

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Legal Division

San Francisco, California
Date: March 1, 2007
Resolution L- 341

RESOLUTION

**RESOLUTION REVISING THE AUTHORITY GRANTED TO
THE EXECUTIVE DIRECTOR BY RESOLUTION NO. L-318 TO
SUSPEND OR REVOKE THE OPERATING AUTHORITY OF A
HOUSEHOLD GOODS CARRIER UPON CONVICTION OF THE
CARRIER OR ONE OR MORE OF ITS OFFICERS OF CERTAIN
MISDEMEANORS OR FELONIES INVOLVING THEFT OR
DISHONESTY**

SUMMARY

This resolution revises the procedures under which the Executive Director shall suspend or revoke the operating authority of a household goods carrier when the carrier or one of its officers is convicted of certain misdemeanors or felonies. Recent legislation amending the underlying statute makes revision of the existing administrative procedures necessary.

BACKGROUND

By Resolution No. L-318, dated June 16, 2005, we delegated to the Executive Director the authority to suspend or revoke the operating authority of a household goods carrier on the basis of a verified report from the Commission's General Counsel that the carrier or one or more of its officers has been convicted of certain categories of felonies or of misdemeanor violations of the Household Goods Carriers Act. The resolution sets out procedures for the Executive Director to follow to provide the carrier with notice of any suspension and the opportunity to request a review of the suspension. If the carrier does not request a review, or the Executive Director denies the appeal, the suspension becomes a permanent revocation of the carrier's operating authority.

In issuing Resolution No. L-318 we noted that despite the best efforts of the Commission staff and the Commission to screen out individuals that are likely to engage in fraudulent or other unfair business practices, a few individuals receive permits to operate as household goods carriers and thereafter commit crimes which

would disqualify them from receiving a permit if the crime had taken place before they applied for a household goods carrier permit. We further found that the conduct of a few currently permitted carriers is so egregious that local authorities prosecute carriers and obtain convictions for fraud and other unfair business practices. In these circumstances prompt action by the staff is necessary to protect the public. We determined that delegation of authority to the Executive Director to suspend or revoke a household goods carrier permit when the carrier or any of its officers has been convicted of certain crimes will allow the staff to act quickly.

The Commission's authority to cancel, suspend, or revoke the permit of a household goods carrier is contained in Public Utilities (Pub. Util.) Code Section 5285. Subdivision (d) of Section 5285 empowers the Commission to cancel, suspend, or revoke a permit, without prior notice to the carrier or opportunity to be heard in a formal evidentiary hearing, upon the conviction of the carrier or any of its officers of certain crimes. Assembly Bill (AB) 2220 (Chapter 763, Statutes of 2006) amended subdivision (d) of Section 5285 and added subdivision (e) effective January 1, 2007. The revised and new provisions include expansion of the list of crimes for which a permit can be suspended or revoked, addition of a requirement that the crime must have been committed in connection with the household goods carrier operation, automatic permit revocation upon the conviction of the carrier of a prescribed felony, and an automatic five-year permit suspension upon the conviction of a carrier officer, director, or managing agent of a prescribed felony. Effective January 1, 2007, Subdivisions (d) and (e) of Section 5285 provide as follows (with the language added by AB 2220 underlined):

(d) The Commission may cancel, suspend, or revoke the permit of any carrier upon the conviction of the carrier of any misdemeanor under this chapter while holding operating authority issued by the Commission, or the conviction of the carrier or any of its officers of a felony while holding operating authority issued by the Commission, limited to robbery, burglary, any form of theft, any form of fraud, extortion, embezzlement, money laundering, forgery, false statements, an attempt to commit any of the offenses described in this subdivision, aiding and abetting or conspiring to commit any of the offenses described in this subdivision, or intentional dishonesty for personal gain.

(e) (1) As used in this subdivision, "convicted of a prescribed felony" means a plea or verdict of guilty or a conviction following a plea of nolo contendere for any felony described in subdivision (d), or for an attempt to commit, aiding and abetting, or conspiring to commit any felony described in subdivision (d), that is committed in connection with, or arising from, a transaction for the transportation of used household goods or personal effects.

(2) If a carrier is convicted of a prescribed felony, the permit of the carrier shall be deemed automatically revoked.

(3) If an officer, director, or managing agent of the carrier is convicted of a prescribed felony, the permit of the carrier shall be deemed automatically suspended for a period of five years. If the Commission determines that the carrier did not have knowledge of, participate in, direct, aid and abet, authorize, or ratify the conduct of the person convicted and did not in any manner benefit from the conduct, the Commission may reinstate the permit on terms the Commission determines to be appropriate in the interest of justice and to ensure the protection of the public. The Commission may also extend the suspension or revoke the permit as provided in subdivision (d).

(4) If an officer, director, managing agent, or employee of the carrier is convicted of a prescribed felony, the person may not be an officer, director, managing agent, or employee or serve in any other capacity with a carrier.

(5) It is a violation of this chapter for a carrier that knows or should know that a person has been convicted of a prescribed felony to hire, retain, or otherwise allow that person to serve as an officer, director, managing agent, or employee or in any other capacity with the carrier.

DISCUSSION

We wish to continue to have a process in place that will allow the staff to respond quickly to protect the public from carriers that are found guilty of engaging in fraudulent or unfair business practices. We therefore will make those changes to our procedures that are necessary to bring them into accord with the amendments to Section 5285 enacted by AB 2220. Since the bill did not modify Section 5285 with respect to carriers convicted of misdemeanor violations of the Household Goods Carriers Act, we will maintain in this resolution the same procedures for permit suspension or revocation in these cases that we adopted in Resolution No. L-318. In many other respects, however, the procedures must be revised.

Under newly enacted Section 5285(e)(2), the permit of a carrier convicted of a prescribed felony shall be deemed automatically revoked. The Commission has no discretion in the matter. Accordingly, we will direct the Executive Director to send a notice of revocation to the carrier upon written notification from the Commission's General Counsel that the carrier has been convicted of one or more of the prescribed felonies listed in Section 5285(d). Before giving such notice to the Executive Director, the General Counsel shall (1) obtain written verification of the criminal conviction from the court wherein the carrier was convicted, (2) ascertain that the carrier held operating authority from the Commission at the time the crimes were committed, and (3) verify that the violations occurred in connection with a transaction for the transportation of used household goods or personal effects.

Added Section 5285(e)(3) applies to convictions of a prescribed felony by an officer, director, or managing agent of the carrier. In these circumstances the statute provides that upon conviction, the permit shall be deemed automatically suspended for a period of five years. In order to ensure fairness in the application of these suspensions, we will require the Executive Director and the General Counsel to follow the same verification and notice procedures described above for automatic revocations under Section 5285(e)(2).

Section 5285(e)(3) further provides that a suspended permit may be reinstated if the Commission determines that the carrier did not have knowledge of, participate in, direct, aid and abet, authorize, ratify, or benefit from the conduct of its convicted officer, director, or managing agent. The Commission may also extend the suspension or revoke the permit. We will allow the carrier to seek a review of the suspension and reinstatement of the permit by filing a request with the Executive Director within 10 days from the date of mailing of the suspension notice. The carrier will have the burden of showing in its appeal that it lacked involvement in and did not derive any benefit from the violations committed by its officer, director, or managing agent.

If a carrier suspended under Section 5285(e)(3) does not request a review, or the Executive Director denies the carrier's appeal, the permit shall stand suspended for five years. A suspension of such long duration places a significant burden on the Commission's enforcement staff to ensure that no operations are conducted during the period of suspension. Therefore, we will require that the suspended carrier immediately disconnect any telephone number that it has published in Yellow Page Directories or any other forms of advertisement. We will direct the Executive Director to immediately revoke a permit suspended under Section 5285(e)(3) upon notice from the Commission's General Counsel that while suspended the carrier has engaged or attempted to engage in the business of transporting used household goods and personal effects, has advertised, solicited offered, or entered into an agreement to engage in such business, or has failed to disconnect telephone service as ordered. Suspended carriers are required by statute and Commission regulations to remit the minimum regulatory fee to the Commission and to respond to any information requests that are sent to every household goods carrier. A permit suspended pursuant to Section 5285(e)(3) will be subject to revocation by the Executive Director under existing delegated authority if during the suspension the carrier fails to pay regulatory fees or respond to information requests. At any time during the suspension the carrier may request voluntary revocation of its permit.

Resolution No. L-318 requires the Executive Director to report to the Commission of any action taken under the resolution to suspend or revoke a household goods carrier permit. We will continue that requirement under our revised procedures.

COMMENTS ON DRAFT RESOLUTION

The Draft Resolution of the Legal Division in this matter was mailed to the parties in interest on January 18, 2007, in accordance with Public Utilities Code section 311(g). No formal comments were received regarding this Resolution, however, the Commission did receive oral comments from Deputy Attorney General Christina Tusan on January 26, 2007.

FINDINGS

1. Despite the best efforts of the Commission staff and the Commission to screen out individuals that are likely to engage in fraudulent or other unfair business practices, a few individuals receive permits to operate as household goods carriers and thereafter commit crimes which would disqualify them from receiving a permit if the crime had taken place before they applied for a household goods carrier permit.
2. The conduct of a few currently permitted household goods carriers is so egregious that local authorities prosecute carriers and obtain convictions for fraud and other unfair business practices.
3. Pub. Util. Code Section 5285(d) provides that the Commission may cancel, suspend or revoke the permit of a household goods carrier, without prior notice or opportunity to be heard through a formal hearing, when the carrier or any of its officers has been convicted of certain misdemeanors or felonies.
4. By Resolution No. L-318, dated June 16, 2005, the Commission delegated to the Executive Director the authority to suspend or revoke, pursuant to Pub. Util. Code Section 5285(d), the permit of any household goods carrier that is convicted of misdemeanor violations of the Household Goods Carriers Act or certain felonies involving theft or dishonesty.
5. AB 2220 amended Pub. Util. Code Section 5285, effective January 1, 2007.
6. Amended Pub. Util. Code Section 5285 contains an expanded list of “prescribed felonies” for which the Commission may suspend or revoke a household goods carrier permit.
7. Effective January 1, 2007, Pub. Util. Code Section 5285(e)(2) provides that if a household goods carrier is convicted of a prescribed felony committed in connection with the transportation of used household goods or personal effects, the carrier’s permit shall be deemed automatically revoked.
8. Effective January 1, 2007, Pub. Util. Code Section 5285(e)(3) provides that if an officer, director, or managing agent of a household goods carrier is convicted of a

prescribed felony, the carrier's permit shall be deemed automatically suspended for a period of five years.

9. A permit suspended under Pub. Util. Code Section 5285(e)(3) may be reinstated if the Commission determines that the carrier did not have knowledge of, participate in, direct, aid and abet, authorize, or ratify the conduct of the person convicted and did not in any manner benefit from the conduct.
10. Delegation of authority to the Executive Director to suspend or revoke a household goods carrier permit will allow the staff to protect consumers from household goods carriers that engage in fraudulent, unfair, or otherwise illegal business practices.
11. Prompt action by the staff is necessary for the protection of the public. The procedures adopted by this resolution would permit full implementation of the actions prescribed by the Public Utilities Code for household goods carriers.

CONCLUSIONS OF LAW

1. The Commission is empowered under Pub. Util. Code Section 5285 to suspend or revoke the permit of a household goods carrier when the carrier or one of its principals is convicted of misdemeanor violations of the Household Goods Carriers Act or certain felonies involving fraud or dishonesty.
2. Consumers should be protected from household goods carriers that engage in unfair, fraudulent or otherwise unfair business practices.
3. The Commission should act promptly to suspend or revoke a household goods carrier permit when the carrier or one of its principals is convicted of a crime prescribed in Pub. Util. Code Section 5285.
4. Pursuant to Pub. Util. Code Section 7, the Commission may delegate to the Executive Director the authority to suspend or revoke a household goods carrier permit.
5. The procedures adopted by Resolution No. L-318 delegating authority to the Executive Director to suspend or revoke a household goods carrier permit should be revised to comport with the amendments to Pub. Util. Code Section 5285 enacted by AB 2220 effective January 1, 2007.
6. The Executive Director's actions under this resolution will be ministerial based upon the Commission's stated policy to protect consumers by acting promptly to suspend and revoke household goods carrier permits in accordance with the provisions of Pub. Util. Code Section 5285, subdivisions (d) and (e)

7. The Executive Director should report to the Commission any actions he or she has taken under this resolution to suspend or revoke a household goods carrier permit.

THEREFORE, IT IS ORDERED that:

1. The Executive Director shall suspend, pursuant to Public Utilities (Pub. Util.) Code Section 5285(d), the operating authority of any household goods carrier upon written notification from the Commission's General Counsel that the carrier has been convicted of a misdemeanor violation of the Household Goods Carriers Act.
2. In order to ensure fairness in the application of the procedure prescribed by Ordering Paragraph 1, the General Counsel shall obtain a written verification of the criminal conviction from the court wherein the carrier was convicted. The verification shall be limited to convictions that have occurred while the carrier has held operating authority from the Commission.
3. The Executive Director shall promptly furnish the carrier with written notice of any suspension imposed under Ordering Paragraph 1. The notice of any such suspension shall inform the carrier that it may request a review of the suspension to the Executive Director within 30 days of the date of the mailing of the notification.
4. The Executive Director shall respond to a request for review of a suspension imposed under Ordering Paragraph 1 within 10 days of receipt of said request, with a decision either affirming the suspension and permanently revoking the operating permit, reversing the suspension upon good cause shown, or continuing the suspension until the appeal of the underlying offense has been resolved or the time for filing such an appeal has expired. The Executive Director shall be authorized to extend the period to render a decision on a request for review for up to 14 days if he or she finds that additional time is needed to investigate the carrier's appeal.
5. A suspension imposed pursuant to Ordering Paragraph 1 will become a permanent revocation of the carrier's operating authority if the carrier does not request a review within 30 days of the mailing of the notice of suspension.
6. The Executive Director shall issue a notice of revocation to any household goods carrier upon written notification from the Commission's General Counsel that the carrier's permit has been automatically revoked pursuant to Pub. Util. Code Section 5385(e)(2) as a result of the carrier being convicted of any of the following felonies: robbery, burglary, any form of theft, any form of fraud, extortion, embezzlement, money laundering, forgery, false statements, an attempt to commit any of these offenses, aiding and abetting or conspiring to commit any of these offenses, or

intentional dishonesty for personal gain. As used herein, “convicted” means a plea or verdict of guilty or a conviction following a plea of *nolo contendere*.

7. Before the Executive Director issues a notice of revocation in accordance with Ordering Paragraph 6, the General Counsel shall obtain a written verification of the criminal conviction from the court wherein the carrier was convicted. The verification shall be limited to convictions that have occurred while the carrier has held operating authority from the Commission and which were committed in connection with, or arising from, a transaction for the transportation of used household goods or personal effects.
8. The Executive Director shall issue a notice of suspension to any household goods carrier upon written notification from the Commission’s General Counsel that the carrier’s permit has been automatically suspended for five years pursuant to Pub. Util. Code Section 5385(e)(3) as a result of an officer, director, or managing agent of the carrier being convicted of any of the following felonies: robbery, burglary, any form of theft, any form of fraud, extortion, embezzlement, money laundering, forgery, false statements, an attempt to commit any of these offenses, aiding and abetting or conspiring to commit any of these offenses, or intentional dishonesty for personal gain. As used herein, “convicted” means a plea or verdict of guilty or a conviction following a plea of *nolo contendere*.
9. Before the Executive Director issues a notice of suspension in accordance with Ordering Paragraph 8, the General Counsel shall obtain a written verification of the criminal conviction from the court wherein the officer, director, or managing agent was convicted. The verification shall be limited to convictions that have occurred while the carrier has held operating authority from the Commission and which were committed in connection with, or arising from, a transaction for the transportation of used household goods or personal effects.
10. The Executive Director is authorized to reinstate a permit suspended under Ordering Paragraph 8 if the carrier presents clear and compelling evidence that it did not have knowledge of, participate in, direct, aid and abet, authorize, or ratify the conduct of the person convicted and did not in any manner benefit from the conduct. The carrier shall have 30 days from the date of mailing of the notice of suspension to request a review by the Executive Director.
11. The Executive Director shall respond to a request for review of a suspension imposed under Ordering Paragraph 8 within 10 days of receipt of said request, with a decision either affirming the suspension or reversing the suspension. The Executive Director shall be authorized to extend the period to render a decision on a request for review

for up to 14 days if he or she finds that additional time is needed to investigate the carrier's appeal.

12. When a permit is suspended under Ordering Paragraph 8, the carrier shall immediately cease operations and terminate telephone service for any number that appears in any form of advertising of its household goods carrier business. No such telephone number may be transferred to another carrier. The suspended carrier shall not renew any existing advertisements or cause any new ones to be published. This includes, but is not limited to, advertising in Yellow Page Directories and newspapers, and shall immediately remove its advertisement(s) and telephone number(s) from the Internet or any other forms of electronic media.
13. The Executive Director shall permanently revoke any permit that has been suspended under Ordering Paragraph 8 upon notice from the Commission's General Counsel that while suspended the carrier has engaged or attempted to engage in the business of transportation of used household goods and personal effects, has advertised, solicited, offered, or entered into an agreement to engage in such business, or has violated any requirement of Ordering Paragraph 12.
14. Each suspension or revocation issued under authority of this resolution shall recite that it was issued pursuant to this resolution. Each such suspension or revocation, when signed by the Executive Director, shall be deemed to be the order of the Commission.
15. The Executive Director shall report to the Commission after taking action pursuant to this resolution at the earliest Commission meeting of the suspension or revocation of a household goods carrier permit. The Executive Director's report shall include a summary of a request for review made by the carrier and the disposition of the request.
16. Any carrier whose permit is revoked pursuant to Pub. Util. Code Section 5285(d) or (e) may thereafter reapply for authority to act as a household goods carrier.
17. Resolution No. L-318 is canceled.
18. The effective date of this order is today.

I certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting of March 1, 2007, and that the following Commissioners approved it:

STEVE LARSON
Executive Director

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
TIMOTHY A. SIMON
Commissioners