

Mailed
APR 3 1992

Decision 92-03-089 March 31, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the operations and
practices of A Nice Jewish Boy
Moving and Storage, Inc., and
Father and Son Moving and Storage,
Inc., California corporations.

ORIGINAL

I.90-12-010

(Filed December 6, 1990)

Anthony P. Brooklier, Attorney at Law, and
Spray, Gould & Powers, by Peter N. Osborne,
Attorney at Law, for A Nice Jewish Boy
Moving and Storage, Inc. and Father and Son
Moving and Storage Inc., respondents.
Laura Tudisco, Attorney at Law, for the
Transportation Division.

O P I N I O N

On December 6, 1990, we issued an Order Instituting Investigation and Order to Show Cause (OII) into the operations and practices of respondents A Nice Jewish Boy Moving and Storage, Inc. (Nice Jewish Boy) and Father and Son Moving and Storage, Inc. (Father and Son), for the purposes of determining whether respondents violated the following:

1. Section 5139 of the Public Utilities (PU) Code by failing to show on shipping documents information required by Items 128 and 132 of Minimum Rate Tariff (MRT) 4-C;
2. Section 5245 of the PU Code by giving verbal estimates in violation of Item 108 of MRT 4-C;
3. Section 5225 of the PU Code by failing to produce records as directed by authorized Commission representatives;
4. Section 5139 of the PU Code by advertising that operations are conducted at addresses where the carrier does not maintain a place of business in violation of Item 88 of MRT 4-C;

5. Section 5139 of the PU Code by failing to provide the information booklet to shippers of household goods as required by Item 88 of MRT 4-C;

6. Section 5139 of the PU Code by failing to acknowledge and process loss and damage claims as required by Item 92 of MRT 4-C; and

7. Commission General Order (GO) 142 by failing to adequately train and supervise their drivers, helpers, and packers in the transportation of used household goods.

Public hearing was held before Administrative Law Judge (ALJ) O'Leary at Los Angeles on May 20, 21, 22, and 24, 1991. The matter was submitted subject to the filing of concurrent opening and reply briefs. The matter was submitted on July 12, 1991, the date the reply briefs were filed. On August 27, 1991, ALJ O'Leary issued a ruling setting aside submission of the matter for the receipt of Exhibits 38 and 39, which were letters submitted by respondents advising that unresolved loss and damage claims at the time of the hearings had in fact been resolved. By letter dated August 29, 1991, counsel for the Transportation Division advised she did not wish to examine the authors of Exhibits 38 and 39. On September 5, 1991, ALJ O'Leary issued another ruling resubmitting the proceeding.

The Transportation Division presented evidence through the testimony of 15 witnesses and 28 exhibits. The Transportation Division recommended the revocation of both respondents' operating authority.

Both respondents conduct operations as household goods carriers. Household goods carrier permits were issued to Nice Jewish Boy on June 10, 1985 (T-148,602) and to Father and Son on June 8, 1988 (T-158,789). The respondents are operated basically as one company, sharing common facilities, employees, and under the management of Louis J. Porcaro.

On February 4, 1992, the Transportation Division filed a petition for the Commission to set aside submission in order to present a settlement under Rule 84 of the Commission's Rules of Practice and Procedure. On February 20, 1992, the Transportation Division and respondents reached a settlement of all the issues addressed in the OII. The Transportation Division and respondents filed a motion asking the Commission for approval of the settlement and termination of the proceedings.

Terms of the Settlement

The settlement agreed to by both the Transportation Division and the respondents includes the following summarized substantive terms:

(1) The operating authorities of both Father and Son Moving and Storage, Inc. and A Nice Jewish Boy Moving and Storage, Inc. (respondents) shall be suspended for 45 consecutive days. Suspension shall be completed no later than January 1, 1993 and respondents shall notify the Transportation Division two (2) weeks prior to the beginning of the suspension period.

(2) Respondents shall pay a fine of fifteen thousand dollars (\$15,000) in quarterly installments, the first to be paid no later than January 1, 1993, with the following installments to be paid in consecutive calendar quarters.

(3) Respondents shall pay to the Commission the cost of placement of an advertisement in the Sunday Los Angeles Times Valley Edition explaining that the Commission took disciplinary action against respondents. The settlement agreement includes the text of the advertisement.

(4) Respondents will make full restitution to all customers identified as having been affected by the rule violations at issue in this case.

(5) The application of Sara Porcaro for a household goods permit is withdrawn.

Terms 6-9 are procedural rather than substantive in nature and include agreements that the settlement is legal and binding, settles all issues, and was not signed under duress.

Discussion

The Commission will evaluate each substantive term of the settlement (Terms 1-5) to determine whether adoption of the settlement is in the public interest.

First, the respondents agree to suspend operations for 45 days, beginning no later than January 1, 1993. Respondents will notify the Transportation Division of the beginning of the suspension two weeks before suspension of activity occurs. This term enables respondents to fulfill any current business moving obligations before initiating the suspension. It also enables the Transportation Division to police the suspension period by providing the Transportation Division with adequate notice. We note that the Transportation Division in its comments on the proposed decision cited outstanding difficulties with respondents dating from 1985. We believe that the stiffer term of suspension of activities is in order, rather than only imposing a further observation period as recommended in the proposed decision.

The Commission also notes that many of the allegations set forth by the Transportation Division, and the subject of customers' testimony in this case, included improper record-keeping, improper claims processing, failure to sign estimates, and failure to provide customer information booklets, among other charges. A period of suspension would benefit the public by immediately ceasing operations as they now stand, providing respondents with an opportunity to overhaul and improve their practices before recommencing operations.

The next term of the settlement increases three-fold the \$2,500 fine suggested in the proposed decision, to \$15,000. While neither fine is substantial in comparison with respondents' expected annual revenues, an increase of three times over the

proposed decision's recommendation better reflects the serious nature of the allegations brought against respondents. The higher fine sends a stronger signal that the Commission is serious about enforcing its rules. In addition, while still below our cost of prosecuting this case, the higher fine does better reflect compensation for the Transportation Division's dogged efforts to bring the respondents' operations into full compliance with the law.

The third term, placement of the advertisement in respondents' home area of business, Los Angeles, also serves the public interest. It alerts the public that this carrier has an unsavory record of business practices with respect to the violation of Commission rules. This will help educate the public in a direct way about their choice of a household goods mover, and also may serve to bring forward members of the public who wish to file claims against respondents under Term 4 of the agreement.

Term 4 of the settlement agrees that respondents will make full restitution to the customers who testified or who are otherwise identified as having been affected by respondents' rule violations. We are concerned by the Transportation Division's observation in its comments on the proposed decision that "During the four days of hearings, testimony was presented by only a fraction of the customers who had been victimized by the Respondents." The Transportation Division also specifically observed that although certain customers questioned their bills and subsequently modified them, others, while equally wronged, may not have been so assertive. "Although Ms. Rosenblatt, Mr. Lewis, and Mrs. Wilson were sufficiently outraged to refuse to pay the additional 10.5%, there is no way of ever knowing the number of customers who objected to the surcharge but paid it anyhow." It is possible that other Los Angeles customers of respondents were victims of respondents' misleading price quotations given over the phone. The combination of the advertisement and the respondents'

agreement to make full restitution to injured customers may bring more customers forward, and bring about the righting of past wrongs.

The fifth term of the settlement is troubling. The named party, Sara Porcaro, who purports to agree to withdraw her application for a household goods permit, is not a signatory to the settlement nor a party to the case. It is not appropriate to adopt such a requirement for Sara Porcaro without her signature representing her explicit consent to the term. We therefore modify the settlement to eliminate this feature.

In evaluating the settlement proposal as a whole we find that it is reasonable in light of the whole record and in the public interest. However, we also recognize that our grave concern about the behavior of the respondents has spanned a considerable period of time. We therefore feel compelled to add to the settlement additional reporting obligations on the respondents to assure the Commission that respondents' business practices continue to improve and are at all times in full compliance with our rules. In addition to the terms in the settlement, we will order respondents to report monthly to the Transportation Division any and all loss and damage complaints filed by customers for a period of one year from the effective date of this order. These reports will be submitted to the Transportation Division on or before the 10th day of each following month. We will also require the Transportation Division to conduct an audit of the records and operations of respondents within one year of the effective date of this order and report to us within 15 months of the effective date of this order the results of said investigation. We will adopt the settlement modified to include these two latter requirements and to delete Term 5 which refers to Sara Porcaro.

According to Rule 51.7.3 of the Commission's Rules of Practice and Procedure, the Commission may "propose alternative terms to the parties to the Settlement which are acceptable to the

Commission and allow the parties reasonable time within which to elect to accept such terms or to request other relief." The Commission therefore proposes to the parties to accept the settlement modified to include the three aforementioned changes, and gives the parties 45 days to accept the modified settlement or request alternate relief.

The Commission finds that the modified settlement is reasonable in light of the whole record, is consistent with the law, and is in the public interest.

Findings of Fact

1. Nice Jewish Boy holds a household goods carrier permit issued on June 10, 1985 (File T-148,602).

2. Father and Son holds a household goods carrier permit issued on June 8, 1988 (File T-158,789).

3. Nice Jewish Boy and Father and Son are operated basically as one company sharing common facilities, employees, and under the management of Louis J. Porcaro.

4. On December 6, 1990, the Commission issued an Order Instituting Investigation and Order to Show Cause into the operations and practices of respondents for the purposes of determining whether respondents violated portions of the PU Code and GO 142.

5. Included in the OII were allegations of violations of PU Code Sections 5139, 5249, 5225, and of GO 142.

6. On February 4, 1990, the Transportation Division filed a motion to set aside submission to accept a settlement document.

7. On February 20, 1992, the Transportation Division and respondents jointly filed a settlement document with the Commission.

8. The settlement document is uncontested.

9. The settlement document resolves all claims disputed by the parties in the case.

10. The settlement document includes agreement to suspend respondents' business operations for 45 days, and that respondents will pay a fine of \$15,000, pay for the placement of an advertisement in the Los Angeles Times declaring that respondents have violated Commission rules, and pay restitution to all customers identified as harmed.

11. The settlement states that Sara Porcaro will withdraw her application for a household goods permit.

12. Sara Porcaro did not sign the settlement agreement and is not named as a party to this case.

13. The settlement document does not include currently a requirement that the respondents file monthly loss and damage claim reports to the Transportation Division, nor does it currently require the Transportation Division to audit respondents' future actions, and report to the Commission in 15 months.

14. The additional monthly filing requirement of any loss or damage claims and the submission of a report on respondents after 15 months would tighten future surveillance on these carriers and likely deter future violations by respondents of the PU Code or our GOs.

Conclusions of Law

1. Terms 1 through 4, and Terms 6 through 9 of the settlement agreement are in the public interest and should be adopted.

2. Term 5 of the settlement agreement, which states that Sara Porcaro will withdraw her application for a household goods permit, should be struck from the settlement agreement as Sara Porcaro is neither a signatory to the settlement nor a party to the case.

3. Two additional terms to the settlement should be adopted as set forth in this decision: Requiring respondents to file monthly reports with the Commission's Transportation Division on any and all damage and loss claims for the period of one year and

requiring the Transportation Division to audit the records and operations of respondents within one year from the effective date of this order and report to the Commission within 15 months of the effective date of this order.

4. The modified settlement is reasonable in light of the whole record, is in the public interest, and should be adopted.

5. Pursuant to settlement Rule 51.7.3, parties have 45 days to sign the modified settlement and file it with the Commission, or seek alternate relief.

O R D E R

IT IS ORDERED that:

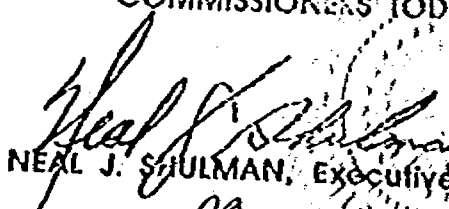
1. The settlement, modified as set forth in this decision, is reasonable in light of the record, is in the public interest, and is adopted. Parties are ordered to either sign the modified settlement within 45 days or file for alternate relief pursuant to the Commission's settlement Rule 51.7.3.

2. This order is effective today.

Dated March 31, 1992, at San Francisco, California.

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

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


NEAL J. SHULMAN, Executive Director

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the operations and
practices of A Nice Jewish Boy Moving
and Storage, Inc., and Father and Son
Moving and Storage, Inc., California
Corporations.

I.90-12-010
(Filed December 6, 1990)

SETTLEMENT AGREEMENT

This SETTLEMENT AGREEMENT is the final and complete expression of the agreement entered into the 18th day of February, 1992, by and between the California Public Utilities Commission ("CPUC"), Transportation Division and Father and Son Moving and Storage and A Nice Jewish Boy Moving and Storage, each of which together with its employees, officers, directors, agents and predecessors and successors in interest, if any, is a "Party" to this Agreement and which, collectively, are the "Parties."

WHEREAS, the CPUC has had before it a proceeding, "Investigation on the Commission's own motion into the operations and practices of A Nice Jewish Boy Moving and Storage Inc., and Father and Son Moving and Storage, Inc., California corporations" (I.90-12-010);

WHEREAS, the Parties each desire to resolve amicably the dispute among them and to settle and forever dispose of all issues raised in I.90-12-010;

NOW, THEREFORE, in consideration of the foregoing, of the monetary consideration specified hereinafter, and of the mutual promises hereinafter made, and intending legally to be bound, the Parties, by their authorized representatives, hereby agree and contract as follows:

1. The operating authorities of both Father and Son Moving and Storage, Inc., and A Nice Jewish Boy Moving and Storage, Inc. shall be suspended for 45 consecutive days. Suspension shall be completed no later than January 1, 1993 and Nice Jewish Boy Moving and Storage and Father and Son Moving and Storage Inc.,

shall notify the Transportation Division two (2) weeks prior to the beginning of the suspension period.

2. Father and Son Moving and Storage, Inc., and A Nice Jewish Boy Moving and Storage, Inc. shall pay a fine of Fifteen Thousand Dollars (\$15,000) in quarterly installments of Three Thousand Seven Hundred and Fifty Dollars (\$3,750). The first installment shall be paid no later than January 1, 1993. Subsequent installments shall be paid, respectively, on the first day of the next three (3) calendar year quarters. No interest is payable with respect to the Settlement Amount or any installment thereof.

3. Father and Son Moving and Storage, Inc., and A Nice Jewish Boy Moving and Storage, Inc. shall pay to the Commission the cost of the placement of an advertisement in the Sunday Los Angeles Times, Valley Edition, (approximately \$1,750) explaining that the Commission took disciplinary action against Father and Son Moving and Storage, Inc. and A Nice Jewish Boy Moving and Storage, Inc. The advertisement shall be one half page and the text of the advertisement shall read as follows:

[State of California Seal]

"PUBLIC NOTICE"

The State Public Utilities Commission (CPUC), San Francisco, which licenses and regulates household goods carriers, commonly referred to as MOVERS, has recently disciplined two Van Nuys movers for unlawful business practices. The carriers are A NICE JEWISH BOY MOVING AND STORAGE and FATHER AND SON MOVING AND STORAGE, both operated by Louis J. Porcaro. The unlawful business practices occurred during 1989 and 1990 and include failure to respond to loss and damage claims, misrepresentation of rates, and failure to produce business records to CPUC investigators. The terms of the discipline imposed by the CPUC on both movers are: (1) a 45-day suspension, (2) a fine of \$15,000, (3) placement of this advertisement, and (4) restitution.

Anyone who feels they have a claim for restitution against either of these movers should contact CPUC investigator, D. Zundel, Los Angeles. (213) 897-3128.

4. Father and Son Moving and Storage, Inc., and A Nice Jewish Boy Moving and Storage, Inc. will make full restitution to the customers who testified at the hearings and to all other customers who are identified as having been affected by the rule violations of Father and Son Moving and Storage, Inc. and A Nice Jewish Boy Moving and Storage, Inc.

5. The application of Sara Porcaro for a household goods carrier permit will be withdrawn.

6. The Parties acknowledge and confirm that they have received sufficient consideration for the settlement set forth in this Agreement, and represent and warrant that no promise or inducement has been made or offered to them except as set forth in this Agreement; that they are executing this Agreement without reliance upon any statement or representation by any person or party released, or the representative of any person or party released, except as set forth in this Agreement; that they are legally competent to make the settlement set forth in this Agreement and to execute this Agreement; that this Agreement sets forth the entire understanding of the Parties with respect to the terms and conditions of their settlement agreement, that they have not assigned, transferred or conveyed, or purported to assign, transfer or convey, voluntarily, involuntarily or by operation of law, any or all of their respective rights or claims against the other; that they fully understand their right to discuss with their respective legal counsel any and all aspects of the settlement set forth in this Agreement, that they have availed themselves of that right, that they and their legal counsel carefully have read and fully understand all of the provisions of the settlement set forth in this Agreement; that they voluntarily are entering into this agreement; and that this Agreement cannot be modified except in writing signed by all parties to the modification.

7. The Parties acknowledge and stipulate that the Agreement is fair and is not the result of any fraud, duress, or undue influence exercised by any Party upon another Party or by any other person or persons upon either; that the provisions herein made are adequate, reasonably, and satisfactory to each of them; that they have arrived at the compromise that forms the basis of their settlement agreement after thorough bargaining, negotiation, and review of the applicable factual allegations and legal authorities and their settlement agreement represents a final and mutually agreeable compromise of the matters set forth in this Agreement. Each Party further acknowledges that, after the execution of this Agreement, he or it may discover facts in addition to or different from those that he or it now knows or believes to be true with respect to matters encompassed by the settlement set forth in this Agreement, but that it is the intention of each Party to settle, and each Party does settle, fully, finally, and forever, the matters set forth in this Agreement notwithstanding the discovery or existence of any such additional or different facts.

8. This Agreement is to be governed and construed in accordance with the laws of the State of California applicable to settlement agreements either entered into or to be performed in the State of California.

9. This Agreement may be executed in multiple counterparts, each of which shall constitute an original, and all of which shall constitute one single agreement.

IN WITNESS OF the settlement set forth in this Agreement, the Parties, by their authorized officers, have signed this Agreement as of the date first above written.

By:

Laura J. Tudisco

Laura J. Tudisco
Staff Counsel

Attorney for the Transportation Division
Public Utilities Commission of the
State of California

By:

Louis Porcaro

Louis Porcaro

FATHER & SON MOVING AND STORAGE, INC.

By:

Louis Porcaro

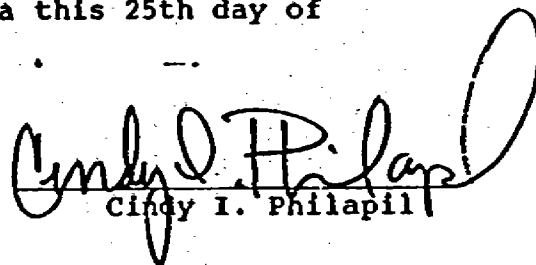
Louis Porcaro

A NICE JEWISH BOY MOVING AND STORAGE, INC.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all known parties of record in this proceeding, by mailing by first-class mail a copy thereof properly addressed to each such party on the attached list.

Dated at San Francisco, California this 25th day of February, 1992.


Cindy I. Philapill

(END OF APPENDIX A)