

ALJ/MAB/avs

Decision 01-10-007 October 10, 2001

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of BRYAN S. CROY, dba  
BRYAN CROY MOVING SYSTEMS, to Obtain a  
Household Goods Carrier Permit Pursuant to  
Division 2, Chapter 7 of the Public Utilities Code.

Application 01-03-010  
(Filed March 5, 2001)

**OPINION GRANTING PERMIT**

**Introduction**

In this decision we grant Bryan S. Croy, doing business as Croy Moving Systems (Croy or applicant), a Household Goods Carrier Permit.

**Background**

On February 15, 2000, Croy submitted an application for a Household Goods Carrier Permit. On September 13, 2000, the Director of the Consumer Services Division (CSD) wrote Croy that CSD had discovered that Croy had been convicted of a misdemeanor, carrying a concealed weapon, in 1992. Based on this conviction and Croy's failure to disclose it on his application, CSD refused to issue a permit to Croy.

On March 5, 2001, Croy filed this formal application seeking a Household Goods Carrier Permit from the Commission. Croy stated that he is a certified U.S. Navy pistol expert, and that he possessed a concealed weapons permit at the time of his arrest, but the permit had recently expired. Croy stated that a passing police officer observed him carrying a handgun into his hotel, and arrested him. He pled guilty to the misdemeanor, not understanding the lifelong

consequences. He pointed out that he was discharged from the U. S. Navy in 1996 with the highest rating marks possible. He also stated that he is married and the father of two children.

CSD protested Croy's application, alleging that Croy's 1992 conviction, and his failure to disclose it, demonstrate grounds upon which the Commission pursuant to Pub. Util. Code § 5135 (e),<sup>1</sup> may deny a Household Goods Carrier Permit. CSD contended that Croy's 1992 misdemeanor conviction "indicates both the capacity and the disposition to inflict serious bodily harm on others." CSD concluded that this conviction "indicates that Applicant would likely disregard Commission policy, rules, and regulations . . ."

### **Need for Hearing**

CSD's evidence consists of Croy's criminal record, which Croy 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.

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<sup>1</sup> All statutory references are to the Public Utilities Code.

## Discussion

Pursuant to § 5135, this Commission may deny a Household Goods Carrier permit “if it can be 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 suspension or revocation of the permit; misrepresented any material fact on his application; or, committed a felony, or an act of moral turpitude.” CSD has presented undisputed evidence that this applicant: (1) was convicted of a misdemeanor, and (2) failed to disclose the conviction on his application. Applicant responds by explaining the circumstances surrounding his arrest and conviction.

CSD contends that Croy’s 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, Croy’s history shows one isolated instance that occurred nine years ago. The records show that Croy complied

with the ordered one-year probation. CSD has not shown any pattern of criminal acts by Croy that is analogous to the pattern exhibited by Porter, nor has CSD presented any facts or analysis to support its assertion that Croy's history "indicates both the capacity and the disposition to inflict serious bodily harm on others." CSD Brief at 5. The mere possession of a handgun does not, in and of itself, demonstrate, or even suggest, a disposition to inflict serious bodily harm on others. The recently expired concealed weapons permit also does not demonstrate such disposition. Indeed, other than this nearly decade-old misdemeanor conviction, Croy's conduct (including his successful completion of probation) demonstrates a pattern of compliance with the criminal laws of this State. Therefore, we find that Porter and Croy are distinguishable.

CSD offers two reasons supporting its position that the application should be denied based on Croy's failure to disclose his misdemeanor conviction on his application. First, CSD states that such a conviction 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 Croy was required to disclose the conviction. CSD provided us no citation for these propositions. While we can hypothesize circumstances where a concealed weapons violation might be grounds to revoke a permit, we can also envision circumstances with the opposite outcome. The facts of Croy's misdemeanor show no nexus to the moving industry nor any threat whatsoever to the public. Thus, based on this factual context, we find that, on balance, Croy's misdemeanor violation was not necessarily an act that would be grounds for revoking a permit.

CSD's second argument for denying Croy's application due to his failure to disclose his misdemeanor conviction is that Croy has committed an act of

dishonesty and misrepresented a material fact on his application by omitting the conviction. In support of this conclusion, CSD states “any reasonable person would regard Applicant’s weapons conviction as material to his Application.” CSD protest at 5. CSD offers no citation for this statement. The Commission’s application form, however, specifically addresses criminal convictions, and seeks additional explanations only if the applicant has “committed a felony, or a crime involving moral turpitude.” A reasonable conclusion to draw from the application’s singling out of felonies and crimes involving moral turpitude is that the applicant need not disclose any other type of criminal convictions such as misdemeanors or violations. By including only felonies and crimes involving moral turpitude, the application creates the reasonable impression that other types of criminal convictions are excluded. Such an interpretation is consistent with the jurisprudential maxim “particular expressions qualify those which are general.” Civil Code § 3534. Thus, having sought information on particular types of crimes, *i.e.*, felonies and crimes of moral turpitude, the application’s general request for “material” information is qualified in this respect. An applicant could reasonably conclude that the Commission had determined that misdemeanors and violations were not “material.”

In sum, based on the particular facts of this case, we find that Croy’s nine-year old misdemeanor conviction was not a material fact that Croy was required to disclose on his application. Accordingly, Croy had no obligation to disclose it in the application.

We will grant Bryan S. Croy, doing business as Croy Moving Systems, (Croy or applicant) a Household Goods Carrier Permit.

### **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. No comments were filed.

### **Findings of Fact**

1. No hearing is necessary.
2. Croy was convicted of a misdemeanor, possession of a concealed weapon, in 1992, and he did not disclose it on his application for a Household Goods Carrier Permit. Croy complied with the ordered one-year probation.
3. CSD has not presented any evidence of subsequent criminal convictions.
4. Croy's criminal history is not analogous to the criminal history at issue in D.98-02-100.
5. Other than Croy's criminal history and failure to disclose it, CSD has not disputed that Croy meets our qualifications for Household Goods Carriers.
6. A misdemeanor conviction for carrying a concealed weapon is not necessarily grounds for revocation.
7. Based on the particular facts of this case, Croy's misdemeanor conviction for carrying a concealed weapon was not a material fact that needed to be disclosed on the application.

### **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 Public Utilities Code § 5135, this Commission may refuse to issue a Household Goods Carrier permit "if it can be shown that an applicant . . . has committed any act constituting dishonesty or fraud; committed any act

which, if committed by a permit holder would be grounds for suspension or revocation of the permit; misrepresented any material fact on his application; or, committed a felony, or an act of moral turpitude.”

3. Based on the facts of this case, Croy had no obligation to disclose his misdemeanor conviction.

4. In the context of the facts of this application, Croy’s nine-year-old misdemeanor conviction is not sufficient grounds to deny a Household Goods Carrier Permit.

5. Croy meets our fitness requirements for Household Goods Carriers.

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

## O R D E R

Therefore **IT IS ORDERED** that:

1. The Commission’s Rail Safety and Carriers Division shall issue a Household Goods Carrier Permit to Bryan S. Croy, doing business as Croy Moving Systems, 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 October 10, 2001, at San Francisco, California.

LORETTA M. LYNCH

President

HENRY M. DUQUE

RICHARD A. BILAS

CARL W. WOOD

GEOFFREY F. BROWN

Commissioners