

## PUBLIC UTILITIES COMMISSION

505 VANNESS AVENUE  
SAN FRANCISCO, CA 94102-3238

June 29, 1998

**ORIGINAL**TO: PARTIES OF RECORD IN CASE 97-12-007  
DECISION 98-06-088, Mailed 6/29/98

On May 27, 1998, a Presiding Officer's Decision in this proceeding was mailed to all parties. Public Utilities Code Section 1701.2 and Rule 8.2 of the Commission's Rules of Practice and Procedures provide that the Presiding Officer's Decision becomes the decision of the Commission 30 days after its mailing unless an appeal to the Commission or a request for review has been filed.

No timely appeals to the Commission or requests for review have been filed. Therefore, the Presiding Officer's Decision is now the decision of the Commission.

The decision number is shown above.

A handwritten signature in cursive script that reads "Lynn T. Carew".

Lynn T. Carew, Chief  
Administrative Law Judge

LTC:jva  
Attachments

Decision 98-06-088

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

Robert Hepler Lowe and Sheryl Berkoff Lowe,

Complainants,

vs.

All Points Moving and Storage,

Defendant.

Case 97-12-007  
(Filed December 4, 1997)

David G. Baram, Attorney at Law, of Stein & Kahan, for  
Robert Hepler Lowe and Sheryl Berkoff Lowe, complainants.  
Robert Herzog, Shari Herzog, and Dan Herzog, in propria  
persona, All Points Moving and Storage, defendant.  
Carol Dumond, Toni D. Crowley, and William G. Waldorf,  
for Consumer Services Division.

**O P I N I O N**

**Background**

On December 4, 1997, Robert Hepler Lowe and Sheryl Berkoff Lowe filed a complaint alleging that All Points Moving and Storage, Inc., (All Points) (PUC Permit No. T-142,593) had given them a "firm" bid to store and move the contents of their home. Complainants further alleged that after moving their belongings into storage, All Points presented them with a bill which was nearly double the "firm" bid and threatened to sell the belongings to pay the bill.

In a letter dated December 16, 1997, the Commission served All Points with a copy of the complaint and instructions to file an answer within 30 days. All Points did not file an answer.

On December 17, 1997, Complainants and All Points reached an agreement whereby All Points would release the belongings upon payment of approximately half the amount All Points claimed was due. The parties further agreed that the disputed additional amount would be resolved via this complaint.

On February 10, 1998, the assigned Administrative Law Judge (ALJ) held a telephonic prehearing conference (PHC). The complainants' attorney and Consumer Services Division's (CSD) representatives and attorney participated in the PHC. Despite repeated notice of the PHC, All Points, as operated by Evesha Barkley, did not participate.

In a letter dated February 12, 1998, Evesha Barkley notified the assigned ALJ that she was ceasing operations as All Points. Ms. Barkley's letter stated that she had acquired the assets, properties and stock of All Points pursuant to a Purchase Agreement with Robert Herzog. Ms. Barkley further stated that neither she nor any member of her staff had obtained operating authority from the Commission. She did not indicate that she would pursue her claim that the Lowes owed her any additional amounts.

On February 18, 1998, the assigned Commissioner and assigned ALJ issued a ruling noting that All Points had not filed an answer and directing All Points to do so no later than February 27, 1998. Again, no answer was filed. The ruling also found that this proceeding came within Rule 4(b)(2) of the Commission's Rules of Practice and Procedure such that Article 2.5 of those Rules applied to this proceeding. The ruling categorized the proceeding as adjudicatory and designated the assigned ALJ as the presiding officer.

On March 4, 1998, the ALJ held an evidentiary hearing where the Complainants, Commission staff, and All Points' former owners, Robert and Shari Herzog, appeared and presented evidence.

On March 5, 1998, the Commission staff filed a motion for an order against Evesha Barkley, Evesha Group, Inc., and all officers and directors directing them to cease and desist from further violations of California law and Commission orders.

### **Summary of Evidence Presented**

#### ***Robert Hepler Lowe and Sheryl Berkoff Lowe***

The Lowes testified that they obtained a firm written estimate of \$3,000 from All Points to move their belongings from their current home to storage units and a rental house. On the day of the move, All Points had between five and ten workers present, none of whom at any time sought their approval for additional charges, although they did approve a charge of between \$500 and \$800 for moving other items to a different storage facility.

Several weeks subsequent to the move, All Points presented the Lowes with an invoice for approximately \$15,000. Although requested, no documentation supporting the increased amount was presented.

On September 25, 1997, All Points sent a past due notice which indicated their intentions to sell the property if the bill was not paid in full.

With the assistance of local law enforcement authorities and the Commission's staff, the Lowes were able to negotiate an agreement which allowed them to retrieve their belongings upon payment of \$8,500.

On the day the belongings were being moved from the storage facility, a representative of All Points threatened Mr. Lowe and his family with physical harm.

The subsequent inventory of the stored items moved out of All Points revealed that approximately 25% of the stored items were missing. The inventory is not yet complete as the Lowes have not moved into their new home and retrieved all their belongings from the storage sites.

The Lowes stated that they dealt with Evesha Barkley and "Mr. Kennedy" throughout their interactions with All Points. Present at the hearing representing All Points were the former owners of All Points, Robert and Shari Herzog. The Lowes indicated that they had not met nor had any interaction with the Herzogs.

***Commission Consumer Services Division***

CSD presented two staff investigators and their declarations for the record: Toni Crowley and William G. Waldorf. These declarations summarized CSD's investigation of All Points and suggested serious violations of the statutes and the Commission's rules. The declarations showed that the All Points business had apparently been sold by the Herzogs to Evesha Barkley, and that this transaction had not been approved by the Commission.

The most significant portion of CSD's presentation was an agreement with the Herzogs regarding prospective operations of All Points. Because the agreement was negotiated during a break in the hearings, the parties memorialized on the record:

The Herzogs agree to, one, revocation of the permit of All Points Moving and Storage effective immediately; two, provide CSD staff with complete list of all current storage customers of APM, including names, addresses, telephone numbers, vault, and/or lot number of customers' goods and where the present whereabouts of goods known are; three, give CSD staff access to all records; four, protect current storage customers by, (a) notifying customers that they need to make other arrangements, (b) making themselves and their warehouse available to customers who want to retrieve their goods, (c) retain insurance and security until all the customers' goods have been safely retrieved and, (d) notify CSD staff when all goods have been retrieved; four, assist staff in any criminal action against the Barkleys.

Staff accepts this agreement and in turn agrees to forego asking for any fines or penalties against the Herzogs.

In sum, the agreement requires that the Herzogs wind down operations of All Points in an orderly manner which protects all current storage customers and allows their permit to be revoked. In the end, All Points will cease doing business.

### ***The Herzogs***

Mr. Robert Herzog formally testified on one issue, participated in the negotiations that led up to the agreement set out above, and offered information that the Barkleys (Evesh) and her brother-in-law who used the pseudonym "Mr. Kennedy") had abandoned their interest in All Points and, to the best of his knowledge, had left the state. He did not indicate that he would pursue the excess amounts the Barkleys claimed the Lowes owed them.

### **Discussion**

The history of the Lowes' business with All Points as operated by the Barkleys is an excellent example of the wisdom of Public Utilities (PU) Code § 5284.5, which requires that the Commission approve transfers of permits only to those who are "qualified" for the proposed operations. Such an application process may have better prepared the Barkleys to operate as a mover of household goods.

At this point, the parties appear to have reached an equitable resolution of the issues. The Lowes have obtained all their goods remaining in the possession of All Points; the Herzogs have agreed to search for any missing items that may be in their warehouse. The Herzogs are apparently unwilling to pursue the amount claimed by the Barkleys, and the Lowes are not seeking a refund. The Herzogs have agreed to cease operations in an orderly manner and to cooperate with staff in any prosecutions of the Barkleys. In exchange for revocation of the permit, staff has agreed not seek penalties against the Herzogs.

The sole remaining issue is CSD's request for a cease and desist order against the Barkleys. The record in the Lowes' case, and the other information presented by CSD in their declarations, amply supports such an order.

**Findings of Fact**

1. Evesha Barkley and her associates, some of whom may have been family members, operated All Points without having secured the proper authorization from the Commission.
2. All Points, as operated by the Barkleys, failed to respond to an ALJ ruling and failed to file a timely answer to a complaint.
3. Robert and Shari Herzog have resumed control of All Points.
4. All Points, as operated by Evesha Barkley and her associates, contracted to provide moving and storage service to Robert Hepler Lowe and Sheryl Berkoff Lowe.
5. All Points, as operated by Evesha Barkley and her associates, attempted to charge Robert Hepler Lowe and Sheryl Berkoff Lowe a fee that exceeded the agreed-upon fee without sufficient supporting documentation.
6. All Points, as operated by Evesha Barkley and her associates, has ceased operations.
7. All Points is currently being operated by Robert and Shari Herzog for the sole purpose of winding down the business in an orderly manner.
8. All Points, as operated by Robert and Shari Herzog, has agreed to cooperate with Robert Hepler Lowe and Sheryl Berkoff Lowe to ensure that all stored property is returned.
9. All Points, as operated by Robert and Shari Herzog, has agreed to cooperate with Commission staff in any prosecution of Evesha Barkley and her associates.

10. CSD has requested a Commission order directing Evesha Barkley to cease and desist from further violations of California law.

**Conclusions of Law**

1. All Points Moving and Storage, as operated by Robert and Shari Herzog, has agreed to allow the Commission to revoke their permit to operate as a household goods carrier, T-142, 593.

2. Evesha Barkley and her associates operated as a household goods carrier without proper authorization of this Commission.

3. All Points, as operated by Robert and Shari Herzog, has abandoned any claim for additional payment from the Lowes.

4. CSD's motion for a cease and desist order should be granted.

5. This proceeding is categorized as adjudicatory as defined in Rule 5(b) of the Commission's Rules of Practice and Procedure.

6. This is a complaint case not challenging the reasonableness of rates or charges, and so this decision is issued in an adjudicatory proceeding as defined in PU Code § 1757.1.

**O R D E R**

Therefore, IT IS ORDERED that:

1. The household goods carrier permit issued to All Points Moving and Storage (All Points), permit number T-142, 593, is hereby revoked.

2. Robert and Shari Herzog are directed to cooperate with Robert Hepler Lowe and Sheryl Berkoff Lowe to ensure that all stored property is located and returned.

3. Robert and Shari Herzog are directed to cooperate with Commission staff in any prosecution of Evesha Barkley and her associates.



4. Evesha Barkley, the Evesha Group, Inc., and all officers and/or directors of the Evesha Group, Inc., are directed to cease and desist from further violations of the Public Utilities Code, the Business and Professions Code, the Penal Code, Commission orders, decisions, rules and regulations, and any other law of California, specifically in connection with All Points, and generally in connection with operations as a household goods carrier in California.

5. This docket is closed.

This order is effective today.

Dated June 29, 1998, at San Francisco, California.