

Decision 05-08-033 August 25, 2005

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Order Instituting Investigation an Order to Show Cause on the Commission's own motion into the operations and practices of Globe Van Lines of California, Inc., a Florida corporation, and its President Isaac Nagar,

Investigation 04-08-023
(Filed August 19, 2004)

Applicants/Respondents.

Jason Reiger, Attorney at Law, California Public Utilities Commission, for Consumer Protection and Safety Division.
Jeffrey D. Nadel, Attorney at Law, Law Offices of Jeffrey D. Nadel, for respondents.

OPINION DENYING PERMIT AND IMPOSING SANCTIONS FOR VIOLATIONS OF THE HOUSEHOLD GOODS CARRIERS ACT AND COMMISISON REGULATIONS

I. Summary

This decision finds that respondents advertised and operated as a household goods mover within California without a license and insurance and in a manner that inflicted serious financial and emotional harm on the public. We order respondents to make full restitution to the 73 customers identified in this proceeding, to pay a fine of \$50,000, and to reimburse the Commission \$13,292.50 for the cost of staff's investigation. We find that respondents are unfit to hold operating authority as a household goods mover and deny their permit application T-189,798 with prejudice. Finally, we order respondents to

immediately cease and desist all intrastate operations and to remove their old Cal-T permit number T-189,207 from all advertisements and trucks.

II. Background

A. Issuance of Order Instituting/Order to Show Cause

On August 19, 2004, the Commission issued this Order Instituting Investigation/Order to Show Cause (OII/OSC) based on declarations from the Commission's Consumer Protection and Safety Division's (CPSD) investigative staff and former customers. These declarations, supported by filed documentation, allege respondents engaged in a pattern of continuing violations, over an extended period, of the statutes, rules, and regulations governing household goods movers operating on an intrastate basis in California. The most serious allegations are that respondents advertised and operated as a household goods mover without a permit from the Commission and overcharged consumers for moving services, including using "bait and switch" estimating practices and "holding goods hostage" tactics.

Pursuant to Article XII of the California Constitution and the Household Goods Carriers' Act (Chapter 7 of the Public Utilities Code, Sections 5101 – 5335), the Commission is the agency responsible for regulating the intrastate transportation of used household goods, personal effects and furniture.¹ To ensure household goods carriers operate only in a responsible manner in the public interest, we have also adopted specific rules and regulations to govern all aspects of their conduct, i.e., the Maximum Rate 4 Tariff (MAX 4) and General Orders (GOs) 100-M, 136-C, and 142.

¹ All Section (§) references are to the Public Utilities Code.

As part of this OII/OSC, the Commission has afforded the respondents notice and an opportunity to be heard on why their November 7, 2003 permit application (November 7 application) should not be denied with prejudice. On March 19, 2004, the Director of CPSD sent a letter to respondents denying their November 7 application based on a staff determination that respondents are not fit to be licensed to serve the public as a household goods carrier and informing respondents of their option to contest this staff action by filing a formal application with the Commission. Respondents chose not to file a formal application, and it is only at the Commission's discretion that this matter is considered still pending.²

The staff declaration from Richard Molzner accompanying the OII/OSC also details the history of Isaac Nagar's previous household goods carrier permit under Globe Van Lines, Inc., permit T-189,207.

B. Procedural Schedule

On September 23, 2004, the assigned Administrative Law Judge (ALJ) issued a ruling setting a prehearing conference (PHC) for October 6, 2004. At the PHC, a schedule for testimony and hearings was set, and this schedule was memorialized in the October 20, 2004 Scoping Memo and Ruling of the Assigned Commissioner and ALJ.

² On May 4, 2004, Ms. Padideh S. Jafari sent a letter to CPSD stating that she had been retained as counsel to represent respondents in the matter of their permit being denied and requesting copies of all correspondence related to staff's investigation. No further action was taken by respondents to pursue the permit.

Based on the schedule, CPSD served supplemental testimony on November 3, 2004, respondents served testimony on November 29, 2004, and CPSD served reply testimony on December 13, 2004.

Evidentiary hearings were held in San Francisco on December 20, 2004 and in Los Angeles on December 22, 2004. At the hearings, testimony was received from CPSD, respondents, and seven former customers. CPSD and respondents filed opening briefs on February 7, 2005 and reply briefs on February 28, 2005. The case was submitted on February 28, 2005.

C. Parties’ Positions

CPSD presents evidence that between October 10, 2003 and the present, respondents have committed a total of 604 violations of the Public Utilities Code, including unlawfully performing intrastate household goods moves, advertising and operating without public liability or workers compensation insurance, overcharging customers, and “holding goods hostage.” The specific violations alleged by CPSD are:

Violation	Number of Violations	Statutory Fine	Potential Fine
Operating without a permit (§ 5133(a)(1))	73	\$5,000	\$ 365,000
Advertising without a permit (§ 5139, 5313.5 and 5314.5)	2	\$5,000	\$ 10,000
Operating without workers’ comp. insurance (§ 5135.5)	159	\$ 500	\$ 79,500
Operating without public liability insurance § 5161, and GO 100-M)	67	\$ 500	\$ 33,500
MAX 4 Items 108, 120, 128 “bait & switch”	86	\$ 500	\$ 43,000
MAX 4 Item 128 Failure to provide agreement to customers no less than three days before the	10	\$ 500	\$ 5,000

Violation	Number of Violations	Statutory Fine	Potential Fine
move			
MAX 4 Items 128 & 132 No "Not to Exceed" Price	53	\$ 500	\$ 26,500
MAX 4 Item 92 Failure to respond to customer claims	4	\$ 500	\$ 2,000
MAX 4 Items 108, 120 & 128 Failure to refund overcharges	86	\$ 500	\$ 43,000
MAX 4 Item 88 Failure to have Cal-T Number in ads	2	\$ 500	\$ 1,000
MAX 4 Items 16 & 44 Failure to observe units of measurement	6	\$ 500	\$ 3,000
MAX 4 Item 88 didn't provide Information Booklet	27	\$ 500	\$ 13,500
MAX 4 Item 340 Illegal extra costs	24	\$ 500	\$ 12,000
MAX 4 Item 80 Fail to weigh goods	5	\$ 500	\$ 2,500

CPSD recommends that respondents be ordered to pay (1) customer restitution of \$61,590.52, (2) fines of \$50,000, and (3) reimbursement to the Commission of \$13,292.50 for the cost of CPSD's investigation. Further, CPSD recommends that respondents' November 2003 permit application (T-189,798) be denied with prejudice, respondents be permanently denied operating authority, and that respondent Isaac Nagar be ordered to remove his old Cal-T permit number (T-189, 207) from all advertisements and trucks.

Respondents state that they agree to nine claims of customers failing to receive the booklet "Important Information for Persons Moving Household Goods (within California)" in violation of MAX 4 Items 88(9) and 470 and that

the penalty for these violations should total \$900.00. They dispute all other charges. In testimony and briefs, their position is that:

- all the household goods moves that are the subject of this OII/OSC were lawfully conducted under the authority of permit T-189,207;

- respondents had adequate insurance at all pertinent times;
- respondents were not given an opportunity for hearing prior to having their November 7 application denied;
- based on Item 28 of MAX 4, there are no tariff violations concerning overcharges because respondents never charged in excess of 65% of the maximum rates permitted under MAX 4;
- respondent should not be sanctioned for violations of MAX 4 because this is an industry-wide problem;
- under the provisions of Public Utilities Code Section 5258, Isaac Nagar should be dismissed as a respondent in this OII/OSC because he was a witness in the hearings; and
- the terms of respondent Isaac Nagar's Florida divorce judgment are not admissible in this proceeding for the purpose of showing ownership of Globe Van Lines, Inc., holder of permit T-189,207.

III. Discussion

A. Does Respondent Have a Valid Existing Permit?

Respondents state that all intrastate moves occurring since October 10, 2003 are legal because they were done under respondents' existing authority of permit T-189207. Respondent Isaac Nagar testified he thought this permit was still active. Later, in their opening brief, respondents argue that the permit was improperly revoked because the Commission based the revocation on the terms of a Florida divorce judgment and did not provide respondent notice and an opportunity for hearing.

CPSD's evidence in Exhibits 1 and 5 show that permit T-189,207, issued on January 11, 2000 to Globe Van Lines, Inc., was suspended or revoked for all but 14 days of the period of the investigation in this OII/OSC. The 14 days of authority are October 10-19, 2003, and November 10, 11, and 12, 2003. CPSD's

testimony also establishes that numerous cease and desist letters were mailed and hand-delivered to respondents beginning September 9, 2003.

The reasons for the suspensions and revocation of permit T-189,207 were failure to maintain proper liability and workers' compensation insurance and to pay regulatory fees. While staff was aware that under the terms of Isaac Nagar's October 17, 2001 divorce agreement his wife was given sole ownership of Globe Van Lines, Inc., the only time this was referenced in a suspension is when the company forfeited corporate powers with the California Secretary of State on January 7, 2004. The suspension history of permit T-189,207 is:

- October 20, 2003 – The permit was suspended due to failure to pay quarterly fees. (See Ex. 5, Att. 1, Doc. 5.)
- November 10, 2003 – The permit was reinstated (see *id.* at Doc. 6.)
- November 13, 2003 – Three days after reinstatement, the permit was suspended for failure to maintain workers' compensation insurance coverage. (See *id.* at Doc. 8.)
- December 04, 2003 – The permit was suspended, above and beyond the November 13, 2003 suspension, due to failure to maintain adequate public liability insurance. (See *id.* at Doc. 9.)
- January 7, 2004 – The permit was suspended, above and beyond the other outstanding suspensions, because (1) the California Secretary of State forfeited Globe Van Lines corporate powers and (2) the failure of Mr. Nagar, qualified examinee, to notify the Commission of his cessation of connection with Globe Van Lines. (See *id.* at Doc. 10 & 11.)
- February 11, 2004 – the permit was revoked for failure to maintain workers' compensation insurance. (See *id.* at Doc. 12-15.)

As set forth in § 5137 (b), a requirement of a household goods carrier under its permit is to maintain adequate insurance and pay the Commission's specified

motor carrier fees. Failure to maintain adequate insurance or pay Commission fees are grounds for the Commission to suspend or revoke a carrier's permit under its administrative procedures; there is no automatic right to a hearing for a carrier that violates these statutory provisions. Respondents' permit T-189,207 was properly suspended and then revoked for failure to maintain adequate insurance and pay regulatory fees. Respondents were given proper notice of all administrative actions of the Commission and have taken no action to cure the deficiencies or present affirmative evidence in these hearings of insurance coverage for Globe Van Lines, Inc., current California registration for the corporation, or payment of regulatory fees.

Based on the evidence submitted, we find that the Commission properly suspended and then revoked permit T-189,207, and that Globe Van Lines, Inc. has not held any Commission authority to conduct intrastate moves in California since November 12, 2003. The record here reflects that CPSD did not bring any charges related to the fourteen days that Globe Van Lines, Inc. did hold operating authority during the period of investigation. Therefore, respondents did not have operating authority for any of the intrastate moves that are the subject of this OII/OSC.

B. Were respondents given proper notice in this proceeding?

In their testimony, respondents state they were not provided an opportunity to examine all evidence and given a hearing prior to the Director of CPSD denying their November 7 permit application. Respondents include a copy of CPSD's March 19, 2004 letter in Exhibit 10. The letter states in its conclusion:

Under the circumstances, the staff does not believe that you are fit to be licensed to serve the public as a household goods carrier and

your application is denied. You have the option of contesting this staff action by filing a formal application in accordance with the Commission's Rules of Practice and Procedure. If you file such an application within 180 days and attach a copy of this letter, payment of another \$500 filing fee will be waived. In your application, you will want to address the concerns of staff stated in this letter, demonstrate to the Commission you have taken corrective actions as directed above, and why you believe you should be issued a permit in light of current circumstances. Should you file a formal application, the staff will protest it and ask that the application be set for hearing. During a hearing you may present evidence on your behalf. It is possible that further investigation on our part may uncover additional topics of concern about your firm's fitness to serve the public, which would also be presented at a hearing.

Once again, you are placed on notice to immediately remove all unlawful advertisements and to cease all unlawful moving operations. Your continuing failure to comply with laws governing movers in California will subject your firm to penalties as provided in the Public Utilities Code. (Ex. 10, pages 2-3.)

We find that respondents were advised of their right to seek a review of staff's action through the formal application process and, therefore, notice and an opportunity to be heard was given. In the formal application process, discovery rights would allow respondents to obtain the documentation they sought. Respondents chose not to file a formal application.

Moreover, in issuing this OII/OSC, the Commission chose on its own motion to provide respondents additional notice and opportunity for hearing on their November 7 permit application.

C. Have Respondents Violated the Commission's Statutes, Rules, and Regulations?

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 and D.05-04-008.) CPSD has

met its burden of proof by establishing, through staff investigators, public witnesses, and documentary evidence, that respondents have repeatedly and seriously violated the Public Utilities Code, MAX 4, and GO 100-M.

The evidence shows that respondents advertised and operated without a license and insurance in a manner that inflicted serious financial and emotional harm on the public. One of the most egregious examples of respondents' behavior is found in the testimony of Johanna Hoffmann. Ms. Hoffmann was charged double the amount originally quoted for her move, and the movers refused to unload the truck until she paid the amount in full with cash. She then filed a claim in Small Claims court and testifies:

Globe Van Lines appeared, and a default judgment was issued against them. Thereafter, Isaac Nagar challenged the judgment stating he did not receive notice of the initial hearing. A second court date was scheduled and Isaac Nagar attended. While speaking to the judge, Isaac accused both my roommate and me of asking the movers to work for free. Additionally, he accused us of being sleazy women who did not work and screwed businesses out of their money. The judge did not make an immediate ruling and informed us all that a judgment would be mailed to us within 10 days. Thereafter, Isaac waited for my roommate and me to leave the courtroom and rode the elevator with us. In the elevator, Isaac yelled at us both and told us he would never pay us because he didn't owe us anything.

Subsequently, a judgment was made in our favor against Isaac personally and Globe Van Lines. No payment was made until a lien was put on Isaac's account. A payment in the full amount of the judgment was finally received in late 2003, almost one year after the initial incident. (Exhibit 2, Attachment 10(h), affirmed in testimony at hearing on December 20, 2004.)

Based on the testimony of CPSD investigators and witnesses, we find respondents guilty of the 604 violations of the Public Utilities Code alleged by

CPSD, and, further, that respondents actions render them unfit under § 5135(e) and (f) to be granted a household goods permit. Section 5135 sets criteria for the Commission to consider when issuing a HHG permit. Section 5135(f) states:

The Commission shall issue a permit only to those applicants who it finds have demonstrated that they possess sufficient knowledge, ability, integrity and financial resources and responsibility to perform the service within the scope of the application.

Section 5135(e) states:

The Commission may refuse to issue a permit if it is shown that an applicant or an officer, director, partner or associate thereof has committed any act constituting dishonesty or fraud; committed any act which, committed by a permit holder would be grounds for a suspension or revocation of the permit; misrepresented any material fact on the application; or, committed a felony, or crime involving moral turpitude.

The evidence presented by customers of the business practices employed by respondents is particularly offensive because members of the public had their personal belongings held hostage, lost, and damaged, and when they attempted to seek redress from respondents were subject to intimidation, threats, and verbal abuse. Attached as Appendix A to this decision is a summary prepared by CPSD of the claims of 73 members of the public that CPSD testifies are owed full compensation for illegal overcharges.³ The deliberate manner in which

³ CPSD is seeking reimbursement for illegal overcharges, monies due customers for respondents' failure to provide required information/disclosure, and monies that respondents owe on outstanding Small Claims Court judgments for loss and damages. In addition to the reimbursement requested in this OII/OSC, many of the customers also have pending Small Claims Court claims against respondents for damaged or lost goods.

respondents deceived the public is shown in their advertised photo (see Appendix B) of individual storage containers for customers. In contrast to respondents' advertisement, actual photos of respondents' storage facility were taken by CPSD and are also reproduced in Appendix B. The CPSD photos show that personal goods were not segregated by customer and were haphazardly stacked and strewn about; one customer testified her belongings were delivered from the facility with rat droppings.

The assertions of respondents that they did not violate the statutes cited by CPSD lack evidentiary and legal support. Mr. Yaniv Nagar's testimony in Exhibit 10 that all customer complaints were satisfactorily resolved is not supported by production of a claims log and is contradicted by the sworn declarations and testimony of customers. Mr. Isaac Nagar's testimony that his former permit remains active and in good standing is unsupported by documentary evidence. Respondents' assertion that its bait and switch tactics are legal because the final charges are less than 65% of the maximum rates does not properly apply the Max 4 tariff provisions or the statutory provisions of § 5133.⁴

⁴ Rather than cite specific sections of MAX 4 here, we note the summary of MAX 4 provided in Resolution TL-19040, issued July 8, 2004. The resolution states "MAX 4 currently requires carriers to provide each shipper of used household goods with a 'Not to Exceed Price.' This is the maximum amount the shipper shall be charged, including the charge for any additional services requested by the shipper as shown on a Change Order for Services. The Not to Exceed Price must be issued to the shipper no later than the day of the move, but prior to the carrier performing any services. "It is this provision that respondents failed to comply with on all intrastate moves prior to January 1, 2004. Resolution TL-19040 discusses the growing problem of carriers illegally holding a shipper's goods hostage to extract additional transportation charges and cites to legislation effective January 1, 2004 that strengthen the requirements. CPSD has cited these violations under Section 5133(b).

Respondents also fail to provide evidence that they maintained proper liability and workmen's compensation insurance for their former permit T-189,207. They assert on brief that they transferred their insurance coverage to their new company and pending permit, T-189,898. CPSD took account of coverage under both permit numbers in the dates it charged violations (see Exhibit 2, Attachments 11 and 13). In their reply brief, respondents also submit a federal regulatory website page that they assert establishes that they hold current operating insurance. Evidence cannot be introduced by brief and, even if properly admitted, would not establish that respondents had provided evidence of insurance for intrastate moves.

Finally, respondents assert that § 5258 serves to release respondent Isaac Nagar from any disciplinary action here because he appeared and voluntarily testified at the hearing. Again, respondents misapply the law. Section 5258 affords protection from self-incrimination for any person who has invoked the privilege against self-incrimination and is ordered to testify in a Commission hearing. Respondent did not invoke this privilege nor was he ordered to testify at hearing.

The Commission's statutory authority and regulatory oversight and enforcement program is designed to ensure that members of the public do not suffer harm at the hands of household goods movers, who assume custody of their customers' essential personal possessions when performing moving services. The evidence here shows that members of the public were seriously harmed and the Commission should take all steps necessary to bring to an end any ongoing violations, provide restitution to victims of the wrongdoing, and deter respondents and other household goods movers from future violations.

D. What are Appropriate Sanctions for the Violations?

Based on the evidence presented, we should deny respondents' November 2003 permit application T-189,798 with prejudice, find that respondents should immediately cease and desist all operations as an intrastate household goods carrier and remove old Cal-T permit number T-189,207 from all advertisements and trucks. In addition, we should order respondents to make full restitution to all customers identified in this proceeding, pay a fine sufficient to deter them from future violations, and reimburse the Commission for the cost of CPSD's investigation.

As set forth in Appendix A, the amount of customer restitution is \$61,590.52. Respondents shall reimburse the customers listed in Appendix A their full reimbursement 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.

The 604 violations found here are subject to maximum fines of \$639,500 under our statutory provisions, as detailed in Table 1.

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, at 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.

Applying the guidelines set forth above, CPSD has shown that \$50,000 is an appropriate amount to fine respondents, and we therefore adopt this amount. A higher fine could be supported based on the serious harm to the public from the egregious behavior of respondents and the fact that respondents made no effort to prevent, detect, or rectify the violations. However, a \$50,000 fine is reasonable when consideration is given to the size of respondents' business and the recent level of fines the Commission has ordered to be paid by other household goods movers. (See \$40,000 fine in D.05-04-009, \$30,000 fine in D.05-04-008, and \$50,000 fine in D.03-05-048.⁵)

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.

In Exhibit 8 and 9, CPSD provides a cost breakdown of its investigative expenses. We find these costs reasonable and, pursuant to § 5313.5, direct respondents to reimburse these expenses. Respondents shall pay \$13,292.50 to the Commission within 45 days after the date this decision is mailed to the

⁵ In D.03-05-048, imposition of the fines was stayed so long as none of the named respondents engage in the business of transporting household goods in the State of California. This was done in consideration that the licensee may have filed for personal bankruptcy prior to our decision. While the Commission has authority under the Bankruptcy Act, 11 U.S.C. Section 362(b)(4) to continue in the exercise of our regulatory power, it was a circumstance taken into consideration based on the facts of the case.

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.

We find here that respondents are unfit to hold operating authority as a household goods mover, but we recognize that respondents could rehabilitate themselves by making full restitution to customers, paying all fines and investigative costs, agreeing to carry all required insurance, and demonstrating that they would treat the public in a civil manner and operate within the law on charges and handling claims for loss and damages.

Therefore, we 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 this order.

IV. Appeal of Presiding Officer's Decision

On July 13, 2005, timely appeals of the Presiding Officer's Decision (POD) were filed by respondents and CPSD. On July 28, 2005, CPSD timely filed a response to respondents' appeal.

In their appeal, respondents allege that legal error was made in applying the facts in the record to Section 5258. (See III.C of today's decision.) Specifically, the appeal asserts that respondent Isaac Nagar was compelled to produce documents to CPSD in the course of its investigation, and that Nagar's compliance in producing the records and not asserting any claim to privilege against self-incrimination should serve to exonerate him, personally, of any prosecution, punishment or penalty.

In its response, CPSD asserts that respondents' appeal is a vague and meritless rearguing of a previous claim and should be given no weight. The POD found that Section 5258 is not relevant because Nagar was not ordered to testify nor did he invoke a privilege against self-incrimination. Respondents' appeal attempts to add to the record the statement that Nagar was "compelled to produce documents to agents of the Public Utilities Commission" but the appeal does not show that the unnamed, uncited, and unidentified documents were compelled and/or produced under oath, and respondents again state that Nagar never asserted any privilege against self-incrimination.

We find that respondents' appeal is without merit. Respondents again acknowledge that Nagar never asserted any claim to privilege against self-incrimination; further, respondents fail to show that any specific documents were compelled to be produced. We find no legal error in the POD's conclusion that Section 5258 does not release Isaac Nagar from any disciplinary action here.

In its appeal, CPSD requests the correction of minor factual errors in the level of potential fines for violations of sections of the MAX-4 tariff and a minor difference in the total amount of potential fines. These errors do not change the amount of fine recommended by CPSD or the rationale that CPSD asserts. Based on CPSD's appeal, we make the following changes:

1. To the table in section II.C.:
 - a. \$2000 is listed as the potential fine for violations of MAX-4, Item 128 "Failure to provide agreement to customers no less than three days before the move." This amount is changed to \$5000.
 - b. \$43,000 is listed as the potential fine for violations of MAX-4, Item 92 "Failure to respond to customer claims." This amount is changed to \$2000.

- c. \$1000 is listed as the potential fine for violations of MAX-4, Items 108, 120, and 128 “Failure to refund overcharges.” This amount is changed to \$43,000.
2. Change the total amount of potential fines shown in Section III.D. from \$641,500 to \$639,500.

V. Assignment of Proceeding

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

Findings of Fact

1. The Commission initiated this proceeding in response to consumer complaints and CPSD’s investigation.
2. The former permit issued to Globe Van Lines, Inc. on January 11, 2000 was suspended or revoked for all but 14 days of the period of the investigation in this OII/OSC.
3. The record reflects that CPSD did not bring any charges related to the 14 days during the period under investigation that Globe Van Lines, Inc. held operating authority under permit T-189,207.
4. Respondents did not have operating authority for any of the intrastate moves that are the subject of this OII/OSC.
5. Respondents advertised and operated without a license and insurance in a manner that inflicted serious financial and emotional harm on the public.
6. The testimony and declarations of customers establish that respondents were aware of the harm they caused members of the public and took no actions to end ongoing violations or to provide restitution to victims of their wrongdoing. The behavior of respondents is particularly offensive because

customers that attempted to seek redress from respondents were subject to intimidation, threats, and verbal abuse.

7. Respondents owe reimbursement to 73 customers for illegal overcharges, failure to provide required information and disclosure, and monies owed on outstanding Small Claims Court judgments. These claims are detailed in attached Appendix A.

8. The CPSD photos in Appendix B show that customers' personal goods were not segregated by customer and were haphazardly stacked and strewn about. One customer testified that her belongings were delivered from respondents' storage facility with rat droppings.

9. A monetary fine of \$50,000 is reasonable in light of the guidelines established in Decision 98-12-075.

10. CPSD's investigative costs of \$13,292.50 are reasonable.

Conclusions of Law

1. The proper administrative procedures were followed in suspending and revoking Permit T-189,207.

2. Respondents were given proper notice of all administrative actions of the Commission in regards to Permit T-189,207 and pending Permit T-189,798.

3. The burden of proof lies with CPSD to establish by a preponderance of evidence that respondents have violated applicable statutes, rules, and regulations.

4. CPSD has met its burden of proof by establishing through staff investigators, public witnesses, and documentary evidence that respondents are guilty of 604 violations of the Public Utilities Code and, further, that respondents actions render them unfit under Sections 5135(e) and (f) of the Public Utilities Code to be granted a household goods permit.

5. Mr. Yaniv Nagar's testimony that all customer complaints were satisfactorily resolved is not supported by production of a claims log and is contradicted by the sworn declarations and testimony of customers.

6. Mr. Isaac Nagar's testimony that his former permit remains active and in good standing is unsupported by any documentary evidence and contradicted by CPSD's evidence.

7. Respondents fail to establish that they maintained proper liability and workers' compensation insurance for the time periods CPSD cites they operated without insurance.

8. Section 5258 does not release Isaac Nagar from any disciplinary action here.

9. Respondents should reimburse customers shown in Appendix A, \$61,590.52 within 15 days after the date this decision is mailed to the service list.

10. Respondents should pay a fine of \$50,000 to the State of California's General Fund within 45 days after the date this decision is mailed to the service list.

11. Respondents should reimburse the Commission \$13,292.50 for the cost of staff's investigation within 45 days after the date this decision is mailed to the service list.

12. Respondents are unfit to hold operating authority as a household goods mover under Sections 5135(e) and (f).

13. Pending Permit T-189,798 should be denied for cause.

14. Respondents should remove all former Permit T-189,207 numbers from its advertisements and trucks.

15. Respondents should immediately cease and desist to operate as an intrastate household goods carrier.

16. Respondents, or any entity in which respondents hold a financial or management interest, are required to apply for a license only through the formal application procedure. In any future application, respondents should reference this decision, and include a showing of rehabilitation and compliance with all the terms of this order.

17. This order should be effective immediately in order to protect members of the public.

18. This proceeding is closed.

O R D E R

IT IS ORDERED that:

1. Respondents' pending permit T-189,798 is denied for lack of fitness under Public Utilities Code Section 5135.

2. Respondents are ordered to cease and desist all operations as an intrastate household goods carrier and to immediately remove all old permit T-189,207 numbers from their advertising and trucks.

3. Respondents shall pay restitution to customers shown in Appendix A of \$61,590.52 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 Consumer Protection and Safety Division (CPSD) within five days of payment.

4. Respondents shall pay a fine of \$50,000 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.

5. Respondents shall reimburse the Commission \$13, 292.50 for the cost of staff's investigation 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.

6. Respondents, or any entity in which respondents hold a financial or management interest, are required to apply for a license only through the formal application procedure. In any future application, respondents shall reference this decision, and shall include a showing of rehabilitation and compliance with all the terms of this order.

7. Investigation 04-08-023 is closed.

This order is effective today.

Dated August 25, 2005, at San Francisco, California.

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

[D0508033 Appendix A](#)

[D0508033 Appendix B](#)