

Decision 05-01-052 January 27, 2005

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)

**INTERIM OPINION APPROVING SETTLEMENT AGREEMENT
WITH CERTAIN RESPONDENTS**

Summary

This decision approves a settlement agreement¹ among the Commission's Consumer Protection and Safety Division (CPSD) and respondents Israel Lerner, and VIP Relocation, Inc. (VIP Relocation). The agreement requires Lerner and

¹ The settlement agreement is Attachment A to today's decision.

VIP Relocation to pay restitution to past customers and a fine for past unlawful operations. Pursuant to the settlement agreement, CPSD will support VIP Relocation's application for a household goods carrier permit. The settlement agreement has no effect on respondents other than Lerner and VIP Relocation.

Background

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

On October 5, 2004, the Assigned Commissioner and Administrative Law Judge (ALJ) convened a prehearing conference. Respondent Lerner, representing himself personally and VIP Relocation, appeared, but no other respondent filed an appearance or participated in any way.

At the prehearing conference, Lerner stated that he had terminated all affiliations with All State or Washington Mini-Storage, and that he understood and was willing to comply with the Commission's licensing requirements. Lerner also stated that he was willing to pay fines associated with his and VIP Relocation's past violations. Lerner also noted that VIP Relocation's application for a household goods carrier permit was pending before the Commission and he hoped that CPSD could support granting the application.

At the conclusion of the prehearing conference, CPSD and Lerner agreed to meet and confer regarding a possible settlement agreement resolving Lerner's and VIP Relocation's participation in this proceeding.

On December 2, 2004, CPSD, Lerner, and VIP Relocation submitted a joint motion seeking Commission approval of a settlement agreement resolving Lerner's and VIP Relocation's participation in this proceeding.

Description of the Settlement Agreement

The settlement agreement provides for a fine, restitution to customers illegally charged, and a one-year probation period, each of which is discussed in more detail below. Lerner and VIP Relocation also agree to remain in full compliance with all applicable household goods carrier law and regulations. Finally, CPSD supports granting VIP Relocation's pending application, MTR 189909, for a household goods carrier permit.

Pursuant to the settlement agreement, Lerner and VIP Relocation, jointly and severally, agree to pay a fine of \$20,000. If, however, they comply with the settlement agreement for one year, then \$18,000 of the fine shall be permanently stayed, with the remainder, \$2,000, due and payable one year from the effective date of the Commission's approval. If Lerner and VIP Relocation do not comply with the terms of the settlement agreement, then the entire \$20,000 shall be due and payable immediately.

Lerner and VIP Relocation will also pay a total of \$11,845 in restitution to eight persons who have submitted declarations of overcharges and loss or damage, and which have been included in the record in this proceeding. Such payments shall take place according to the schedule set out in the settlement agreement.

During the one-year period following the Commission's approval of the settlement agreement, the settlement agreement provides that Lerner and VIP Relocation will be on probation. During this time, Lerner and VIP Relocation must file quarterly reports setting forth a summary of all customer complaints received and the resolution of the complaints.

Settlement Criteria

The Commission evaluates proposed settlement agreements pursuant to the standards set forth in Rule 51.1(e) of the Commission's Rules of Practice and Procedure (Rules). Those standards require that the "settlement is reasonable in light of the whole record, consistent with law, and in the public interest." Each standard will be separately considered below.

On the record, Lerner and VIP Relocation state that they have ceased violations of the household goods carrier regulations, and that they are willing to pay penalties for past unlawful acts. The settlement agreement provides a schedule for restitution to former customers, and for paying a fine. To demonstrate that Lerner and VIP Relocation continue compliance, the settlement agreement also requires Lerner and VIP Relocation to provide quarterly reports to CPSD during a one-year probationary period. In the joint motion, the parties state that the agreement is "reasonable in that it penalizes Respondents for illegal operations, deters future illegal operations, and brings Respondents into compliance."

We agree. By becoming a licensed household goods carrier, Lerner and VIP Relocation will be required to comply with detailed law and regulations designed to protect consumers. Future unsatisfied customers, if any, will be able to rely on our complaint process to resolve disputes with Lerner and VIP Relocation. The fine creates a significant financial incentive against future illegal operations. Finally, restitution to previously wronged customers is a high priority in our enforcement efforts. Having considered the record of this proceeding, we conclude that the settlement agreement reasonably resolves the issues and furthers our enforcement objectives.

The settlement agreement is consistent with the law in that it requires Lerner and VIP Relocation to comply with the regulations applicable to household goods carriers. The amount of the fine, as well as the technique of staying a significant portion to entice compliance and restitution, is also consistent with previous decisions. (See, e.g., Affordable Apartment Movers, Decision 02-08-052.) The settlement agreement is, therefore, consistent with the law.

The joint motion contends that the settlement agreement is in the public interest because it both penalizes Lerner and VIP Relocation for operating illegally, which undermines a fair and competitive marketplace, and it brings another provider of lawful moving services into the marketplace. We note as well that it efficiently and expeditiously resolves these matters. We conclude that approving the settlement agreement is in the public interest.

Having found that the settlement agreement is reasonable in light of the record, consistent with the law, and in the public interest, we will approve the settlement agreement.

No Hearing Is Necessary

The record of the proceeding provides sufficient information for us to evaluate whether the settlement agreement meets our standards for approval. No factual issues require resolution. We conclude that no hearing is necessary.

Comments on Draft Decision

Pursuant to the stipulation between the parties, the draft decision of the ALJ in this matter was not mailed to the parties for comment.

Assignment of Proceeding

Geoffrey F. Brown is the Assigned Commissioner and Maribeth A. Bushey is the assigned ALJ in this proceeding.

Findings of Fact

1. The Commission initiated this proceeding in response to consumer complaints and CPSD's investigation.
2. Lerner and VIP Relocation were the only respondents to appear at the prehearing conference.
3. Respondents Lerner and VIP Relocation entered into a settlement agreement with CPSD, which resolved these respondents' participation in this proceeding.
4. VIP Relocation submitted Application MTR 189909 seeking Commission authorization to operate as a household goods carrier.
5. As provided in the settlement agreement, CPSD supports granting the authority sought in MTR 189909.
6. No hearing is necessary. All parties to the settlement agreement have waived their right to comment on the draft decision.

Conclusions of Law

1. The settlement agreement is an uncontested agreement as defined in Rule 51(f) and it satisfies the requirements of Rule 51(f).
2. The settlement agreement is reasonable in light of the whole record, consistent with law, and in the public interest.
3. The settlement agreement should be adopted.
4. The settlement agreement resolves the allegations in this proceeding against respondents Lerner and VIP Relocation.
5. Application MTR 189909 should be granted.
6. This decision should be effective immediately.

INTERIM ORDER

IT IS ORDERED that:

1. The settlement agreement among the Consumer Protection and Safety Division (CPSD), Israel Lerner, and VIP Relocation, Inc., is approved and adopted. The parties shall comply with all provisions of the settlement agreement.
2. CPSD shall issue a household goods carrier permit pursuant to Application MTR 189909 upon a showing that Applicant meets all the other requirements of the Household Goods Carriers Act.
3. This proceeding shall remain open to address the allegations against the other respondents.

This order is effective today.

Dated January 27, 2005, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
SUSAN P. KENNEDY
DIAN M. GRUENEICH
Commissioners

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)

SETTLEMENT AGREEMENT

The Parties to the Settlement Agreement (Agreement) are as follows

- CONSUMER PROTECTION AND SAFETY DIVISION (CPSD or STAFF) of the CALIFORNIA PUBLIC UTILITIES COMMISSION (CPUC)
- V.I.P. Relocation, Inc., a California Corporation
- Israel Lerner, President of V.I.P. Relocation, Inc.

I. INTRODUCTION AND BACKGROUND

Pursuant to Article 13.5 of the Commission Rules of Practice and Procedure, the Respondents named above and the Consumer Protection and Safety Division (CPSD) hereby agree to settle a portion (without having an evidentiary hearing), of Order Instituting Investigation (I.) 04-08-022. A summary of the background of this settlement follows:

- On April 18, 2002 the Commission License Section received an application for a households goods permit from All State Moving & Storage (“All State”). The corporate officers listed on the application are Jacob Sudai (President/Treasurer) and Israel Lerner (Secretary). The application listed the carrier’s business and mailing address as 13148 Raymer Street, North Hollywood, CA 91605.
- On October 21, 2002 Staff began investigating All State and Washington Mini-Storage (“Washington”) due to consumer complaints of overcharges and loss and damages.
- On February 28, 2003 the Commission denied All State’s license application for failure to file evidence of cargo insurance.
- On April 29, 2003 Staff met with Israel Lerner to discuss All State’s illegal moving activities. Mr. Lerner informed Staff that Prime Movers, All State and Washington were one and the same company.
- On May 15, 2003 the Commission received an application for a household goods permit from Israel Lerner, an individual doing business as V.I.P. Relocation. The application listed the carrier’s business and mailing address as 13148 Raymer Street, North Hollywood, CA 91605.
- On July 28, 2003 Staff conducted a sting call to Washington in Maryland. An employee answering the phone stated that the company also operated as Prime Movers, and forwarded Staff to the company’s

California office. The California office phone number was the same as the one All State to conduct unlawful moving.

- On October 10, 2003 Staff obtained a Temporary Restraining Order (TRO) against All State Moving and Washington Mini-Storage and its officers operating or advertising without a permit, in Los Angeles Superior Court proceeding BC303987.
- On November 19, 2003 Staff obtained a Preliminary Injunction in proceeding against All State Moving and Washington Mini-Storage and its officers operating or advertising without a permit, in Los Angeles Superior Court proceeding BC303987.
- On December 15, 2003 V.I.P.'s application for a household goods permit was denied for failure to file evidence of workers' compensation insurance.
- On June 14, 2004 the Commission received an application for a household goods permit from V.I.P. Relocation, Inc. The corporate officers listed on the application are Israel Lerner (President) and Kfir Cohen (Vice-President.) The Application is MTR 189909
- On August 19, 2004 the Commission voted out the Order Instituting Investigation (OII) in this proceeding. Staff declarations detailing extensive unlicensed household goods operations by Respondents were served along with the OII to all Respondents.
- On October 5, 2004 a Prehearing Conference was held in this proceeding. The only Respondent attending was Israel Lerner representing himself and V.I.P. Relocation, Inc. Mr. Lerner indicated that he was no longer affiliated with All State or Washington Mini-Storage, that he understood the Commission's licensing requirements, and that he would be willing to settle the portion of the OII involving

his activities with Staff in order to have Staff withdraw its opposition to V.I.P.'s application for a household goods permit being granted.

- On November 1, 2004 Staff member Suong Le, CPSD counsel Gregory Heiden and Israel Lerner held settlement discussions over the phone.
- On November 3, 2004 Staff served "Supplemental Prepared Testimony of Michael W. Nakasone on VIP Relocation, Inc." The report detailed extensive unlicensed activities by V.I.P. Relocation between December 20, 2003 and July 14, 2004, including eleven instances where Israel Lerner was admonished by Staff not to perform any moving services without a valid permit.
- On November 18, 2004 Staff member Suong Le, CPSD counsel Gregory Heiden and Israel Lerner held settlement discussions over the phone and came to an oral agreement on a settlement to be proposed to the Commission to resolve Mr. Lerner and V.I.P.'s participation in this proceeding.

In consideration of the mutual covenants contained in this Settlement, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

II. TERMS AND CONDITIONS

2.1 Fines. Respondents V.I.P. and Israel Lerner agree jointly and severally to a fine of \$20,000. Within one year of the Commission issuing a decision adopting and approving this Settlement, these Respondents will pay the Commission as a fine the amount of \$2,000. If Respondents remain in compliance with this Settlement, during the one year period of Probation, as defined below, the Commission will stay the remaining \$18,000 fine. If Respondents do not comply with the Settlement, the remaining \$18,000 will be due immediately. Payments must be in the

form of a cashier check made payable to the order of the Commission and delivered to CPSD Transportation Enforcement Supervisor, Suong T. Le, 505 Van Ness Ave, San Francisco CA 94102.

2.2 Permit. Respondents may not advertise or otherwise hold themselves out to the public or engage in business as a household goods carrier until the Commission has issued the Respondents a household goods carrier permit. CPSD supports the Commission granting Respondent's application (MTR 189909) as part of approval of this settlement.

2.3 Restitution. Respondents agree to make Restitution payments totaling \$11,845 to customers illegally charged by All State Moving, Prime Storage and their affiliated companies. These customers have filed declarations of overcharges and loss and damages with the Commission and are part of the record in this proceeding. The Restitution payments will be made in two installments, as specified below. The payments will be made by cashier checks payable to the individual shippers, and sent to the Commission. Commission staff will then forward the checks to the shippers with a cover letter of explanation.

2.3.1 The first installment of restitution payments will be due within 30 days of Commission adoption of this settlement agreement. The payments will consist of checks made out as following:

Harold Rawls:	\$4,838
Tina Masquelier:	\$300
Scott Arnold:	\$550
Yungandhar Kyasa:	\$200

2.3.2 The second installment of restitution payments will be due within 120 days of Commission adoption of this settlement agreement. The payments will consist of checks made out as following:

Jennie Gonzalez: \$3,000

Yaren Oren-Pines: \$1,383

Muriel Drakeford: \$574

Carol McPeters: \$1,000

2.4 Probation. Respondents agree to a one-year Probation. The Probation period shall begin on the date when the Commission orders adoption of this Settlement. During the Probation period, Respondents shall:

2.4.1 File quarterly written reports of consumer complaints received by Respondents. The first report is due on the 30th calendar day after the date of the Commission order adopting this Settlement. Each subsequent report must be filed no later than 30 calendar days thereafter. Each report must be signed by the Respondents under penalty of perjury, and delivered to CPSPD Transportation Enforcement Supervisor, Suong T. Le, 505 Van Ness Ave, San Francisco CA 94102.

2.4.2 Each report must contain or attach the following data:

2.4.2.1 A summary of all consumer complaints made against the Respondents or any of its employees for the preceding 30 days;

2.4.2.2 The subject of each complaint and the name, address, and telephone number of the complainant;

2.4.2.3 The disposition of the complaint by the Respondents;

2.4.2.4 A copy of all correspondence or other written communication between the complainant and he Respondents and/or any of its employees;

2.4.2.5 A copy of any court judgment rendered final against the Respondents and proof of payment thereof

2.5 Compliance. Respondents acknowledge all violations contained in Staff's testimony, which has been served on Respondents as proposed Exhibits in this proceeding. Respondents take full responsibility for past violations of laws, rules and regulations governing household goods carriers and agree to be in full compliance with these regulations, and all other applicable rules in the future.

III. DEFAULT AND REMEDIES

3.1 If the Respondents violate or fail to comply with any provision of this Settlement, Commission rules and regulations, or any Commission judicial decision, CPSD will petition to reopen this or initiate another Commission proceeding for purposes of, but not limited to, imposing fines and penalties and suspension or revocation of operating authorities pursuant to Pub. Util. Code § 5285(b)

IV. MISCELLANEOUS PROVISIONS

4.1 The Parties agree that the Commission has primary jurisdiction over any interpretation, enforcement, or remedies pertaining to this Settlement, as indicated by California Constitution, Article XII, Section 8. No Party may bring an action pertaining to this Settlement in any local, state, or federal court or administrative agency without first having exhausted its administrative remedies at the Commission.

- 4.2 The Parties acknowledge that this Settlement is subject to approval by the Commission. As soon as practicable after all the Parties have signed this Settlement, CPSD will file a Motion requesting Commission adoption. The Parties must furnish such additional information, documents, and/or testimony as the Commission may require in granting said Motion and adopting this Settlement.
- 4.3 The provisions of this Settlement are not severable. If any Party fails to perform its respective obligations under this Settlement, the Settlement may be regarded as rescinded.
- 4.4 The Parties acknowledge and stipulate that they are agreeing to this Settlement freely, voluntarily, and without any fraud, duress, or undue influence by any Party. Each Party hereby states that it has read and fully understands its rights, privileges, and duties under this Settlement. Respondents further acknowledge full understanding of their right to discuss this Settlement with their legal counsel, and have availed themselves of that right to the extent deemed necessary. In executing this Settlement, each Party declares that the provisions herein are fair, adequate, reasonable, and mutually agreeable. Respondents further acknowledge that as set forth in this Settlement, no promise or inducement has been made or offered them.
- 4.5 Each Party further acknowledges that after the execution of this Settlement, discovery may continue of facts that are in addition to or different from those known or believed to be true by any of the Parties. Respondents agree to cooperate fully with such inquiries. However, it is the intention of each Party to settle, and each Party does

settle, fully, finally, and forever, the matters set forth in this Settlement notwithstanding such discovery.

- 4.6 This Settlement constitutes the Parties' entire Settlement, which cannot be amended or modified without the express written and signed consent of all the Parties hereto.
- 4.7 This Settlement shall be binding upon the respective Parties hereto, their legal successors, assigns, agents, or corporations (e.g., parent, subsidiaries, affiliates, divisions, units, officers, directors, and/or shareholders).
- 4.8 This Settlement shall become effective and binding on the Parties as of the date it is fully executed.

IN WITNESS WHEREOF, the Parties, hereto have set their hands on the day and in the year indicated below:

By: /s/ Richard W. Clark 12/2/04

Date:_____

Richard W. Clark

Director

Consumer Protection and Safety Division

By: /s/ Gregory Heiden 12/2/04

Date:_____

Gregory Heiden

Staff Counsel

Attorney for the Consumer Protection and Safety Division

By: /s/ Israel Lerner 12/1/04

Date:_____

Israel Lerner

Respondent

By: /s/ Israel Lerner 12/1/04

Date:_____

VIP Relocation, Inc.

Israel Lerner, President

Respondent

(END OF ATTACHMENT A)