

Decision 98-11-005 November 5, 1998

**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 Elite Moving  
and Storage, Inc. and its Chairman, John Small  
and its President, Chad Price, as individuals,

Respondents.

**ORIGINAL**

Investigation 97-06-036  
(Filed June 25, 1997)

John E. Small, for Elite Moving and Storage, Inc.  
respondent (Prehearing Conference Only.)  
Carol A. Dumond, Attorney at Law, and  
Richard Mólzner for Consumer Services Division.

**OPINION**

**Summary**

In this decision we permanently revoke the household goods carrier permit, number T-184,023, of respondent Elite Moving and Storage, Inc. (Elite). The Commission's staff is directed to take all appropriate action to return to the rightful owner(s) any property which is the subject of this investigation that may remain in the respondent's custody. Investigation (I.) 97-06-036 is closed.

**Background**

Elite holds a household goods carrier permit under the number, T-184,023. This permit was transferred to Elite in 1993 from John Small (Small) and Chad

Price (Price), respectively its chairman and president, when Elite was organized as a corporation.<sup>1</sup>

We issued the Order Instituting Investigation (OII) in this proceeding on the basis of an investigation by agents of our Consumer Services Division (Staff) which disclosed numerous suspected violations of statutes we administer, our General Order (GO) 142, and our MAX 4 tariff. Staff conducted its investigation after receiving a number of complaints from Elite's customers.

Violations alleged by Staff following its investigation specifically include assertions that Elite

- a. Conducted operations as a household goods carrier during a period when its operating authority was suspended, in violation of Public Utilities (PU) Code § 5286;
- b. Failed to maintain adequate liability and cargo protection insurance in violation of PU Code § 5161;
- c. Failed to acknowledge and process loss and damage claims in a timely manner, in violation of Item 92 of MAX 4 and PU Code § 5139;
- d. Failed to maintain a claims register in violation of Item 92 of MAX 4;
- e. Failed to make a reasonable effort to determine the size of motor vehicle equipment appropriate for requested moving services, in violation of GO 142(1)(b); and
- f. Failed to show on shipping documents information required by Items 128 and 132 of MAX 4.

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<sup>1</sup> Small and Price are shown as respondents.

Our OII directed that a formal proceeding be conducted to establish proof of these allegations, and to determine whether the respondent's permit should be suspended or revoked, or fines imposed, if violations are found.

### **Procedural History**

A prehearing conference (PHC) was held by the administrative law judge (ALJ), as prescribed in our OII. Before the matter was set for hearing, however, Staff filed a motion asking us to adopt a proposed settlement between Staff and the respondents. The settlement contained corrective measures addressing the alleged misconduct of Elite and its officers, and it appeared at first that this proceeding could be resolved without a hearing. However, before we issued a decision regarding the proposal, staff moved to withdraw it because of new allegations of misconduct that had occurred while the previous motion was pending. The ALJ granted Staff's request to withdraw the proposal, and the OII was set for formal evidentiary hearing (EH).

In addition to these events, Elite's operating authority was administratively revoked on April 15, 1998, for failure to pay regulatory fees, and has not been reinstated. Elite appears to have ceased doing business in California altogether by the time its authority was revoked, has refrained from participating in this proceeding since late 1997, and is no longer conducting activities which jeopardize the rights of consumers. Nevertheless, Staff requested that we proceed to hearing in order to bring this matter to a final conclusion.

The EH was held on June 15, 1998. Elite did not appear, either by representative or through the presence of an officer named as a respondent. Staff put on its testimony, and four exhibits were received for the record. In lieu of requiring briefs the ALJ required Staff to identify sufficiently reliable evidence of record to support any findings of conduct constituting the violations alleged, and to include the proposed language of findings, conclusions, and an order. This

was to be served upon the respondents, who then had the opportunity to file a response. None was ever filed, and the proceeding was submitted on July 15, 1998.

### **Discussion**

Although much of the evidence received for the record is in the form of the investigators' narratives of interviews conducted with Elite's customers and others, there is sufficient nonhearsay evidence, and sufficient corroborative material, in the record to substantiate the findings proposed by staff. We need not dwell upon this evidence in detail, particularly in light of the circumstance that Elite did not appear at the hearing or otherwise attempt to contest the investigative filings. Accordingly, as the ALJ observed at the hearing, Staff has satisfied its burden of proof under our rules. Even viewing the record in the light most favorable to Elite, we must conclude that Elite has committed egregious acts of misconduct on numerous occasions, and that we are justified in revoking its authority permanently.

Inasmuch as the record discloses that the subject operating authority had been transferred from the named individual respondents to Elite after incorporation of the latter, these individuals hold no authority that we can revoke in this proceeding. However, we infer from the facts of record that the misconduct of Elite was the direct result of actions or intentional neglect by Price and Small, and we will take notice of this fact if either of them ever participates in any future application before this Commission.

This is an enforcement proceeding brought by the Commission against Elite Moving and Storage, Inc., and so this decision is issued in an "adjudicatory proceeding" as defined in PU Code § 1757.1.

**Findings of Fact**

1. Elite operated as a household goods carrier during a period when its permit was not in force.
2. Elite operated as a household goods carrier without filing proof of liability and cargo insurance with this Commission.
3. Elite failed to respond to consumer loss and damage claims.
4. Elite failed to maintain a claims register.
5. Elite failed to provide adequate equipment for moving services requested.
6. Elite failed to include information on shipping documents which is specified in Items 128 and 132 of the Commission's MAX 4 tariff.
7. Elite operated without filing proof of workers' compensation coverage with the Commission.
8. Elite overcharged customers, gave estimates which were not in writing and gave estimates which were not based upon visual inspection of the goods to be moved.
9. The foregoing acts and omissions of Elite were committed either by its Chairman, John Small, its President, Chad Price, or by both of them.

**Conclusions of Law**

1. Elite has violated the following provisions of the PU Code, and the following rules, regulations, or tariff provisions of the Commission:
  - a. PU Code §§ 5286, 5161, 5139, and 5135.5.
  - b. GO 142.
  - c. Items 92, 108, 128, and 142 of our MAX 4 tariff.
2. Permit number T-184,023 should be permanently revoked, and Elite should hereafter be barred from obtaining any permit to operate as a household goods carrier.

3. This is an enforcement proceeding, and so this decision is issued in an "adjudicatory proceeding" as defined in PU Code § 1757.1.

**O R D E R**

**IT IS ORDERED** that:

1. Household goods carrier permit T-184,023, issued to respondent Elite Moving and Storage, Inc., is permanently revoked, and respondent is hereafter barred from obtaining any permit to operate as a household goods carrier.

2. The Commission's staff is directed to take all appropriate action to return to the rightful owner(s) any property which is the subject of this proceeding that may remain in the respondent's custody.

3. Investigation 97-06-036 is closed.

This order is effective today.

Dated November 5, 1998, at San Francisco, California.

**RICHARD A. BILAS**  
President  
**P. GREGORY CONLON**  
**JESSIE J. KNIGHT, JR.**  
**HENRY M. DUQUE**  
**JOSIAH L. NEEPER**  
Commissioners