

Decision 06-11-041 November 30, 2006

**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 Mr. Move Moving & Storage, Inc., a California corporation, doing business as Load Rock N Roll Moving and Storage, Right Now Moving and Storage, Same Day Moving, Short Notice Moving and Storage, A All-American Relocation, Load Lock N Roll, Long Beach Security Storage, Mister Move, and its president, Eli Galam.

Investigation 05-04-019  
(Filed April 21, 2005)

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Division.

**DECISION ORDERING REFUNDS, IMPOSING FINE, AND DIRECTING STAFF  
TO MONITOR COMPLIANCE**



## **DECISION ORDERING REFUNDS, IMPOSING FINE AND DIRECTING STAFF TO MONITOR COMPLIANCE**

### **I. Summary**

This decision holds that Mr. Move Moving and Storage, Inc., (Mr. Move) has failed to comply with applicable law and Commission regulations for household goods carriers. Most such violations, however, occurred prior to the 2004 criminal court stipulation which required respondents to bring operations into compliance with the law and regulations. Mr. Move has substantially, albeit not completely, complied with the requirements of the criminal court stipulation. The officers and management of Mr. Move are admonished for several recent moves, directed to make refunds for overcharges, required to resolve loss and damage claims, and pay a fine. Our staff shall implement a plan for enhanced supervision of Mr. Move.

### **II. Background**

On April 21, 2005, the Commission opened this investigation to determine whether Mr. Move and its president Eli Galam (collectively, respondents) have violated the laws and regulations that govern household goods carriers. Respondents were informed that should such violations be proven, appropriate sanctions, including revocation of the household goods carrier permit, could be imposed. As set forth in the Commission's order opening this investigation, the Commission's Consumer Protection and Safety Division (CPSD) conducted a thorough investigation of respondents' operations, including regulatory and legal history. CPSD specified 20 violations of the Public Utilities Code and our regulations, most with multiple counts. These include allegations of holding goods hostage, charging in excess of verbal estimate, and failing to have required insurance.

A prehearing conference (PHC) was held on June 24, 2005. At the PHC, CPSD indicated that respondents had violated a September 10, 2004, Stipulation to Sentencing Order entered in Los Angeles County Superior Court (criminal court stipulation). CPSD agreed to provide copies of the evidence to respondents' counsel on an expedited schedule. CPSD also stated that it intended to convey the information to the Los Angeles City Attorney's office, which brought the charges that led to the Stipulation. The assigned Administrative Law Judge (ALJ) directed the parties to report any developments in the Superior Court case.

A procedural schedule for this proceeding was also set at the PHC that included written direct and rebuttal testimony. Evidentiary hearings were held September 21-23, 2005.<sup>1</sup> The record was closed and this proceeding submitted for consideration by the Commission with the filing of reply briefs on November 21, 2005.

On December 9, 2005, CPSD moved to reopen the record. It stated that new evidence in the form of declarations from two customers showed that respondents were engaged in "continued, serious violations of the law," including allegations of property theft, major property damage, criminal vandalism, and inadequate supervision. Respondents opposed receiving the declarations into evidence on several procedural and substantive grounds. CPSD filed additional supplemental information on January 20, 2006, and requested that it also be included in the record.

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<sup>1</sup> For the convenience of the parties and the consumer witnesses, all evidentiary hearings were held in the hearing room of the Commission's Los Angeles Office.

On February 16, 2006, the assigned ALJ granted CPSD's motion. Submission was set aside and the record reopened. Additional written testimony was presented, and another day of evidentiary hearings was held on March 14, 2006. The proceeding was again submitted for consideration by the Commission on April 28, 2006, with the filing of final briefs.

**Los Angeles Superior Court Criminal Case No. 3CR02706**

On August 1, 2003, the Los Angeles City Attorney's Office filed the above-referenced criminal complaint against Mr. Move and Eli Galam. Based on evidence gathered through a joint investigation with CPSD, the complaint alleged violations of the Public Utilities Code, MAX 4,<sup>2</sup> and the Penal Code, including attempted extortion, failure to follow Commission rules, and vandalism.

On September 10, 2004, the parties filed the criminal court stipulation which included Mr. Move's nolo contendere plea to 12 misdemeanor counts, with a sentence of 36 months probation, a fine of \$1,000 plus a penalty assessment of \$3,200, and restitution of \$22,335 to 18 victims. Eli Galam pleaded nolo contendere to 11 misdemeanor courts, for which he was sentenced to 45 days in jail or CalTrans duty, with 36 months probation. The criminal court stipulation also required Mr. Move and Eli Galam to obey all laws, rules, and orders of the court.

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<sup>2</sup> Pursuant to Pub. Util. Code § 5191, the Commission sets maximum rates for household goods carriers to charge as well as other rules and regulations applicable to transporting household goods. The "MAX 4 tariff" is the version of the tariff currently applicable to household goods carriers. Statutory references are to the Public Utilities Code, unless otherwise indicated.

In this proceeding, CPSD relied on some of the evidence also included in the criminal proceeding, and collected evidence of additional violations by Mr. Move. CPSD provided the City Attorney's office with new evidence CPSD gathered in preparation for and during this proceeding. CPSD concluded that the evidence showed "multiple violations of the Commission's rules and regulations, and hence of the probation agreement" and inquired about the City Attorney's intentions on seeking probation revocation.

In a letter dated February 28, 2006, Mark Lambert, Deputy City Attorney, informed CPSD counsel that he would investigate whether a probation violation should be noticed in the criminal case. Lambert also cautioned CPSD that the court had full discretion over any sentence for probation violations, and, in Lambert's experience, was "hesitant to close down a business if any part of it seems legitimate."

No further communication has been forthcoming since that letter, and no evidence has been presented showing that a probation violation has been sought by the City Attorney.

### **III. Discussion**

#### **A. Evaluation of Each Specific Move**

CPSD provided evidence on 30 moves. Each move is listed chronologically in Attachment A with the date of the move, whether it was included in the criminal proceeding, a summary of the allegations, and the current status. In Attachment B, each move is discussed in detail and any ordered actions set forth. Although the individual resolutions are important, our decision today will focus on Mr. Move's overall operations and compliance with law and Commission regulations. In the discussion below, we will address major compliance issues and fashion comprehensive remedies.

## **B. Analysis of CPSD's Allegations**

### **1. Failure to Ensure Capable Help**

In 1977, this Commission adopted General Order (GO) 142 which required carriers of used household goods to provide "capable help":

#### **2. Capable Help**

No carrier shall permit any driver, helper, and/or packer to be used in the transportation of any used household goods shipment or in the performance of accessorial services unless such person is trained and experienced in the movement of used household goods. Those engaged in on-the-job training shall be bona fide employees and adequately supervised.

The GO prohibits carriers from allowing employees to go on duty under the influence of intoxicants or to consume intoxicants while on duty. Carriers must also provide properly maintained, clean motor vehicles of the appropriate size for the requested move. If not, the carrier is prohibited from charging drive time for any excess vehicle equipment.

CPSD witness Smith testified that Mr. Move failed to provide capable help and offered descriptions of 19 moves to support the allegation.

In response to CPSD's allegations, Mr. Move conceded historic violations of this requirement and identified its failure to adhere to this requirement as one of the "root causes" of its overall deficiencies: "The Company concedes that its employee training, oversight, and supervision were not up to its own or the Commission's standards during 2003 and 2004 and further agrees that deficiencies in these areas are among the root causes of its customer service and documentation problems during that period."

Mr. Move goes on to explain that since 2003 and 2004 it has identified and dealt aggressively with its training and supervision deficiencies. It concludes

that “while there were admittedly problems in this area” it has “already taken appropriate measures to address these problems.”

We agree that Mr. Move has correctly identified the root cause of most of its customer service and regulatory compliance difficulties. The record in this proceeding shows that these difficulties peaked in 2003, but that instances persist.

Mr. Move’s president testified at the reopened hearing in March 2006 that since the close of the September 2005 hearings Mr. Move had completed about 3,500 to 4,000 moves and received eight serious complaints about those moves. Of those eight, five had been resolved by the time of the reopened hearings. He also testified that hiring standards and compensation have been improved. Mr. Move now seeks employees with household goods carrier experience and performs criminal records checks.

We are satisfied that Mr. Move is making progress towards resolving its failure to provide capable help and prepare documents that comply with Commission requirements. The on-going criminal stipulation and probation, coupled with this proceeding, have provided Mr. Move an incentive to direct its corporate attention and resources to these issues. In structuring our remedies in today’s decision, one of our goals will be to maintain this incentive.

## **2. Conducting Operations as a Household Goods Carrier During Periods of Suspension of its Permit**

CPSD stated that Mr. Move’s permit was suspended December 24, 2002, for failure to maintain cargo insurance, and reinstated on January 23, 2003. CPSD witness Smith testified that respondent made five moves during this period of suspension. The permit was also suspended December 24, 2004, for failure to maintain cargo insurance, and reinstated February 17, 2005. CPSD

witness Zundel testified that Respondent made 1,093 intrastate moves during that suspension period.

In addition to the 85 days of suspension accounted for above, CPSD witness Smith added 18 days for failing to have proof of public liability and property damage insurance on file from January 10, 2004, through January 27, 2004. Mr. Move conceded that during the times in question it had failed to timely file the required proof of insurance. During the times Mr. Move's permit was suspended for failure to file proof of insurance, however, all required insurance was in effect but proof thereof had not been timely filed with the Commission.

In mitigation, Mr. Move explained that it had mistakenly assumed that its insurances agents would timely, and without further action on Mr. Move's part, file the required proofs of insurance. Mr. Move now understands that in addition to securing the required insurance, it must also ensure that the proof is on file with the Commission.

We find Mr. Move conducted operations as a household goods carrier while its permit was suspended. We include these violations in our tabulation of Mr. Move's fine.

### **3. Holding Goods Hostage**

This is one of the most serious of allegations against a household goods carrier – refusing to unload goods and demanding additional payments. Of the ten listed violations in the Order Instituting Investigation (OII), six were included in the criminal proceeding and addressed in the stipulation.<sup>3</sup>

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<sup>3</sup> Jones, Garcia/Leon, Arico, Barnett Lewis, Lussier, Jin Lee.

The four other violations alleged in the OII – Budnic, Mohn, Clark, and Muro – are unclear. Budnic did not receive a not to exceed price, which is itself a violation, but which undercuts an allegation of holding goods hostage because there was no previously agreed-to price. Mohn, for reasons that are unclear, did not pay at all. Clark apparently left the moving site, and her goods were placed in storage, thus incurring additional charges. Muro’s goods should have been released with her payment of substantially all charges in August 2003.

The clearest example of holding goods hostage is the Hogan move, which is in addition to those alleged in the OII. Persuasive testimony showed that Mr. Move’s crew, after loading Hogan’s goods, attempted to obtain a payment in addition to the previously agreed to amount, which had been paid in advance. Although this is the only clear example in the record, other factors support the conclusion that other customers were also subjected to the same violation.

First, Mr. Move had a pattern of incomplete documentation, which often did not include a clear not to exceed price. Absent a well-understood (and reasonable) upper limit, an unscrupulous crew could “increase” the price at will, particularly when customers were vulnerable, with their goods loaded on the truck.

Second, as discussed above, Mr. Move concedes inadequate training and supervision of the crews.

Under these circumstances, the preponderance of the record evidence supports a finding that Mr. Move’s crews failed to release customers’ goods upon payment of the agreed price. No evidence, however, supports a finding that these violations were either widespread or recent.

#### **4. Estimate Violations**

The testimony does not support CPSD's contention that Mr. Move routinely offered prospective customers estimates without viewing the goods to be moved. Rather, the declarations show that Mr. Move quoted hourly rates based on the number of workers.

For example, CPSD witness Smith testified that Muro was "given a verbal estimate over the telephone by Mr. Move employee Eddie Diaz." However, Muro's declaration shows only an hourly rate quotation and specifically states that no "estimate as to the number of hours the move would take" was presented. The following declarations state that each received a rate quote, not an estimate: Clark, Mohn, Budnic, Guarnieri, and Parker.

The testimony does show that Mr. Move quoted Lemus an hourly rate as well as the maximum number of hours the move would take. Carolyn Rios was quoted a price of \$150, but charged \$225 based on altered documents.

Therefore, we conclude that CPSD has shown two instances of improper estimates by Mr. Move.

#### **5. Documentation Violations**

CPSD alleged that Mr. Move did not comply with numerous documentation requirements in several moves. The allegations included failing to:

- complete a valid change order containing all required information for additional services and increased charges;
- furnish to each prospective shipper at the time of first in-person contact a copy of the booklet entitled "Important Information For Persons Moving Household Goods;"
- offer or allow shippers to select a valuation option of other than \$.60 cents per pound per article in the Declaration of Value section of shipping documents, by failing to include a

“Not To Exceed Price” on its Agreement For Moving Services and Freight Bills; and,

- include a “Not To Exceed Price” on its Agreement For Moving Services and Freight Bills.

In response to these and other documentation deficiency allegations, Mr. Move explained that there have been instances where Mr. Move has not fully complied with Commission regulations but that these instances were isolated and did not reflect a systemic failure of compliance. Mr. Move stated that it is “committed to training its employees to properly and timely complete all shipping documents.” To this end, Mr. Move has engaged a consulting firm that specializes in household goods carrier regulations to provide Mr. Move management guidance and employee training.

The Household Goods Carrier Act and its regulations impose many documentation requirements on carriers. The purpose of these requirements is to ensure that customers clearly understand the services to be provided and the cost. The record shows that Mr. Move had a past practice of using altered documents against customers that pay by credit card.

The testimony shows that moving workers (Guarnieri, 2003) as well as office managers (Rios, 2003) were actively involved in the creation of documents with factual misrepresentations. Mr. Move’s senior management knew or should have known of these actions. Mr. Move’s obligation to provide “capable help” and accurate documents includes the duty to ensure that employees are not manufacturing documentation, and to establish a workplace culture and necessary protocols to prevent such events.

While these violations are not recent, they are most serious. Mr. Move’s management must take necessary steps to ensure that documents are properly

and timely prepared as well as explained to customers. Attempts to manipulate documents must be prevented.

Analysis of a relatively recent move, however, suggests that Mr. Move has not yet achieved full compliance. The Sugarman move occurred in late August 2005, just before the initial hearings in this proceeding. Mr. Move's workers arrived three hours late to begin the move and, after viewing the goods to be moved and the logistical circumstances, offered a not to exceed price of \$3,500, with the move completed that day. At 8:00 p.m., the movers were fatigued and the move halted for the day. The move was completed the next day after another 12 hours of work. Prior to completing the work, however, Mr. Move's crew chief required Sugarman to accept a change order with a revised not to exceed price of \$7,000. In its brief, Mr. Move states that the change order was for "the additional services that would be required to complete the move the following day." The "additional services" are not identified, other than \$150 for storing the loaded truck overnight.

The record does not support a conclusion that Mr. Move provided any additional services to Sugarman, other than the overnight storage, which might justify a change order doubling the not to exceed price. Having partially completed the move, Mr. Move had placed Sugarman in a vulnerable position where he had no readily available alternatives other than to accept Mr. Move's change order.

The Sugarman move illustrates that Mr. Move has not yet fully succeeded in complying with documentation requirements. We conclude, therefore, that these violations should be considered in the remedies we fashion below.

## **6. Failing to Acknowledge and Timely Process Claims for Loss or Damage**

CPSD presented evidence that Mr. Move had not complied with requirements for processing loss and damage claims. Most of the claims had been resolved. The Garcia/Leon and Bernard moves were addressed in the criminal case in 2003. Similarly, the Hood damage claim of \$240, where Mr. Move only offered \$100, was resolved with the Commission's help in 2003, as was the King claim.

The Lemus claim, which Mr. Move asserts it did not receive, for \$400 of damage to furniture is addressed in Attachments A and B to this decision.

The Clark claim remains outstanding and Mr. Move is ordered to resolve this claim and report the resolution.

In response to CPSD's allegations, Mr. Move explains that it has received few damage claims in relation to the thousands of moves it performs each year. Many of the claimants included in CPSD's testimony did not comply with the requirements for submitting a timely and valid loss or damage claim. Nevertheless, to improve overall customer service, Mr. Move has instituted an enhanced tracking and claim resolution process, with shorter timelines than required by the Commission regulations.

We find that CPSD has demonstrated that Mr. Move's processing of loss and damage claims has been deficient. We are hopeful that Mr. Move's efforts will remedy this deficiency, but we will order enhanced monitoring by CPSD to determine the success of the efforts.

### **7. Fictitious Business Names in Telephone Directory**

CPSD witness Smith included a list of 13 telephone directories which she alleged “fail to cross reference all its fictitious business names as required by Item 88 of Max 4.”

MAX 4 tariff, Item 88, Number 5 requires that in its relationships with the public each authorized household goods carrier must cross reference all listings under different names in a telephone directory: “Carriers listing more than one name in the classified section of a telephone directory shall cross reference each name to all other names listed.”

Witness Smith did not testify, nor provide evidence to support, that Mr. Move had multiple advertisements in the directory under different names which were not cross-referenced. The testimony showed that not all fictitious business names used by Mr. Move were listed in each advertisement. The rule, however, does not require each carrier to list all business names, but only requires cross referencing other names listed in the same directory. Therefore, we conclude that CPSD’s testimony does not support a finding of violations of this rule.

### **8. Failing to Allow Inspection of Records**

CPSD witness Smith testified that during 2004 she made three requests to inspect Mr. Move records, and that Mr. Move failed to provide timely responses. Smith’s testimony references written requests relating to five separate moves submitted to Mr. Move on six different days. The testimony also includes a request for a meeting, which was ignored.

Pursuant to § 5226, Commission employees may inspect any records required to be kept by a household goods carrier:

The employees, representatives, and inspectors of the commission may, under its order or direction, inspect and examine any lands, buildings, equipment, accounts, books, records, and memoranda, including all documents, papers, and correspondence kept or required to be kept by household goods carriers.

Mr. Move does not dispute CPSD's description of its response to CPSD's information and meeting requests. Mr. Move attributes its lack of responsiveness to the then on-going criminal case in which CPSD was cooperating with the prosecution. Mr. Move contends that it is now "committed to working to ensure timely responses to all future requests for information from the Commission."

As set forth below, we find that Mr. Move's failure to allow inspection of its records in 2004 to be a serious violation, and we include it separately in tabulating Mr. Move's fine.

### **C. Remedies**

For the violations set out above, CPSD seeks revocation of Mr. Move's household goods carrier permit, unspecified fines, and reparations to customers. We address each remedy below.

#### **1. Revocation**

Pursuant to § 5285, this Commission may revoke a household goods carrier permit, after notice and opportunity to be heard, "for failure to comply with any provision of the [Household Goods Carrier Act] or with any order, rule, or regulation of the commission, or with any term, condition, or limitation of the permit."

In the OII, CPSD presented the results of its investigation and formally accused Mr. Move of distinct violations of applicable laws or regulations. In its opening brief, CPSD concludes that these violations are serious and repeated,

and that Mr. Move's defense of discontinuance of the unlawful operations is no defense. CPSD is convinced that Mr. Move will operate unlawfully if the Commission allows it to operate at all.

Mr. Move responds that revoking its household goods carrier permit would put 100 employees out of work and financially ruin Mr. Move's owners. Mr. Move cited Commission enforcement precedent that does not support CPSD's requested revocation.

The Commission is authorized to revoke a household goods carrier permit for violations of applicable law. Here, it is undisputed that Mr. Move has violated the laws and regulations applicable to household goods carriers. Accordingly, the Commission has the power to revoke Mr. Move's household goods carrier permit; whether the Commission should exercise that power is the question before us.

Our precedents in addressing revocation requests show that the Commission typically revokes household goods carrier permits where the carrier is a threat to public safety or has demonstrated that it is unable or unwilling to bring its operations into compliance with laws and regulations applicable to household goods carriers.

In Ace of Bace Moving Company, Decision (D.) 01-08-035, the Commission found that the record showed that Ace had a pattern of noncompliance with applicable law and regulations, and that Ace had a practice of extracting unlawful additional amounts for a move by refusing to unload household goods, "holding goods hostage." In addition, the president of Ace had failed to disclose his criminal history on his permit application, and had subsequently been convicted of driving while intoxicated. Based on the largely undisputed facts, the Commission revoked Ace's household goods carrier permit.

In contrast, where the carrier demonstrates a sincere and successful effort to bring its operations into compliance, the Commission has not revoked the household goods carrier permit. In Starving Students, D.03-11-023, the Commission found that the carrier had committed serious violations which necessitated two investigations by staff. The Commission found that the carrier had expended considerable resources and capital in an attempt to resolve its customer service issues, and, although not completely successful, had “made progress.” The Commission imposed a 180-day permit suspension but stayed imposition of the suspension for a three-year probation period.

The record shows that Mr. Move has “made progress” in bringing its operations into compliance with California law and the Commission’s regulations. This progress, unfortunately, was initiated by a criminal court proceeding, jail sentence, and probation, rather than an independent desire to comply with the law. The financial consequences of that enforcement effort, plus the ensuing Commission proceeding, have been incentives for making progress toward full compliance. Below, we impose certain obligations on Mr. Move to ensure future compliance incentives. We conclude, therefore, that revocation is not necessary at this time.

Mr. Move’s past practices, however, have demonstrated a capacity to extract funds from customers without regard to legal or regulatory requirements. Continued regulatory monitoring of Mr. Move’s operations is essential to ensure that future customers are not subjected to these past practices. We impose the following requirements:

1. Complaint Resolution Review. No less than once each annual quarter, Mr. Move’s president shall meet in person with the Director of CPSD, or the Director’s designee, to review all pending complaints either to this Commission or the Better Business Bureau as well as all loss and

damage claims submitted to Mr. Move. Such review shall include the facts of each complaint or claim, the actions taken to resolve it, and the timetable for final resolution. The Director of CPSD or the Director's designee shall set the time and place of the meeting and provide reasonable notice to Mr. Move.

2. CPSD Inspection. CPSD shall proactively conduct inspections of Mr. Move's real time operations, as well as review documentation.
3. Completion of Monitoring. If, after no less than four such meetings,<sup>4</sup> the CPSD Director determines that Mr. Move is in compliance with applicable law and regulations, then no further meetings are required and monitoring ends. If the CPSD Director finds that Mr. Move is not in compliance, CPSD is authorized to file a motion to reopen this proceeding for the assessment of additional penalties.

In combination with CPSD's extant authority to supervise household goods carriers, we are confident that this enhanced monitoring will enable CPSD to quickly uncover any future violations by Mr. Move.

## **2. Fines**

Pursuant to § 5311, this Commission is empowered to impose a fine of up to \$1,000 per violation of law or regulations. Where a person or corporation operates as household goods carrier "without a valid permit," the Commission is authorized by § 5313.5 to impose a fine of \$5,000 for each violation.<sup>5</sup>

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<sup>4</sup> The CPSD Director is authorized to require additional meetings as necessary to determine whether Mr. Move is in compliance.

<sup>5</sup> Section 5313.5 also provides that the Commission may recover "the reasonable expense of investigation incurred by the Commission." This remedy is limited to operating without a valid operating permit, and does not extend to the costs of investigating other violations of the Household Goods Carrier Act. Here, the costs of investigating these particular violations are nominal because the Commission's own records disclose the permit suspension and Mr. Move did not deny that it operated during those times. CPSD, however, seeks recovery of its investigation costs for all violations. We deny this request because recoverable costs are nominal.

CPSD seeks \$515,000 in fines for operating with a suspended permit<sup>6</sup> and the “maximum penalty” of \$500 for each other violation found.

Mr. Move responds that CPSD’s fines are excessive and unjustified, and ignore Commission-adopted guidelines for setting fines.

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 Rules for Enforcement of the Standards of Conduct Governing Relationships between Energy Utilities and Their Affiliates adopted by the Commission in D.97-12-088, D.98-12-075, App. B. Those principles begin by distinguishing reparations from fines. The purpose of reparations is to return improperly collected amounts to customers. The purpose of fines, in contrast, is to deter further violations. Effective deterrence creates an incentive for household goods carriers to avoid future violations.

CPSD has not addressed how additional fines will effectively deter future violations by Mr. Move. The criminal case and stipulation, along with this proceeding, have imposed significant financial and other consequences on Mr. Move and its president for violations of the Public Utilities Code. The threat of probation revocation and possible incarceration creates a significant incentive for compliance.

In determining whether to impose a fine and, if so, at what level, the Commission’s guidelines consider the severity of the offense, the utility’s

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<sup>6</sup> 103 days x \$5,000/day = \$515,000.

conduct, the financial resources of the utility, the totality of circumstances in furtherance of the public interest, and the role of precedent.

The severity of the offense includes consideration of the economic harm to customers as well as the economic benefit gained by the public utility. Here, the record shows that any significant economic gain by Mr. Move occurred, if at all, prior to the enforcement effort by the Los Angeles City Attorney's office. The reparations ordered below show that the harm to customers from Mr. Move's recent violations has been modest, and we also note that the cost of defending this action is likely to have exceeded any economic gain by Mr. Move.

The record shows that the Los Angeles City Attorney's office investigated and prosecuted Mr. Move for numerous criminal violations, and that the resulting stipulation required significant changes in Mr. Move's operations, including the termination of Mr. Move's president's cousin from employment at Mr. Move. The City Attorney's office has not sought to revoke Mr. Move's probation despite having been informed of the results of CPSD's on-going investigation.

The severity of the offense also includes consideration of the effects of disregarding a Commission order. Compliance and cooperation is essential to the proper functioning of the regulatory process. This factor is particularly important in consideration of Mr. Move's failure to provide requested information, which is addressed below.

The record shows, as discussed in more detail below, that Mr. Move conducts about 12,000 moves a year - the vast majority of those moves successfully complying with Commission regulations and resulting in satisfied customers. The record does not support a finding of wide-spread or systemic violations of applicable law and regulation in Mr. Move's overall operations. On

the moves where Mr. Move does not successfully comply, however, the violations may be serious for those customers. Relocation is inherently stressful, and entrusting one's belongings to a third party leaves one feeling vulnerable. In this context, incompetent and possibly dishonest workers failing to provide reliable service can inflict disproportionately severe harm.

On balance, and in light of the overall circumstances of this proceeding, we find Mr. Move's violations to be limited in scope but severe to the affected customers.

The next factor is the utility's efforts to prevent, detect, and rectify the violation. In this case, Mr. Move did not prevent or detect these violations; however, Mr. Move has shown that it has made substantial efforts to rectify violations largely as a result of the criminal proceeding. We encourage Mr. Move to proactively seek out, understand, and implement applicable laws and regulations.

The next factor is the financial resources of the utility. Mr. Move has annual gross revenues of about \$2 million, and, at the time of briefing, was uncertain whether there would be any net income in 2005.

The role of precedent is also important in our consideration of imposing a fine. Here, CPSD has provided us no citations to previous decisions imposing a fine on a household goods carrier that is already subject to criminal court probation requiring full compliance with household goods carrier law and regulations.

The final factor is the totality of the circumstances in furtherance of the public interest. Pursuant to the criminal case stipulation, Mr. Move has made restitution of \$22,332 and paid fines and penalty assessments of \$8,400. These previous payments and the criminal court probation have already elicited

substantial compliance efforts and improved if still imperfect performance. On balance, we find that creating some further financial incentive for Mr. Move to continue making progress towards full compliance with applicable law and regulations is in the public interest. The payments we describe below will provide periodic reminders to Mr. Move of the importance of its on-going efforts.

As provided in § 5313.5, we are authorized to impose a fine of up to \$5,000 for operating as a household goods carrier without a valid permit. CPSD has provided evidence of two periods, totaling 85 days of such operations. In mitigation, Mr. Move has provided evidence that all required insurance actually was in effect but that the proof of such insurance had not been timely filed. We also note that Mr. Move has limited financial resources. Although § 5315 would allow us to count each day as a separate violation, we will exercise our discretion and count each period as a single violation, and impose a fine of \$5,000 for each violation.

Pursuant to § 5311, every household goods carrier that fails to comply with the Household Goods Carrier Act or to “comply with any order, decision, rule, regulation, direction, demand or requirement of the Commission” is “guilty of a misdemeanor, punishable by a fine of not more than \$1,000 or by imprisonment in the county jail for not more than three months, or both.”

CPSD does not request a specific fine for Mr. Move, but rather seeks “the maximum penalty for each violation.” Mr. Move calculates the amount to be \$1,329,000, based on the assumption that CPSD proves each of its alleged violations. Many of those violations, however, occurred prior to the criminal

case stipulation, and some were included in the criminal case.<sup>7</sup> As discussed above, CPSD did not prove all of the allegations, and did not provide us an analysis showing how additional substantial fines would achieve our goal of deterrence given the criminal court probation. CPSD has not explained why a fine by this agency will be a greater deterrent than the possibility of incarceration and business closure that Mr. Move currently faces pursuant to the criminal case.

As noted earlier, Mr. Move completes about 12,000 moves per year. Of those moves, about five annually have resulted in serious alleged violations of household goods carrier regulations; this represents a compliance success rate of 99.96%.

Mr. Move's vulnerability to opportunistic customers should also be acknowledged. The record contains several requests by customers for payments greatly in excess of any amounts warranted under the applicable regulations. Mr. Move also contends that customers have threatened to use the criminal case as a means of retaliating against Mr. Move for legitimate charges. We find that the usual purpose of fines, deterrence, will not be served by imposing an additional fine anywhere near the amount sought by CPSD.

The record shows, however, that Mr. Move has instances of current noncompliance. To prevent such lapses in the future, we order compliance monitoring by CPSD of Mr. Move's operations. As described in more detail below, we also create a financial incentive to impress upon Mr. Move the

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<sup>7</sup> Mr. Move asserts that the Commission may not impose additional sanctions for moves at issue in the criminal proceeding, and CPSD disagrees. We need not and do not reach that question here, but rather rely only on cases arising outside of the criminal proceeding as the basis for today's decision.

necessity of complying with Commission regulations and cooperating with Commission staff. In light of the unique circumstances of the case, we will select only the most egregious and proven violations on which to base our fine calculation.

The Sugarman move is recent and illustrates both failure to provide competent help to prepare an accurate not to exceed price and charging in excess of a not to exceed price. The Hogan move demonstrated holding goods hostage, and the Rios move included altered documents. We impose the statutory maximum of \$1,000 per violation for each of these moves.

Timely response to Commission staff’s requests for information are essential to this agency discharging its duties to oversee the operations of its regulatees. Mr. Move’s admitted violations of failing to respond to our staff’s requests are serious, and we impose the maximum fine of \$1,000 for each of the three violations identified by CPSD.

Thus, in today’s decision we impose further fines of \$16,000 on Mr. Move. The fines are summarized below.

<b>Name</b>	<b>Violation</b>	<b>Fine</b>
	Failure to respond to commission staff request for information	3 x \$1,000 = \$3,000
	Operating while permit suspended	2 x \$5,000 = \$10,000
Sugarman	Charges greater than not to exceed price	\$ 1,000
Hogan	Holding Goods Hostage	\$ 1,000
Rios	Altered Documents	\$ 1,000
	TOTAL	\$16,000

Consistent with our past practice, we will suspend \$12,000 so long as Mr. Move complies with California law and regulations applicable to household

goods carriers. Should any further violations be proven, the \$12,000 shall become immediately due and payable.

The remaining \$4,000 shall be paid in four installment of \$1,000 each, with the first payment due 90 days after the effective date of this order. The three subsequent payments shall be due in 90 days intervals thereafter. Mr. Move's president shall demonstrate to the CPSD Director in their quarterly meeting that payments have been made on schedule. Failure to adhere to the schedule shall render the full amount, \$16,000, immediately due and payable.

### **3. Reparations**

In Attachment B, we set out the following refund obligations:

Lemus	\$400
Rios	\$75
Guarnieri	\$200
Parker	\$2,701.94
Sugarman	\$1,953.24

No later than 25 days after the effective date of today's decision, Mr. Move shall file and serve a compliance filing showing that all refunds have been paid.

We also order Mr. Move to evaluate, consistent with applicable regulations, the loss and damage claims from Malloy and Clark. No later than 45 days after the effective date of this order, Mr. Move shall file and serve a compliance filing showing that these claims have been resolved as provided in our regulations.

### **4. Admonition**

Mr. Move has on occasion tolerated deception, employee incompetence, and indifference to customers. The record suggests, however, that the criminal proceeding initiated by the Los Angeles City Attorney's office has elicited substantial efforts by respondents to reform their operations and comply with

the Commission's regulations and California law. As the more recent complaints show, operations are not yet perfect.

Mr. Move is instructed to continue to improve hiring practices to ensure that it hires only experienced and trustworthy employees who meet the requirement of "capable help." Increased compensation and incentives for high quality employees should be used.

Management is responsible for planning work schedules such that employees are not overly fatigued. Management should also take care not to overschedule. Clear communication with customers is essential to setting reasonable expectations that Mr. Move's workers can meet. Accurate and timely documentation is an essential component of successful customer communication.

Loss and damage claims should be handled quickly and fairly. Expert customer service representatives may be needed to handle what Mr. Move describes as "hypersensitive" customers.

In conclusion, we admonish the officers and management of Mr. Move for past performance but acknowledge their improvement. The objective of the enhanced supervision and financial incentives ordered in today's decision is to bring all of Mr. Move's operations into full compliance.

#### **IV. Appeal of Presiding Officer's Decision**

The presiding officer's decision (POD) was filed and served on the parties to this proceeding on August 25, 2006. CPSD and Sugarman<sup>8</sup> appealed the POD. CPSD contended that the POD failed to make required findings of fact and

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<sup>8</sup> At the time of filing the appeal, Sugarman was not a formal party to the proceeding, having appeared only as a witness for CPSD. The appeal was therefore deemed a request for party status as well as an appeal and accepted for filing.

conclusions of law on numerous CPSD allegations that, in CPSD's view, supported revocation of Mr. Move's operating authority. CPSD relied on the Muro, Malloy, Doctors, Jones, and Kay moves to support revocation.

Sugarman disputed many of the factual findings in the POD and sought reconsideration of his award such that he would be "fully compensated for his losses."

Mr. Move responded that both appeals fail to include sufficient citations to the record in support of the requested changes to the POD, and that the few record references by CPSD did not support the requested changes.

We have considered the appeals and are not persuaded that the POD is unlawful or erroneous. The intervening years since most of the moves referenced by CPSD and the improvement in Mr. Move's regulatory compliance undermine the asserted necessity to revoke Mr. Move's operating authority at this time.

Of the five moves referenced by CPSD, Muro, Malloy, and Jones occurred prior to the criminal court stipulation. Mr. Move has paid substantial compensation to each victim, its president served a jail sentence, and Mr. Move paid fines due to its conduct of these moves. Malloy's claim for \$17,650 has been settled for \$4,750 as discussed below, and Jones previously received over \$25,000. The value of the extra moving services provided to Muro exceeded the claim.

The more recent moves also fail to justify revoking Mr. Move's operating authority. The Kay move was not jurisdictional. Mr. Move paid \$1,500 in settlement but Kay seeks another \$10,000. The Doctors move occurred recently, but the testimony does not support CPSD's interpretation that Ms. Doctors was taken in the truck against her will, nor does it support Ms. Doctors' request for \$10,000 - \$15,000 in compensation for inconvenience. These moves do not

demonstrate that the POD unlawfully or erroneously failed to revoke Mr. Move's operating authority.

Sugarman's appeal reiterates his request for an award of full retail replacement price for all allegedly lost or damaged items. The POD analyzed this request, and Sugarman provides no citations showing the POD's analysis to be erroneous or unlawful. Consequently, we have no basis on which to alter the POD.

CPSD also provided a copy of the October 13, 2005, letter from Lena M. George with attachments which purported to itemize the damages Ms. George incurred from Mr. Move in contrast to the POD's determination that the damage claim was unsubstantiated. The two-page letter, however, lists various types of damages but does not include specific amounts for each. Copies of pages from several catalogues are also attached with certain items circled. The letter contains no tabulation of these amounts and simply concludes with "I would be willing at this time to accept a full and final settlement of fifteen thousand dollars." This letter and attachments is not consistent with our regulations for lost or damaged items, and does not show the POD's conclusions to be unlawful or erroneous.

In conclusion, no party has presented us with the showing required by Rule 14.4, namely that the POD is unlawful or erroneous. We, therefore, decline to make changes to the POD.

On October 12, 2006, Mr. Move filed a motion to reopen the record to accept a copy of Mr. Move's settlement with Malloy for \$4,750. No party opposed the request and it is granted.

## **V. Assignment of Proceeding**

Michael R. Peevey is the Assigned Commissioner and Maribeth A. Bushey is the assigned ALJ and the presiding officer in this proceeding

### **Findings of Fact**

1. On September 10, 2004, the Los Angeles City Attorney's Office filed a stipulation to sentencing order in Los Angeles Superior Court Criminal Case No. 3CR02706 with Mr. Move and Eli Galam. The stipulation provided for 36 months of probation, restitution to customers, penalty assessments, and observance by Mr. Move and Galam of all applicable laws. The City Attorney's office has been informed of the results of CPSD's investigation. Neither Mr. Move's or Galam's probation has been revoked.
2. Mr. Move denied receiving Lemus' damage claim but did not rebut the allegations.
3. The Rios documents Mr. Move provided to the credit card company had been altered from the copies given to Rios.
4. Rios testified persuasively that Mr. Move's workers completed the move in two hours and the hourly rate quoted was \$75.
5. Mr. Move transported Muro's belongings to her new home in Oregon at no charge, and the value of those services exceeds Muro's claim against Mr. Move.
6. Mr. Move has settled Malloy's claim of loss and damages.
7. Mr. Move overcharged Parker, caused damages, and did not complete the job.
8. Mr. Move held Hogan's goods hostage.
9. George did not substantiate her loss and damage claim.
10. Mr. Move increased Sugarman's not to exceed price from \$3,500 to \$7,000 for the same services.

11. There are recent occasions when Mr. Move has failed to provide customers with capable help.

12. During two periods, Mr. Move conducted operations as a household goods carrier while its permit was suspended for failing to have filed proof of required insurance.

13. During the times Mr. Move's permit was suspended for failure to file proof of insurance, all required insurance was in effect but proof had not been timely filed with the Commission.

14. Mr. Move's crews failed on occasion to release goods upon payment of the not to exceed price, but these violations were not widespread or recent.

15. Insufficient evidence was presented to show that Mr. Move routinely offered estimates without viewing the goods to be moved.

16. Mr. Move conceded that it has failed on occasion to comply with documentation requirements, but it is committed to full and timely compliance.

17. Mr. Move has implemented a plan to improve its processing of loss and damage claims.

18. CPSD did not demonstrate that Mr. Move had failed to cross reference all listings under different names in a telephone directory.

19. On at least three occasions, Mr. Move failed to allow inspection of records required to be maintained by household goods carriers on request by Commission staff.

20. Mr. Move has made progress in bringing its operations into compliance with California law and Commission regulations.

21. Mr. Move conducts about 12,000 moves per year.

22. Mr. Move's gross annual revenues are about \$2 million per year, with net revenues uncertain.

23. CPSD did not propose a specific fine but sought the “maximum penalty,” which Mr. Move calculated to be \$1,329,000.

24. The POD was mailed to parties on August 25, 2006.

25. CPSD and Sugarman filed appeals of the POD.

26. Mr. Move has resolved the Malloy damage claim.

### **Conclusions of Law**

1. Mr. Move has on occasion violated the laws and regulations applicable to household goods carriers.

2. Mr. Move has offered substantial evidence in mitigation of its violations, including that it has successfully improved its compliance efforts and that virtually all of its 12,000 annual moves result in satisfied customers.

3. The Commission has authority to revoke Mr. Move’s household goods carrier permit.

4. Revoking Mr. Move’s permit would not be consistent with Commission precedent, and is not necessary at this time.

5. Mr. Move should be subjected to compliance monitoring by CPSD.

6. The purpose of fines is to deter future violations.

7. CPSD has not demonstrated that substantial fines are needed to provide deterrence above and beyond the criminal court stipulation.

8. Mr. Move’s violations are not systemic but are serious to the affected customers.

9. The public interest requires that Mr. Move be subject to a fine of \$16,000, with \$12,000 suspended so long as Mr. Move remains in compliance with applicable law. The remaining amount should be paid in \$1,000 installments at 90-day intervals.

10. As set forth in Attachment B, Mr. Move should make the following refunds to customers:

Lemus	\$400.00
Rios	\$75.00
Guarnieri	\$200.00
Parker	\$2,701.94
Sugarman	\$1,953.24

11. Mr. Move should be admonished for its past performance and directed to continue its improvement.

12. CPSD's and Sugarman's appeals of the POD failed to demonstrate that the POD was unlawful or erroneous; no changes should be made to the POD.

13. This decision should be effective immediately.

### **O R D E R**

Therefore, **IT IS ORDERED** that:

1. Mr. Move Moving & Storage, Inc., a California corporation, doing business as Load Rock N Roll Moving and Storage, Right Now Moving and Storage, Same Day Moving, Short Notice Moving and Storage, A All-American Relocation, Load Lock N Roll, Long Beach Security Storage, Mister Move, and its president, Eli Galam (Mr. Move) are assessed a fine of \$16,000. So long as Mr. Move complies with the provisions of this decision and all other law and regulations, \$12,000 of the fine is suspended. The remaining \$4,000 shall be paid in \$1,000 installments, with the first such payment due 90 days after the effective date of this order. The subsequent payments shall each be due at 90-day intervals. The payments shall be made to the California Public Utilities Commission for deposit to the General Fund, and remitted to the Commission's Fiscal Office at 505 Van Ness Avenue, Room 3000, San Francisco, CA 94102. The number of this decision

shall be included on the face of the check. Mr. Move's president shall bring proof of such payment(s) to the meeting with the Consumer Protection and Safety Division (CPSD) Director required below.

2. No later than 25 days after the effective date of this order Mr. Move shall make the following refunds and shall file and serve a compliance filing with CPSD so stating:

Lemus	\$400
Rios	\$75
Guarnieri	\$200
Parker	\$2,701.94
Sugarman	\$1,953.24

3. No later than 45 days after the effective date of this order, Mr. Move shall file and serve a compliance filing with CPSD showing that the Clark claim has been resolved consistent with applicable regulations.

4. The CPSD shall implement the following program of compliance monitoring of Mr. Move:

- a. Complaint Resolution Review. No less than once each annual quarter, Mr. Move's president shall meet in person with the Director of CPSD, or the Director's designee, to review all pending complaints either to this Commission or the Better Business Bureau as well as all loss and damage claims submitted to Mr. Move. Such review shall include the facts of each complaint or claim, the actions taken to resolve it, and the timetable for final resolution. The Director of CPSD or the Director's designee shall set the time and place of the meeting and provide reasonable notice to Mr. Move.
- b. CPSD Inspection. CPSD shall proactively conduct inspections of Mr. Move's real time operations, as well as review documentation.
- c. Other actions as deemed necessary by the CPSD Director.

d. Completion of Monitoring. If after no less than four such meetings, the CPSD Director determines that Mr. Move is in compliance with applicable law and regulations, then no further meetings are required and monitoring ends. If the CPSD Director finds that Mr. Move is not in compliance, CPSD is authorized to file a motion to reopen this proceeding for the assessment of additional penalties. The CPSD Director may require additional meetings as necessary to determine whether Mr. Move is in compliance.

5. Mr. Move is admonished for past practices and directed to comply fully with all law and regulations applicable to household goods carriers.

6. Mr. Move's motion to reopen the record to accept a copy of Mr. Move's settlement agreement with Malloy is granted and the settlement agreement is made part of the record.

7. Investigation 05-04-019 is closed.

This order is effective today.

Dated November 30, 2006, at San Francisco, California.

MICHAEL R. PEEVEY  
President  
GEOFFREY F. BROWN  
DIAN M. GRUENEICH  
JOHN A. BOHN  
RACHELLE B. CHONG  
Commissioners

**Attachment A - Summary of Moves Alleged to Violate Applicable Law  
Moves Conducted Prior to Sentencing Order**

	<b>Date</b>	<b>Name</b>	<b>LA?</b>	<b>Allegations</b>	<b>Status</b>
1	1/11/03	Lemus	No	\$400 damage claim, deficient documents	\$4000 refund ordered
2	1/12/03	Arico	Yes	\$207 overcharge, should have been charged distance rates	Refund paid 4/18/03
3	1/25/03	Hood	No	\$245 damage claim, deficient documents	Refund paid 4/17/03
4	1/25/03	Garcia/ Leon	Yes	Held goods hostage, damage claim	Resolved 9/03
5	1/28/03	W. Jones	Yes	held goods hostage, employees grossly sullied new residence	Resolved 6/20/05
6	2/27/03	Bernard	Yes	Loss and damages	\$630 paid
7	3/29/03	Budnic	No	Overcharges, disrespectful	Declined refund
8	3/31/03	Gabar	Yes	Overcharges, incompetent and threatening workers	Refund paid \$2,131, 9/04
9	6/7/03	Lussier	Yes	held goods hostage	Resolved 7/21/03
10	6/8/03	Rios	No	Overcharged \$75	\$75 Refund ordered
11	6/30/03	Lewis	Yes	Held goods hostage	Resolved 8/8/03
12	6/30/03	Jin Lee	Yes	Held goods hostage	Settled 8/13/03
13	7/12/03	Muro	No	Held goods hostage. Loss and damage claim of \$3,000, and hotel bill	Goods released on 10/6/03; moved at no charge to Oregon
14	10/17/03	M. Lee	No	Damage claim of \$2,500	Unsubstantiated; denied
15	11/8/03	L. Clark	No	Loss and damage claim of \$9,688.80	Loss and damage claim outstanding
16	11/16/03	Mohn	No	Alleged overcharge but credit card not charged at all	Moved for no charge
17	11/21/03	King	No	Loss claim of \$742	Paid
18	11/24/03	Guarnieri	Yes	Damage claim of \$200, overcharge claim of \$200, forged documents	Damage claim paid, \$200 overcharge refund ordered
19	11/28/03	Bennet	No	Damage to residence	No claim form submitted; unsubstantiated, denied
20	3/11/04	Malloy	No	Loss and damage claim of \$17,650	Loss and damage claim settled
21	5/1/04	Parker	No	Overcharge and damage claim	\$2,701.94 Refund ordered
22	7/17/04	Hogan	No	Holding goods hostage, damage claim	\$215 Refund ordered

**Moves Conducted After September 10, 2004 Stipulation to Sentencing Order  
Filed with Los Angeles County Criminal Court**

	<b>Date</b>	<b>Name</b>	<b>LA?</b>	<b>Allegations</b>	<b>Status</b>
23	12/3/04	Nagata	No	Damage claim of \$100	Paid
24	11/10/04	Ashe/ Condojani	No	Late arrival, inept employees, excessive charges. Damage claim of \$5,900	Settled
25	3/14/05	George	No	Inept employees. Missing items, including credit cards. Damage claim of \$15,000	Unsubstantiated; denied
26	7/16/05	Folk	No	Inept employees, excessive charges. Damage claim. (refund of \$870 in moving charges, and damage claim settled for \$548)	Settled
27	8/21/05	Kay	No	Disgruntled worker, damages	Nonjurisdictional move. Agreed to settle for \$1,000, demanded and received \$1,500. Seeks \$10,000 more
28	8/31/05	Sugarman	No	Excessive charges, many lost and damaged items. Damage settlement offer made	Refund of \$1,953.24 ordered. Damage settlement offer outstanding
29	9/17/05	Germano	No	Excessive charges, stolen goods, threats	All charges refunded
30	1/3/06	Doctors	No	Elderly woman taken in truck to bank to obtain cash, charged for delays	\$1,100 refunded on 3/2/06. Seek refund of amount paid, and \$10,000 to \$15,000 for aggravation

**(End of Attachment A)**

**Attachment B – Discussion of Each Move Listed in Attachment A**

**1. Delores Lemus, 1/11/03**

CPSD witness Smith testified that Delores Lemus received a verbal rate quote of \$69 per hour for two men and a truck, and an estimate of two hours to move Lemus' goods within the City of Long Beach. The subsequent charge was \$425. Lemus also alleged \$400 in damage to her sofa and loveseat. CPSD's testimony included a hand-written claim dated January 21, 2003, by Lemus, for \$400 in damages. In its September 2005, response to CPSD's allegations, Mr. Move denies receiving the damage claim but offers no other rebuttal to the allegation.

We find that Mr. Move owes \$400 to Lemus to resolve this damage claim.

**2. Julie Arico, 1/12/03**

Julie Arico had a piano moved more than 100 miles and was charged \$483.00, which included driving time. Shipments in excess of 100 miles, however, should be charged distance rates. After meeting with CPSD staff on April 18, 2003, Mr. Move refunded the difference between the rates, \$207, to Arico. This move was also included in the criminal case.

**3. Richard Hood, 1/25/03**

Richard Hood alleged that Mr. Move's workers snagged a telephone cable with their truck when delivering his goods to his new residence. Hood submitted a damage claim to Mr. Move for \$245. After Hood rejected an offered \$100, Mr. Move resolved the damage claim with a payment of \$245 on April 17, 2003.

**4. John Garcia/Nancy Leon, 1/25/03**

The record shows that Garcia and Leon paid \$510 for this January 23, 2003, move and that as part of the criminal case Mr. Move paid \$1,090 to them. In the declaration offered in this case, Garcia claims \$245 in damages. As the amount paid by Mr. Move exceeds a full refund of all charges paid plus the damages, CPSD has not shown that Mr. Move owes any further additional amounts.

**5. Wendolyn Jones, 1/28/03**

Jones alleged that Mr. Move workers grossly sullied her new residence. This matter was included in the criminal case and was resolved with payment to Jones of \$25,000.

**6. William Bernard, 2/27/03**

Bernard alleged that Mr. Move's workers were inept and another crew had to return two days later to complete his job. Bernard had Mr. Move's workers place his goods in storage. When removing the stored items, he discovered missing and damaged items. He submitted a damage and loss claim of \$1,400 to Mr. Move, and accepted payment of \$630. Bernard's move was included in the criminal case.

**7. Virgil Budnic, 3/29/03**

CPSD witness Smith presented Budnic's declaration stating that Mr. Move's workers billed him for packing materials when none were used as all items were boxed and ready for the move, took over three hours to drive 30 miles, and refused to unload the goods unless Budnic paid \$1,291 cash immediately. Budnic had not previously agreed to a not to exceed price but he estimated the cost would be about \$500. Budnic testified that the movers were disrespectful, and that he was not seeking a refund of the amount he paid.

**8. Tish Gabar, 3/31/03**

Gabar alleged that Mr. Move overcharged her and that workers damaged her goods and new residence. She was charged \$1,076.01. As part of the criminal proceeding, she received payments totaling \$2,131 from Mr. Move.

**9. Angela Lussier, 6/7/03**

Lussier alleged that Mr. Move overcharged her for moving and storing her goods. Lussier estimated that her final bill would be about \$200, but Mr. Move billed her \$485.49. With the intervention of the Los Angeles City Attorney's office and CPSD, Mr. Move accepted \$200 in full payment on July 21, 2003, in return for a full release from Lussier.

**10. Rios, 6/8/03**

CPSD witness Smith presented Janet Rios' declaration which stated that she contracted with Mr. Move to move her daughter with two workers and a truck for two hours at \$75 per hour on June 8, 2003. After the move was completed in two hours, Mr. Move submitted an invoice for \$192.50, which exceeded the \$170 Rios' daughter had available to pay in cash. When the daughter presented a credit card for payment, the price increased to \$225, which was charged to the card.

Upon report of the increased price, Rios immediately contacted Mr. Move's office and an employee stated that the \$42.50 was for double drive time. Rios stated that the drive time between the pick up and unload locations is approximately 10 minutes and that double drive time was not explained to her.

Rios stated her intention to dispute the credit card charge, to which Mr. Move's employee responded: "Go ahead, I'll get it from them anyhow." Rios sent Mr. Move a check for \$192.50 and disputed the credit card charge.

After Rios disputed the charge, the credit card company sent her copies of the documents, including the Shipping Order/Freight Bill, Mr. Move provided to the credit card company. Based on these documents, the credit card company restored the charges to Rios account. Rios compared the Shipping Order/Freight Bill that Mr. Move had provided to the credit card company to her copy provided on the day of the move. She found four major discrepancies between the two documents:

<b>Rios Copy</b>	<b>Mr. Move to Credit Card Version</b>
Move took 2.75 hours at \$70 per hour for total of \$192.50	Move took 3 hours at \$75 per hour for \$225
Not to exceed price BLANK	Not to exceed price \$400
Completion time BLANK	Completion time 2:00 p.m.
Double Driving Hours BLANK	Double Driving Hours 50

Rios states that the move took two hours and at the original contract rate of \$75 per hour she should have paid \$150 for the move, not the \$225 charged to her credit card. Accordingly, she seeks a refund of the extra \$75.

Mr. Move explained that the price differences are due to cash versus credit card payments, but offered no explanation for the other differences in the documents.

Mr. Move’s alteration of the documents substantially undermines its credibility. We will therefore adopt Rios’ understanding of the hourly rate and time worked. Mr. Move is ordered to refund an overcharge of \$75 to Rios.

**11. Lewis, 6/30/03**

Barnett Lewis alleged that Mr. Move was holding his goods hostage because he refused to pay more than the not to exceed price of \$1,995. With the

intervention of Los Angeles City Attorney's Office and CPSD, Mr. Move released the goods on July 8, 2003. This move was included in the criminal case.

**12. Jin Lee, 6/30/03**

Ms. Lee and her sister were moved from an apartment to two separate apartments, with some items also being delivered to their parents' home. All three stops were within three miles of the previous apartment. At the last delivery point, Mr. Move's workers demanded payment of \$800, which Ms. Lee contends was excessive. After Ms. Lee refused to pay the full amount, Mr. Move's workers left with the goods. Ms. Lee called the police, and the movers returned. The movers accepted a cash payment of \$630 and unloaded the truck. Ms. Lee and her sister met the next day with Eli Galam, whom they describe as indifferent to their complaints and threatening their credit rating. When Mr. Move sent a subsequent bill for \$157, Ms. Lee filed suit in small claims court. The matter was settled by a payment from Mr. Move of \$150 on August 13, 2003, and was included in the criminal case.

**13. Muro, 7/12/03**

Rachel Muro's move was scheduled to occur at 8:00 am on July 12, 2003, but Mr. Move's crew did not arrive until 3:00 p.m, with a truck much too small for the job. The same crew returned the following day with another truck, packed up most of the remaining goods but left numerous items in the house. (Muro valued these items at \$2,000, and was charged \$1,000 by the escrow company for removal.) Muro planned to have the items stored for one month at the quoted "special rate" of \$150. She also arranged with Mr. Move to have her invoice faxed to the escrow company for payment. Escrow was expected to close on July 13, 2003, but did not close until July 30, 2003. Mr. Move was not paid by the escrow company but rather on August 8, Colin Currie sent Mr. Move a check

for \$1,000, which Mr. Move deposited on August 10, 2003. Despite the payment, Mr. Move refused to release Muro's goods and continued to charge storage at \$474 per month.

During September 2003, Mr. Move issued a notice of lien on Muro's goods and noticed a public auction for October 9, 2003. After contact from the Los Angeles City Attorney's office, on October 6, 2003, Mr. Move released the goods to Muro.

Mr. Move received a small claims court judgment for \$2,022 against Muro for unpaid moving and storage fees. Mr. Move contends that this judgment resolves all issues regarding the move. Nevertheless, Mr. Move offered to move Muro's belongings from storage in Long Beach to her current residence in Oregon at no charge.

Muro seeks reimbursement for a hotel bill of \$7,080 for the time she spent "in Long Beach to straighten out this matter." She also claims loss and damage of \$1,985 for items left behind at the house and \$1,000 in charges from the escrow company to remove the items. Muro seeks a refund of \$292.66 in overcharges and \$100 penalty for Mr. Move's failure to provide her with the Important Information Booklet.

The Commission has the authority to order Mr. Move to refund unlawful moving charges and to reimburse customers for lost and damaged goods. The Commission does not have authority to award Muro consequential damages, such as the hotel costs.

The record is not clear as to whether the small claims court considered the items left behind and the removal charges. However, the fair market value of the services provided by Mr. Move to Muro in moving her belongings from Long Beach, California, to Portland, Oregon, greatly exceeds the amount in dispute.

Therefore, we conclude that no further refunds or payments are necessary between Mr. Move and Muro.

**14. M. Lee, 10/17/03**

CPSD witness Zundel presented the declaration of Marguarite Lee which contended that Mr. Move workers had damaged her goods during an October 2003 move. She valued the damages at \$2,500, but had not presented a claim to Mr. Move.

In defense, Mr. Move argued that the claim was made well beyond the nine months allowed in MAX 4 and denied it.

CPSD presented no further evidence. We conclude that insufficient evidence has been presented to support the alleged damage claim.

**15. L. Clark, 11/8/03**

Leda Clark's declaration was included in CPSD witness Smith's testimony and Clark was available for cross examination at the evidentiary hearing but Mr. Move waived cross-examination. Clark stated that Mr. Move neglected to load all items, left with the loaded truck without explanation, and refused to deliver her belongings after her December 8, 2003, move. With the intervention of Commission and Los Angeles City Attorney's office staff, Mr. Move delivered Clark's belongings on December 5, 2003. Clark paid only the costs for the original move, and did not pay \$1,212.40 in storage fees and additional moving charges.

In response, Mr. Move stated that Clark left the moving location to rent a storage space with a promised return in 20 minutes. The crew completed loading and waited for two hours then returned with the loaded truck to the Mr. Move office. Clark contacted Mr. Move three days later, demanded delivery,

and refused to pay additional charges. Due to the insistence of the City Attorney's office, Mr. Move delivered Clark's goods.

Clark's final claim for loss and damages is \$9,688.80. Mr. Move denied the claim because Clark has not paid all storage and moving costs, \$1,212.40, which Mr. Move contends is a prerequisite to a damage claim. Mr. Move cites to MAX 4, item 92, paragraph 7, to support its contention that all moving and storage charges must be paid prior to considering a loss and damage claim.

Here, however, the additional storage and additional moving charges are disputed by Clark. Mr. Move cannot use these disputed charges as a basis to ignore a loss and damage claim which substantially exceeds the disputed charges. Apparently relying on this erroneous interpretation of MAX 4, Mr. Move presented no evidence for the record on its investigation and evaluation of Clark's loss and damage claim.

We, therefore, conclude that Mr. Move improperly ignored Clark's loss and damage claim. Mr. Move should investigate and evaluate this claim consistent with our regulations. Any amount determined to be owed to Clark may be offset against the outstanding storage charges.

**16. Mohn, 11/16/03**

CPSD witness Smith presented the declaration of Bruce Mohn, which stated that he agreed to a not to exceed price of \$700 but the movers charged him \$1,477.50, for which he signed a credit card slip. Mohn's declaration does not state that the movers refused to unload his goods prior to making the higher payment. Also, for unstated reasons the signed credit card slip apparently was not effective as Mr. Move was not paid at all.

**17. King, 11/21/03**

Janet King alleged that Mr. Move's workers were slow and demanded excessive payments. Mr. Move also failed to timely respond to her loss and damage claim. However, with a check for \$742, dated April 18, 2005, the damage claim was settled.

**18. Guarnieri, 11/24/03**

Aimee Guarnieri testified that she had hired Mr. Move to move her on November 24, 2003 and that she had not placed signatures or initials, purporting to be hers, on numerous documents presented by Mr. Move. She explained in detail that she is professionally experienced in concert set-up which is substantially similar to moving, and that Mr. Move's workers were intentionally slow and disorganized. She dismissed the first crew after several hours, and then Mr. Move sent one replacement person to unload the truck. She stated that she and her family finished the job. She explained that all her belongings were packed in sealed boxes and that the moving company that moved her in to her apartment took only 2.5 hours. Mr. Move, in contrast, charged her \$560 for over six hours time. She seeks a refund of \$200 in overcharges.

Going through the documents offered by Mr. Move, Ms. Guarnieri identified the signatures and initials she had placed on several documents, but also testified that numerous signatures and initials were "forged." The signature on the Job Completion Form which stated that she was "satisfied with the service" was not authentic, and she similarly disavowed the initials next to the not to exceed amount of \$900 on the moving agreement. The Liability Waiver/Release Form contained 16 sets of initials and one signature, all of which the witness testified she had not made. Ms. Guarnieri confirmed that the point of pick-up signature on the Walk Through Report was hers but the point of delivery

was not. The Damage Inspection and Release form contained four signatures that the witness disavowed.

Mr. Move offered no defense to allegations of phony signatures and initials, or overcharges.

This witness has presented serious and unrebutted charges which substantially undermine the reliability of all documents presented by Mr. Move, and demonstrate egregious violations of the requirement to provide capable help. These violations are addressed elsewhere in today's decision.

She has also presented credible and convincing testimony that she was overcharged by at least \$200, which Mr. Move has not rebutted. Mr. Move is ordered to refund this amount.

**19. Bennett, 11/28/03**

CPSD witness Smith presented Amy Bennett's declaration which claimed \$400 in loss and damages but did not include any documentation of the damages or proof of having submitted a claim. Mr. Move responded that it had not received a loss and damage claim from Bennett, and CPSD offered no further evidence. Accordingly, we have no evidence to support a finding of damages by Mr. Move.

**20. Malloy, 3/11/04**

Malloy testified that he incurred damages of \$17,650 in lost or damaged household goods as a result of the move performed by Mr. Move in March 2004. Malloy testified and provided photographs of the 'severe' damage caused by Mr. Move, and stated that Mr. Move's representatives told him to "go to hell" when he attempted to submit a loss and damage claim.

Malloy provided an itemized list of lost and damaged items with valuations. The list includes a damaged antique armoire, \$6,000, and a missing

antique Irish dresser, \$3,500.<sup>1</sup> Mr. Move offered to pay based on \$0.60 per pound valuation a total amount of \$120, but offered no evidence rebutting Malloy's valuation of the lost or damaged items.

Malloy obtained a small claims court judgment for \$5,000 against Eli Galam, which was set aside on appeal.

Mr. Move responded that Malloy's move and storage was complicated because Malloy's new residence was not ready for him to move in.

We determine that Malloy is not bound by the \$0.60 valuation option because Mr. Move failed to provide Malloy with "capable help" as required by GO 142. Malloy's testimony and photographs show that the lack of "capable help" resulted in loss and damage, e.g., broken glass and furniture. Carriers of used household goods must provide workers able to move and store furniture without severe damage; that is the essence of the "capable help" requirement. Carriers that fail to provide the required level of service cannot use the minimum per pound damage amount to shield themselves from the consequences of their failures. We conclude that Mr. Move owes Malloy the fair market replacement value of the lost items, and the cost of repair or replacement of the damaged items.

Malloy's damaged furniture has not been inspected by a furniture repairer to determine whether the items can be repaired, and some of his valuations seem high for used merchandise, e.g., Sony VCR, \$250.

Malloy and Mr. Move have settled this claim.

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<sup>1</sup> The top and the drawers of the dresser were delivered to Malloy, but the main dresser structure was not.

**21. Parker, 5/1/04**

Francine Parker was charged \$4,487.73 to move on May 1, 2004.

Mr. Move's workers arrived late. They were scheduled to arrive at 8:00 but did not arrive until 12:15 p.m., and stated that they had been on another job and she would be charged time and a half after 6:00 pm. They also moved slow, appeared completely inexperienced, and spent inappropriate time on trivial tasks, e.g., wrapping numerous plastic cups in bubblewrap. The movers also left Parker's refrigerator in the middle of her driveway. The movers did not complete the job and Parker was required to call another moving company to complete the move the following day for an additional charge of \$371.66.

Hearing exhibit 6, provided by Mr. Move, includes the change order for Parker's move. Handwriting in the "additional articles and other services section" states: "shipper request 3 additional movers at an additional \$90 per hour Total 180 per hour for first 8 hour."

The sheet tabulating total charges for the move shows that the first three-man crew arrived at 12:15 p.m., and worked for 14.75 hours. The second three-man crew arrived at 5:15 p.m. and worked for 9.75 hours. Both crews ended their billing at 3 a.m., May 2, 2004. Crew 1 billed 5.75 hours at \$90 per hour, and 9 hours at \$168.93. Crew 2 billed 0.75 hours at \$90 per hour and 9 hours at \$168.93. The higher rate is labeled "time x 1/2" but is not 1.5 x 90, which is \$135.

Parker also contends that Mr. Move overcharged her for packing boxes. In her declaration, Parker states that Mr. Move charged her for 18 dish packs at \$25.20 each for a total of \$453.60, when only four dish packs were necessary. Parker also stated that Mr. Move used only 20 other moving boxes, not the 49 listed on her bill. Parker concluded that she should have been charged \$229.95

for packing boxes, rather than the \$861.99 charged by Mr. Move. Parker also claims \$400 in damages to her furniture.

Parker contends that the move should not have lasted more than eight hours with three workers at \$90 per hour for a total of \$720.

In response to Parker's allegations, Mr. Move stated that Parker greatly underestimated the amount of goods to be moved and the extent of packing required, but that the agreement showed a not to exceed price of \$6,000.

Mr. Move also explained that the refrigerator was filled with books and was too heavy to be moved from the driveway. Mr. Move conceded that the movers were late starting the job and could have done a better job explaining the difficulties in size of the job. Mr. Move offered no rebuttal to Parker's allegations of overcharges for the packing boxes, damages, or need to call another moving company.

We find that Mr. Move failed to complete this move in a competent manner. Upon arriving late and seeing the scope of the requested move, Mr. Move's supervisor should have developed a more realistic estimate of the time and cost to complete the job and clearly conveyed this information to Parker. This information lapse, the resulting worker (and customer) fatigue caused by working until 3:00 a.m., and the inevitable surprise at the final bill total, are the proximate cause of this dispute. Even if we accept Mr. Move's contention that the workers were as efficient as possible, the handwritten notation on the change order could reasonably have led Parker to believe that she would be charged \$180 per hour for the first eight hours of work by a six-person crew. We will hold Mr. Move to this representation. As Mr. Move offered no rebuttal to the allegations of overcharges for the packing boxes,

damages, or need to engage another moving company, we will offset those charges against the amount Parker paid.

Revised Calculation

Crew 1	
5.75 hours	x \$90 = \$517.50
1 hour	x \$135 = \$135.00
Combined Crew 1 &2	
8 hours	x \$80 = \$1,440.00
Crew 2	
0.75 hours	x \$90 = \$90.00
1 hours	x \$135 = \$135.00
Hourly total	\$2,327.50
<u>Packing Boxes</u>	<u>\$229.95</u>
TOTAL	\$2,557.45
Damages	- \$400.00
<u>Mover</u>	<u>- \$371.66</u>
Parker's Total	\$1,785.79

The record shows that Parker paid Mr. Move \$4,487.73. Therefore, we find that Mr. Move owes Parker a refund for overcharges, damages, and costs necessary to complete the job in the amount of \$2,701.94.

**22. Hogan, 7/17/04**

Mary Hogan testified that she paid the full estimated cost of the move (\$213) in advance, but that Mr. Move's workers demanded an additional cash payment of \$250 before they would unload her family's belongings at their new home. She refused. The goods were unloaded, with the total time and charges within the amount paid for in advance.

This move was not included in the criminal case and occurred on July 17, 2004. Mr. Move offered no defense to Mary Hogan's accusation of holding goods hostage other than to note that it was undocumented.

Mary Hogan is an employee of the Federal Bureau of Investigation and was a credible witness. She sought replacement cost of a damaged coffee table (\$500) rather than the cost of repair, \$215, as she did not trust any workers hired by Mr. Move.

We find that the Hogan testimony to be substantial evidence that Mr. Move's employees held goods hostage and that Mr. Move failed to provide capable help. Given Mr. Move's employees' actions, the Hogans are reasonably opposed to further interactions with Mr. Move. Therefore, we will order Mr. Move to pay the cost of repair, \$215, directly to the Hogans so that they may select a repair service.

**23. Nagata, 12/3/04**

CPSD witness Zundel presented the declaration of Ayumi Nagata which stated that Mr. Move's workers were unable to move her piano, despite the Mr. Move's scheduler's assurance that the piano would be "no problem." The movers also lost crib hardware valued at \$20. Nagata subsequently hired another moving company to move the piano for \$80.

Mr. Move stated that it had sent a loss and damage claim from to Nagata but the form had not been returned. Upon receiving Zundel's testimony, Mr. Move contacted Nagata and mailed a check for \$100.

**24. Ashe/Condojani, 11/10/04**

CPSD's witness Zundel presented the declarations of Shanna Ashe and her mother, Gyl Condoljani. They allege that Mr. Move was scheduled to arrive at 6:00 am to ensure that the truck would be packed and on its way before rush hour. The movers, however, arrived late at 8:30 am, worked slowly, and subsequently spent over three hours in traffic traveling from Dana Point to Studio City, about 70 miles. The entire move took a total of 12 hours and the

final price was \$1,893. Ashe and Condojani contend that they were overcharged; they also had a damage claim.

Mr. Move responded that Ashe was a demanding and uncooperative customer, and that the claim has been settled.

**25. George, 3/14/05**

Lena George testified that Mr. Move's workers caused severe damage to her goods.

Mr. Move responded that George has refused to allow their furniture repairer to inspect the damage, and that George has failed to provide a list of damaged or lost items. Mr. Move did not dispute that damage has occurred.

The record shows that Mr. Move is not contesting the damages but that George has been uncooperative in presenting and allowing evaluation of the damage claim. Consequently, we conclude that George's damage claim is unsubstantiated and therefore denied.

**26. Folk, 7/16/05**

Ruth Folk alleged that only one of the three workers on the Mr. Move crew that moved her belongings actually worked which led to overcharges in the final bill of \$1,785 for 11 hours work. She also alleged damage to her new residence. With a refund of \$870 in moving charges, and damage claim payment of \$548, the matter is settled between the parties.

**27. Kay, 8/21/05**

All parties agree that this move took place entirely on private property (within a mobile home park), and that the Commission lacks jurisdiction over the move.

Nader Kay testified that Mr. Move's workers were slow, and that one particular worker was reportedly fired during the move. The fired worker blamed Kay. This worker used Kay's bathroom and soon after he left the toilet overflowed. Kay concluded that the disgruntled worker was responsible for overflow. Kay also submitted a damage claim to Mr. Move.

In response, Mr. Move explained that the worker was not fired during the job but several days later. Mr. Move also stated that it resolved the damage claim with repairs and a payment of \$1,500. Kay had originally agreed to a settlement of \$1,000 but after meeting with CPSD representatives, Mr. Move stated, Kay repudiated the original agreement and demanded \$1,500, which Mr. Move paid.

**28. Sugarman, 8/31/05**

Ronald Sugarman testified that he was overcharged and that Mr. Move's employees stole, lost, and damaged his goods. Mr. Move sent a crew of three employees who arrived two hours late to begin the move, and provided him with a not to exceed price of \$3,500 to complete the move that day. Subsequently, two movers were added to the crew but at 8:00 pm all were fatigued and loading was not yet complete. The move resumed the following day and continued for 12 hours. The record is not clear how many crew members were present on the second day. When beginning the second day of work, the crew leader presented Sugarman with a revised Agreement for Moving Services which showed a not to exceed price of \$7,000. Sugarman accepted the revised Agreement as the Crew Leader stated that without the revised Agreement, the Mr. Move crew would not complete the move. The final price charged to Sugarman was \$5,603.24. Sugarman seeks a refund of \$2,103.24, the amount he paid in excess of the \$3,500 not to exceed price.

Sugarman provided a list of items he alleged were lost or stolen, with no supporting documentation of ownership. In response, Mr. Move presented its customer service representative who testified that Sugarman had an extraordinary amount of small collectibles in his apartment which took an equally extraordinary amount of time to pack and move.<sup>2</sup> Mr. Move provided additional unpacking assistance at no charge to Sugarman. Mr. Move offered to refund a portion of the moving charges, and to pay the final price obtained on an internet-based auction site for items comparable to the lost or stolen items. Sugarman rejected this offer and sought payment of the full retail price for listed items.

CPSD witness Zundel testified that Mr. Move violated laws and regulations relating to overcharges by initially stating a not to exceed price of \$3,500 and then, when it became apparent that the move would extend to a second day, having Sugarman sign a subsequent agreement with a not to exceed price of \$7,000. The final price charged was \$5,603.24. No additional items to be moved were included in the second agreement.

Mr. Move offered no explanation for the increase in the not to exceed price.

A valid change order requires additional services or some other change in circumstances. Here, Mr. Move's employees stated a not to exceed price of

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<sup>2</sup> The customer service representative testified that at Sugarman's residence was packed floor to ceiling with crates, boxes, and various porcelain and crystal collectibles, with only narrow paths between the stacks for walking. When assisting Sugarman with unpacking at the new residence, the customer service representative, at Sugarman's request, moved 150 - 200 boxes of these items out of the new residence to allow furniture to be placed in the residence.

\$3,500 for the entire move to be completed in one day.<sup>3</sup> The only additional service identified in the record is one night of storage for the loaded truck - \$150. Mr. Move has offered no justification for doubling the not to exceed price. We find that Mr. Move violated MAX 4, Item 130, by charging a price greater than the not to exceed price, and order a refund of the excess amount, \$2,103.24, less the legitimate charge for the additional service of overnight storage, \$150, resulting in a refund of \$1,953.24.

Sugarman values his loss and damage claim at \$13,000, based on prices for such items at "Geary's in Beverly Hills and most recently, Dublin, London, and Rome." Mr. Move has offered Sugarman \$2,079.40 to settle the loss and damage claim based on prices obtained for the items on an internet auction site. The fair market value of used items is not the retail replacement price but rather the actual price paid for similar, i.e., used items. Mr. Move's offer of settlement of the loss and damage claim remains outstanding.

**29. Germano, 9/17/05**

CPSD presented Germano's declaration, but Germano did not testify. Mr. Move's witnesses rebutted each allegation made in the declaration, and testified that Mr. Move had refunded all charges to Germano.

The record is insufficient to support factual findings regarding CPSD's alleged violations by Mr. Move on this move. Therefore, we decline to make any such findings or related conclusions of law.

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<sup>3</sup> The "capable help" required by GO 142, discussed above, includes employees able to accurately estimate the total work time and materials necessary to arrive at a binding not to exceed price. Contingencies must also be factored in.

**30. Doctors, 1/3/06**

On the Friday before New Years weekend 2005, Sylvia Doctors called Mr. Move regarding the move she believed was scheduled for that day. Mr. Move had no record of scheduling this move, but sent a crew as soon as possible. The crew determined that the move could not be completed that day, and it was raining which further imperiled the goods to be moved. The crew chief accompanied Doctors to the building manager to obtain permission to delay the move until after the New Years weekend.

Doctors testified that on January 3, 2006, the crew returned and completed loading the truck about 4:45 pm. Doctors and her daughter, in the daughter's car, instructed the movers to follow them to the new apartment. Doctors arrived at approximately 6:00 pm but the movers did not arrive until 8:30 pm. When the new neighbors complained of the noise, the move ended at 11:30 pm.

The crew returned the next day and demanded payment of \$2,600 in cash prior to unloading the remaining items. (Doctors had signed a moving agreement with a not to exceed price of \$1,500.) After conferring with "the owner," the crew agreed to unload the truck but then insisted the Doctors immediately accompany them in their truck to the bank to get the cash. The crew lifted Doctors, who is 82 years old, into the truck and drove her to the bank where they received their \$2,600 cash, and then drove her home. Doctors spent the subsequent three days in hospital for treatment of high blood pressure, brought on, she testified by the aggravation of the move.

Mr. Move responded that it had refunded the \$1,100 over the not to exceed price to Doctors, but that they had not received a damage claim.

Doctors testified that she would prepare a damage claim, and that she wanted the \$1,500 refunded and a payment of \$10,000 to \$15,000 for pain and aggravation.

**(End of Attachment B)**