recommendations for controls on the management of Starving Students' employees. We do so in light of the numerous allegations of theft of customers' goods in transit, allegations that continue beyond the period when Starving Students admits it lacked control of its operations. CPSD recommends adequate supervision of employees with criminal convictions, limiting employees who can be drivers to those without drug or alcohol convictions, and not rehiring terminated employees. Starving Students states it conducts background checks and effectively trains and supervises employees.

We will require Starving Students to continue to conduct background checks in order to meet GO 142's requirement that Starving Students have capable help. We will prohibit Starving Students from rehiring employees terminated for lack of experience or training in the transportation of used household goods or for being under the influence of alcoholic beverages, narcotics, or habit-forming drugs not prescribed by a physician. Because Starving Students is required to supervise all employees and to ensure its employees are not under the influence of alcohol and/or drugs on the job, we will not establish additional requirements in those areas. However, we direct Starving Students to comply with GO 142.

**Starving Students Shall Comply With Applicable
Regulations or the Stay of Its Suspension
Automatically Will Be Lifted**

We must ensure that Starving Students complies with our rules and regulations. CPSD recommends immediate revocation if insurance policies are

not in effect and on file and/or Starving Students underpays regulatory fees. We will require Starving Students to keep evidence of proof of insurance current with the Commission throughout the three-year probationary period. If Starving Students fails to maintain proof of insurance during that period, we will order that the stay of Starving Students' suspension automatically will be lifted.

We require that Starving Students resolve the underlying problems that resulted in underpaying regulatory fees in 1998, 1999, and 2000, by establishing accounting controls to ensure regulatory accounts accurately reflect revenues and establishing reporting controls to ensure that all applicable accounts are included in quarterly reports submitted to the Commission. Starving Students did not properly maintain its regulatory accounts and did not report all intrastate operating revenues in those admittedly inaccurate accounts in its quarterly reports. If Starving Students fails to properly report gross operating revenues during the suspension period, we will order that the stay of Starving Students' suspension automatically will be lifted.

Furthermore, Starving Students is directed to comply with all pertinent state statutes, Commission General Orders, tariffs, rules and regulations governing household goods carriers, including but not limited to the Household Goods Carrier's Act, Pub. Util. Code §§ 5101 et seq., General Orders 100-M, 136-C, and 142, and Max Tariff 4. If Starving Students violates those laws, rules, and regulations, we will order that the stay of Starving Students' suspension automatically will be lifted.

Assignment of Proceeding

Geoffrey F. Brown is the Assigned Commissioner and Janice L. Grau is the assigned ALJ in this proceeding.

Findings of Fact

1. In I.92-11-029, the Commission investigated allegations of unlawful business practices by Starving Students, including failure to provide scheduled moving services, failure to provide competent and trained movers, and failure to respond to loss and damage claims. The Commission also investigated whether Starving Students provided unlawful verbal estimates, misrepresented transportation and insurance charges, operated unsafe trucks, and unlawfully denied loss and damage claims because the customer did not note the damages at the time of delivery.

2. CPSD obtained the declarations of 58 Starving Students customers after contacting 176 customers, primarily from Starving Students' claims register. Those declarations contain 234 allegations of violations of Commission rules and regulations concerning Starving Students' customer service.

3. CPSD summarized a review of 150 of Starving Students' shipping documents, including customer complaint records, for the years 2000 and 2001, which raise an additional 388 counts of alleged violations of our rules and regulations.

4. CPSD provided 19 complaints from CPSD's informal complaint files, which allege 64 violations of our rules and regulations.

5. CPSD provided 13 complaints received by the Better Business Bureau from October 2001 to June 2002, which allege 25 violations of our rules and regulations.

6. Starving Students on at least 208 occasions has failed to timely acknowledge and process consumers' claims for lost, stolen or damaged goods, to properly supervise and train its employees, to properly supervise and manage its employees and facilities resulting in items being lost while in the custody of

Starving Students and/or its agents and employees, to provide the required “Not to Exceed Price” on shipping documents; and to issue the “Important Information for Persons Moving Household Goods,” booklet; and has provided illegal verbal estimates; charged more than the provided estimate without the customer-initiated Change Order for Services, arrived hours late or failed to provide scheduled moving services at all, improperly denied consumers’ claims for failure to note lost or damaged goods at the time of delivery, and solicited tips.

7. Gross operating revenues were lower on Starving Students’ 1998, 1999, and 2000 quarterly reports filed with the Commission than on Starving Students’ annual financial reports.

8. Starving Students included only three revenue accounts in its quarterly reports’ computation of gross operating revenue—local moving, intrastate moving, and packing materials/box sales, and occasionally miscellaneous box sales.

9. Starving Students omitted revenue accounts such as intrastate moving-long haul, pick and hold intrastate revenue, and packing labor-intrastate.

10. CPSD used Starving Students’ California income tax returns to compute an underpayment of license fees.

11. Interstate and exempt revenues are not subject to Commission license fees.

12. Pub. Util. Code § 5002 broadly defines gross operating revenue subject to payment of a license fee as including all revenue derived from the transportation of property having origin and destination within this state.

13. Starving Students was suspended for failure to maintain proof of liability insurance effective October 1, 1999 and reinstated on November 3, 1999, after it filed proof of insurance. On December 8, 1999, Starving Students was suspended

for failure to maintain proof of liability insurance. Starving Students was reinstated effective December 10, 1999. On August 31, 2000, Starving Students was suspended for failure to maintain proof of workers' compensation insurance. Starving Students was reinstated effective September 13, 2000. Starving Students continued to operate during the three suspension periods.

14. Starving Students had business auto and workers' compensation policies in effect during the three suspension periods.

15. Starving Students expended considerable resources and capital in an attempt to resolve its customer service issues and complaints regarding Starving Students declined from 2000 to 2002 at the Commission and at the Better Business Bureau.

16. The Commission has investigated Starving Students twice for failing to provide scheduled moving services, failing to provide competent and trained movers, failing to respond to loss and damage claims, and unlawfully denying loss and damage claims because the customer did not note damages at the time of delivery.

Conclusions of Law

1. Starving Students violated Pub. Util. Code §§ 5161, 5164, and General Order 100-M by operating as a household goods carrier without proof of property liability and property damage insurance, and cargo insurance in effect and on file with the Commission.

2. Starving Students violated Pub. Util. Code § 5135.5 by operating as a household goods carrier without evidence of adequate workers compensation insurance on file and in effect with the Commission.

3. Starving Students violated § 5286 by conducting operations as a household goods carrier after the suspension of its permit authorizing such operations.

4. Starving Students violated General Orders 139-B (timely claims processing), 142 (capable help), Pub. Util. Code § 5241 (denying claims solely because goods not noted at time of delivery) and Maximum Rate Tariff 4, items 88 (failing to provide booklet), 92 (timely claims processing), 100, 108 and 112 (improper estimate), 136 (failing to honor valuation options) and 128 (failing to provide agreement) at least 208 times as discussed herein.

5. Respondents' authority should not be revoked as a result of the violations committed while Starving Students lacked control over its operations.

6. It is reasonable to impose a 180-day suspension and stay that suspension subject to Starving Students' full compliance with this decision.

7. It is reasonable to place Starving Students on probation for three years following the effective date of this decision.

8. It is reasonable to fine Starving Students \$104,000, the maximum of \$500 per offense for a total of 208 consumer violations, as permitted under Pub. Util. Code § 5313.

9. It is reasonable to permit Starving Students to make restitution as set forth herein to the declarants and the complainants identified in this proceeding (the Starving Students, CPSD and BBB complainants) and as a result to stay all but 25% of the fine, thereby reducing the fine to \$26,000.

10. It is reasonable to require Starving Students to pay the Commission \$20,903 for 1998, 1999, and 2000 fees, taxes, and penalties.

11. It is reasonable to fine Starving Students \$180,000, 4,000 per day for a total of 45 days, for operating without a valid permit, as permitted by § 5313.5.

12. For violations alleged and settled in 1992 and fined in this investigation, it is reasonable to establish performance guarantees, under the authority granted the Commission in Pub. Util. Code § 5196, in the form of a separate \$100 credit,

as established herein, to total shipment charges for each instance such a guarantee is violated.

13. It is reasonable to require Starving Students to meet General Order 142's requirement that Starving Students have capable help as set forth herein.

14. Starving Students should provide quarterly written compliance reports to CPSD as set forth herein.

15. If Starving Students fails to maintain proof of insurance during the probation period, Starving Students' suspension automatically should be lifted.

16. If Starving Students fails to properly report gross operating revenues during the probation period, Starving Students' suspension automatically should be lifted.

17. Starving Students should comply with all pertinent state statutes and Commission General Orders, tariffs, rules, and regulations governing household goods carriers.

18. Today's order should be made effective immediately to resolve the status of Respondents and to provide conduct guidance generally.

O R D E R

IT IS ORDERED that:

1. Starving Students, Inc. (Starving Students) shall pay \$20,903 in additional license fees, taxes, and penalties for 1998, 1999, and 2000 payable to the California Public Utilities Commission and tendered to the Commission's Fiscal Office within 30 days of the effective date of this order.

2. Starving Students shall pay a fine of \$284,000 for consumer violations and operating during periods of suspension, payable to the State of California General Fund and tendered to the Commission's Fiscal Office. Starving Students

shall pay the fine in five installments, with the first installment of \$56,800 due within 90 days of the effective date of this order and the remaining installments due every 90 days thereafter.

3. The fine ordered in Ordering Paragraph 2 shall be partially suspended and reduced to \$206,000, or five installments of \$41,200, if Starving Students makes restitution to its customers as set forth herein.

4. Starving Students' operating authority is suspended for 180 days and that suspension is stayed subject to the conditions set forth herein.

5. Starving Students is placed on probation for three years following the effective date of this decision.

6. Starving Students shall pay a \$100 credit to total shipment charges as set forth herein for each instance of:

- 1) Misrepresenting to customers that a move can be scheduled on a day when there are insufficient trucks to complete those moves;
- 2) Sending personnel untrained and/or inexperienced in the movement of used household goods on a move;
- 3) Failing to acknowledge receipt of a claim for loss or damage in writing within 30 days;
- 4) Failing to either pay a loss and damage claim, decline to pay, or make a firm compromise offer to the claimant within 60 days; and
- 5) Denying loss and damage claims solely because the customer did not note the damages at the time of delivery.

7. Starving Students shall submit quarterly compliance reports to CPSD as set forth herein.

8. Starving Students shall comply with all pertinent state statutes and Commission General Orders, tariffs, rules, and regulations governing household goods carriers and the specific conditions established herein.

9. The stay of the 180-day operating authority suspension shall be lifted if Starving Students violates any law or regulation governing household goods carriers and any condition established herein.

10. Investigation 02-02-005 is closed.

This order is effective today.

Dated _____, at San Francisco, California.