Decision 02-08-052 August 22, 2002

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the Order Instituting Investigation on the Commission's own motion into the operations and practices of William Michael Gavin, an individual doing business as Affordable Apartment Movers, Respondent.	Investigation 01-11-037 (Filed November 29, 2001)

OPINION IMPOSING SANCTIONS FOR VIOLATIONS OF PUBLIC UTILITIES CODE AND COMMISSION REGULATIONS

Summary

This decision finds that Respondent has violated sections of the Public Utilities Commission Code and Commission regulations, imposes a fine, and requires restitution.

Background

Order Instituting Investigation (OII) 01-11-037 into the operations of the Respondent, Michael Gavin, doing business as Affordable Apartment Movers (AAM), alleged that the Commission had received complaints from customers regarding AAM. According to these complaints and inquiry by the Commission's Consumer Protection and Safety Division (CPSD), AAM had assessed charges in excess of verbal prices quoted, had failed to respond to claims for loss or damaged property and in other ways had given poor service

and behaved unprofessionally as specified in more detail in the OII and Findings of Fact 1 through 7 of this decision.[1]

On January 7, 2002, the Assigned Administrative Law Judge (ALJ) held a Prehearing Conference (PHC). The Respondent appeared with counsel via telephone and stated his intent to resolve all outstanding customer claims and complaints to CPSD's satisfaction. CPSD representatives and counsel appeared and stated that they were still investigating the Respondent and evaluating proffered explanations for lapses in compliance.

After the PHC, the parties successfully engaged in efforts to resolve factual issues in this proceeding. The parties differed, however, on the appropriate penalty recommendations. Pursuant to a schedule set by the assigned ALJ, the parties submitted a stipulated record for this proceeding and findings of fact and conclusions of law. Each party offered a set of recommended penalties.

Need for Evidentiary Hearings

Pursuant to Rule 6.6 of the Commission's Rules of Practice and Procedure (Rules), a hearing is not necessary to resolve the issues in this proceeding and, accordingly, Article 2.5 of the Rules ceases to apply.

Discussion

The facts in this proceeding are clear and are not disputed in any material respect: Due to temporary health problems, Respondent was unable to properly conduct a household goods carrier business in compliance with applicable law and regulations. In Exhibit 6, Respondent stated that during 2000 and 2001 he was suffering from various physical and psychological problems that prevented him from properly managing his business. During that time, Respondent's

[1] CSD has since been renamed the Consumer Protection and Safety Division.

now-former wife unsuccessfully attempted to manage the business. Due to his disabilities and his then-wife's inexperience, some customers received poor service as set it out in Findings of Fact 1 through 7. Respondent's doctors confirm that he has recovered from his health problems and is now fit to operate such a business. Respondent has resolved nearly all outstanding customer claims and is diligently moving forward with resolving the remaining claims.

Concerning the complaints lodged with the Commission by customers of AAM, Exhibits 1-5 show that the majority of the complaints were for damages to items moved or other property for amounts less than $1,000. An example of one of the larger claims is that of Andy and Melissa Green. Per Exhibit 1, the Greens alleged that AAM's movers failed to properly pad and secure furniture and appliances for the move. The Greens also stated that the movers made gouge marks on several walls and floors in both their new and old residences. The Greens detailed the AAM movers' incompetence in moving their refrigerator. First, the movers tried to get it through the front door but got it wedged into the door jamb, damaging both the refrigerator and the jamb. The movers next tried the patio door but the refrigerator did not fit. They finally returned to the front door, removed the door, and were able to move the refrigerator in. The movers did not, however, put the door back on. The Greens' total damage claim was $3,048 which AAM failed to process in a timely manner in violation of § 5139[2] and MAX 4 of our regulations. The Greens subsequently obtained a small claims court judgment for the full amount which AAM initially ignored, in violation of § 5139, but subsequently paid in full.

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[2] All sections cited are in the Household Goods Carriers Act as codified in the Public Utilities Code.

The Greens' experience with AAM, while an extreme example, illustrate the human impact of the violations admitted by respondent Gavin. Customers entrust moving companies with their most treasured possessions. Incompetent and unsupervised movers, such as those imposed on the Greens, are unworthy of this trust. The purpose of California law and regulations applicable to household goods carrier is to ensure that fiascos like this do not occur.

The record in this case shows numerous violations of law and regulation, albeit almost always on a smaller scale than that experienced by the Greens. These violations imposed anxiety and inconvenience on customers. It is of paramount importance that no future violations of this nature occur, and we approach the questions of sanctions accordingly.

In Decision (D.) 01-04-036, the Commission adopted the following priorities for enforcement proceedings:

> As a general matter, the Commission's priorities in enforcement proceedings, where violations of law or regulations have been established, as here, are to: (1) bring to an end any ongoing violations, (2) provide restitution to victims of the wrongdoing, and (3) deter future violations through the use of fines.

Investigation of USP&C, D.01-04-036, *mimeo.*, at pages 27-28 (April 19, 2001). In this case, the violations have ceased and restitution is nearly complete. Thus, we conclude that our first two objectives have been met.

Turning to the matter of fines and other sanctions, CPSD recommends that we impose a fine of $65,000 for the 130 violations ($500 each) set out in Findings of Fact 1-7 and suspend Respondent's operating authority for 130 days. CPSD further recommends that we stay all but $14,000 of the fine and seven days of the suspension. CPSD also seeks a three-year probation period for Respondent during which any further violations would lead to re-imposition of the stayed

fine and suspension. CPSD's final request is for an order directing Respondent to complete restitution efforts.

Respondent urges us to impose a fine of $13,000 for the violations set out in Findings of Fact 1 – 7 and suspend its operating authority for 30 days. Respondent would have us stay all but $3,500 of the fine and three days of the suspension.

Pursuant to § 5285, this Commission may revoke a household goods carrier permit, after notice and opportunity to be heard, "for failure to comply with any provision of the [Household Goods Carrier Act] or with any order, rule, or regulation of the commission, or with any term, condition, or limitation of the permit." However, CPSD does not now recommend revocation, and since the record shows that Respondent is now rehabilitated and is properly managing his business, we find that revocation is not appropriate at this time.

In addition, pursuant to § 5313, this Commission is empowered to impose a fine of up to $ 500 per violation of law or regulations. To provide guidance in setting fines, the Commission recently distilled the principles that it has historically relied upon in assessing fines and restated them such that they may form the basis for future decisions assessing fines. Rulemaking to Establish Rules for Enforcement of the Standards of Conduct Governing Relationships between Energy Utilities and Their Affiliates Adopted by the Commission in Decision 97-12-088, D.98-12-075, App. B. The purpose of fines, is to deter further violations. In determining whether to impose a fine and, if so, at what level, the Commission will consider the severity of the offense, the utility's conduct, the financial resources of the utility, the totality of circumstances in furtherance of the public interest, and the role of precedent.

Here, AAM has nearly completed all payments to customers.[3] To ensure that each and every customer receives any required payment, we will order Respondent to complete the payments and submit a written report to CPSD within 60 days.

Turning to the factors for deciding whether to impose a fine and, if so, for what amount, the severity of the offense is the first factor. The severity of the offense includes consideration of the economic harm imposed as well as the economic benefit gained by the household goods carrier. Here, completing the payments will ensure that Respondent disgorges all benefits and that the victims will incur no economic harm. The severity of the offense also includes consideration of the effects of disregarding a Commission order because compliance is essential to the proper functioning of the regulatory process. In this case, the facts show that Respondent disregarded the Commission directives referenced in Findings of Fact 1 – 7. In mitigation, we note Respondent's health problems interfered with proper compliance. Such problems, however, do not excuse compliance. On balance, and in light of the overall circumstances of these violations, we find that the violations are not so severe as to require a fine at the high end of the range.

The next factor is the respondent's efforts to prevent, detect, and rectify the violation. In this case, Respondent did not prevent the violations but did eventually use its best efforts to rectify them.

The next factor is the financial resources of the utility. Respondent is a modest business with limited financial resources.

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[3] CPSD's April 19, 2002, declaration lists six outstanding complaints.

The role of precedent is also important in our consideration of imposing a fine. Here, neither party has provided a citation to any comparable decision. We note, however, that in D.01-08-035, finding 411 undisputed violations of laws and regulations, including frequent holding goods hostage for higher fees, we revoked the Household Goods Carrier Permit. We also imposed a fine of $40,000, as provided by § 5313, and directed the carrier to make reparations to all customers from whom amounts had been unlawfully obtained. We reduced the fine to $ 10,000, provided that the carrier made the reparations to its victims.

Here, we find that Respondent's violations do not rise to the severity reflected in D.01-08-035. There, the carrier had exhibited a pattern of substantial noncompliance, including repeated and undisclosed criminal convictions, that continued up to and through the hearings. Here, in contrast, Respondent has accepted responsibility for the lapses and has demonstrated a commitment to making all needed payments.

The final factor is the totality of the circumstances in furtherance of the public interest. The public interest is best served by household goods carriers that comply with applicable law and regulations. Where violations do occur, prompt remedial actions are required. The totality of the circumstances in this case suggest that due to health problems Respondent was temporarily unable to comply, but is now able and willing to do so.

As noted above, customers entrust household goods carriers with their most valuable possessions. Respondent's lapses violated this trust and imposed unnecessary anxiety, inconvenience, and expense on its customers. No future such violations will be tolerated.

In sum, we find that AAM's actions were blameworthy but not as as those egregious noted in D.01-08-035; moreover, AAM has presented facts in mitigation of its violations. Accordingly, rather than imposing the maximum

fine allowed by § 5313 of $500 per offense as we did in D.01-08-085, we will impose a fine of $200 per offense, or a fine of $26,000. Consistent with D.01-08-035, should Respondent complete all required payments to customers, we will stay all but 25% of the fine, and the resulting fine will be $6,500.

Respondent shall make all required payments to customers within 60 days. No later than 60 days from the effective date of this order, Respondent shall submit to CPSD a statement of payments it has made. CPSD shall have 15 days to file and serve a report stating whether Respondent has made the payments. Should Respondent fail to submit the required statement, CPSD shall so state in its report. Unless and until CPSD reports that Respondent has made all required payments, the fine shall remain at $26,000.

CPSD recommends suspending Respondent's operating authority for 130 days and staying all but seven days of the suspension. Respondent advocates a 30-day suspension with all but three days suspended.

Having concluded that Respondent is fit to conduct operations as a household goods carrier and imposing a substantial fine for past violations, we are not convinced that further sanctions, such as suspension, are warranted at this time. We are also not persuaded that suspending AAM's operating authority for a short period, either three or seven days, will have any significant deterrent effect because AAM could simply schedule around the suspension days, while a longer suspension seems excessive on these facts.

CPSD also seeks a three-year "probation period" for Respondent, where any further violations of law and regulation would result in imposition of the stayed portion of the fine by ALJ ruling. Respondent contends that an 18-month period would be sufficient.

Due to the importance of AAM's continued compliance with law and regulation, we direct CPSD to monitor AAM's conduct during the three-year period following the effective date of this order. Should Respondent incur any further violations of law or regulation during the three-year period, we may set aside today's fine reduction and impose the full fine amount as well as imposing additional sanctions for the new violations.

Comments on Draft Decision

The draft decision of Administrative Law Judge Maribeth Bushey in this matter was mailed to the parties in accordance with Section 311(g) and Rule 77.7 of the Rules of Practice and Procedure. No comments were filed.

Findings of Fact

1. Respondent has violated § 5286 (10 counts) by conducting operations as a household goods carrier after the suspension and revocation of its permit authorizing such operations, as alleged in OP 2(a) of the OII.

2. Respondent has violated § 5139, and Item 92 of MAX 4 (6 counts), by failing to timely process claims for loss or damage, as alleged in OP 2(b) of the OII.

3. Respondent has violated § 5139, and Items 128 and 132 of MAX 4 (14 counts), by failing to show required information, including a Not to Exceed Price, on its shipping documents, or showing an unreasonable Not to Exceed Price, as alleged in OP 2(c) of the OII.

4. Respondent has violated § 5245 (3 counts) by giving an oral estimate, not in writing, and assessing charges in excess of the price quoted, as alleged in OP 2(d) of the OII.

5. Respondent has violated § 5135 (1 count) by failing to comply with a lawful order of a court, as alleged in OP 2(e) of the OII.

6. Respondent has violated § 5139, and General Order 100-M (93 counts), by failing to maintain evidence of adequate public liability insurance in effect and on file with the Commission, as alleged in OP 2(f) of the OII.

7. Respondent has violated § 5139, and Items 36 and 128 (5) of MAX 4 (3 counts), by collecting charges in excess of those based upon rates quoted in the Agreement with the customer, and failing to refund such overcharges to the customer within ten days of collection, as alleged in OP 2(g) of the OII.

8. Respondent Gavin admits the violations listed in Findings of Fact 1 through 7.

9. Respondent Gavin experienced physical and emotional health difficulties during the time he committed the violations listed in Findings of Fact 1 through 7, which left him unfit to fulfill his obligations as a household goods carrier.

10. Respondent Gavin's physical and emotional health difficulties were temporary.

11. Respondent Gavin has taken steps to correct his difficulties and is currently fit to conduct operations as a household goods carrier.

12. Respondent Gavin's future compliance with laws and regulations applicable to Household Goods Carriers is critical to the basis for this decision.

Conclusions of Law

1. Respondent's authority should not be revoked or suspended as a result of the violations committed while he was unfit.

2. The Commission should impose a fine of $200 for each of the 130 violations committed while Respondent Gavin was unfit, for a total fine of $26,000.

3. The Commission should stay all but $6,500 of the total fine contingent upon Respondent completing all required payments to customers.

4. Should Respondent commit future violations of applicable law or regulations, the Commission may set aside this resolution and reopen the investigation.

5. No hearing is needed to resolve this OII.

6. This order should be made effective immediately so that Respondent may resolve all outstanding compliance requirements as soon as possible.

O R D E R

IT IS ORDERED that:

1. Michael Gavin, doing business as Affordable Apartment Movers (AAM) shall comply with all laws and regulations applicable to Household Goods Carriers.

2. AAM shall promptly and completely make all due reparations to customers, within 60 days from the effective date of this order.

3. Except as provided in Ordering Paragraphs (OP 4 and 5), AAM shall pay a fine of $26,000 to the Commission, for deposit in the General Fund of the State of California, within 180 days of the effective date of this order.

4. No later than 60 days from the effective date of this order, AAM shall submit to Consumer Protection and Safety Division (CPSD) a statement of reparation payments it has made. CPSD shall have 15 days thereafter to file and serve a report stating whether AAM has paid all required payments. Should AAM fail to submit the required statement, CPSD shall so state in its report. If AAM has made all due reparations as provided in OP 2, CPSD shall so state, and all but $6,500 of the fine shall be suspended.

5. If AAM violates any provision of law or regulation during the three-year period following the effective date of this order, the fine suspension in this decision may be set aside and the full fine imposed as well as any sanctions for

the new violations. If AAM complies with all provisions of law and regulation during the three year period following the effective date of this order, the suspended portion of the fine shall be permanently rescinded.

6. This proceeding is closed.

This order is effective today.

Dated August 22, 2002, at San Francisco, California.

LORETTA M. LYNCH
President
HENRY M. DUQUE
CARL W. WOOD
GEOFFREY F. BROWN
MICHAEL R. PEEVEY
Commissioners