

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ-236
Administrative Law Judge Division
April 16, 2009

RESOLUTION

RESOLUTION ALJ-236. Affirming Citation FC-197 issued to Adriana Fortson & Benecia Toms, a Partnership dba Chris Moving Systems and Chris Moving Systems, Inc.

SUMMARY

This Resolution resolves the appeal of Field Citation 197 (FC-197) issued to Adriana Fortson & Benecia Toms, a Partnership dba Chris Moving Systems and Chris Moving Systems, Inc. by the Commission's Consumer Protection and Safety Division (CPSD) on June 26, 2008.¹ FC-197 was issued to Chris Moving Systems with a fine in the amount of \$3,000 for 252 violations of the Public Utilities Code and Maximum Rate Tariff 4 (MAX 4) during the period October 1, 2007 through February 29, 2008. Specifically, FC-197 charges Chris Moving Systems of (1) operating as a corporation before obtaining the proper authority from the Commission in violation of Public Utilities Code Section 5133 (Section 5133) (30 counts), (2) hiring employees without first securing and filing evidence of Workers' Compensation Insurance coverage with the Commission in violation of Section 5135.5 (13 counts), (3) deficiencies on moving forms in violation of Sections 5139 and 5143 and MAX 4, Items 128, 130, 132, and 465 (182 counts), and (4) failure to give customers the "Important Information for Persons Moving Household Goods Booklet" and retaining the receipt for such booklet, in violation of Section 5143 and MAX 4, Item 88 (27 counts).

Based on the hearing record, we find that the above violations occurred and the level of fine imposed is reasonable based on the number and type of violations, and Chris Moving Systems compliance history. Therefore, we affirm FC-197 in full. We direct

¹ Since the field citation is issued to both the partnership, owned by Ms. Fortson and her mother, and the corporation, owned by Ms. Fortson and her husband Christopher Fortson, we discuss each separately as the partnership and the corporation and only when reference is made to both do we use the name Chris Moving Systems.

Chris Moving Systems to pay the \$3,000 fine in full within 30 days of this resolution or to begin to make payments within 30 days based on an approved written payment plan with CPSD.

Finally, this resolution finds that evidence introduced at hearing related to the recent revocation of the partnership's Commission license for nonpayment of fees and problems with the corporation's license application are issues outside the scope of this appeal process. These issues will be separately addressed by CPSD, as discussed at hearing.

BACKGROUND

Pursuant to Resolution ALJ-187, issued by the Commission on September 22, 2005, CPSD is authorized to issue citations to various classes of transportation carriers for violation of the Public Utilities Code and/or Commission orders. In turn, a carrier issued such a citation may accept the fine imposed or contest it through a process of appeal.

On July 14, 2008, Chris Moving Systems timely appealed FC-197 issued on June 26, 2008. When contacted by the Administrative Law Judge (ALJ) division to schedule a hearing, Chris Moving Systems requested the hearing be held in Los Angeles rather than in San Francisco, with the understanding that a Los Angeles hearing could not be scheduled until the Legislature passed and the Governor signed a final state budget. A hearing was noticed and held in Los Angeles on November 17, 2008. At the hearing, appellant appeared and requested a continuance in order to have time to retrieve documents from storage. The request was granted and a second hearing was held in Los Angeles on January 27, 2009. At this hearing, both parties were given an opportunity to submit late-filed exhibits; the evidentiary record was submitted on February 11, 2009.²

COMMENTS

Public Utilities Code Section 311(g)(1) requires that a draft resolution be served on all parties, and be subject to a public review and comment period of 30 days or more, prior to a vote of the Commission on the resolution. A draft of today's resolution was distributed for comment to appellant and CPSD.

In its April 1, 2009 opening comments, CPSD requests that the Commission add ordering language specifying that if Chris Moving Systems fails to pay the fine as provided herein, CPSD shall immediately suspend its permit and 30 days afterwards

² See February 17, 2008 ALJ ruling.

revoke the permit. CPSD does not explain why this language is needed nor does the record address this specific remedy. In the draft resolution, we have already affirmed CPSD's authority to take any and all action provided by law to recover the unpaid fine and ensure compliance with applicable statutes and Commission orders (See Conclusion of Law 8). Therefore, we do not make this change.

FINDINGS

1. On June 26, 2008, CPSD served FC-197 (the citation) on Adriana Fortson, managing partner and corporate vice-president of Chris Moving Systems, following an investigation of the period October 1, 2007 through February 29, 2008.

2. In her July 14, 2008 appeal of FC-197, Ms. Fortson states that Chris Moving Systems had filed its application to transfer authority from its partnership to the new corporation over one and a half years ago and was told by CPSD that it could continue to operate under its partnership authority while the application was being processed. Further, she states that Chris Moving Systems did not have employees until 2008 and that deficiencies in moving forms are due to Chris Moving having no knowledge of new Commission regulations.

3. At the November 17, 2008 hearing, Ms. Fortson requested a continuance of the hearing in order to retrieve from storage a certified receipt for Chris Moving Systems' original transfer application in November 2006. The request for continuation was granted and the hearing rescheduled.

4. At the January 27, 2009 hearing, Ms. Fortson introduced as evidence a February 16, 2007 transfer application, Exhibit 7. She testified that she was unable to locate a return receipt, and had not submitted a check with the application.³

5. Appellant asserts that the amount of the fine is excessive given the company's good record and the nature of the violations. Ms. Fortson testified that Chris Moving Systems has had only one customer complaint, the complaint that led to CPSD's investigation, and that Chris Moving Systems did not carry Workers' Compensation insurance for individuals it hired that represented they had independent contractor licenses in the period of the investigation.⁴

³ Ms. Fortson also testified she later understood she had not submitted the correct paperwork. See January 27, 2009 hearing transcript at pages 29-31 (TR at 29-31).

⁴ See TR at 31-33.

6. Ms. Fortson, as the managing partner of Chris Moving Systems, passed the Commission's Household Goods Carrier examination on December 11, 2002 has held a Commission license as a household goods mover since May 12, 2003.⁵

7. Ms. Fortson complied fully with CPSD in its investigation.⁶

8. CPSD introduced evidence, Exhibit 3, that the application for transfer had not been properly filed until May 6, 2008. CPSD sponsored an investigative report, Exhibit 2, showing that since Chris Moving System's partnership authority has been issued through February 14, 2008, the authority has been suspended on seven (7) separate occasions and subsequently reinstated on seven (7) occasions, for insurance, delinquent fees and underpayment of fees. Exhibits 2 and 6 contain documentation for all violations cited in FC-197.

9. CPSD testified that the level of fine imposed in FC-197 was reasonable in comparison to the type of violations and the carrier's compliance history.⁷

CONCLUSIONS OF LAW

1. Chris Moving Systems has violated Public Utilities Code Section 5133 by operating as a corporation before obtaining the proper authority from the Commission on 30 occasions during the period from October 1, 2007 through February 29, 2008.

2. Chris Moving Systems has violated Public Utilities Code Section 5135.5 by hiring employees without first securing and filing evidence of Workers' Compensation Insurance coverage on 13 occasions during the period from October 1, 2007 through February 29, 2008.

3. Chris Moving Systems has violated Public Utilities Code Section 5139 and Maximum 4 Tariff (MAX 4) Items 128 and 132 by failing to issue Combined Agreements for Moving Services and Freight Bills showing all required information during the period from October 1, 2007 through February 29, 2008. The documented violations total 152.

4. Chris Moving Systems has violated Public Utilities Code Section 5143 and MAX 4 Items 130 and 465 by failing to properly complete the "Important Notice About Your Move" for 30 moves during the period from October 1, 2007 through February 29, 2008.

⁵ See Exhibits 4 and 5.

⁶ See TR at 25.

⁷ See TR at 68-72.

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