

PUBLIC UTILITIES COMMISSION505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

October 29, 2001

CA-8
11/29/2001

TO: PARTIES OF RECORD IN APPLICATION 01-06-030

This is the draft decision of Administrative Law Judge (ALJ) Bushey. It will be on the Commission's agenda at the next regular meeting 30 days after the above date. The Commission may act then, or it may postpone action until later.

When the Commission acts on the draft decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the draft decision as provided in Article 19 of the Commission's "Rules of Practice and Procedure." These rules are accessible on the Commission's website at <http://www.cpuc.ca.gov>. Pursuant to Rule 77.3 opening comments shall not exceed 15 pages. Finally, comments must be served separately on the ALJ and the assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

/s/ LYNN T. CAREWLynn T. Carew, Chief
Administrative Law Judge

LTC:sid

Attachment

Decision **DRAFT DECISION OF ALJ BUSHEY (Mailed 10/29/2001)****BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Application of Robert Charles
Torres, Jr., dba Split Second Enterprises for a
Household Goods Carrier Permit.

Application 01-06-030
(Filed June 15, 2001)

OPINION GRANTING PERMIT**I. Introduction**

In this decision, we grant Robert Charles Torres, Jr., doing business as Split Second Enterprises, Inc. (Torres or applicant), a Household Goods Carrier Permit.

II. Background

On September 2, 1993, Torres submitted his first application for a Household Goods Carrier Permit. Torres certified in writing that he had not been convicted of a felony or a crime of moral turpitude. At that time, Commission staff did not obtain fingerprints and did not conduct a criminal background check. Torres was subsequently issued Permit Number T-178,452.

In February 2000, Torres applied to transfer his permit to a corporation, Split Second Enterprises, Inc. Torres is president and part owner of the corporation. As with the first application, Torres certified in writing that he had not been convicted of a felony or crime of moral turpitude. As a new part of the application process, however, the Commission staff obtained his fingerprints and conducted a criminal background check.

Although unrelated to the application process, on May 8, 2000, the Commission revoked Torres' permit due to failure to maintain with the Commission evidence of liability and cargo insurance.

On September 13, 2000, the Director of the Consumer Services Division (CSD) wrote Torres that CSD had discovered that Torres had been convicted of a series of misdemeanors and one felony, all prior to 1992. Based on these convictions and Torres' failure to disclose it on his application, CSD refused to issue a permit to Torres.

On June 15, 2001, Torres filed this formal application seeking a Household Goods Carrier Permit from the Commission. On July 23, 2001, CSD filed a protest to the application stating that Torres' criminal history and his failure to disclose it demonstrated a lack of fitness for such a permit, as well as the current revocation of his existing permit. As documented by CSD, Torres' convictions are set out in Attachment A. The assigned Administrative Law Judge ordered Torres to file a response to the allegations contained in CSD's protest.

On August 29, 2001, Torres filed his response. Torres stated that he had all required insurance in place at all times. He had submitted the insurance documentation to the Commission as required but, pursuant to the staff's direction, had indicated that the insurance was for the new corporation, Split Second Enterprises, Inc., not Torres as an individual. Consequently, Torres appeared to lack insurance, with the resulting revocation of his permit. To support his contentions, Torres submitted a copy of an insurance certificate in his name, stamped filed with the Commission on February 11, 2000, as well as a copy of a revised form in the name of Split Second Enterprises, Inc. stamped filed with the Commission on March 6, 2000.

Torres also explained that he has a history of drug abuse, but that many years ago he successfully completed a treatment program.

In his response, Torres also stated that an attorney had represented him with regard to his criminal convictions, and the attorney had assured him that his record had been expunged. Torres stated that it was his belief that his record had been expunged, which was why he believed he would successfully pass fingerprinting and a criminal background check.

III. Need for Hearing

CSD's evidence consists of Torres' criminal record, which Torres has not disputed. Based on the record, we conclude that there are no disputed issues of material fact between these parties, and that a public hearing is not necessary. As no hearing is required, and pursuant to Rule 6.6 of the Commission's Rules of Practice and Procedure (Rules), Article 2.5 of the Rules ceases to apply to this proceeding.

IV. Discussion

Pursuant to § 5135, this Commission may deny a Household Goods Carrier permit "if it is shown that an applicant . . . has committed any act constituting dishonesty or fraud; committed any act which, [if] committed by a permitholder would be grounds for a suspension or revocation of the permit; misrepresented any material fact on the application; or, committed a felony, or crime involving moral turpitude." CSD presented undisputed evidence that this applicant: (1) was convicted of misdemeanors and a felony, and (2) failed to disclose the convictions on his application. CSD also argued that Torres' application should be denied because his prior permit had been revoked due to failure to maintain insurance coverage.

CSD contends that Torres' criminal history is similar to that of the applicant in Application of Porter, Decision (D.) 98-02-100. There the applicant had been convicted of second-degree burglary and assault with intent to rape 16 years prior to applying for authority to operate as an Energy Service Provider. The Commission concluded that the convictions were "not substantially related to the qualifications of a licensee." The Commission went on, however, to consider the applicant's subsequent compliance with the law. Since the convictions, Porter had been convicted of a misdemeanor charge of prostitution, and had multiple convictions for driving with a suspended license. At the time of his application to the Commission, there was an outstanding bench warrant for his arrest for failure to perform community service ordered for his latest conviction for driving with a suspended license. Based on this history, the Commission concluded that Porter's failure to comply with the court orders showed a lack of responsibility, and that Porter was not amenable to regulation.

In contrast to Porter's criminal history, Torres' criminal history ends in 1991, a decade ago. Torres stated that he overcame his problems with drugs through rehabilitation, and has been providing moving service in compliance with applicable law and regulations since 1993. CSD has not shown any pattern of criminal acts by Torres that is analogous to the pattern exhibited by Porter. Indeed, other than these decade-old convictions, Torres' conduct (including his successful provision of moving service for over eight years) demonstrates a pattern of compliance with the applicable laws and regulations of this State. Therefore, we find that Porter and Torres are distinguishable.

CSD offers two reasons supporting its position that the application should be denied based on Torres' failure to disclose his convictions on his application. First, CSD states that such convictions would be grounds to revoke a Household

Goods Carrier Permit. Because the application requires disclosure of any act that would be grounds for revocation, CSD concludes that Torres was required to disclose the conviction. CSD's second argument for denying Torres' application due to his failure to disclose his convictions is that Torres has committed an act of dishonesty and misrepresented a material fact on his application by omitting the convictions. While we agree that at least some of Torres' convictions would meet the requirements for disclosure, Torres has explained his belief that his criminal record had been expunged. Moreover, Torres has been providing the very services for which he now seeks operating authority (in a different organizational structure) for over eight years in compliance with this Commission's regulations.

In sum, based on the particular facts of this case, we find that Torres' decade-old criminal convictions are not sufficient to render him otherwise unfit to receive a Household Goods Carrier Permit.

We will grant Robert Charles Torres, Jr., doing business as Split Second Enterprises, Inc. a Household Goods Carrier Permit.

V. Comments of Draft Decision

The draft decision of Administrative Law Judge Maribeth Bushey in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed on _____, and reply comments were filed on _____.

Findings of Fact

1. No hearing is necessary.
2. Torres was convicted of a series of misdemeanors and one felony, all prior to 1992, as set out in Attachment A, and he did not disclose these convictions on his application for a Household Goods Carrier Permit.

3. CSD has not presented any evidence of subsequent criminal convictions.

4. Torres' criminal history is not analogous to the criminal history at issue in D.98-02-100.

5. Other than Torres' criminal history and failure to disclose it, CSD has not disputed that Torres meets our qualifications for Household Goods Carriers.

6. Torres believed that his criminal record had been expunged.

7. Torres is president and part owner of Split Second Enterprises, Inc.

Conclusions of Law

1. Article 2.5 of the Commission's Rules of Practice and Procedure ceased to apply to this proceeding.

2. Pursuant to Pub. Util. Code § 5135, this Commission may refuse to issue a Household Goods Carrier permit "if it is shown that an applicant . . . has committed any act constituting dishonesty or fraud; committed any act which, [if] committed by a permitholder would be grounds for a suspension or revocation of the permit; misrepresented any material fact on the application; or, committed a felony, or crime involving moral turpitude."

3. In the context of the facts of this application, Torres' decade-old criminal convictions are not sufficient grounds to deny a Household Goods Carrier Permit.

4. Torres meets our fitness requirements for Household Goods Carriers.

5. We should grant applicant a Household Goods Carrier Permit pursuant to § 5135, effective immediately.

O R D E R

IT IS ORDERED that:

1. The Commission's Rail Safety and Carriers Division shall issue a Household Goods Carrier Permit to Robert Charles Torres, Jr., doing business as Split Second Enterprises, Inc. upon its receipt of any additional information or documents that may be needed to satisfy the requirements of the Household Goods Carriers Act or Commission regulations.

2. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.

ATTACHMENT A**Page 1**

February 13, 1991	Misdemeanor, burglary; sentenced to 36 months probation, 60 days jail
December 14, 1990	Misdemeanor, disobeying court order / process, illegally entering a noncommercial dwelling, vandalism; sentenced to 36 months probation, 20 days in jail
May 23, 1990	Misdemeanor, giving false identification to a peace officer; sentenced to 20 days jail
June 8, 1989	Misdemeanor, possession of a controlled substance; sentenced to 36 months probation; 275 days jail, suspended
May 24, 1988	Misdemeanor, giving false identification to peace office; sentenced to 12 months probation and four days jail
August 3, 1987	Misdemeanor, use and under influence of specified controlled substance, possession of controlled substance paraphernalia, possession of hypodermic needle / syringe; sentenced to 45 days jail
April 30, 1985	Misdemeanor, false identification to peace office, 36 months probation, five days jail
January 12, 1984	Felony, robbery; five years imprisonment, later resentenced to three years prison
August 3, 1983	Misdemeanor, grand theft of an automobile; sentenced to 36 months probation, 90 days jail

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March 4, 1982	Misdemeanor, misuse of needle or syringe; sentenced to 36 months probation, 13 days jail
July 2, 1982	Misdemeanor, receipt of known stolen property; sentenced to 36 months probation, six months jail
August 14, 1981	Misdemeanor, grand theft from person; sentenced to 36 months probation, 30 days jail

(END OF ATTACHMENT A)