

## 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 Fan Ding (aka Ding Fan or Lisa Ding), an individual doing business as Lucky Moving Co., Lucky Movers, Jixiang Moving Co., Northam Immigration Services, and Northman Immigration Service,

Applicant/Respondent.

**FILED**  
**PUBLIC UTILITIES COMMISSION**  
**JULY 8, 2004**  
**SAN FRANCISCO**  
**I.04-07-003**

**ORDER INSTITUTING INVESTIGATION AND ORDER**  
**TO SHOW CAUSE WHY RESPONDENT'S APPLICATION**  
**SHOULD NOT BE DENIED WITH PREJUDENCE**

The California Public Utilities Commission (Commission) is the agency responsible for regulating the intrastate transportation of used household goods, personal effects and furniture, pursuant to Article XII of the California Constitution, the Household Goods Carriers' Act (Act) (Public Utilities Code §§ 5101 et seq.),<sup>1</sup> the Commission's Maximum Rate Tariff 4 (MAX-4), and Commission General Orders (GOs) 100-M, 136-C, 142, and others. These statutes and regulations require, among other things, that household goods carriers operate only in a responsible manner in the public interest; procure, continue in effect, and maintain on file adequate proof of public liability/property damage, cargo, and workers' compensation insurance; and observe rules and regulations governing: (1) acknowledging and handling claims for loss and damage, (2) issuing

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<sup>1</sup> Unless otherwise noted, all statutory references are to the California Public Utilities Code.

estimates, (3) executing and issuing documents, (4) training and supervising employees, (5) maintaining equipment and facilities, and (6) rates and charges. The Commission is the primary agency responsible for enforcing these and other statutes and regulations governing household goods carriers. These other statutes and regulations include general consumer protection and public safety provisions of other California Codes such as theft, fraud, bait-and-switch, unfair and unlawful business practices and unsafe or unlawful operation of vehicles.

We have directed the Consumer Protection and Safety Division (formally in D. 92-05-028) to use all tools at its disposal to enforce the laws and regulations against illegal operations – both carriers operating without a permit, and permitted carriers not in compliance with the law, and our rules and regulations – and to bring cases to district attorneys and us for prosecution as appropriate. In response to our directives, staff has brought such investigative proceedings before us as Starving Students [I. 92-11-029], Best Move [I. 91-11-002], Nice Jewish Boy/Father and Son [I. 90-12-010], Reginald Duncan [I. 90-09-009], Dave's Quality Movers [I. 91-10-011], Ronald Zammito [I. 91-01-011], and Harrington Brothers, Inc. [I. 94-03-022], Arnold Baeza dba Best Movers [I. 01-06-021], All America Express Moving and Storage [I. 02-09-001] and Affordable Apartment Movers [I. 01-11-052] – cases with patterns of aggravated violations.

Consumer Protection and Safety Division (CPSD) investigators (Staff) advise us, through the declarations supporting the initiation of this investigatory proceeding, that, as part of the permit application process, it conducted a review of this applicant. Staff became aware of unlawful operations and advertising for moving services by Respondent Fan Ding and Lucky Moving Co. et al. Staff then initiated an investigation into the business practices of Fan Ding dba Lucky Moving Co., Lucky Movers, Jixiang Moving Co., Northam Immigration Services, and Northman Immigration Service (hereinafter LUCKY), CPUC File T-189,546, which operates a moving business in San Francisco County. Staff's investigation of LUCKY found numerous alleged violations of the Household Goods Carriers' Act and Commission rules and regulations, including

operations and advertising during an extended period when it neither had public liability, cargo or workers' compensation insurance on file, nor a permit from the Commission authorizing those operations. Although LUCKY has filed an application for operating authority on three separate occasions, most recently February 27, 2004, it failed to meet the requirements for a household goods carrier (HHG) permit.

## **I. ENFORCEMENT HISTORY**

### **A. Temporary Restraining Order, Preliminary Injunction, Case No. 04-428873 Superior Court, County of San Francisco**

On February 18, 2004, Commission staff filed a complaint for temporary restraining order, preliminary injunction, permanent injunction, and action for recovery of civil penalties in the Superior Court of the City and County of San Francisco. A hearing was held on March 11, 2004, in which the PUC was granted a temporary restraining order (TRO). Staff reports that LUCKY has since violated this restraining order by providing a rate quote for a move on a sting call conducted by staff on April 8, 2004. Staff prepared and filed a Declaration with the court on April 8, 2004. Further hearing was held on April 12, 2004, in which the court noted LUCKY's violation of terms of the TRO and issued the preliminary injunction, which provides that during the pendency of the civil action, the defendant is restrained and enjoined from operating or advertising as a household goods carrier within the State of California, until such time she has been granted a permit duly issued by the California Public Utilities Commission. The Preliminary Injunction bars the defendant from operating without a license. Defendant Fan Ding, along with her Counsel Peter Chao, Attorney at Law, appeared.

## **II. LICENSE HISTORY**

### **A. Application for a Household Goods Permit as an Individual (T-189,546)**

On March 21, 2002, Fan Ding (aka Ding Fan or Lisa Ding), an individual doing business as (dba) Lucky Moving Company, 471 Milton Avenue, San Bruno, CA 94066, filed an Application for a Household Goods Carrier Permit with the Commission

License Section under File Number T-189546. On August 2, 2002, License Section denied Fan Ding's application for failure to file evidence of public liability, cargo and workers' compensation insurance coverage, to supply required documents, and to successfully complete the required MAX 4 examination. A Notice of Denial of Application was mailed to Fan Ding's address of record.

On August 27, 2002, Fan Ding submitted a re-file application for a Household Goods Carrier permit. The application listed the carrier's business and mailing address as 2562 Noriega Street, #203, San Francisco, CA. On September 26, 2002, Chi Jiang Zhong appeared in License Section as the "Qualified Employee" of Lucky Moving Co. to take the required written MAX 4 examination. Mr. Zhong failed to obtain a passing score, thereby demonstrating Lucky Moving's lack of knowledge to engage in the moving business. On October 29, 2002, Mr. Zhong appeared to retake the examination. Prior to being seated to take the exam, Mr. Zhong was directed that he may not use a cellular telephone during the exam. Despite staff's warning, Mr. Zhong was twice observed using a cellular telephone during the examination. Thus, License Section immediately disqualified Mr. Zhong and barred him from taking future exams on behalf of Lucky Moving. On February 20, 2003, License Section denied this second application for the same reasons that the first application was denied.

On February 27, 2004, Fan Ding submitted a third re-file application for a Household Goods Carrier permit. This third application also listed the carrier's business and mailing address as 2562 Noriega Street #203, San Francisco, CA 94122. The application did not identify an individual's name designated to take the MAX 4 examination prescribed by the Commission and required by Public Utilities Code Section 5135.

The Commission License Section mailed two notices dated March 15, and April 14, 2004, to Fan Ding informing her that the application cannot be further processed pending the following:

- A designated qualifier to take and pass the MAX 4 examination,

- Evidence of adequate public liability, cargo and workers' compensation insurance coverage,
- Completion and/or submission of required documents, and
- Submission of fingerprints as part of the required background check.

The notices further informed Fan Ding that failure to respond, or furnish necessary documents or information, may result in denial of the application. The application is currently pending.

### **III. THE INVESTIGATION**

Following is a summary of the staff's findings and the alleged violations. The Staff informs us that it opened its investigation into the practices of LUCKY because of continued unlawful advertising and operations as a household goods carrier. According to staff, these unlawful activities occurred over a period of 552 days (July 23, August 8, August 29, September 12, and September 24, 2002, and November 1, 2002 through April 30, 2004), and continued even after the denial of the respondent's application on August 2, 2002 and February 20, 2003. Staff alleges LUCKY falsely held herself out to the public as a licensed mover by including unauthorized permit numbers in Yellow Pages Directories and newspaper advertisements. Staff warned this operator to cease and desist all unlawful advertising and operations as a mover without the required permit in four (4) letters dated May 24, August 20, and September 4, 2002, and September 26, 2003. Notwithstanding directives issued by CPSD's staff to cease and desist, LUCKY continued to violate the statutory and regulatory schemes applicable to household goods carriers. LUCKY conducted, or attempted to conduct moves after its application was denied and during the pendency of the application. Moreover, LUCKY has not filed evidence of adequate public liability, cargo or workers' compensation insurance with the Commission. On February 18, 2004, CPSD filed a complaint in San Francisco Superior Court to enjoin the defendant's unlicensed moving business. On April 12, 2004, the court issued the Preliminary Injunction enjoining the defendant from operating or advertising as a household goods

carrier. These documents are included with CPSD Declarations supporting issuance of this order.

### **1. Fitness Issues**

Public Utilities Code Section 5135 (e) provides that “The commission may refuse to issue a permit if it is shown that an applicant or an officer, director, partner or associate thereof has committed any act constituting dishonesty or fraud; committed any act which, committed by a permit holder 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.” Staff states its investigation disclosed the Respondent fraudulently displayed a permit number belonging to another licensed mover in its advertisements. LUCKY also displayed the Better Business Bureau (BBB) logo in its advertising, falsely convening to the public its status as a licensed mover and member of the BBB.

### **2. Advertising Without a Permit in Force**

According to Sections 5139 and 5314.5, every corporation or person who knowingly and willfully causes or permits the issuance, publishing of any oral or written advertisement of household goods carrier operations to the public without a valid permit, is guilty of a misdemeanor punishable by a fine of not more than one thousand dollars (\$1,000). Respondent LUCKY advertised household goods carrier services to the public for a total of 552 days (July 23, August 8, August 29, September 12, September 24, 2002, and November 1, 2002 through April 30, 2004.) Section 5315 states that every violation of the Household Goods Carriers’ Act is a separate and distinct offense, and in case of a continuing violation, each additional day is a separate and distinct offense. Section 5314.5 authorizes \$1,000 fine per violation; at 552 alleged violations, Respondent could be liable for a total fine of \$ 552,000.

### **3. Operating Without Proper Insurance Coverage**

According to Sections 5135.5, 5139 and 5161, and Commission General Orders (GOs) 100-M and 136-C, a carrier must maintain inter alia workers' compensation, public liability and property damage, and cargo insurance coverage in effect and on file with the Commission. In this case, Respondent LUCKY failed to maintain the required insurance coverage for a total of 552 days (July 23, August 8, August 29, September 12, September 24, 2002, and November 1, 2002 through April 30, 2004). Section 5313 authorizes \$500 fine per violation; at 552 alleged violations, Respondent could be liable for a total fine of \$276,000.

### **4. Operating Without Permit in Force**

According to Section 5133, no household goods carrier shall engage, or attempt to engage, in the business of transportation of used household goods by motor vehicle over the public highways in this State without a permit in force issued by the Commission authorizing those operations. Respondent LUCKY conducted household goods operations for a period of 552 days (July 23, August 8, August 29, September 12, September 24, 2002, and November 1, 2002 through April 30, 2004). Section 5315 provides every violation of the Household Goods Carriers' Act is a separate and distinct offense. In case of a continuing violation, each additional day is a separate and distinct offense. Section 5313 authorizes \$500 fine per violation; at 552 alleged violations, Respondent could be liable for a total fine of \$276,000.

### **5. Relationships With The Public**

According to Section 5139 and Commission Maximum Rate Tariff No. 4, household goods carriers are required to observe specified consumer protection regulations. Item 88 of MAX 4, "Relationships With The Public" reads, in part:

Printed advertising matter, including hand bills, newspaper advertising, and classified telephone directory listings and advertisements which advertise or solicit the intrastate movement of used household goods shall show the household goods carrier's "T" number as issued by the Commission. The

number shall be printed in this manner. "CAL. P.U.C. T-\_\_\_\_."

Carriers shall not, in any manner, misrepresent their rates nor the scope of services offered to the public. Specifically, carriers shall:

(a) Not advertise or otherwise represent themselves under any name different from that under which their effective permits are issued by the Commission.

LUCKY displayed an unauthorized permit number in its advertisements appearing in two major San Francisco area Chinese newspapers, the *Sing Tao Daily* and *World Journal*, on June 2 and July 3, 2003. Staff determined the permit number displayed in LUCKY's advertisements belongs to another licensed mover. Staff contacted this mover who confirmed he neither placed the advertisements, nor authorized anyone the use of his household goods carrier permit number. Another LUCKY advertisement, which appeared in the SBC San Francisco Yellow Pages directory, 2003 issue, displayed the Better Business Bureau (BBB) logo. Staff confirmed with BBB stated that Lucky Moving is not a member of their organization. Section 5313 authorizes \$500 fine per violation; at two (2) alleged violations, Respondent could be liable for a total fine of \$1,000.

#### **IV. DISCUSSION**

The Commission exercises continuing oversight of a carrier's fitness. Public Utilities Code § 5285 authorizes the Commission, upon complaint or on the Commission's own initiative and after notice and opportunity to be heard, to suspend, change, or revoke a permit for failure of the carrier to comply with any of the provisions of the Act, or with any order, rule, or regulation of the Commission, or with any term, condition, or limitation of the permit. Section 5139 gives the Commission power to establish rules for the performance of any service of the character furnished or supplied by household goods carriers.

We place tremendous trust in household goods carriers in granting them operating authority, a trust equaled by that of our citizens who tender their most personal

and treasured belongings to movers. This carrier's alleged pattern of violations, operating without a permit in force, failing to file evidence of public liability, cargo, or workers' compensation insurance, advertising moving services without a valid household goods carrier permit in force, continuing such advertising and operations after staff directives to cease all such unlawful activity, and after issuance of a Temporary Restraining Order from the court directing it to cease all unlawful advertising and operations as a mover without the required permit from the Commission, alarms us.

Before issuing a permit, the Commission reviews the fitness of household goods carriers. A fundamental measure of the fitness of a household goods carrier holding a permit issued by the Commission is compliance with statutes and regulations applicable to household goods carriers.

Section 5135 provides, in part, that:

The commission may refuse to issue a permit if it shall be shown that an applicant or an officer, director, partner or associate thereof has committed any act constituting dishonesty or fraud; committed any act which, committed by a permit holder would be grounds for a suspension or revocation of the permit; misrepresented any material fact on his application; or, committed a felony, or crime involving moral turpitude.

The commission shall issue a permit only to those applicants who it finds have demonstrated that they possess sufficient knowledge, ability, integrity and financial resources and responsibility to perform the service within the scope of their application.

Respondent should recognize that the Consumer Protection and Safety Division's allegations described herein are grave and, if substantiated through hearing, may well constitute grounds for denial for cause of Respondent's application for operating authority and/or other appropriate sanctions and remedies.

It appears that Respondent may have:

1. Violated § 5314.5 of the Public Utilities Code by advertising and holding out to the public that it is in operation as a household goods carrier, without a valid permit issued under Chapter 7 of the Public Utilities Code;

2. Violated § 5139 and 5161 of the Public Utilities Code and GO 100-M by failing to procure, and to continue on file and in effect while conducting operations as a household goods carrier, adequate protection against liability, as imposed by law upon carriers;

3. Violated § 5139 and 5161 of the Public Utilities Code and GO 136-C by failing to procure, and to continue on file and in effect while conducting operations as a household goods carrier, adequate cargo insurance, as imposed by law upon carriers;

4. Violated § 5135.5 of the Public Utilities Code by failing to procure, and to continue on file and in effect while conducting operations as a household goods carrier, adequate workers' compensation insurance coverage for its employees, as imposed by law upon carriers;

5. Violated § 5133 of the Public Utilities Code by conducting operations as a household goods carrier without a permit in force from the Commission authorizing those operations;

6. Violated §§ 5135, 5139 and Item 88 of MAX 4 by falsely displaying the permit number of another household goods carrier in its advertising;

7. Demonstrated lack of fitness to hold operating authority under Section 5135 of the Public Utilities Code by a pattern of continuing violations over an extended period, of provisions of the Public Utilities Code, Commission regulations and orders of the court applicable to household goods carriers and its operations.

**IT IS ORDERED** that:

1. An investigation on the Commission's own motion is instituted into the operations and practices of Respondent Fan Ding (aka Ding Fan or Lisa Ding) dba Lucky Moving Company, Lucky Movers, Jixiang Moving Co., Northam Immigration Services, and Northman Immigration Service. A public hearing on this matter shall be held

expeditiously before an Administrative Law Judge (ALJ) at a time and date to be set at the prehearing conference. At the hearing, Respondent shall appear and show cause why its pending application for a household goods carrier permit under File No. T-189,546 should not be denied for cause and lack of fitness in view of the above listed allegations made by Staff, assuming the allegations are proven at the hearing, and/or other sanctions imposed.

2. During the pendency of this investigation, it is ordered that Respondent Fan Ding (aka Ding Fan or Lisa Ding) dba Lucky Moving Company, Lucky Movers, Jixiang Moving Co., Northam Immigration Services, and Northman Immigration Service shall cease and desist from any violations of the terms of the Preliminary Injunction in Case No. 04-428873 granted by the Superior Court in San Francisco on April 12, 2004, in connection with household moves, the Household Goods Carriers' Act, including Maximum Rate Tariff 4 and General Order 100-M.

3. The Consumer Protection and Safety Division staff, if it elects to do so, may present additional evidence beyond that described in the declaration issued with this order, either by testimony or through documentation, bearing on the operations of Respondent and any new advertising of moving services to the public.

4. Scoping Information: This paragraph suffices for the "preliminary scoping memo" required by Rule 6 (c).

This enforcement proceeding is adjudicatory, and, absent settlement between staff and Respondent, will be set for evidentiary hearing. A hearing may also be held on any settlement for the purpose of enabling parties to justify that it is in the public interest or to answer questions from the ALJ about settlement terms. A prehearing conference will be scheduled and held within 40 days and hearings will be held as soon as practicable thereafter. Objections to the OII may be filed but must be confined to jurisdictional issues, which could nullify any eventual Commission order on the merits of the issues concerning violations of statutes, rules, regulations or orders.

5. Respondent is hereby placed on notice that if staff's allegations are proven during the evidentiary hearing, the Commission may impose fines and penalties according to that which is authorized by law. The Executive Director shall cause a copy of this order and the staff declarations to be served by certified mail upon Respondent Fan Ding dba Lucky Moving Company, Lucky Movers, Jixiang Moving Co., Northam Immigration Services, and Northman Immigration Service, 2562 Noriega Street #203, San Francisco, CA 94122. A copy of this order and the staff declarations shall also be sent by certified mail to Peter Chao, Attorney at Law, Chao & Lopez, Counsel for Respondent Fan Ding, 807 Montgomery Street, San Francisco, CA 94133.

This order is effective today.

Dated July 8, 2004, at San Francisco, California.

MICHAEL R. PEEVEY  
President  
CARL W. WOOD  
LORETTA M. LYLNCH  
GEOFFREY F. BROWN  
SUSAN P. KENNEDY  
Commissioners