

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 All State Moving and Storage, Inc., a California corporation doing business as (dba) California Transportation Systems, dba Prime Movers, dba All State Moving & Storage, dba City Transportation System, and its President, Jacob (aka Yacov) Sudai, and Secretary, Israel Lerner; Washington Mini-Storage, Inc., a Maryland corporation dba Prime Movers, dba Washington Moving and Storage, and its President, Yacov Sudai; and VIP Relocation, Inc., a California corporation and its President, Israel Lerner, and Vice President, Kfir Cohen,

Applicants/Respondents.

Investigation 04-08-022
(Filed August 19, 2004)

**ASSIGNED COMMISSIONER'S AND
ADMINISTRATIVE LAW JUDGE'S RULING
SETTING OUT PRELIMINARY ISSUES AND
SCHEDULING PREHEARING CONFERENCE**

Summary

A prehearing conference (PHC) is scheduled for Tuesday, October 5, 2004, at 10:00 a.m. Commission staff's declarations and evidence show that many of the violations alleged here are also included in a pending court complaint. Because the courts can provide a timely, efficient, and effective means of protecting California consumers from violations of the Household Goods Carrier

Act, complementary to our own enforcement proceedings, this ruling schedules a PHC to coordinate these proceedings.

Background

The Commission issued the OII in response to numerous consumer complaints as well as Commission staff's allegations of unlawful operations and advertising for moving services by respondents.

The Commission staff's enforcement history against respondents All State Moving, the various business names under which it does business, and its corporate officers predates issuance of the OII by almost a year. Staff filed a complaint filed on October 10, 2003, in Los Angeles County Superior Court seeking a temporary restraining order, preliminary injunction, and action for recovery of civil penalties, Case No. BC30387. That complaint resulted in the court issuing a preliminary injunction on November 19, 2003, which restrained these respondents from operating or advertising as a household goods carrier, without a permit from the Commission while the complaint was pending.

Role of the Superior Courts In Commission Staff's Enforcement Strategy

The history of the Commission staff's enforcement actions against respondents illustrates an appropriate strategy of relying on the extensive coercive tools available in the courts. Where staff has evidence of egregious misconduct, the court's tools may be the most effective to protect the public. The prospect of immediate incarceration and/or asset seizure¹ by the sheriff tends to

¹ In addition to seizing assets to make reparations to customers, the courts' authority and ability to impound moving company assets, i.e., moving trucks, is critical to enforcing a cease and desist order.

bring defendants into compliance quickly with court orders. While the Public Utilities Code offers the Commission many enforcement tools, the sanctions inherent in a sheriff and a jail are not among them. Consequently, we find that Commission staff's use of the courts to be an efficient and effective means to enforce household goods carrier law and regulations. We fully support and encourage these continued efforts, particularly in the case of recalcitrant moving firms that continue to harm California consumers.

We also recognize that not all household goods carrier violations require the full coercive authority of the civil and criminal courts to bring about compliance. Commission staff can and should exercise their prosecutorial discretion to determine which forum offers the best means to accomplish enforcement goals.

In presiding over any enforcement proceeding, the assigned Commissioner and ALJ will also consider judicial economy in managing the proceeding here. Duplicative proceedings unnecessarily consume enforcement resources and could lead to inconsistent results. Generally, we will rely on the criminal and civil courts where the characteristics of the respondents indicate that significant coercive authority is needed to effectively and efficiently protect consumers. We will manage any companion proceeding here at the Commission to complement the judicial proceeding. Where the facts require, and staff has selected the civil or criminal courts, we will not expend additional Commission resources in a duplicate proceeding here.

The Court Proceeding and This OII

Most of the allegations set out in the OII were apparently also included in the court proceeding. In fact, only two alleged violations² by VIP Relocation, Inc., appear not to have been included in the Superior Court complaint. In the OII, Commission staff's allegations against All State Moving and Storage, Inc., and Washington Mini-Storage, Inc., all predate the October 10, 2003, Court complaint against those parties. Even the Commission staff's two alleged violations of law by VIP Relocation, Inc., and its officers, Israel Lerner and Kfir Cohen, implicate the Court order because Lerner is also an officer of All State Moving and Storage. Any allegations that Lerner offered household goods moving services without a valid permit after November 19, 2003, would also imply violations of the court preliminary injunction.

All respondents, other than VIP Relocations, Inc., and Cohen, are subject to the court complaint and preliminary injunction. To the extent the other respondents have provided moving services, those respondents would appear to be in violation of the preliminary injunction. The alleged frequency and duration of these violations support Commission staff's choice in 2003 to pursue court sanctions as direct coercive actions may be necessary to bring these respondents into compliance.

As provided in the OII, Commission staff alleges that VIP Relocation, Inc., has committed one violation of § 5133, conducting household goods carrier operations without a permit, and one violation of § 5245 and Item 108 of MAX 4 by issuing verbal estimates, issuing written estimates without visual inspection

² Out of a total 1,217 alleged violations.

of the goods to be moved, and charging customers in excess of estimates issued. Pursuant to § 5313.5 the maximum fine for one violation of § 5133 is \$5,000, and § 5313 imposes a maximum fine of \$500 for the violation of § 5245 and MAX 4. Although these violations occurred subsequent to filing the complaint in superior court, these violations are related to the violations alleged in the complaint. Respondent Lerner is also a defendant in the court complaint, and subject to the preliminary injunction. VIP Relocation may be just another corporate shell used by the court defendants in furtherance of their long-standing disregard of the Household Goods Carrier Act.

In sum, the vast majority of the violations alleged by Commission staff are currently included in the pending court complaint, and the others are closely related. The respondents/defendants pattern of alleged violations suggests that prompt and forceful coercive actions are necessary to protect California consumers. Thus, we observe that the courts could provide a quicker and more efficient forum to enforce the Household Goods Carrier Act against these respondents, and also obviate the duplication of fact-finding and possible inconsistent results inherent in two proceedings, one in the administrative forum and the other in the Superior Court.³

Pending Permit Application (T-189,909)

VIP Relocation, Inc., submitted an application for a household goods carrier permit, which is currently pending before the Commission. Commission

³ As stated above, where the Commission staff has selected the judicial forum to pursue respondents, we will not engage in a duplicative proceeding here, absent extraordinary circumstances.

staff is concerned that respondent Lerner, the president of VIP Relocation, Inc., may continue his alleged pattern of violating the Household Goods Carrier Act.

Until Commission staff's allegations are adjudicated, these allegations cannot form the basis for denying the permit. Similarly, however, we are in no position to grant the permit with these outstanding allegations.

Thus, it appears that resolving the application should await adjudication of the alleged violations.

Prehearing Conference (PHC)

To address the issues set out above, as well as any other matters, a PHC is scheduled for Tuesday, October 5, 2004, at 10:00 a.m., in the Commission Courtroom, State Office Building, 505 Van Ness Avenue (at McAllister), San Francisco, California. The parties should be prepared to discuss these issues.

IT IS SO RULED.

Dated September 23, 2004, at San Francisco, California.

/s/ GEOFFREY F. BROWN

Geoffrey F. Brown
Assigned Commissioner

/s/ MARIBETH A. BUSHEY

Maribeth A. Bushey
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Assigned Commissioner's and Administrative Law Judge's Ruling Setting Out Preliminary Issues and Scheduling Prehearing Conference on all parties of record in this proceeding or their attorneys of record.

Dated September 23, 2004, at San Francisco, California.

 /s/ FANNIE SID
Fannie Sid

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074 or TTY# 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.