

PUBLIC UTILITIES COMMISSION505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

July 20, 2009

Agenda ID # 8709

TO PARTIES OF RECORD IN DRAFT RESOLUTION ALJ-238

This draft resolution regarding Appeal of Citation No. FC-252 issued by the Consumer Protection and Safety Division will be on the agenda at the August 20, 2009 Commission meeting. The Commission may then vote on this draft resolution, or it may postpone a vote.

When the Commission acts on the draft resolution, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own order. Only when the Commission acts does the resolution become binding on the parties.

You may serve comments on the draft resolution. Opening comments shall be served no later than August 10, 2009, and reply comments shall be served no later than August 17, 2009. Service is required on all persons on the attached service list. Comments shall be served consistent with the requirements of Pub. Util. Code § 311(g) and Rule 14.5 of the Rules of Practice and Procedure.

Finally, comments must be served separately on Administrative Law Judge Ryerson at vdr@cpuc.ca.gov, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

/s/ KAREN V. CLOPTON
Karen V. Clopton, Chief
Administrative Law Judge

KVC: eap

Attachment

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ-238
Administrative Law Judge Division
_____, 2009

RESOLUTION

RESOLUTION ALJ-238 in the Matter of the Appeal of Citation FC-252,
Affirming in Part and Amending in Part, pursuant to Resolution ALJ-187.

Patrick Berdge, Attorney at Law, Legal Division, for Consumer Protection and Safety Division.

Alon Levin, in pro per, for Meyer's Van Lines of CA, d/b/a Air Ride Moving & Storage.

This matter was heard on June 23, 2009, in Los Angeles, pursuant to Resolution ALJ-187, by Administrative Law Judge Victor D. Ryerson. The hearing was completed, and the matter was submitted, on that date.

Findings of Fact

1. Appellant Meyer's Van Lines of CA, d/b/a Air Ride Moving & Storage (Air Ride) is a Household Goods Mover regulated by this Commission. Its principal place of business is 11264 White Oak Avenue, Granada Hills, CA 91344. Its Household Goods Carrier Permit Number is 189785.
2. On March 2, 2009, the Commission's Consumer Protection and Safety Division (CPSD) served Citation number FC-252 (the citation) on Air Ride. On March 16, 2009, Air Ride served a timely Notice of Appeal on CPSD.
3. The incident underlying the citation is a household goods move between Glendale and Santa Cruz that was performed by Air Ride on April 21, 2008, at the request of Margarita Hermosillo (Hermosillo). The goods, which consisted generally of furniture and packed boxes, belonged to Hermosillo's sister. Hermosillo arranged the move on her sister's behalf and took responsibility for contracting and payment.

4. Hermosillo initially sought estimates for the move by contacting several household goods movers online. Before she contacted Air Ride, she received an estimate of \$1240 from another mover for the same list of items she subsequently furnished to Air Ride.

5. On April 14, 2008, Hermosillo contacted Air Ride to obtain a quote for the move. Her request was handled by an Air Ride salesperson identified only as "Tony." She furnished Tony with the following list of household goods to be moved:

- 1 Piano, Spinnet [sic]/Console, 60 Cu ft., 420 lbs.
- 1 Refrigerator 7ft to 10 ft., 45 Cu ft., 315 lbs.
- 1 Bed, Standard Double, 60 Cu ft., 420 lbs.
- 1 Sofa, 3 Cushion, 50 Cu ft., 350 lbs.
- 1 Table, coffee, 10 Cu ft., 70 lbs.
- 1 Armoire, sm, 25 Cu ft., 175 lbs.
- 20 Box, medium, 60 Cu ft., 420 lbs.

6. Tony stated that Air Ride could accomplish the move for a lower price than the quote Hermosillo had received from the first company. Tony responded to her inquiry on April 14, 2008, with the following quote for the move:

"Based on the information you provided, Cost is as follows:

Weight (Lbs).....2100 Lbs. x \$0.55/lbs. = \$1,155.00

* * *

Estimated Cost:	\$1,155.00
Our Discount to you is:	\$ 155.00
Total Price:	\$1,000.00
Payment #1 (Visa)	\$ 250.00
BALANCE DUE:	\$ 750.00

Any additional Items will be charged at the same binding rate as indicated."

7. On April 18, 2008, which was a Friday, Hermosillo called Tony to accept Air Ride's quote and make arrangements for the move. She provided a credit card number and made a \$250 refundable deposit by telephone, and told Tony that she wanted the move to commence on the following Monday, April 21.

8. According to Hermosillo, Tony told her that he would make a visual inspection of the items to be moved by stopping by the jobsite over the weekend, as he was going to visit his parents, who lived nearby. Tony never stopped by. Although Air Ride disclaims that Tony would not have done this because performing visual inspections was not among his duties, Hermosillo's testimony is credible. Tony did not testify or furnish a declaration at the hearing.

9. A four-person crew from Air Ride arrived at the jobsite at about 9:00 on the morning of Monday, April 21. The crew leader was David Levy (or Levin). At Hermosillo's direction they moved the truck to a driveway on another street in order to load more easily.

10. The testimony is in conflict concerning the sequence of events that occurred at this juncture.

- a. Hermosillo says that the entire crew, including David, started to load the furniture and other goods immediately, and that she did not have any discussion with David about the price of move or completion of the paperwork until after the items were loaded onto the truck. After the goods were loaded and secured on the truck, she and David sat down at a table inside the house and had her review and sign the moving documents, which David characterized as a "formality." He told her that the truck had to be weighed, and that the weight would determine the price. She denies that she had any conversation with anyone concerning the cost of the move, by telephone or otherwise, until after the truck was weighed. She also claims that the Not to Exceed Price, \$3,800, was not inserted in the blank form [Item 465 Important Notice about your Move] at this time.
- b. David did not testify at the hearing, and did not furnish a declaration. Air Ride's president, Alon Levin (Levin), testified on behalf of the company, and said he had personal knowledge of what occurred at the jobsite because he spoke to David on the phone after the truck arrived. Levin claims that

David, whom he characterized as his partner, called him right away when the crew arrived and reported that the load was much bigger than the 2100 lbs. used in the estimate. Levin stated that both he (by telephone) and David explained this to Hermosillo and told her that the cost would be determined by weight. He says that David told Hermosillo that the Not to Exceed Price, based on the rate per pound, would be \$3,800. Levin stated that they did so prior to loading, and that they asked her if they should continue with the loading. Levin says it was at that point that Hermosillo consented to the price and signed the Not to Exceed Price form, as well as the shipping order and freight bill, and the receipt for the Commission's customer information booklet. He says that after she signed all of these documents, he gave the OK to the movers to proceed with the loading.

11. After the truck was loaded and she had signed the moving documents, Hermosillo followed the truck to a weigh station and watched the crew weigh the truck. The difference between the weights of the truck before and after it was loaded was 6620 lb. Using the rate that had originally been applied to the 2100 lb. estimate, David told her that the price of the move, net of the \$250 deposit she had already paid would be \$3,391.

12. Hermosillo responded by asking David to bring the load back to the jobsite and unload it, as the quoted price was too high. David became very upset and refused to comply, and told her that the items would be placed in storage until she paid for them.

13. Hermosillo then obtained a cashier's check in the amount of \$3,391.00, payable to Air Ride, and paid the full amount for the move. Air Ride acknowledged receipt of full payment in this amount, and completed the move without further incident.

14. Air Ride received one citation in the past year, based upon a customer complaint, after the CPSD issued the citation appealed here.

Conclusions of Law

1. The first violation in the citation in pertinent part states that Air Ride failed to complete a Combined Agreement for Moving Services and Freight Bill (Agreement) showing all the required information, and to provide an original or copy of the Agreement to the shipper no less than three days before the move, in

violation of Items 128 and 132 of Maximum Rate Tariff 4 Naming Maximum Rates and Rules for the Transportation of Used Personal Property, Namely: Household Goods and Personal Effects over the Public Highways within the State of California by Household Goods Carriers (MAX 4).

- a. Item 128 requires the carrier to prepare the Agreement for all shippers who provide information in sufficient detail for the carrier to complete the Agreement, regardless of shipper commitment to engage the services of that carrier, and to deliver the original or a copy of that document to the shipper not less than three days before the day of the move. The shipper's failure to do so will result in rates being assessed at a lower rate under Item 28. That rate is the lowest of: (1) 65 percent of the maximum fixed rates published in MAX 4; (2) rates quoted in the Estimate; or (3) rates quoted in the Agreement.
- b. Item 132 requires the carrier to issue a shipping document to the shipper for the shipment received for transportation. The shipping document must show specified information, including the Not to Exceed Price.
- c. Cause exists to cite Air Ride for the first violation under Findings of Fact 3 through 10. Exception 1 of Item 128 permits the Agreement to be completed on the day of the move if the shipper's first contact with the carrier is less than three days before the day of the move. Air Ride contends that it should be excused from this violation because Hermosillo agreed to engage its services on April 18, less than three full days before the move. However, there is clear and convincing evidence that she first contacted Air Ride on April 14, one full week before the move, so this exception does not apply. Air Ride should provide the move at the lowest of the three alternative rates computed in accordance with Item 28,¹ because Air Ride should have provided Hermosillo with a copy of the Agreement at least three days before the date of the move.

¹ This means the *rate*, as applied to the actual weight of the load, and not the *total* computed for the Estimate, which was based upon 2100 lbs.

2. The second violation in the citation states that Air Ride failed to properly complete and provide to Hermosillo the Important Notice about your Move, which must include the Not to Exceed Price, at least three days prior to the scheduled date of the move. This is required by Public Utilities Code Section 5143 and MAX 4 Items 130 and 465. There is an exception if the consignor requests services on a date that is less than three days before the scheduled date for transportation, but in no event may the carrier commence any services until the consignor has signed and received a signed copy of the notice.

Although Air Ride furnished a signed copy of this notice, as well as a signed receipt for the consumer information booklet, Hermosillo's account of the sequence of events on the day of the move is more credible than that of Air Ride. Air Ride's case is supported entirely by the testimony of Levin, who was not present at the time of the move. He had no firsthand knowledge of what was taking place at the jobsite. David, who did have such knowledge, did not testify at the hearing.

Cause exists to cite Air Ride for the second violation under Findings of Fact 3 through 10. Based upon Hermosillo's testimony, it appears more likely than not that the crew immediately began loading the truck upon arrival at the jobsite, and that the documents were completed after the truck was at least partially loaded. Even if this was not the case, Hermosillo's claim that the notice did not include the Not to Exceed Price when she signed it is credible. Without this essential piece of information, a customer is at the carrier's mercy. Indeed, in this case the information was not furnished until her only options were to pay the quoted amount or submit to having the load put into storage until the matter was somehow worked out, as Air Ride refused to return to the jobsite and unload the goods. This is exactly the sort of conduct that MAX 4 is designed to prevent.

3. The third violation in the citation states that Air Ride issued an estimate of costs for proposed services without making a visual inspection of the goods, in violation of Public Utilities Code Section 5143 and MAX 4 Item 108. Although Air Ride admits that it did not make a visual inspection before providing the estimated cost, Levin contends that this was because Hermosillo requested the estimate at the beginning of a weekend, and less than three days before the move. This is simply not true, as Air Ride furnished a written estimate by online communication on April 14, a week before the date of the move. Cause exists to cite respondent for this violation by reason of the facts set forth in Findings of Fact 3 through 9.

4. The fourth violation in the citation states that Air Ride failed to charge rates stated in the MAX 4 tariff, in violation of Public Utilities Code Section 5139 and MAX 4 Items 24 and 300. Air Ride concedes this violation, and has offered to reimburse Hermosillo \$860.60, the difference between the maximum allowable rate and the rate she was actually charged. Cause therefore exists to cite respondent for this violation. Air Ride should refund the \$860.60 to Hermosillo. In addition, if the amount of that refund is less than the difference between the maximum fixed rates published in the MAX 4 tariff and 65 percent of that amount, Air Ride should refund the additional difference to Hermosillo, subject to confirmation by CPSD.

5. The fifth violation in the citation states, without elaboration, that Air Ride failed to comply with a staff directive, in violation of Public Utilities Code Section 5313. At the hearing staff explained that this violation was based upon Air Ride's refusal to pay the fine sought by CPSD in this matter. Affirming a violation on this ground would negate the citation appeal process, which allows a carrier to have the citation reviewed before any obligation to pay fines or make refunds is finally determined. Cause does not exist for this violation.

6. Although Levin appeared earnest in presenting his case at the hearing, and volunteered to refund the amount Hermosillo paid in excess of the MAX 4 maximum rates, he stated in the course of his testimony that the company may not always complete its required paperwork rigorously. We recognize that full compliance is difficult, particularly in a situation where a move is arranged on short notice. However, failing to comply fully with our regulatory requirements can lead to disputes with customers, as it did here. Our system of consumer protection is intended to protect both carriers and customers, and to prevent misunderstandings that can have serious consequences. Air Ride must take measures to follow the rules properly.

Air Ride has been cited twice recently because of consumer complaints. This is not an encouraging sign. We recognize that managing a small moving company is difficult, but Air Ride must do a better job of attending to details in the interest of protecting the public.

7. In light of the fact that one violation is unsupported, the fine in this matter should be reduced to \$400.

Comments

This Resolution was issued for public review and comment in accordance with Public Utilities Code Section 311(g) and Rule 14.5 of the Commission's Rules of Practice and Procedure.

IT IS THEREFORE RESOLVED that:

1. Citation FC-252 is affirmed except as provided herein.
2. Meyer's Van Lines of CA, d/b/a Air Ride Moving & Storage, shall, within 30 days of receipt of the final amount in accordance with paragraph 3 below, refund to Margarita Hermosillo the following:
 - a. The sum of \$860.60, the difference between the maximum allowable rate under MAX 4 and the rate she was actually charged; plus
 - b. If the \$860.60 is less than the difference between the amount Hermosillo paid and 65 percent of the maximum fixed rates published in the MAX 4 tariff, the additional amount due pursuant to Item 28 of MAX 4.
3. The Consumer Protection and Safety Division shall determine the total amount of the refund payable pursuant to the previous paragraph, and shall promptly communicate that information to Meyer's Van Lines of CA, d/b/a Air Ride Moving and Storage, and Margarita Hermosillo.
4. Meyer's Van Lines of CA, d/b/a Air Ride Moving & Storage, shall, within 30 days of the effective date of this Resolution, pay a fine in the amount of \$400. All checks shall be made payable to the California Public Utilities Commission and reference Citation No. FC-252 and shall be sent to the Commission's Fiscal Office, 505 Van Ness Avenue, San Francisco, CA 94102. Upon payment, the fine shall be deposited in the State Treasury to the credit of the General Fund.
5. If Meyer's Van Lines of CA, d/b/a Air Ride Moving & Storage, fails to pay the fine as provided herein, the Commission's Consumer Protection and Safety Division shall immediately revoke Household Goods Carrier Permit No. 189785, and may take any other action provided by law to recover the unpaid fine and ensure compliance with applicable statutes and Commission orders.

This resolution is effective today.

I certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on _____, 2009, by approval of the following Commissioners:

PAUL CLANON
Executive Director

INFORMATION REGARDING SERVICE

This is to certify that I have served a hard copy of the foregoing Draft Resolution ALJ-238 by U.S. mail on those persons on the attached service list.

Dated July 20, 2009, at San Francisco, California.

/s/ ERLINDA PULMANO

Erlinda Pulmano

**CPSD Citation Number FC-252
SERVICE LIST**

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