

Decision 99-06-090 June 24, 1999

**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 Paradise  
Movers LLC, and its chief Executive Officer,  
James Shiloh.

Investigation 98-02-026  
(Filed February 19, 1998)

Respondents.

Matthew V. Brady, Attorney at Law, and James Shiloh,  
for Paradise Movers LLC and James Shiloh, respondents  
Maria J. Oropeza, Attorney at Law, and  
William Waldorf, for the Consumer Services Division.

**O P I N I O N**

**Summary**

We revoke the household goods carrier permit of Paradise Movers LLC (Paradise). Investigation (I.) 98-02-026 is closed.

**Background**

**Procedural History**

Paradise currently holds permit number T-188934 as a household goods mover. The Commission issued this Order Instituting Investigation (OII) of Paradise on February 19, 1998. The OII names the company and its putative Chief Executive Officer, James Shiloh (actually, a managing member of the limited liability company), as respondents, and alleges 14 separate violations of the Household Goods Carriers Act (Act), Pub. Util. Code Section 5101 et seq.,

based upon a supporting declaration furnished to the Commission by the Consumer Services Division (Staff).

The OII was served upon the respondents on February 26, 1998, and the Administrative Law Judge (ALJ) held a prehearing conference (PHC) in Sacramento on March 30, 1998. Respondent Shiloh appeared at the PHC to represent himself and the company. At the conclusion of the PHC he expressed a desire to seek the assistance of counsel in recognition of the seriousness and complexity of the allegations, and the ALJ granted him a reasonable time to arrange representation. The evidentiary hearing (EH) was initially scheduled for June 29, 1998 after the respondents retained counsel, but was continued to July 23, 1998 at the respondents' request to allow time to prepare. To accommodate this continuance the parties agreed to exchange prepared testimony on a shortened time schedule, and did so on July 20, three days before the hearing.

The ALJ conducted two days of hearing in Sacramento, concluding July 24, 1998. Allowing time for preparation of the transcript and for prior commitments of counsel and the ALJ, the initial briefing schedule called for submission of the proceeding on October 13, 1998. Two rounds of briefs were filed.<sup>1</sup> An illness of the respondents' counsel necessitated extending the final filing deadline slightly, and submission of the proceeding was on October 16, 1998.

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<sup>1</sup> The schedule set by the ALJ called for an initial brief to be filed only by Staff, and a reply brief only by the respondents. Perhaps because of a misunderstanding, each party filed two rounds of briefs. The ALJ reviewed all of the briefs in preparing this decision.

### **Jurisdiction and Regulatory Authority**

Article XII, Section 4 of the California Constitution confers upon this Commission jurisdiction to fix rates and establish rules for the transportation of property by transportation companies, subject to legislative control of such companies under Article XII, Section 3. The Act is a comprehensive statute governing the household goods carrier industry, which delegates to this Commission regulation of the licensing of used household goods carriers, enforcement of liability insurance requirements, establishment of just, reasonable, and nondiscriminatory maximum and minimum rates, imposition of recordkeeping requirements, and estimation of charges for customers. Section 5139 specifically empowers the Commission to "establish rules for the performance of any service of the character furnished or supplied by household goods carriers," and makes it a violation of the Act to violate such a rule.

To carry out its statutory responsibilities the Commission has promulgated several general orders, including General Order (GO) 142 relating to transportation and accessorial services of used household goods performed by household goods carriers. This general order regulates the cleanliness and quality of vehicles used by the carrier and requires the carrier to utilize appropriate equipment, and establishes requirements for qualification, supervision, and sobriety of employees and trainees. The Commission has also issued Maximum Rate Tariff 4 (MAX 4), which articulates parameters for the contractual relationships between carriers and customers.

The Act provides that the Commission may suspend or revoke the permit of a household goods carrier on its own initiative, after notice and the opportunity to be heard, for failure to comply with any provision of the Act or with any order, rule, or regulation of the Commission. (Pub. Util. Code

Section 285(b).) Because a rule violation is also a violation of the statute *per se*, it can result in suspension or revocation of the carrier's permit on either basis.<sup>2</sup>

### **The OII**

The OII alleges three distinct categories of violations of statutes or Commission rules or orders. First, the OII alleges that the respondents wrongfully failed to disclose material facts when they applied for operating authority. Second, Paradise allegedly held itself out unlawfully as a household goods carrier, and conducted its moving business, before obtaining operating authority. Third, the respondents allegedly violated a number of specific Commission rules and provisions of the Act requiring documentation and disclosures that should have been made in the course of moving a customer on August 11, 1997.<sup>3</sup>

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<sup>2</sup> Some violations the Act may also constitute criminal conduct punishable by fines, penalties, or imprisonment. Proceedings concerning these violations must be prosecuted in Superior Court rather than before this Commission. (*See generally* Pub. Util. Code Section 5311 *et seq.*)

<sup>3</sup> The ALJ received evidence concerning all of these issues, but declined to receive a July 15, 1998, declaration by a Staff investigator, as well as other evidence, pertaining to a "sting" operation that was conducted earlier that month. Staff offered this evidence to show that the Commission had administratively suspended Paradise's household goods carrier permit on July 10, 1998, for failure to comply with insurance requirements, and that Paradise had thereafter operated as a household goods carrier. Because these incidents took place only a few days before the hearing and more than a year after those described in the OII, and because they involved allegations of conduct occurring long after Paradise had received its permit, the ALJ was unwilling to receive this evidence for the record. See discussion, *infra*, at pages 20-21.

The OII alleges that the respondents may have violated the following specific statutes and rules:

- (1) Pub. Util. Code Section 5314.5, by advertising moving services in the yellow pages at a time it did not hold a household goods carrier permit.
- (2) Pub. Util. Code Section 5133, by providing moving services at a time it did not hold a household goods carrier permit.
- (3) Pub. Util. Code Section 5139, by failing to comply with a Commission cease and desist order to halt all unfair business practices.
- (4) Pub. Util. Code Section 5135, by failing to divulge to the Commission prior felony convictions of the Chief Executive Officer of the company.
- (5) Pub. Util. Code Section 5139, by failing to furnish a prospective shipper a copy of information specified in Item 470 of Max 4, thus violating Item 88 of MAX 4.
- (6) Pub. Util. Code Section 5139, by giving estimates not in writing or not based upon visual inspection of the goods to be moved, in violation of Item 108 of MAX 4.
- (7) Pub. Util. Code Section 5139, by charging in excess of the maximum allowable charge on estimated services, and by failing to issue a change order for increased charges, in violation of Items 108 and 120 of MAX 4.
- (8) Pub. Util. Code Section 5139, by failing to execute and provide to the shipper prior to commencement of service a Confirmation of Shipping Instructions and Rate Quotation, or an Agreement for Service, in violation of Item 128 of MAX 4.
- (9) Pub. Util. Code Section 5139, by failing to provide an Agreement for Service no less than three days before the day of the move, in violation of Item 128(1) of MAX 4.

- (10) Pub. Util. Code Section 5139, by failing to include upon the Agreement for Service a Not to Exceed Price, in violation of Item 128 (2)(q) of MAX 4.
- (11) Pub. Util. Code Section 5139, by failing to show on shipping documents information required by Items 36 and 132 of MAX 4, including a legible record of all starting and ending times for each phase of service rendered, points of origin and destination, and signatures.
- (12) Pub. Util. Code Section 5139, by failing to have shippers acknowledge and execute insurance valuation options, in violation of Item 136 of MAX 4.
- (13) Pub. Util. Code Section 5139, by permitting drivers, helpers, or packers to be used who are not trained and experienced in the movement of household goods, or not adequately supervised, in violation of GO 142(2)(a).
- (14) Pub. Util. Code Section 5139, by failing to make a reasonable effort to determine the size of motor vehicle equipment appropriate for moving service requested, in violation of GO 142 (1)(b).

### **The Record**

The evidentiary record consists of portions of the initial and supplemental investigative reports of Special Investigator Richard Chan (with exhibits thereto), the prepared testimony of James Shiloh, the transcript of testimony given at the EH, oral stipulations between counsel at the EH, and two Sacramento County Probation Department memoranda that augment one of the stipulations of counsel. The following material facts are drawn from this record.

Shiloh decided to go into the moving business in 1995. He says that he had previously moved friends and relatives without compensation, and decided to make a business out of this work. He began to organize his moving company in earnest the following year, seeking to serve the black community in Sacramento, as it was his perception that there were few minority-owned movers in the

Sacramento area.<sup>4</sup> He says he obtained business licenses from the City and the County of Sacramento.

On January 10, 1997, he arranged to place an advertisement in the Sacramento Valley Yellow Pages telephone directory, using the name Paradise Movers. According to his testimony, he first learned about the need to obtain a CPUC "T" number from the salesperson when he placed the order for the Yellow Pages advertisement. He contacted our licensing section to obtain the number, and says that he told the responding staff member his intention to include it in the advertisement. He was given a file number that coincides with the "T" number he was later issued, and he submitted it to Yellow Pages for inclusion in the advertisement. He admits he knew at that time that Paradise needed to submit additional information before it could obtain a permit from the Commission.

Shiloh and a friend, Christian Johnson (Johnson), later organized the business as a California limited liability company under the name Paradise Movers, LLC.<sup>5</sup> The Limited Liability Company (LLC) Statement of Information filed with the Secretary of State lists Shiloh and Johnson as managers of the company. The declaration bears Shiloh's signature and the word "Manager" on the signature line, but also shows his title as "CEO" on the line beneath it.<sup>6</sup> This form is dated March 10, 1997.

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<sup>4</sup> In addition to his efforts to start this business he earned a certificate of completion as a medical assistant, and was employed as an electrocardiograph technician at the time of the hearing.

<sup>5</sup> A LLC is a form of business organization first authorized under California law in 1994 under Beverly-Killea LLC Act (Calif. Corporations Code Section 17000 et seq.)

<sup>6</sup> This line actually requires the declarant to select among the titles, "Manager, Managing Member or Attorney-in-Fact."

On April 21, 1997, Paradise Movers, LLC, doing business as Paradise Moving, filed its Application for Household Goods Carrier Permit with this Commission. The application consists of a series of forms, each of which requires a separate signature. It was assigned file number T-188934, the printed statement on the form specifically indicating that this number is "for PUC use only." The Commission's application form contains no provision for an applicant to identify itself as a LLC. In the absence of this option, Shiloh checked the box on the form indicating that Paradise was organized as a corporation in favor of the remaining choices, i.e., those for a proprietorship or partnership.

Most of the application forms were filled out in Shiloh's handwriting, and were signed by him and Johnson. A few were signed by Shiloh alone, and one was signed solely by Johnson. There is little consistency in the titles the two men used in signing these forms, but Shiloh signed at least five of the forms as "applicant," and again as "corporate officer," generally specifying that he was "CEO." The form indicating who would take the required household goods carrier examination on behalf of the company provides the name and title, "James Shiloh" and "CEO," respectively. Below this entry, in bold typeface, is a certification made under penalty of perjury that the representations appearing in the application *and any attached PUC forms* are, to the best of the signatory's knowledge and belief, "true, correct, and complete, based on all the information required to be included therein, of which [he has] *any knowledge, and these representations are made in good faith.*" (Exhibit 1, page 23, italics supplied.) This certification is signed by Shiloh and Johnson personally, and also by Shiloh as a "corporate officer" [sic] with the title, "CEO."

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<sup>7</sup> Shiloh successfully took the examination on behalf of the company, identifying himself as "Owner-Applicant" on the examination form, which is dated July 7, 1997



The only form signed by Johnson alone is the certification of California drivers licensing. The top of the form lists the names of both men and the number, expiration date, and license class. At the bottom, beneath the certification, Johnson signed the form twice, once as applicant, and once in the capacity of corporate officer, showing as his title, "Vice President." These signatures are immediately beneath a certification, which states:

"I(we) certify that:"

\* \* \*

"I (we) ☐ have ☐ have not been convicted of committing any felony or crime involving moral turpitude. (If the first box is checked, please attach full explanation)." (Exhibit 1, page 39.)

The "have not" box is checked, and there is no attachment or other indication that the response is intended to be qualified in any way. During the course of the investigation it came to Chan's attention that Shiloh had two felony convictions on his record, one of which was for a property theft-related crime.<sup>8</sup>

According to Chan, the licensing section could not process the application after it was submitted, because the documentation lacked some of the required insurance information. Shiloh says that he submitted the supplemental documentation at various times upon receipt, the final occasion being in July. In the meantime, the Sacramento Valley Yellow Pages were published. Paradise's advertisement was included. The advertisement shows the Commission's file

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<sup>8</sup> There is no dispute that Shiloh had a felony record that was not divulged in the application. At the EH Shiloh stipulated that he had been convicted of a violation of Health and Safety Code Section 11352 (sale of controlled substances) in October 1990, and for violation of Penal Code Section 496 (receipt of stolen property) in December 1992, the latter being a violation of probation from his conviction in 1990. He was on probation for the second violation until January 19, 1998, and it remained on his criminal record until at least that date. (Transcript, pages 206 - 207.)

number as Paradise's "License No." in the advertisement. Chan became aware of this advertisement on June 27, 1997, and on June 30 sent Shiloh a letter advising him that the company's application for PUC authority was still in a pending status, and calling his attention to Sections 5133 and 5314.5 of the Pub. Util. Code and Sections 17200 and 17500 of the California Business and Professions Code, which pertain to false advertising. Chan's letter closes with the boldface, underscored statement that the company "MUST IMMEDIATELY CEASE AND DESIST ANY AND ALL UNFAIR BUSINESS PRACTICES." (Exhibit 1, page 19.)<sup>9</sup>

The Commission issued Paradise's permit on September 9, 1997, six weeks after the application was complete. At the hearing Shiloh testified that he believed he could operate as a mover when he submitted the last of the supplemental information. However, in a letter to Chan on September 26, 1997, he had admitted that he was only under the impression the application was "practically approved," and that although it was not his intention to operate "in opposition to the commission," Paradise "had to operate in order to stay alive financially." (Exhibit 1, page 111.) Consequently, his testimony conflicts with his own written admission concerning this belief. Shiloh conceded that on August 11, 1997, Paradise performed a move for Watson, and he admitted that the company performed approximately ten other moves before receiving its permit.

The Watson job came to Staff's attention as the result of a call to Chan from the customer early in September 1997. The purpose of the call was to complain about problems with the moving services Paradise had provided. Among other

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<sup>9</sup> We note that although authority for Chan's directive was the cited code sections, neither the Act nor any Commission rule or regulation purports to regulate or proscribe "unfair business practices."

things, Watson claimed that he was overcharged for the move in violation of the moving contract, that a piece of furniture was damaged, and that several items were stolen during the course of his move, including checks which were later forged and put through for payment by one of the movers. Most of the violations alleged in the OII relate to the circumstances of this move, and we must therefore focus upon the specific events in some detail.

Watson called Paradise early in the morning of August 11 and spoke to Shiloh. He planned to move his possessions from a storage facility in Orangevale to an apartment in Sacramento that day, and had made arrangements with another moving company that abruptly cancelled for some reason.<sup>10</sup> Shiloh says he may have quoted the company's hourly rate on the telephone, but denies giving Watson an estimate for the job, because he had not yet seen the items to be moved. He arranged to meet Watson later that morning at the storage facility with a truck adequate to move the items described by Watson. Shiloh was able to secure a 25-foot rental truck.<sup>11</sup> As a precaution against having insufficient equipment and personnel to do the job, Shiloh arranged for an associate, Terry Mangram (Mangram), to obtain another truck and meet them at the jobsite. Shiloh claims he warned Watson that he might be unable to assemble a sufficient crew on such short notice, but Watson assured him that the two of them could perform the work together.

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<sup>10</sup> Watson says he had found Paradise through the Yellow Pages advertisement that morning.

<sup>11</sup> As disclosed in its application, Paradise does not own any vehicles.

Shiloh met Watson at the storage facility with the first truck. Watson claims that at this time Shiloh verbally quoted a maximum rate for the move of \$350, which Shiloh denies. It is undisputed that at no time did Shiloh furnish a written agreement for service, written freight bill, shipper's booklet, written information about insurance plans, or any other document relating to the move. Mangram eventually arrived with the second truck, but was indisposed, and left before the move was completed. Shiloh obtained the help of several other men in the afternoon, one of whom was David Fisher (Fisher), Shiloh's uncle. He claims that, with one exception, none of these men were paid anything for this work, and that all had previous moving experience.

Watson voluntarily assisted with the move, and in the course of carrying a sofa with another man, knocked over a stereo cabinet, damaging it. Both trucks were loaded at the storage facility, one with boxes and the other with furnishings. The trucks were unloaded at the apartment late in the afternoon, and the move was completed at about six o'clock in the evening. At the conclusion of the move Shiloh demanded payment of \$420 for the services, based, he claims, upon a \$60 hourly rate negotiated at that time. Watson denies that they ever reached agreement about the price, but he did pay this sum to Shiloh for the move.

After the move, Watson requested a meeting with Shiloh and Johnson to discuss his damage claim. A meeting with the two men took place a few days later. At this meeting Shiloh refunded \$110 to Watson to compensate him for alleged damage to his goods. Shortly afterward, Watson noticed that some of his property was also missing. Among the missing items were a power drill and a large number of bits in a carrying case, a box containing about 40 videotapes, and a box of 100 "novelty" checks for an account he seldom used. At the time he

received the payment for his damage claim, Watson was still unaware of the misappropriation of his checks.<sup>12</sup>

Watson reported the disappearance of his checks and other missing property to the Sacramento Police when he discovered the loss. By the time of the police investigation two of the checks had been presented for payment with forged signatures, made payable to Mangram. Without going into unnecessary detail, by Shiloh's own admission the circumstances of this incident strongly indicate that Fisher stole the checks while assisting with the move, although Shiloh was unaware of it at the time they left Watson's apartment. Later that evening, however, Shiloh confronted Fisher when he noticed him carrying what appeared to be a box of Watson's possessions from one of the trucks. He therefore knew about the possible theft before his meeting with Watson, but had said nothing about it to Watson. Shiloh claims to have reported what he saw to the police on the evening of the move, but he says the police took no action. At a meeting with Chan, Shiloh admitted that he also knew Fisher had a drug problem which had resulted in previous problems with the law.

### **Discussion**

The record unequivocally demonstrates that the respondents violated numerous regulations and provisions of law governing used household goods carriers. Much of the offending activity was apparently a consequence of the respondents' inexperience and the informality with which Paradise conducted its business, and was relatively innocent. Nevertheless, we have a mandate to ensure that the public does not suffer harm at the hands of either incompetent or unscrupulous household goods movers. We must therefore determine whether

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<sup>12</sup> Watson estimates the total amount of the loss he eventually claimed as \$1450.

the character of the respondents' conduct rises to a level requiring revocation of Paradise's operating authority. CSD argues that only revocation of Paradise's operating authority will suffice to redress the violations of the Act which flowed from Paradise's conduct. Paradise responds that ordering "economic capital punishment" is a draconian solution to problems that will not likely recur; borrowing a phrase from Gilbert and Sullivan, the respondents ask only that the "punishment fit the crime."

### **Failure to Disclose Material Facts in the Application**

The respondents' most serious violation of the Act was their failure to disclose Shiloh's felony record and history of theft-related crime in the application. If we disregard such conduct, we will undermine the entire licensing process and dilute the protections it affords the public.

Pub. Util. Code Section 5135 directs us to ascertain the fitness of an applicant to enter the household goods carrier business. That statute requires every applicant to demonstrate that it has the competence, integrity, and financial resources to engage in the moving business. In addition to requiring a demonstration of knowledge and ability through our examination process, and reasonable financial responsibility by means left to our discretion, Section 5135 also requires a demonstration of integrity. In pertinent part the statute specifies,

"The Commission shall issue a permit only to those applicants who it finds have demonstrated that they possess sufficient knowledge, ability, integrity and financial resources and responsibility to perform the service within the scope of their application."

If the applicant (or an officer, director, partner or associate thereof) has committed any act constituting dishonesty or fraud, misrepresented any material fact on the application, or committed a felony or a crime involving moral turpitude, the Commission may refuse to issue a permit under this section.

Here, the applicant withheld material facts about felonies he had committed, including a crime involving property theft, at the time he completed the application, with the consequence that we relied upon information which was incomplete and misleading in granting Paradise's permit. It is not Shiloh's criminal past that is of greatest concern to us now, but his failure to disclose these adverse facts under penalty of perjury when he filled out the application forms, particularly in light of the integrity showing required to be satisfied under Section 5135. As a household goods carrier, Shiloh's company is entrusted with the personal property of every person who contracts to use its services. His concealment of his past not only calls into question its fitness to do so, but also casts doubt upon the veracity of every other material fact set forth in the application. Whether the company will advertise its services truthfully, hire honest and qualified employees, fulfill its insurance and reporting requirements, safeguard property in its custody, handle claims fairly, and comply in good faith with all other aspects of our regulatory program are all in issue because the application lacks candor. Most importantly, there is a serious issue whether Shiloh and his company will handle future dealings with the Commission truthfully.

We are not persuaded by the respondents' reliance upon the legal fiction of Paradise's separate existence as a LLC to explain this omission from the application, as this theory is unsupported by the facts. Shiloh knowingly completed and signed the application forms, not only as the owner and principal figure in the business, but also as the managing member of the limited liability company. This is clear from the manner in which he executed each of the forms that bears his signature, as well as his notation at the top of the Partnership Agreement form (Exhibit 1, page 35) that the company is a LLC. Moreover, contrary to the respondents' contention, the driver's licensing information form

does not distinguish the business entity from the person who signs the form, but calls for the disclosure of the pertinent criminal history of each person identified in the first section as having a proper California driver's license. Johnson signed this form twice, first as "applicant," and again in his capacity as a corporate officer. His intent was clear: he was providing the information about these persons on behalf of the company.

That the driver's licensing form was the only document in the entire series signed solely by Johnson also strikes us as noteworthy. In contrast to the fact that every other form in the application package was contemporaneously signed by Shiloh, the uniqueness of this form strongly suggests a deliberate attempt to circumvent the disclosure requirement. It is simply inconsistent with the degree of awareness and control Shiloh demonstrated in completing the remaining forms to believe that he singled out this form to be completed by Johnson for no apparent reason. Coupled with the fact that Shiloh certified under penalty of perjury, both personally and as CEO [sic] of the company, that representations in the attached forms were *true, correct, and made in good faith*, we regard this as a deliberate act of deception.<sup>13</sup> The certification Shiloh signed required all responses of which he had *any* knowledge, on *all* of the forms, to meet this standard, and to be *completed* to the *best* of his knowledge and belief. The printed language is clearly and strongly worded in bold typeface. An applicant who signs this form can make no mistake that this certification must be taken seriously. The facts simply do not support the respondents' contentions as to

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<sup>13</sup> Pub. Util. Code Section 5134 requires an application for a permit to be in writing and verified under oath, and to be in such form and contain such information as the Commission requires.



why Shiloh or Johnson failed to disclose significant and material facts on the application.

The Act supports our conclusion that the respondents may not avoid the disclosure requirement by legal artifice. Pub. Util. Code Section 5104 states:

In construing and enforcing the provisions of [the Act] relating to penalties, the act, omission, or failure of any officer, agent, or employee of any person or corporation, acting within the scope of his official duties or employment, is the act, omission, or failure of the employing person or corporation.

Shiloh and Johnson were both acting within the scope of their respective roles as employees or managers of Paradise when they completed and signed the application forms. They cannot evade their disclosure responsibility by relying upon the company's separate legal existence, because their failure to disclose was also that of the company.<sup>14</sup>

We understand Shiloh may have been reluctant to reveal his criminal record, but his failure to do so cannot be excused by his desire to present an unblemished record. The application form has a place for explaining such disclosures. Section 5135 makes denial of a permit discretionary on our part, so the disclosure of an applicant's criminal history does not automatically disqualify him from obtaining a permit. There is even a requirement in Section 5135 for a mandatory hearing to determine an applicant's qualifications if a permit is denied by the licensing staff. Shiloh therefore had more than adequate

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<sup>14</sup> Our Code of Ethics, which is set forth in Rule 1 of our Rules of Practice and Procedure, also states that any person who transacts business with the Commission agrees "never to mislead the Commission or its staff by an artifice or false statement of fact or law." The respondents' certification was either a false statement or an effort to mislead by artifice, and revocation of the permit the only appropriate sanction for this violation of the rule.

opportunity to deal with the licensing problems presented by his criminal history.

### **Engaging in the Moving Business before being Licensed**

By its own admission, Paradise both advertised and performed household goods moving services before its license was issued on September 9, 1997. This is a violation of the Act, for which the Commission may revoke Paradise's permit after notice and an opportunity to be heard, under Pub. Util. Code Section 5285(b). Specifically, Paradise's conduct violates Section 5133, which states:

No household goods carrier shall engage, or attempt to engage, in the business of the transportation of used household goods and personal effects, ...for compensation, by motion vehicle over any public highway in this state, unless there is in force a permit issued by the Commission authorizing those operations.<sup>15</sup>

Section 5131 additionally prohibits any household goods carrier from engaging in such business except in accordance with the provisions of the Act.

Although violation of the Act is clear, Shiloh offers several explanations for "jumping the gun" to mitigate the penalty, none of which is very compelling. The explanations for his conduct may suggest that his actions were consistent with naivete, but the statement in his September 26 letter to Chan that the company "had to operate in order to stay alive financially" despite the absence of licensing authority evinces his recognition that the company acted prematurely by performing the Watson move. Moreover, a boldly lettered notice below Shiloh's signature on the application form advised him that the filing of the application "does not in itself constitute authority to engage in for-hire trucking

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<sup>15</sup> Section 5107 states, "'Public highway' includes every public street, road or highway in this State."

operations," and that, "Any for-hire operations conducted prior to Commission authorization are unlawful and may subject applicant to fine and imprisonment." (Exhibit 1, page 23.) This statement could scarcely be clearer. If Shiloh failed to comply with this statement, he has only himself to blame.<sup>16</sup> His admission that he continued to perform moving services even after he received Chan's letter of warning reinforces our belief that we are not dealing harshly with a novice company, and revocation is appropriate.

### **Violation of Commission Rules and General Orders on the Provision of Services**

The respondents have admitted that they did not furnish a shred of paperwork, nor observe other formalities, required by MAX 4 in performing the Watson move. We need not belabor the individual violations alleged in the OII in light of this admission. Our separate findings and conclusions provide a formal determination for each of these separate issues. It is sufficient to observe that Paradise accomplished the whole Watson move in total disregard of the formalities required by MAX 4 and other regulations we administer, even after scoring well on the licensing examination, which is largely devoted to the subject matter of MAX 4.

### **Conclusion**

We find the consequences of Paradise's conduct to be particularly troubling. At least one customer suffered demonstrable harm at the hands of Paradise through the dishonest acts of a member of its moving crew. Paradise's

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<sup>16</sup> Shiloh claims that members of the licensing staff verbally assured him he could engage in business when all the paperwork was submitted, and that the Commission should be estopped from asserting otherwise. Even if a member of the licensing staff told him that he could rely upon the fact that his application was complete, no Commission staff member can override a clear statutory prohibition, as a matter of law.

owner and manager also withheld important facts during the licensing process which were material to our decision to grant Paradise's operating authority. These facts not only erode our trust in Paradise and its managers, but also undermine the arguments offered by Paradise to mitigate the penalty. We are sympathetic to Shiloh's travails as an inexperienced businessman, and aware that the theft and forgery which attended the Watson move were not Shiloh's personal acts, but we conclude in this instance that our mandate to protect the public outweighs the arguments in favor of leniency. The risks to consumers presented by the company's demonstrated lack of integrity are simply too great to permit Paradise to continue in operation.

Paradise's application for operating authority was void from the outset, because Shiloh and Johnson misrepresented their qualifications. We have no meaningful reassurance in this record that the company's staffing practices will change, or that it will comply with our regulations or the consumer protection requirements of the Act in the future. A simple fine will not remedy these concerns, as the respondents urge. We will therefore revoke Paradise's permit.

#### **Motion to Admit Exhibit 3 for Identification**

The ALJ, on his own motion, denied Staff's offer to admit Exhibit 3 for identification. This investigative document reports on activities of the respondents that took place long after the issuance of the OII, and just before the hearing. These activities raise entirely collateral issues concerning Paradise's regulatory compliance after its operating authority was administratively suspended for reasons completely unrelated to the OII. Staff has requested reconsideration of the ALJ's ruling.

At the time he made his ruling on the admissibility of this document, the ALJ stated:

"I have been consistently concerned about [this exhibit], which was developed only...three [sic--seven] days before the hearing began, and contains new matter pertaining to activities of the respondent after...two very recent notices of suspension... [The OII contains] 14 very explicit allegations relating to purported violations of the Commission rules and tariffs and statutes and so forth. And the allegation of any activity after suspension of the license is not among those.

"This is late developed information. ... [T]he Commission has not issued any amended Order Instituting Investigation. There is no new proceeding relating to these allegations...which could be consolidated with or heard at the same time as this proceeding. And although there may be merit to the investigative facts that were developed,..., it is my ...conclusion, that to admit this kind of late developed testimony [without] advanced [sic] notice and without any reflection of the matters...contained in the OII, ... offends principals [sic] of fundamental due process...."  
(Transcript, p. 247, l. 19 - p. 248, l. 26.)

Without the provision of reasonable notice and a fair opportunity to respond to these additional allegations of wrongdoing, admission of this exhibit could taint the record needlessly. Seven days' notice to the respondents does not satisfy due process requirements in light of the gravity of the penalty sought by the Staff. We have reached the result sought by Staff from the evidence of record without resorting to additional matter that may carry this taint. We will not disturb the ALJ's ruling concerning admission of this evidence.

### **Appeal**

The respondents filed and served a timely appeal of the presiding officer's decision, pursuant to Rule 8.2(c). Staff filed and served a timely response under Rule 8.2(f). The appeal sets forth no factual or legal error which would justify

changing the result reached by the presiding officer. We therefore have not modified the presiding officer's decision in response to the appeal.

The appeal argues that revocation of Paradise's operating authority, which the respondents describe as "economic capital punishment," is unwarranted in light of the facts and of prior Commission decisions. Paradise minimizes the importance of the issue of its failure to disclose Shiloh's criminal record, and instead stresses the arguably minor nature of Paradise's failure to document a single move, the Watson move, which it performed before its license was issued. This mischaracterizes our principal concern, which is clearly articulated in the presiding officer's decision, that Paradise's conduct is not consistent with the degree of integrity and competence required under the Act and by our rules, regulations, and MAX 4 tariff.<sup>17</sup> We are not persuaded that the content of the application forms and the nature of the application procedure excuse Paradise's conduct.

Contrary to Paradise's assertion, revocation does not amount to "economic capital punishment." Rather, it withdraws licensing approval that was inappropriately obtained, given Paradise's failure to disclose material information in the application process. We have not barred Paradise from reapplying for authority, and it may do so when it is prepared to disclose all material facts fully and truthfully, and so to demonstrate the requisite integrity and competence to engage in the moving business. Until that time, however, Paradise and its owners must neither conduct the business of a used household goods carrier, nor hold themselves out to the public as being engaged in that business.

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<sup>17</sup> Contrary to the suggestion made several times in the respondents' brief, Shiloh's race is not a factor in our decision to revoke the respondents' operating authority.

### **Findings of Fact**

1. Respondent Paradise Movers LLC, doing business as Paradise Moving, currently holds Permit No. T-188934 to operate as a Household Goods Carrier.

2. Respondent James L. Shiloh is a manager of Paradise Movers LLC.

3. Christian Johnson is a manager of Paradise Movers LLC.

4. Shiloh and Johnson applied for the operating authority at issue in this proceeding on April 21, 1997.

5. As part of the application filed on behalf of Paradise Movers LLC, Johnson filled out and submitted Form TL706-HHG (Rev. 1/96). This form contains space for listing the names and driver's licensing information of persons who will drive on behalf of the applicant, and a certification that the persons named thereon had not been convicted of any felony or crime involving moral turpitude. Johnson listed his own name and license number and that of Shiloh on this form, signed the form twice, once as "applicant," and once as "Vice President" on the corporate officer line. He completed the certification regarding the applicant's criminal history by giving a negative response. There was no attachment of any sort submitted with this form.

6. Before this application was submitted on behalf of the applicant, Shiloh had been convicted of two felonies, a violation of Health and Safety Code Section 11352 (sale of controlled substances) and Penal Code Section 496 (receiving stolen property).

7. Shiloh completed Form TL-706-HHG (Rev. 1/96), indicating that he would take the mandatory household goods carrier examination on behalf of Paradise Movers LLC. This form contains the following certification, in pertinent part:

"I(we) certify (or declare), under penalty of perjury, that the representations appearing in said application and in any PUC forms attached thereto (including any accompanying financial schedules, statements or projections) are, to the best of my (our) knowledge and

belief, true, correct and complete, based on all the information required to be included therein, of which I (we) have any knowledge, and these representations are made in good faith. Where the CPUC operating authority is held by a corporation, I further certify that I am an officer of the corporation and am authorized to make this certification on its behalf."

Shiloh and Johnson signed this form personally, and Shiloh also signed it as a corporate officer, showing his title as "CEO."

8. Permit No. T-188934 was issued to Paradise Movers LLC, doing business as Paradise Moving, on September 9, 1997.

9. Prior to September 9, 1997, Paradise advertised in the Sacramento Valley Yellow Pages that it was engaged in the business of transportation of used household goods and personal effects and other items for compensation by motor vehicle over the public highways of this state, and during that period it was actually so engaged.

10. On June 30, 1997, Special Agent Chan of the Commission's Consumer Services Division notified Shiloh and Paradise Movers LLC by letter to cease and desist any and all unfair business practices, which were defined to include the activities referred to in the preceding paragraph.

11. On August 11, 1997, Paradise Movers, LLC, under the personal supervision of Shiloh, performed a move for Watson from a storage facility in Orangevale to an apartment in Sacramento, over the public highways of this state. In connection with performing that move the respondents provided no written estimate, agreement for service, freight bill, shipper's booklet, information regarding insurance options, or any other written document relating to the move, and communicated to Watson all information which would have been included in such documents verbally, if at all.



### **Conclusions of Law**

1. Respondent Paradise is, and at all times material to the OII has been, a "household goods carrier" within the meaning of Section 5109 of the Pub. Util. Code.
2. Paradise violated Section 5133 of the Pub. Util. Code by providing moving services at a time when it did not hold a household goods carrier permit.
3. Paradise did not violate Section 5139 of the Pub. Util. Code by failing to comply with a cease and desist letter to halt all unfair business practices, because neither the letter, nor the California statutes cited therein, are rules of this Commission.
4. Shiloh's two prior felony convictions, as well as the respondents' failure to divulge them, are material facts within the meaning of Section 5135 of the Pub. Util. Code. These are factors which the Commission was entitled to consider as part of the licensing process.
5. Paradise violated Section 5139 of the Pub. Util. Code by failing to furnish to a prospective shipper a copy of the Important Information For persons Moving Household Goods booklet, as required by Item 88 of MAX 4.
6. Respondents did not violate Section 5139 of the Pub. Util. Code by giving estimates not in writing, or not based upon visual inspection of the goods to be moved, because Item 108, paragraph 1(a) of MAX 4 is permissive rather than mandatory.
7. Respondents did not violate Section 5139 of the Pub. Util. Code by charging in excess of the maximum allowable charge on estimated services, and by failing to issue a change order for increased charges of MAX 4, because no estimate was given within the meaning of Item 108. The record demonstrates that services were provided at an hourly rate only.

8. Paradise violated Section 5139 of the Pub. Util. Code by failing to show on shipping documents information required by Items 36 and 132 of MAX 4, because it performed moving services without preparing any shipping documents.

9. The respondents violated Section 5139 of the Pub. Util. Code by failing to have a shipper acknowledge and execute insurance valuation options, as required by MAX 4, Item 136, because Paradise performed moving services without preparing any shipping documents.

10. Staff did not prove the respondents violated Section 5139 of the Pub. Util. Code by violating GO 142(2)(a), because it did not show that Paradise's employees are not trained and experienced in the movement of household goods, nor that any of the personnel utilized by Paradise were on-the-job trainees.

11. The respondents did not violate Section 5139 of the Pub. Util. Code by failing to make a reasonable effort to determine the size of motor vehicle equipment appropriate for the moving service requested by Watson, in violation of GO 142(1)(b), because Shiloh made a reasonable effort to do so during his initial conversation with Watson.

12. Respondents' permit should be revoked pursuant to Sections 5139 and 5285(b) of the Pub. Util. Code, and Rule 1 of the Commission's Rules of Practice and Procedure, as an administrative penalty for the violations of rules and regulations of the Commission and of the provisions of the Pub. Util. Code set forth in the preceding conclusions of law.

**O R D E R**

**IT IS ORDERED** that:

1. Permit No. T-188934 held by Paradise Movers LLC is revoked.
2. Consumer Services Division's motion to reconsider the Administrative Law Judge's Ruling concerning admission of Exhibit 3 for identification is denied.
3. Investigation 98-02-026 is closed.

This order is effective today.

Dated June 24, 1999, at San Francisco, California.

RICHARD A. BILAS  
President  
HENRY M. DUQUE  
JOSIAH L. NEEPER  
JOEL Z. HYATT  
CARL W. WOOD  
Commissioners