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Decision 91-06-055 June 19, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, rates, and practices of A Aallstar Moving Co., Inc., a California corporation, and Ronald A. Zammito, Joan C. Zammito, also known as Joan Magistrini, Eugene T. Landers and Charles Walker, a partnership doing business as A Aall American Moving Company,

Respondents.

ORIGINAL

I.91-01-011 (Filed January 15, 1991)

Alberto Guerrero, Attorney at Law, and Tom Boyd, for the Transportation Division.

OPINION

Summary

On January 15, 1991, respondents were ordered to show cause why the household goods carrier permit held by A Aallstar Moving Co., Inc. (Aallstar) should not be revoked with a finding, based upon staff investigation, that respondents are unfit to hold operating authority from this Commission. The president of Aallstar notified the Commission that he would not appear for hearing and does not oppose revocation of Aallstar's operating authority. A hearing on the matter was conducted on May 15, 1991. Respondents did not appear. Based upon the findings set forth in a Commission investigation, Aallstar's Household Goods Carrier Permit T-159,560 is revoked with a finding that respondents are unfit to hold operating authority from this Commission.

Background

Aallstar holds Household Goods Carrier Permit T-159,560 issued on August 10, 1988. Aallstar is a California corporation,

showing an office in Foster City. In its application filed on March 25, 1988, AAllstar listed its officers as Ronald A. Zammito, president and treasurer, and Joan C. Zammito, vice president and secretary.

On July 24, 1990, Ronald A. Zammito, Joan C. Zammito (also known as Joan Magestrini), Charles Walker, and Eugene Thurmond Landers, describing themselves as a partnership doing business as A All American Moving Company (AAll-American), submitted an application for transfer of Permit T-159,560 from AAllstar to AAll-American.¹ The transfer application is pending and is an issue in this proceeding.

The transfer application is signed by Landers, Ronald Zammito, Magestrini, and Walker. Attached to it is a certification identifying drivers (Ron Zammito, California Driver's License A3700350, and Bill Conroy, California Driver's License C4715745) and representing that no officer or associate of AAll-American has been convicted of any felony or crime of moral turpitude. An investigation shows that Landers was convicted in 1987 of robbery, a felony, and was convicted in 1983 of petty larceny, a crime of moral turpitude. The investigation also shows that warrants alleging grand theft are outstanding against Ronald Zammito and Joan Zammito.

In November 1990, the Compliance and Enforcement Branch of the Commission's Transportation Division (Branch) completed a three-month investigation into allegations that Ronald A. Zammito, Joan C. Zammito, Walker, and Landers had appropriated household goods of their customers, had fraudulently charged and collected amounts on customers' credit cards, and had required payment by customers of higher amounts than the original prices quoted for moving services.

¹ The application is maintained in Commission File Number T-168,442.

Branch reports that the Zammitos, Landers, and Walker conducted business primarily by telephone through the use of large advertisements appearing in Bay Area yellow page directories. Respondents advertised under the name A Aall American Moving Company without having a valid permit.²

Branch reports that the vehicle used by respondents to move household goods apparently did not display a Cal "T" identifying symbol, as required by the Commission. Branch was advised by the California Highway Patrol that none of the equipment operated by Aallstar/Aall-American had been registered or inspected as required by the California Vehicle Code.

Branch states that it identified about 25 customers who incurred losses or damage to household goods after contracting for moving services with the Zammitos, Walker, or Landers. Damages are estimated in the aggregate at more than \$266,000. None of the customers interviewed had been given the required "information for shippers" booklet. Most of the customers stated that they were quoted a low rate for moving when they spoke to the Zammitos or Landers by telephone, then were charged a higher rate when the move was in progress.

The customer complaints investigated by Branch are egregious. In one, the customer alleges that she received a \$300 quote from Aall-American for a move from San Francisco to Redwood City. When the move was completed, she was compelled to pay \$500 under threat of having her household goods confiscated by the mover. The customer paid by check. The driver requested a Master Card number for identification. Later, the customer was billed by Master Card for \$542 for the move. Aall-American's Master Card

² Branch reports that respondents owe approximately \$100,000 to Pacific Bell in unpaid yellow page advertisements and telephone charges.

authority was later revoked, but not before the credit card agency incurred losses of \$66,000 in disputed AAll-American charges.

Another customer asked that her household goods be stored temporarily. AAll-American was found to have stored the goods in a self-storage facility. When the owner of the storage facility threatened AAll-American for non-payment, AAll-American is alleged to have authorized the sale at auction of the customer's goods. The goods, valued by the customer at \$75,000, were sold at auction for \$450, which was applied to AAll-American's account at the self-storage facility.

Several AAllstar/AAll-American customers have taken their complaints to the police, or have pursued civil actions. At the time of the Branch investigation, three felony arrest warrants were outstanding against Ronald A. Zammito and Joan C. Zammito. Joan Zammito is charged in the Walnut Creek-Danville Judicial District with five counts of violation of Penal Code § 487.1 (grand theft of personal property exceeding \$400 in value). Ronald Zammito is accused in the same court district of one count of grand theft. The warrants continue to be outstanding. Also outstanding is a Florida warrant charging Ronald Zammito with grand theft-auto.

Notice and Hearing

Branch was directed to cause a certified copy of the order in this proceeding, including a copy of the Branch investigator's affidavit, to be served upon Ronald Zammito, the agent for service of process for AAllstar, and upon one or more partners of AAll-American, or to arrange suitable alternative service if respondents could not be located.

Branch Investigator Larry E. McNeely testified at hearing that he had personally served the order and other documents on attorney William Gagen, who had represented respondents in the past. While Gagen stated that he was not the attorney of record for respondents, he agreed to forward the documents to Ronald Zammito. On April 5, 1991, investigator McNeely spoke to Ronald

Zammito by telephone, recognizing his voice from prior conversations, and Zammito acknowledged that he had received the documents, including notice of hearing, from attorney Gagen. In a letter dated April 10, 1991, Zammito wrote to the Commission, stating that he now is in Florida, does not wish to return to California, and would not oppose revocation of license in this proceeding.

In addition to this service, the Commission served its Order Instituting Investigation and notice of hearing on all respondents by certified mail, addressed to their last known address on file with the Commission. Each of these notices was returned with a Postal Service notation that forwarding instructions had expired.

Notice of the hearing in this proceeding also has appeared each day since March 23, 1991, in the Commission's Daily Calendar.

Respondents did not appear at hearing on May 14, 1991. The assigned administrative law judge opened the record to receive the testimony and exhibits of investigator McNeely, along with the testimony and copies of an affidavit and the investigative reports compiled by Branch investigator Rhonda Adams-Waldorf. This proceeding was then submitted for decision by the Commission.

Discussion

After issuing a permit under the Household Goods Carriers Act, Public Utilities (PU) Code § 5101, et seq., the Commission exercises continuing oversight of a carrier's fitness. PU Code § 5285 provides, in pertinent part:

"The permit of any household goods carrier may...upon complaint or on the commission's own initiative, after notice and opportunity to be heard, be suspended, changed, or revoked, in whole or in part, for failure to comply with any provision of this chapter or with any order, rule, or regulation of the commission or with any term, condition, or limitation of the permit."

The uncontested findings of Branch investigators in this proceeding demonstrate that AAllstar/AAll-American and its officers and partners have violated numerous provisions of the Household Goods Carriers Act. We find that respondents have failed to demonstrate the "integrity and financial resources and responsibility to perform the service within the scope" of their application and permit, as required by PU Code § 5135.

Accordingly, AAllstar Permit T-159,560 is revoked, and AAll-American's application for transfer of permit is denied on grounds that these respondents, along with the named officers and partners associated with these entities, are unfit to hold operating authority.

Branch is instructed to make its investigative report available upon request to police and other law enforcement agencies in any proceeding involving the named respondents. Staff also is instructed to cooperate with individual customers and their counsel in any civil action initiated against any or all respondents.

Findings of Fact

1. AAllstar holds a household goods carrier permit issued on August 10, 1988, under T-159,560.
2. Officers of AAllstar are Ronald A. Zammito, president and treasurer, and Joan C. Zammito (a/k/a Joan Magestrini), vice president and secretary.
3. AAll-American on July 24, 1990, applied for transfer to it of AAllstar's Permit T-159,560.
4. AAll-American lists as its partners Ronald A. Zammito, Joan (Magestrini) Zammito, Charles Walker, and Eugene T. Landers.
5. The Compliance and Enforcement Branch of the Commission's Transportation Division on September 10, 1990, began an investigation of respondents.
6. Respondent Landers was convicted of the felony of robbery on June 15, 1987, and was convicted of the crime of petty larceny on July 12, 1983.

7. AAllstar/AAll-American failed to show on shipping documents the information required by Items 128 and 132 of Minimum Rate Tariff 4-C, a violation of PU Code § 5139.

8. AAllstar/AAll-American assessed charges greater than the maximum allowed on estimated shipments and made verbal estimates to customers in violation of Item 108 of Minimum Rate Tariff 4-C, a violation of PU Code § 5245.

9. AAllstar/AAll-American failed to comply with motor vehicle safety requirements in Title 13 of the California Code of Regulations, a violation of PU Code § 5285.5.

10. AAllstar/AAll-American falsified material facts in Application T-168,442 related to the conviction record of associates of the applying enterprise, a violation of PU Code § 5135.

11. AAllstar/AAll-American failed to display a Cal "T" identifying symbol as required by the Commission on vehicles operated for compensation, a violation of PU Code § 5132.

12. AAllstar/AAll-American failed to provide the information booklet to shippers of household goods as required by Item 88 of Minimum Rate Tariff 4-C, a violation of PU Code § 5139.

13. AAllstar/AAll-American failed to acknowledge and process loss and damage claims as required by Item 92 of Minimum Rate Tariff 4-C, a violation of PU Code § 5139.

Conclusions of Law

1. Each respondent took part in, was aware of, or with reasonable diligence should have known of, the practices of AAllstar or AAll-American that are the subject matter of this Order Instituting Investigation and Order to Show Cause.

2. Service of process has been adequate to place respondents on notice of the allegations in this proceeding and of the pendency of the hearing on the Order to Show Cause.

3. Respondents A AAllstar Moving Co., Inc., A AAll American Moving Company, Ronald A. Zammito, Joan C. Zammito, also known as

Joan Magistrini, Eugene T. Landers, and Charles Walker are unfit to hold operating authority from this Commission.

4. Household Goods Carrier Permit T-159,560 should be revoked.

5. Respondents' application to transfer T-159,560 to AAll-American should be denied.

6. Since respondents do not oppose revocation of Permit T.159,560, and since respondents have failed to provide the Commission with a valid mailing address, respondents in effect have waived the proposed decision requirement of PU Code § 311, since an unopposed decision sent to an invalid address would be a useless gesture. Pursuant to Rule 87, therefore, this decision should be a final decision closing this proceeding.

7. It is in the public interest that the revocation of permit ordered in this proceeding be made effective immediately.

ORDER

IT IS ORDERED that:

1. Household Goods Carrier Permit T-159,560, granted August 10, 1988, to A Allstar Moving Co., Inc., is revoked.

2. Application T-168,442 to transfer Household Goods Carrier Permit T-159,560 to A AAll American Moving Company is denied.

This order is effective today.

Dated June 19, 1991, at San Francisco, California.

PATRICIA M. ECKERT
President
G. MITCHELL WILK
JOHN B. OHANIAN
DANIEL Wm. FESSLER
NORMAN D. SHUMWAY
Commissioners

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY


NEAL J. SHULMAN, Executive Director

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