

Decision 05-04-008 April 7, 2005

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the matter of the Order Instituting Investigation and Order to Show Cause on the Commission's own motion into the operations and practices of Ronen Perez, an individual, Ford Moving and Storage, Inc., a California corporation, and its president, Ronen Perez,

Investigation 04-04-001  
(Filed April 1, 2004)

Applicants/Respondents.

**OPINION DENYING PERMIT AND IMPOSING SANCTIONS  
FOR VIOLATIONS OF THE HOUSEHOLD GOODS CARRIERS ACT  
AND OTHER COMMISSION REGULATIONS**

**I. Summary**

This decision finds that respondents have violated numerous sections of the Public Utilities Code and Commission rules and regulations. We deny respondents' pending permit for cause, require customer restitution, impose fines, and find that respondents, or any entity in which respondents hold a financial or management interest, may reapply for a household goods carrier permit only after they have complied in full with all terms of court and Commission orders and made a showing of rehabilitation in a formal application.

In addition to our action here, the Commission has also taken court action against respondents in both criminal and civil court. On January 23, 2004, respondents were convicted in criminal court for operating without a valid license from the Commission, conducting moves that resulted in unreimbursed

damage to the household goods of consumers, and overcharging consumers; Perez is currently serving three years of probation for this conviction. The violations we find in this decision are not the same offenses as those in the criminal complaint.

In civil court, the Commission's Consumer Protection and Safety Division (CPSD) instituted a suit against respondents on August 14, 2003. While final resolution is still pending, the court has issued a temporary restraining order (TRO) and preliminary injunction. Both orders prohibit respondents from operating as a household goods mover in California without a valid license from the Commission. (We discuss both the civil and criminal proceedings in more detail below.)

Despite the court orders, respondents have continued to operate as an unlicensed household goods mover. Due to the chronic and serious nature of respondents' behavior, we find the circumstances in this case warrant CPSD staff pursuing action against respondents both here and in court.

## **II. Background**

### **A. Issuance of OII/OSC**

In starting this proceeding, the Commission cites to a report from the CPSD stating that a staff investigation of Ford Moving and Storage, Inc. found numerous violations of the Household Goods Carriers Act (Public Utilities Code Sections 5101 et seq.), the Commission's Maximum Rate Tariff 4 (MAX-4), and the Commission General Orders (GOs) 100-M, 136-C, and 142. (Subsequent section references are to the Public Utilities Code.) The alleged violations include operations during an extended period without either public liability insurance on file or a permit in force from the Commission, and consumer complaints of overcharges and problems in handling claims for loss and damage.

There is a lengthy Commission history with respondents. We discuss this history in more detail below, but in brief our actions include suspending and revoking Perez' license and, when he continued to operate, pursuing a criminal complaint and obtaining a preliminary injunction in a pending civil case. CPSD staff now seeks denial of a pending license permit to Ford Moving and Storage Inc., restitution for customers, fines, recovery of staff's investigative costs, and a permanent forfeiture of rights for respondents to operate as a household goods carrier in California.

The Commission has pursued action against respondents in the Los Angeles Superior Court in both criminal and civil proceedings. On July 2, 2003, the Los Angeles City Attorney's Consumer Protection Section filed charges against Perez and Ford Moving and Storage, Inc. for two counts of misdemeanor theft and 13 misdemeanor violations of the Public Utilities Code related to operating without a valid license from the Commission, conducting moves that resulted in unreimbursed damage to the household goods of consumers, and overcharging consumers. (Los Angeles Superior Court Case No. 3CR02645.) On January 23, 2004, Perez pleaded nolo contendere to eight misdemeanor violations of the Public Utilities Code. He was ordered not to operate as a household goods carrier unless he received a license from the Commission, to make restitution to 17 customers, to reimburse the Commission for \$2,000 in staff investigative costs, and to serve three years probation.<sup>1</sup>

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<sup>1</sup> Specifically, the sentencing order states that Ronen Perez and Ford Moving and Storage, Inc. are not to directly or indirectly own, operate, be employed by, be an agent for, be a broker for, advertise for, solicit for, hold themselves out as, have a business affiliation with, or have any financial interest in any business operating as a household goods carrier, interstate or intrastate unless: (a) that business has a current, valid permit

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On August 14, 2003, the Commission filed a civil complaint in Los Angeles Superior Court, Case No. BC300974, requesting civil penalties and an injunction against respondents for conducting household goods mover operations without a Commission license and otherwise violating statutes, rules, and regulations. On August 21, 2003, the Los Angeles Superior Court issued a Temporary Restraining Order and on September 12, 2003, a Preliminary Injunction against respondents, prohibiting them from operating until they obtain a Commission license. This civil proceeding is still open. The court docket shows a case management conference was last held on November 30, 2004 and is next scheduled for May 4, 2005.

**B. Prior Enforcement History at the Commission**

The Commission became aware in early 2000 that Perez was conducting moving operations without a license. Verbal and written warnings from CPSD staff failed to result in Perez ceasing and desisting unlawful advertising and operations and applying to obtain operating authority from the Commission. Therefore, on June 14, 2000, CPSD staff obtained a court order to terminate telephone service to two phone numbers registered to Ronen Perez dba Ford Moving and Storage.

On June 23, 2000, Perez then applied and was granted a household goods permit as a sole proprietorship. Over the next two years, Perez' permit was in

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to operate from the appropriate licensing authority; and (b) at least 48 hours before defendants begin to act in that capacity, they notify the Commission in writing and provide the Commission with the following: the name of the business, the address of the business, the name of the owner of the business, and the license/permit number of the business. The notice is to be provided to the Public Utilities Commission, Consumer Protection and Safety Division, Transportation Enforcement Branch, Attn: Supervisor, 320 West 4<sup>th</sup> Street, Suite 500, Los Angeles, CA 90013.

and out of suspension for failure to file and maintain evidence of public liability and workers' compensation insurance coverage. The permit was finally revoked on August 27, 2002.

On October 1, 2002, Perez requested to reinstate his permit and was informed the permit could not be reinstated until he filed evidence of workers' compensation insurance; when Perez failed to make the filing, the Commission denied this request on December 19, 2002. On November 7, 2002, Perez filed an application for a household goods permit under the corporate entity, Ford Moving & Storage, Inc. That permit is pending and at issue today.

When we began this proceeding, we directed the respondents to appear at a hearing to show cause why their pending application for a household goods carrier permit should not be denied for cause and lack of fitness in view of the allegations. The respondents were directed to cease and desist performing any and all moves while this case is pending and notified that they may be subject to fines and penalties for the alleged violations.

### **C. Events in the Current Proceeding**

The assigned Administrative Law Judge (ALJ) scheduled a prehearing conference (PHC) for June 15, 2004. At the request of respondent's attorney and counsel for CPSD, the June 15 PHC in San Francisco was changed to a July 1, 2004 telephonic PHC. In the ALJ rulings setting the PHC, the respondents and CPSD were directed to file by June 15, 2004, a PHC statement setting forth the issues they saw requiring evidentiary hearings.

In its PHC statement, CPSD also included a motion to compel production of documents. Respondents failed to file a PHC statement. At the PHC, respondent agreed to respond to CPSD's discovery request, and a schedule for

discovery, testimony, evidentiary hearings and briefs was set. This schedule was memorialized in the August 8, 2004 scoping memo.

On July 7, 2004, respondent Ronen Perez filed a declaration in response to CPSD's request for production of documents. Perez states he was unable to locate any records requested by CPSD, provides an explanation for other documents found at his premises by CPSD's investigators on October 28, 2003, and objects to CPSD's document request on the grounds that because respondent is not presently a carrier, the Commission does not have authority to request his records.

On August 13, 2004, respondents filed a motion to withdraw their pending application for household goods authority, forego evidentiary hearings, and waive all objections to the documents served by CPSD entering evidence. On August 16, 2004, CPSD filed a response stating it (1) did not object to foregoing hearings since respondents had not served any testimony challenging CPSD's documents, and (2) did not object to applicants withdrawing their application because applicants remain as respondents in this proceeding and as such can be held responsible for past illegal activities.

By ruling on August 30, 2004, the ALJ removed the hearings from the Commission's calendar, provided procedural direction to applicants on how to withdraw their application, identified and admitted into evidence Perez' July 7<sup>th</sup> declaration and CPSD's documents, and provided direction on what should be addressed in parties' briefs.<sup>2</sup> Based on respondents request to forego hearings

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<sup>2</sup> In the August 30, 2004 ruling, respondents were informed that they cannot withdraw their application by motion and advised that the procedure for withdrawal of an application is for the applicant to send a letter to the Commission's Consumer Protection and Safety Division, License Section, Attn: Paul Wuerstle at our San

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and CPSD's agreement, we change our earlier determination that hearings are necessary.<sup>3</sup>

On September 3, 2004, CPSD and respondents filed opening briefs. On September 27, 2004, CPSD filed a reply brief; respondents did not file a reply brief. Respondents did not properly serve their opening brief, despite several follow-up requests from the Commission's Docket Office and the assigned ALJ. As a result, the ALJ did not receive a copy of respondents' brief until November 19, 2004; accordingly, this is the date of case submission.

#### **D. Parties' Positions**

CPSD presents evidence of 823 violations of the applicable statutes, rules, and regulations, and recommends that the Commission:

- (a) Fine the respondents \$40,000;
- (b) Require respondents to pay \$13,632.50, which is the full costs of investigation minus the \$2,000 that was ordered in Criminal Proceeding 3CR02645;
- (c) Require respondents to pay \$5,000 in restitution to Michelle Morris and also order respondents to pay restitution required in Criminal Proceeding 3CR02645 and report to the Commission when all restitution has been paid; and

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Francisco offices. Further, the ruling informed respondents that the letter should state that applicant is withdrawing his application and should be signed by Ronen Perez, with copies to the service list in this proceeding. The application remains pending and will be addressed here because respondents did not withdraw their application by the November 19, 2004 submission date of this proceeding.

<sup>3</sup> In the briefing instructions, the ruling states that the focus of the briefs should be on the appropriate level of fines and penalties the Commission should impose based on the evidentiary record here and the criteria for determining the level of fines set forth in Decision (D.) 98-12-075.

(d) Impose a permanent denial of operating authority.

In its reply brief, CPSD also requests that the Commission sanction respondents' attorney, Jeffrey Nadel, for violating Rule 1 of the Commission's Rules of Practice and Procedure by misleading the Commission on a statement of law.

Respondents' position is that since they have already been charged criminally for the actions subject to this proceeding, they cannot be prosecuted here due to the constitutional protections relating to double jeopardy and due process. In the alternative, respondents argue that should fines be assessed in this proceeding, they should be minimal since the declarations submitted here relating to improper conduct are for a few instances that are spread apart and insufficient to establish any continuous stream of punishable acts to warrant the number of violations charged by CPSD.

### **III. Discussion**

#### **A. Violations**

The burden of proof lies with CPSD to establish by a preponderance of evidence that respondents have violated applicable statutes, rules, and regulations. (See D.97-05-089, 72 CPUC 2d 621, 642, Conclusions of Law 1 and 2.) CPSD has met its burden of proof by establishing, chiefly through declarations of staff witnesses and an investigative analyst with the California Department of Justice's Consumer Law Section, that respondents have committed 823 violations of the Public Utilities Code, the Max 4 tariff and GO 100-M. The specific violations are as follows:

(1) Section 5133(a)(1)<sup>4</sup>—Operating Without a Permit (7 violations)

The evidence submitted by staff is for five moves conducted between March 27, 2003 and October 23, 2003 and for two instances of “holding itself out as a carrier” in sting calls from investigators.

(2) Section 5314.5—Advertising Without a Permit in Force (365 Violations)

Respondents violated this statute by advertising in the “Verizon Superpages 2002-2003 issue” for 365 days.

(3) Section 5135.5 and GO 100-M—Operating Without Worker’s Compensation Insurance (306 Violations)

Respondent failed to maintain the required insurance for 306 days.

(4) Section 5161 and GO 100-M—Operating Without Public Liability Insurance (134 Violations)

Respondents failed to maintain the required coverage for a total of 134 days.

(5) Section 5139 and Max-4—Failure to Provide Maximum Rate Tariff Required Information (11 Violations)

This consists of 3 violations for failure to provide each prospective shipper a copy of the “Important Information Booklet For Persons Moving Household Goods,” 2 violations for providing a cost estimate prior to a visual inspection of the goods to be moved, 2 violations for completing the “Basis For Carrier’s Estimated Cost of Services” prior to a visual inspection of goods and prior to determining the estimated costs of

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<sup>4</sup> All references to the Public Utilities Code sections are by cite to the specific section.

services, 3 violations for failure to provide customers a complete “Agreement for Moving Services,” and 1 violation for failure to issue a shipping order and freight bill to the customer when charges are collected.

(6) Section 5135—Fitness Criteria

This section requires that a household goods permit be issued only to applicants who have demonstrated that they possess sufficient knowledge, ability, integrity, and financial resources and responsibility to perform the services. Staff states that the overall violations here render the respondents unfit to operate as household goods carriers.

We find respondents’ history of illegal conduct to be chronic and of a serious nature. Respondents do not present evidence to refute these violations. Rather, they argue that the violations are minor and infrequent. Respondents also argue that the double jeopardy clause prevents the Commission from assessing civil penalties against a party already criminally convicted for the actions that are the subject of this OII/OSC. We reject both arguments, beginning with double jeopardy.

**B. Double Jeopardy Claim**

Respondents contend that imposition of the administrative sanctions under consideration would violate the double jeopardy clause of the Fifth Amendment of the U.S. Constitution.<sup>5</sup> For the reasons discussed below, we disagree. However, in an abundance of caution, we strike all allegations here

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<sup>5</sup> The double jeopardy clause reads: “Nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb....” U.S. Constitution, Amendment 5, emphasis added.

that could be argued to overlap with the offenses for which respondents were charged in the criminal proceeding.

It has long been established that the double jeopardy clause protects against the imposition of multiple criminal punishments for the same offense. Respondents' contention, in essence, is that because they have already been penalized in a criminal court, the sanctions proposed in this OII/OSC would subject them to double jeopardy. This could only occur if this OII/OSC were a criminal rather than civil proceeding and the offenses being sanctioned here were the same as the offenses in the criminal complaint, Case No. 3CR02645.

In this OII/OSC, the Commission is engaging in an essentially civil, licensing function, and the sanctions under consideration here are not aimed at retribution but rather are for the purpose of achieving compliance with our licensing statutes. The public places tremendous trust in household goods movers by tendering their most personal and treasured belongs to the movers. The Legislature has recognized the public's vulnerability to abuse from these movers by providing the Commission with authority to pursue civil remedies through its own administrative structure and in civil court or to pursue criminal charges through the courts.

The Commission holds licensing authority in the regulation of household goods movers in order to protect the public from movers who (1) do not hold adequate insurance, (2) hold consumers goods hostage, (3) fail to properly disclose all charges, and (4) fail to provide proper compensation for lost or damaged property. The Commission is the only entity that can act on respondents' pending application or address CPSD's recommendation that respondents be permanently denied operating authority.

While our OII/OSC is a civil and not a criminal proceeding, we recognize that the courts provide guidelines rather than a bright line between whether imposition of fines is a civil or criminal exercise of authority. Therefore, to the extent the OII/OSC alleges violations that are also charged in the criminal complaint, we strike those allegations and will not impose further sanctions in this proceeding for the same conduct in the same time period. We will also not allow recovery of any CPSD investigative fees where there may have been an overlap of staff's time in the criminal proceeding.

We have carefully reviewed the criminal charges and the sentencing order in Case No. 3CR02645 and compared it to the 823 violations alleged by CPSD to see if there are instances of overlap. Respondents were charged with violations of the following sections of the Public Utilities Code: one count of Section 5133, one count of Section 5286, two counts of Section 5314.5, and nine counts of Section 5139. A copy of the criminal complaint is Exhibit 3 in this proceeding and the Los Angeles Superior Court's January 22, 2004 sentencing order is included in Exhibit 6.

As a result of our review, we strike from consideration in this OII/OSC the March 27, 2003 alleged violation of Section 5133(a)(1), operating without a permit, and the 365 alleged violations under Section 5314.5 for advertising without a permit in force in the 2002 and 2003 time period.<sup>6</sup> We do not impose

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<sup>6</sup> The Section 5133(a)(1) OII/OSC violation is for the move of Navy Banvard. The criminal complaint does not name the customers under the Section 5133 charges, but does state the illegal moves occurred between February 2003 through May 31, 2003. While Banvard is not listed in the criminal complaint or the sentencing order, his move was performed on March 27, 2003. The OII/OSC at page 14 states the time period for violation of Section 5314.5 is May 29, 2002 through May 29, 2003, a period covered by the criminal complaint.

any sanctions for these alleged violations. Under the same rationale, we do not allow recovery of any CPSD investigative costs because the evidence presented here, Exhibit 5, does not provide the detail necessary for us to separate the investigative hours worked on the criminal proceeding from the hours worked on this OII/OSC.

We will consider four alleged violations of Section 5139 which occurred on June 12, 2003, and thus have a time overlap with the criminal complaint. These four alleged violations all relate to the move of Michelle Morris, and our evidence establishes that this information was obtained by CPSD on October 28, 2004, after the criminal complaint had been filed.<sup>7</sup> Finally, while the time period overlaps, we will consider alleged violations under Sections 5135.5 and 5161 because no charges were brought in the criminal case under these statutes and because the allegations state a separate and distinct offense not covered in the criminal complaint. Based on this review, we find respondents have violated Section 5133(a)(1) six times, Section 5135.5 306 times, Section 5161 and GO 100-M 134 times, and Section 5139 and the Max-4 tariff 11 times.

With these limitations, an argument cannot be sustained that the violations we sanction here are the same as those respondents were found guilty of in the criminal case. Therefore, the Fifth Amendment actually is inapplicable.

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<sup>7</sup> As set forth in Exhibit 6, on October 28, 2003, at the request of Los Angeles City Attorney Mark Lambert, CPSD commenced review of Perez' business records to ensure that he complied with the Los Angeles Superior Court's order, in the criminal complaint pending there, that he cancel all current contracts for moves as a condition for release on his own recognizance. CPSD found shipping documents in Perez' office for six customers and commenced further investigation. Morris was one of the six customers.

Furthermore, respondents' double jeopardy defense is no more than a red herring, because they cite case law that has been overruled.<sup>8</sup> The law respondents' favor, *United States vs. Halper (Halper)*,<sup>9</sup> held that imposition of a civil penalty following a criminal conviction for essentially the same conduct could constitute a second punishment violative of the double jeopardy clause. Double jeopardy was triggered, according to the *Halper* Court, "to the extent that the second sanction may not fairly be characterized as remedial, but only as a deterrent or retribution."<sup>10</sup> But in 1997, the Supreme Court in *Hudson v. United States (Hudson)*, overruled *Halper*.<sup>11</sup> The first paragraph of *Hudson* concisely relates both the underlying facts and the Court's holding, and we quote it in relevant part:

The Government administratively imposed monetary penalties and occupational disbarment on petitioners for violation of federal banking statutes, and later criminally indicted them for essentially the same conduct. We hold that the Double Jeopardy Clause of the Fifth Amendment is not a bar to the later criminal prosecution because the administrative proceedings were civil, not criminal.<sup>12</sup>

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<sup>8</sup> We admonish respondents' attorney, Jeffrey Nadel, for misrepresenting case law to the Commission.

<sup>9</sup> 490 U.S. 435 (1989).

<sup>10</sup> 490 U.S. at 448-49. The Commission reviewed *Halper* in D.96-08-034 (*Re Prime Time Shuttle International*) and distinguished the shuttle company's situation, since the sanctions ordered against the shuttle company were not aimed at retribution but "were carefully crafted to secure compliance." (D.96-08-034, 67 CPUC 2d, 437, 472.)

<sup>11</sup> 522 U.S. 93 (1997).

<sup>12</sup> *Id.* at 95-96.

Focusing on the analytical error in *Halper*, the Court explains that *Halper* “... marked the first time we applied the Double Jeopardy Clause to a sanction without first determining that it was criminal in nature.”<sup>13</sup> The Court then recounts that whether a punishment is criminal or civil turns on a two-part examination of statutory construction. The first inquiry is whether the legislature has stated its intention, either expressly or impliedly. When a civil penalty is intended, the second inquiry is whether the statutory scheme is so punitive as to transform what was clearly intended as a civil remedy into a criminal penalty. This latter determination requires examination of a number of guidelines, which we need not review here. The point for present purposes is that respondents have not made any attempt to establish their double jeopardy claim under governing case law, i.e., *Hudson*; and given the limitations we place on the violations we have found in today’s decision, respondents could not make out a double jeopardy claim even under *Halper*.

### **C. Coordination With Court Action**

CPSD is pursuing a civil complaint against respondents in Los Angeles Superior Court, Case No. BC300974, at the same time we are conducting this OII/ OSC. CPSD obtained a Temporary Restraining Order on August 21, 2003 and a Preliminary Injunction on September 12, 2003. This civil case is pending.

The Commission, on the other hand, is the sole entity with licensing authority for household goods movers, is a primary agency to receive consumer complaints regarding household goods movers, and is the agency that possesses the administrative expertise and resources to investigate household goods

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<sup>13</sup> *Id.* at 100.

movers. On the issue of fines, the Commission has an administrative expertise is determining the specific violations of the Public Utilities Code that have occurred and the appropriate level of fines that should be assessed.

The remedies requested by staff in the OII/OSC are in keeping with our authority. CPSD requests a denial of respondents' application for a household goods carrier permit, permanent forfeiture of respondents' rights to operate as a household goods carrier in California, monetary fines, recovery of staff investigative costs, and customer restitution. Respondents invoked the Commission's administrative processes when they filed for an application and also when they held themselves out to the public as a household goods mover.

The courts have extensive coercive tools available that the Commission does not have, including the prospect of incarceration and/or seizure of assets. In circumstances where a carrier continues to operate without a license, ignoring cease and desist orders from both the Commission and the courts, we should take all steps necessary to protect California consumers from continuing harm. Therefore, in this case circumstances warrant staff pursuing enforcement action both here and in the courts.

#### **D. Customer Restitution**

Included as undisputed evidence is Michelle Morris' sworn declaration that her loss and damage claim equals \$5,000. Respondents shall reimburse Morris \$5,000 within 15 days after the date this decision is mailed to the service list. Proof of payment shall be filed and served on the service list and shall be provided to the Commission's Executive Director and the Director of CPSD within five days of payment.

**E. Fines**

As discussed earlier, we consider the imposition of fines for 457 violations of the Commission's statutes, rules, and regulations. These violations are comprised of 6 violations of Section 5133(a)(1), 306 violations of Section 5135.5, 134 violations of GO 100-M and Section 5161, and 11 violations of Section 5139.

Section 5313 subjects household goods carriers to a penalty of not more than \$500 for each violation of the Household Goods Carriers Act or Commission rules and regulations. Respondents' violations of Sections 5135.5, 5161, and 5139, and Max 4 Tariff and GO 100-M are subject to fines under Section 5313. Section 5313.5 subjects carriers to a penalty of not more than \$5,000 when operating as a household goods carrier without a valid permit or holding

themselves out as such a carrier without a valid permit. Respondents' violations of Section 5133(a)(1) is subject to fines under Section 5313.5.

CPSD recommends that the Commission fine respondents \$40,000 for these violations based on the size of respondents' operations and the level of fines the Commission has imposed on similar, if not quite as flagrant, illegal carriers in recent decisions.

To provide guidance in setting fines, the Commission distilled the principles that it has historically relied upon in assessing fines and restated them such that they may form the basis for future decisions assessing fines. (See *Rulemaking to Establish Rules for Enforcement of the Standards of Conduct Governing Relationships between Energy Utilities and Their Affiliates*, Decision 98-12-075, Appendix B.) This decision states that the purpose of a fine is to effectively deter further violations by the perpetrator or others and that in determining whether to impose a fine and at what level, the Commission will consider (a) the severity of the offense; (b) the utility's conduct; (c) the financial resources of the utility; (d) the totality of the circumstances in furtherance of the public interest; and (e) the role of precedent.

Respondents have shown a long history of noncompliance with the law and Commission directives, particularly in not keeping public liability and worker's compensation insurance coverage current, advertising and operating without a valid permit, and not complying with Commission's Max 4 provisions. Respondents have gained hundreds of dollars per move while subjecting the public to potential and actual harm. We find the violations severe.

The next factor for consideration is respondents' conduct, specifically their efforts to prevent, detect, and rectify the violations. We find no mitigating evidence that respondents have acted to prevent, detect, or rectify the violations.

Our records show that Perez' permit was in and out of suspension for failure to file and maintain evidence of insurance coverage. The OII/OSC shows that Ronen Perez dba Ford Moving and Storage agreed to pay a fine of \$2,000 on February 6, 2001 in four installment payments of \$500 each and failed to pay the fourth and final payment. We also take into consideration here respondents' failure to provide any of the documents requested by staff. These documents may have led to evidence of further violations. We also give consideration to CPSD's assertion that respondents have not submitted proof to the court in Case 3CR02645 that the required restitution to customers has been paid.

The third factor for consideration is the utility's financial resources. The record here is incomplete. Respondents did not present any evidence of financial resources or inability to pay fines. In its opening brief, CPSD proffers as a proposed exhibit a 2002 balance sheet provided by respondents to Commission staff. We do not admit the proposed exhibit, finding it is stale.

In examining the totality of the circumstances in furtherance of the public interest, we find that respondents have seriously harmed the public on a repeated and continuing basis, without mitigating circumstances. We place tremendous trust in household goods carriers in granting them operating authority, as do citizens who tender their most personal and treasured belongings to movers.

The last factor we consider in setting fines is precedent. We look at four recent cases that have similarities to this case. The decisions in these cases are D.03-05-048, D.02-08-052, D.02-05-028, and D.01-08-035.

The most recent case is D.03-05-048. Our decision found that respondents had operated in corporate form without approval and without insurance and

had engaged in a pattern of deliberate intimidation of customers. The decision revoked respondents' permit and imposed a joint fine of \$25,000.<sup>14</sup>

In D.02-08-052, the Commission found that William Michael Gavin, an individual doing business as Affordable Apartment Movers, was unable to properly conduct business as a mover due to temporary health problems. The violations were not as serious or numerous as those we find here, and Gavin had nearly completed all payments to customers who had filed complaints with CPSD. The Commission imposed a fine of \$26,000 and stayed all but \$6,500 pending full customer restitution and a three-year probation period.

In D.02-05-028, the Commission found respondent Arnold Ray Baeza, doing business as Best Movers, to have violated Sections 5133 and 5286 on 18 occasions by conducting operations after the suspension and revocation of his permit. Baeza offered letters from four of his satisfied customers testifying to professional moves conducted in a timely fashion. The Commission placed Baeza on probation for three years and imposed a \$19,000 fine, with all but \$5,000 suspended provided respondent complied with all terms of the decision.

In D.01-08-035, we found that respondents had a practice of extracting unlawful additional amounts for a move by refusing to unload household goods until the money demanded was paid. The Commission imposed a fine of \$40,000 and directed respondents make full reparations to all customers from whom

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<sup>14</sup> Imposition of the fines was stayed so long as none of the named respondents engages in the business of transporting household goods in the State of California. This was done in consideration that the record indicated the licensee may have filed for personal bankruptcy. While the Commission has authority under the Bankruptcy Act, 11 U.S.C. Section 362(b)(4) to continue in the exercise of our police and regulatory power, it was a circumstance taken into consideration.

amounts were unlawfully obtained. Should respondents make all reparations, the fine is reduced to \$10,000.

Under the criteria established in D.98-12-075, we find a \$30,000 fine is reasonable and we adopt it. While we do not impose sanctions for all the violations cited in CPSD's documents, the violations we do penalize are of a serious and chronic nature and warrant a \$30,000 fine. Further, this level of fine is consistent with fines we have imposed in other household goods cases for less severe violations.

The respondents shall pay this fine to the State of California's General Fund within 45 days after the date this decision is mailed to the service list. Proof of payment shall be filed and served on the service list and shall be provided to the Commission's Executive Director and the Director of CPSD within five days of payment.

#### **F. Operating Authority**

Respondents requested that their application be withdrawn and were instructed by ruling on August 30, 2004 of the procedure to follow. As of the November 19, 2004 submission date of this proceeding, respondents had not withdrawn their application. Therefore, we find that good cause exists on this record to deny the application. We make this finding based on the violations here, which clearly establish a lack of fitness under the criteria set forth in Section 5135.

CPSD requests that the Commission permanently deny respondents operating authority. We do not agree with this recommendation. Permanently revoking operating authority would remove an incentive for respondents to rehabilitate themselves by making full restitution to customers, paying all fines

and investigative costs, and agreeing to carry all required insurance, and to operate within the law on charges and handling claims for loss and damage.

Rather than permanently revoking respondents' operating authority we instead require respondents, or any entity in which respondents hold a financial or management interest, to apply for a license only through the formal application procedure. In any future application, respondents would need to reference this decision, and include a showing of rehabilitation and compliance with the terms of all court and Commission orders.

### **G. Conclusion**

Respondents have violated statutes and Commission orders in a manner that is serious and chronic. Respondents Ronen Perez and Ford Moving & Storage, Inc. have continued to advertise and operate as an unlicensed household goods mover (1) despite repeated warnings and citations from the Commission, (2) in defiance of a temporary restraining order and preliminary injunction against their operation issued by the Los Angeles Superior Court, and (3) in violation of the terms of probation from a criminal conviction entered on January 23, 2004 in Los Angeles Superior Court. Based on the facts in this matter and the lack of mitigating circumstances, the remedies set forth above are fully warranted.

### **IV. Comments on Draft Decision**

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Commission's Rules of Practice and Procedure. Comments were filed on March 28, 2005, by CPSD and are incorporated herein.

## **V. Assignment of Proceeding**

Geoffrey F. Brown is the Assigned Commissioner and Christine M. Walwyn is the assigned ALJ in this proceeding.

### **Findings of Fact**

1. Respondents have conducted operations without a permit or held themselves out as a carrier on six occasions between the dates of June 27, 2003 and October 23, 2003.
2. Respondents failed to maintain the required worker's compensation insurance for 306 days.
3. Respondents failed to maintain the required public liability insurance for a total of 134 days.
4. Respondents failed to provide the Max 4 Tariff required information on eleven occasions.
5. Respondents failed to reimburse Michelle Morris for a \$5,000 loss and damage claim.
6. Respondents operated without a household goods permit in violation of court orders.
7. Respondents presented no evidence disputing the allegations made by staff.

### **Conclusions of Law**

1. Because the proceeding can be decided without evidentiary hearings, this order should change the determination originally made in the OII/OSC and Scoping Memo.
2. The Commission's Consumer Protection and Safety Division has the burden of proving by a preponderance of the evidence that respondents violated the Commission's statutes, rules, and regulations.

3. Respondents violated Public Utilities Code Section 5133(a)(1) (Section 5133(a)(1) on six occasions by conducting moves without a permit or holding themselves out as a carrier.

4. Respondents violated Section 5135.5 and General Order 100-M on 306 occasions by failure to maintain the required worker's compensation insurance for 306 days.

5. Respondents violated Section 5161 and General Order 100-M on 134 occasions by failure to maintain the required public liability insurance for 134 days.

6. Respondents violated Section 5139 and Max 4 Tariff on 11 occasions.

7. Respondents' claim of double jeopardy is not applicable due to this OII/OSC being a civil not a criminal proceeding. In an abundance of caution, we also strike all alleged violations in the OII/OSC that may overlap the charges in respondents' criminal conviction.

8. Respondents are liable for a \$5,000 loss and damage claim to Michelle Morris.

9. Respondents pending permit should be denied for cause.

10. Respondents should be fined \$30,000.

11. Respondents should cease and desist all operations as a household goods mover until they have a valid operating permit from the Commission.

12. Respondents, or any entity in which respondents hold a financial or management interest, should be required to only apply by formal application for a household goods permit and to include in the filing reference to this decision and a showing of rehabilitation and compliance with the terms of all court and Commission orders.

13. This order should be effective immediately in order to effectively protect consumers.

**O R D E R**

**IT IS ORDERED** that:

1. Respondents shall pay restitution of \$5,000 to Michelle Morris for her loss and damage claim within 15 days after the date this decision is mailed to the service list. Proof of payment shall be filed and served on the service list and shall be provided to the Commission's Executive Director and the Director of CPSD within five days of payment.
2. Respondents pending permit is denied for lack of fitness under Public Utilities Code Section 5135.
3. Respondents shall pay a fine of \$30,000, payable to the State of California's General Fund, within 45 days after the date this decision is mailed to the service list. Proof of payment shall be filed and served on the service list and shall be provided to the Commission's Executive Director and the Director of CPSD within five days of payment.
4. Respondents shall perform no moving services in this State or advertise or in any way hold themselves out to perform any moving services until they have a valid operating permit from the Commission.
5. Respondents, or any entity in which respondents hold a financial or management interest, are required to apply only by formal application for a household goods permit and to include in the filing reference to this decision and a showing of rehabilitation and compliance with the terms of all court and Commission orders.

6. Evidentiary hearings in this proceeding are unnecessary, and this proceeding is closed.

7. This order is effective immediately.

Dated April 7, 2005, at San Francisco, California.

MICHAEL R. PEEVEY  
President  
GEOFFREY F. BROWN  
SUSAN P. KENNEDY  
DIAN M. GRUENEICH  
Commissioners