

SEP 8 1995

Decision 95-09-002 September 7, 1995

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations and practices of Michael A. Kahn, an individual doing business as MICHAEL'S MOVING AND STORAGE, and of his managing employees, Robert A. Kahn and Julio Estrella.

Respondents

ORIGINAL

On August 1, 1994, the license holder received a notice to transfer the permit to Michael's Moving & Storage, Inc. Article of Incorporation filed with the state shows that the entity was incorporated on November 18, 1993. The application shows Robert A. Kahn as a resident and majority shareholder with 75% of the shares.

By today's decision, we adopt a settlement agreement proposed by the Safety and Enforcement Division (staff) and the respondents to this investigation. We regulate the operations and practices of household goods carriers within California, pursuant to Division 2, sections (ss) 5101 to 5320 of the Public Utilities (PU) Code. This proceeding was initiated on January 24, 1995 with the filing of an Order Instituting Investigation (OII or OI) into the operations and practices of Michael A. Kahn, an individual doing business as Michael's Moving and Storage, and his managing employees, Robert A. Kahn and Julio Estrella. The OII was issued after an investigation by staff for the purpose of determining:

1. Whether respondents violated PU Code § 5133 by conducting operations as a household goods carrier before a permit was issued by the Commission authorizing such operations; and
 2. Whether respondents violated PU Code § 5003.1 by failing to remit quarterly fees based on carrier's gross operating revenue for the year 1993;
- Our staff is concerned that the principals or managing employees of respondents violated PU Code § 5007 by failing to remit the 25% penalty on delinquent fees based on carrier's gross operating revenue for the year 1993; and

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4. Whether respondents violated PU Code § 5139 by failing to observe certain provisions in the Commission's Maximum Rate Tariff 4.

License History

Michael A. Kahn was issued a household goods carrier permit (T-174(898)) on December 31, 1993, to conduct operations as an individual doing business as (dba) Michael's Moving and Storage. On August 1, 1994, the License Section of the Safety and Enforcement Division received an application to transfer the permit of Michael A. Kahn to Michael's Moving & Storage, Inc. Articles of Incorporation filed with the application shows that the entity was incorporated on November 18, 1993. The application shows Robert A. Kahn as president and majority shareholder, with 51% of the shares. Julio Estrella is shown as vice president and owner of the remaining 49% of the shares. Directors of the corporation are listed as Robert A. Kahn, Julio Estrella, and Michael A. Kahn. On October 7, 1994, Michael's Moving & Storage, Inc. filed an application to replace the pending transfer application. Staff has recommended that although the application is technically complete, it should be held in abeyance pending Commission review of the issues raised in this investigation.

Enforcement History

As detailed more fully in I.95-01-022, staff has informed us that complaints against Michael's Moving and Storage were filed in 1993, prior to Mr. Kahn's receipt of the operating permit. On March 2, 1994, staff conducted an investigation into the operations and practices of Michael A. Kahn, dba Michael's Moving and Storage, which led to the OII being issued. At that time, Robert A. Kahn and Julio Estrella were managing employees of the company.

Our staff is concerned that the principals or managing employees of Michael's Moving & Storage, Inc. will abandon the household goods permit issued to Michael A. Kahn as an individual; ignore the pending fines and penalties imposed on Michael's Moving

and Storage; utilize the new household goods permit, if issued; and continue practices the staff alleges resulted in customer complaints of overcharging. As we stated in I.95-01-022, "[w]e wish to ensure future compliance with the Public Utilities Code and Maximum Rate Tariff 4 consumer protections before we grant authority to a corporation whose officers managed a business which is alleged to have committed these types of violations."

Proposed Stipulation for Settlement

An initial prehearing conference (PHC) was held on March 16, 1995, with an additional PHC held on March 27, 1995. During these PHCs, counsel for the Commission's Safety and Enforcement Division, and for respondents, advised the administrative law judge that parties wished to explore the possibility of reaching a settlement on the issues delineated in this proceeding. On June 19, 1995, the Safety and Enforcement Division filed a motion for adoption of a proposed stipulation for settlement, pursuant to Rule 51.1(c) of the Commission's Rules of Practice and Procedure, (Title 20 of the California Code of Regulations).

The parties believe that the settlement constitutes a reasonable resolution of the proceeding, is in the public interest, is consistent with the law, and will avoid the expense, time, inconvenience, and uncertainty attendant to litigation of the issues in dispute between them. The settlement agreement includes the following provisions:

1. The household goods carrier permit issued to Michael A. Kahn; an individual (T-174,898) will be revoked concurrent with the granting of a provisional household goods carrier permit to Michael's Moving & Storage, Inc. a California corporation;
2. A provisional household goods carrier permit will be issued to Michael's Moving & Storage, Inc., for a term of 12 months, to begin on the date this agreement is approved and adopted by the Commission. Sixty days before the expiration of the

provisional permit, Michael's Moving & Storage, Inc. may apply for a permanent household goods permit, as described in the settlement agreement.

3. Michael's Moving & Storage, Inc. shall serve a 12-month probation, which shall begin on the date this agreement is approved and adopted by the Commission.

During probation, Michael's Moving & Storage, Inc. must provide monthly progress reports to the Safety and Enforcement Division, which document compliance with Commission regulations and must be signed under penalty of perjury. The monthly progress reports are due on the 15th of each month for the previous month's operations and must include a list of all complaints, acknowledgement and disposition of each complaint, and all information required by Commission tariff MAX 4, Item 92.(15) and (16). The reports must also include a list of each move during the prior month, as described in the settlement agreement.

4. Michael A. Kahn, Robert A. Kahn, and Julio Estrella agree to pay a total monetary payment of \$1,500, payable in six installments of \$250. No interest shall accrue. The respondents further agree to pay quarterly fees pursuant to PU Code § 5003.1 and the 25% penalty pursuant to PU Code § 5007 in the amount of \$37,500; and

5. Within 15 days of the date this Agreement is signed, Michael's Moving & Storage, Inc. agrees to provide the Safety and Enforcement Division with a report on all outstanding claims.

Discussion

A copy of the settlement agreement is attached to this decision as Appendix A. Pursuant to Rule 51.1(e), the Commission must evaluate proposed settlements to determine whether adoption of the agreement is reasonable, consistent with the law, and in the public interest. The proposed settlement agreement has

appropriately resolved the issues raised in the OII without going to the time and expense of hearings and litigation. The transfer permit to Michael's Moving & Storage, Inc. is granted provisionally and subjects the corporation to a 12-month probation period. By this action, the respondents are put on notice that this Commission will not tolerate further violation of our rules and regulations. In order to ensure and monitor compliance, we require detailed monthly reports. We find, therefore, that the settlement agreement is reasonable, consistent with the law, and in the public interest.

Findings of Fact

1. Michael A. Kahn, an individual doing business as Michael's Moving and Storage, operates as a household goods carrier under a permit issued by this Commission (T-174,898).

2. On August 1, 1994, Michael's Moving & Storage, Inc. applied for a transfer of the permit of Michael A. Kahn (T-174,898). Michael's Moving & Storage, Inc. replaced this transfer application with a revised transfer application on October 7, 1994.

3. On January 24, 1995, the Commission issued this OII into the operations and practices of respondents to determine whether they had violated various sections of the PU Code and various provisions of the Maximum Rate Tariff. The transfer application has been held in abeyance pending the outcome of this investigation.

4. On June 19, 1995, the Safety and Enforcement Division filed a motion for Adoption of Proposed Stipulation for Settlement. The motion included an attached settlement agreement.

5. The settlement agreement is uncontested.

6. The settlement agreement resolves all claims disputed by the parties in the case.

Conclusions of Law

1. The settlement agreement is reasonable, consistent with the law, in the public interest, and should be adopted.

Since the settlement agreement is uncontested, the effective date of this decision should be today and expires on the date of the last and expected to Michael's Moving & Storage, Inc. is granted provisionally and subject to the corporation's probation period.

ORDER and subject to the corporation's probation period. This action, the respondents are put on notice that this Commission will not tolerate further violation of its orders.

IT IS ORDERED that the attached settlement agreement, as summarized below, is adopted. The attached settlement agreement, as summarized below, is adopted.

The household goods carrier permit issued to Michael A. Kahn, an individual (T-174,898) shall be revoked concurrent with the granting of a provisional household goods carrier permit to Michael's Moving & Storage, Inc., a California corporation.

a. A provisional household goods carrier permit shall be issued to Michael's Moving & Storage, Inc. for a term of 12 months, to begin on the date this agreement is approved and adopted by the Commission sixty days before the expiration of the provisional permit, Michael's Moving & Storage, Inc. may apply for a permanent household goods carrier permit, as described more fully in the settlement agreement.

b. Michael's Moving & Storage, Inc. shall serve a 12-month probation, which shall begin on the date this agreement is approved and adopted by the Commission. During probation, Michael's Moving & Storage, Inc. shall provide monthly progress reports to the Safety and Enforcement Division, which shall document compliance with Commission regulations and shall be signed under penalty of perjury. The monthly progress reports shall be due on the 15th of each month for the previous month's operations and shall include a list of all complaints, acknowledgement and disposition of each complaint, and all information required by Commission tariff MAX 4, Item 92 (15) and (16). The reports shall also include a list of each move during the prior month, as described more

c. Michael's Moving & Storage, Inc. shall serve a 12-month probation, which shall begin on the date this agreement is approved and adopted by the Commission. During probation, Michael's Moving & Storage, Inc. shall provide monthly progress reports to the Safety and Enforcement Division, which shall document compliance with Commission regulations and shall be signed under penalty of perjury. The monthly progress reports shall be due on the 15th of each month for the previous month's operations and shall include a list of all complaints, acknowledgement and disposition of each complaint, and all information required by Commission tariff MAX 4, Item 92 (15) and (16). The reports shall also include a list of each move during the prior month, as described more

d. Michael's Moving & Storage, Inc. shall serve a 12-month probation, which shall begin on the date this agreement is approved and adopted by the Commission. During probation, Michael's Moving & Storage, Inc. shall provide monthly progress reports to the Safety and Enforcement Division, which shall document compliance with Commission regulations and shall be signed under penalty of perjury. The monthly progress reports shall be due on the 15th of each month for the previous month's operations and shall include a list of all complaints, acknowledgement and disposition of each complaint, and all information required by Commission tariff MAX 4, Item 92 (15) and (16). The reports shall also include a list of each move during the prior month, as described more

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fully in the attached settlement agreement,
and

- d. Michael A. Kahn, Robert A. Kahn, and Julio Estrella (respondents) shall pay a total monetary payment of \$1,500, payable in six installments of \$250. No interest shall accrue on this amount. The respondents shall pay quarterly fees pursuant to PU Code § 5003.1 and the 25% penalty pursuant to PU Code § 5007 in the amount of \$37,500.
- e. Within 15 days of the date this agreement is approved and adopted, Michael's Moving & Storage, Inc. shall provide the Safety and Enforcement Division with a report on all outstanding claims not settled or disposed of as of the date of the settlement agreement.

This order is effective today.

Dated September 7, 1995, at Los Angeles, California.

DANIEL Wm. FESSLER
President
P. GREGORY CONLON
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
Commissioners

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

Wesley Franklin
Acting 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 Michael A. Kahn, an individual doing business as MICHAEL'S MOVING AND STORAGE, and of his managing employees, Robert A. Kahn and Julio Estrella, Respondents.

I.95-01-022
 (Filed January 24, 1995)

STIPULATION FOR SETTLEMENT

This Stipulation for Settlement (Settlement Agreement or Agreement) is entered into by and between the Safety and Enforcement Division of the California Public Utilities Commission (Safety & Enforcement), Michael A. Kahn, an individual doing business as Michael's Moving and Storage, and Robert A. Kahn and Julio Estrella, managing employees of Michael's Moving and Storage and owners and President, Vice President, respectively of Michael's Moving & Storage, Inc. The effective date of this Agreement shall be the date of its approval and adoption by the California Public Utilities Commission (Commission).

The Commission regulates household goods carriers pursuant to its authority under Division 2, Sections 5101 to 5320 of the Public Utilities Code. Michael A. Kahn, an individual doing business as Michael's Moving and Storage, conducts such operations under a household goods carrier permit (T 174 898). Michael's Moving & Storage, Inc. doing business as Michael's Moving and Storage, has made application to the Commission for a household goods carrier permit. Robert A. Kahn is President and owner of 51 percent of the shares of the corporation, and Julio Estrella is Vice President and owner of 49 percent of the shares of the corporation.

Agreement are: the California Public Utilities Commission Safety and Enforcement Division; Michael A. Kahn, an individual

On January 24, 1995, the Commission issued an Order Instituting Investigation (OII) into the operations and practices of Michael A. Kahn, Robert A. Kahn, Julio Estrella, and Michael's Moving and Storage. The OII sought to determine the following:

1. Whether Respondents violated Section 5133 of the Public Utilities Code by conducting operations as a household goods carrier before a permit was issued by the Commission authorizing such operations.

2. Whether Respondents violated Section 5003.1 of the Public Utilities Code by failing to remit quarterly fees based on carrier's gross operating revenue for the year 1993.

3. Whether Respondents violated Sections 5007 of the Public Utilities Code by failing to remit the 25 percent penalty on delinquent fees based on carrier's operating revenue for the year 1993.

4. Whether Respondents violated Section 5139 of the Public Utilities Code by failing to observe certain provisions in the Commission's Maximum Rate Tariff.

The OII also held in abeyance the issuance of a new household goods carrier permit to Michael's Moving & Storage, Inc., Bob A. Kahn, President and Julio Estrella, Vice President, pending the outcome of the investigatory proceedings.

THE PARTIES TO THIS PROCEEDING now pending before the Public Utilities Commission, desiring to avoid the expense and inconvenience, and uncertainty attendant to litigation of the issues in dispute between them, have agreed upon a Settlement of the issues raised in the OII and submit this Settlement Agreement to the Public Utilities Commission for approval and adoption as its final disposition of the matters herein. The parties to this Agreement are: the California Public Utilities Commission's Safety and Enforcement Division; Michael, A. Kahn, an individual

doing business as Michael's Moving and Storage, Robert A. Kahn, managing employee of Michael's Moving and Storage and President and 51 percent owner of Michael's Moving & Storage, Inc.; and Julio Estrella, managing employee of Michael's Moving and Storage and Vice President and 49 percent owner of Michael's Moving & Storage, Inc.

In order to effectuate a settlement of this matter before the Commission, Michael A. Kahn, Robert A. Kahn, Julio Estrella and Michael's Moving & Storage, Inc. shall not contest the above allegations.

NOW, THEREFORE, in consideration for the mutual promises set forth herein, the parties agree as follows:

AGREEMENT

1. Request for Revocation: Michael A. Kahn, an individual, requests that his household goods carrier permit (TX1749898) be revoked concurrent with the grant of a household goods carrier permit to Michael's Moving & Storage, Inc., a California corporation.

2. Grant of Provisional Household Goods Carrier Authority. Robert A. Kahn, President and majority stockholder in Michael's Moving & Storage, Inc. and Julio Estrella, Vice President and minority stockholder in Michael's Moving & Storage, Inc., request that the Commission grant a provisional household goods carrier permit to Michael's Moving & Storage, Inc. for a term of twelve months, which shall begin on the date this Agreement is approved and adopted by the Commission. Sixty days before the expiration of the twelve-month provisional household goods carrier permit, Michael's Moving & Storage, Inc. may make application to the Commission for

Application for permanent household goods carrier permit. The application for permanent authority need not be accompanied by the fee required by P.U. Code Sect. 5136. The Director of the Safety and Enforcement Division may, in the event of any procedural delay in the disposition of the application for permanent authority filed by Michael's Moving & Storage, Inc., extend the term of the provisional authority granted by the Commission for whatever time is necessary for permanent authority to be granted. The applicant, Michael's Moving & Storage, Inc., shall, at the time of such application for permanent authority, provide evidence of its fitness to operate as a household goods carrier sufficient for the Commission finding pursuant to P.U. Code Sect. 5135 that applicant has demonstrated that it possesses sufficient knowledge, ability, integrity and financial resources and responsibility to perform the service within the scope of its application.

Probation: Michael's Moving & Storage, Inc. shall serve a twelve-month probation which shall begin on the date this Agreement is approved and adopted by the Commission. During probation, Michael's Moving & Storage, Inc. is subject to the following terms and conditions:

- (a) Progress Reports: During probation, Michael's Moving & Storage, Inc. shall prepare and present to the Safety and Enforcement Division monthly reports signed under penalty of perjury, of its compliance with Commission regulations. The reports shall include:
 - (1) a list of all complaints received from its customers during the prior month;
 - (2) the acknowledgment and

and settlement of each complaint, including the dates of acknowledgement and disposition or settlement, and all information required by Commission tariff MAX 4, Item 92, (15) and (16);

- (3) a list of each move during the prior month, including name of customer, date of move, date and amount of estimate (if any), date of Agreement for Service and Shipping Order and Freight Bill, amount of Not to Exceed Price on Agreement for Service and Shipping Order and Freight Bill, amount of final charge paid by

customer, date and amount of Change Order for Service (if any).

The report shall be due on the 15th of each month for the previous month's operations. The first report shall be due the month following the

Commission's adoption of this Agreement. Michael's Moving & Storage, Inc. shall continue to provide

these reports until completion of probation.

Monetary Payment Michael A. Kahn, Robert A. Kahn and Julio Estrella agree to pay a total monetary payment of \$1,500.

Michael A. Kahn, Robert A. Kahn and Julio Estrella agree to pay this amount in six installments as follows: The first

installment of \$250 shall be due on or before the first of the month following the Commission adoption of the Agreement. The

remaining installments shall be due on or before the first of each subsequent month for the next five months. Each

installment shall be in the amount of \$250. No interest is payable with respect to the Settlement amount of \$1,500.

Michael A. Kahn, Robert A. Kahn and Julio Estrella further agree to pay quarterly fees pursuant to P.U. Code Sect. 5003.1 and the

25 percent penalty pursuant to P.U. Code Sect. 5007 on the amount of \$37,500

5. Outstanding Claims. Michael's Moving & Storage, Inc. agrees, within 15 days of the date it signs this Agreement, to provide the Safety and Enforcement Division with a report on all claims not settled or disposed of as of the date of this

Agreement, including the following complaints;

- Gail Rentz
- Evelyn Iannini
- Hedy Brenner
- Phyllis Van Boxtell
- Janet Tisdale
- Jack Abbott

Michael's Moving & Storage, Inc. further agrees that the report on all outstanding claims will include all information required by the Commission's tariff MAX 4, Item 92 (15) and (16).

6. Michael's Moving & Storage, Inc. agrees that immediately upon the Commission's adoption of this Settlement Agreement it will be in compliance with the terms of the Agreement.

7. Michael's Moving & Storage, Inc., and Michael A. Kahn, doing business as Michael's Moving and Storage, agree that this Settlement Agreement is intended only to resolve the instant Regulatory matter affecting it that is before the Commission.

The parties agree jointly by executing and submitting this Settlement Agreement that the relief requested herein is just, fair, and reasonable and in the public interest, and that the terms are binding when approved by the Commission. The parties respectfully request that the Commission adopt findings and conclusions consistent with the Settlement Agreement and that the instant proceeding be terminated upon such order of the Commission.

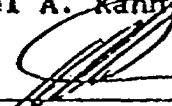
IN WITNESS WHEREOF, the parties hereto have executed this Settlement Agreement on the date set forth opposite their respective signatures.

APPENDIX A

IN WITNESS WHEREOF, the parties hereto have executed this Settlement Agreement on the date set forth opposite their respective signatures.

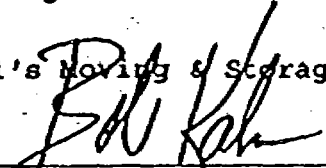
Michael's Moving and Storage
Michael A. Kahn

Dated: 5/26/95

By: 
Michael A. Kahn,
Owner, Michael's Moving and Storage

Michael's Moving & Storage, Inc.

Dated: 5/26/95

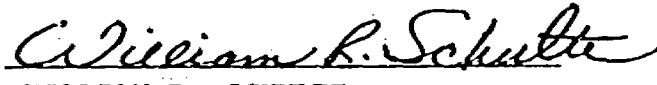
By:  PRES.
Robert A. Kahn, President
Michael's Moving & Storage, Inc.

Dated: 5/26/95

By:  V.P.
Julio Estrella, Vice President
Michael's Moving & Storage, Inc.

STAFF OF THE CALIFORNIA PUBLIC
UTILITIES COMMISSION

Dated: June 12, 1995

By: 
WILLIAM R. SCHULTE
Director of Safety and Enforcement Division