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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 A Better Moving and )  
Storage, Co., Inc., and its President, )  
Bennet D. Mattingly, )  
Respondents. )

**ORIGINAL**

F I L E D  
PUBLIC UTILITIES COMMISSION  
MAY 21, 1997  
SAN FRANCISCO OFFICE  
I.97-05-045

ORDER INSTITUTING INVESTIGATION  
AND ORDER TO SHOW CAUSE

The California Public Utilities Commission (Commission) is the agency responsible for regulation of intrastate transportation of used household goods, personal effects and furniture pursuant to the California Constitution, (Article XII), the Household Goods Carriers Act (Public Utilities Code Sections 5101, et seq.), the Commission's Maximum Rate Tariff 4 (MAX 4), and Commission General Orders (G.O.'s) 100-L, 136-B, 139-A, 142, and others. These statutes and regulations require, among other things, that household goods carriers: operate only in a responsible manner in the public interest; procure, continue in effect, and maintain on file adequate proof of public liability/property damage, cargo, and workers' compensation insurance; and observe rules and regulations governing the acknowledgement and handling of claims for loss and damage, issuing of estimates, execution and issuance of documents, training and supervision of employees, maintenance of equipment and facilities, and rules pertaining to rates and charges. The California Public Utilities Commission is the primary agency responsible for enforcement of these and other statutes and regulations governing household goods carriers. These other

statutes and regulations include general consumer protection and public safety provisions which address issues such as: theft, fraud, bait-and-switch, and unfair and unlawful business practices.

We have directed the Consumer Services Division (formerly part of Transportation Division) in D.92-05-028 to use all tools at its disposal to enforce the laws and regulations against unlawful operations--both carriers operating without a permit and permitted carriers not in compliance with the law, and our rules and regulations--and bring cases to us and district attorneys for prosecution as appropriate. In response to our directives, Staff has brought such investigative proceedings before us such as Earthquake Movers [I.95-11-003], Ego Line [I.95-05-048], Wong Brothers [I.94-09-007], Harrington Brothers [I.94-03-022], Starving Students [I.92-11-029], Best Move [I.91-11-002], Nice Jewish Boy/Father and Son [I.90-12-010], Reginald Duncan [I.90-09-009], Dave's Quality Movers [I.91-10-011], and Ronald Zammito [I.91-01-011].

Consumer Services Division Special Agents (Staff) advises us, through the declaration supporting the issuance of this investigatory proceeding, that it has initiated an investigation into the business practices of A Better Moving and Storage Co., Inc. (ABMS), T-170,373 who operates a moving service in the Sacramento Area. Staff's investigation of ABMS found numerous alleged violations of the Household Goods Carriers Act, and Commission rules and regulations, and found corroborating testimony regarding complaints of threatening and abusive behavior on the part of ABMS' President, Bennet D. Mattingly against Commission staff and customers.

#### ENFORCEMENT HISTORY

On February 20, 1991 the staff served Bennet Downs Mattingly, an individual doing business as A Better Moving and Storage Co., Citation Forfeiture No. F-4218. Mr. Mattingly was

cited for having violated Sections 5133, 5139 and 5196 of the of the Public Utilities Code for operating beyond permit authority; engaging subhaulers without a bond on file with the Commission; charging less than the then minimum rates established by the Commission (the Commission instituted a maximum rates program in the MAX 4 Tariff effective November 1, 1992); and by failing to retain weight certificates as required by Minimum Rate Tariff No. 4-C. The carrier did not contest the citation and paid the fine of \$ 1,000 imposed pursuant to Section 5285 of the Public Utilities Code. This citation file was closed March 26, 1991.

#### LICENSE HISTORY

A Better Moving and Storage Co., Inc. is holder of a household goods carrier permit under T-170,373. The permit was issued to ABMS on June 19, 1991, pursuant to an application made on April 9, 1991 to transfer authority from Bennet Downs Mattingly, an individual doing business as "A Better Moving and Storage Co." under permit number T-145,178. The transfer application shows the same address, 6640 Fair Oaks Blvd., Carmichael, CA 95608, for both transferor and transferee. The officers of A Better Moving and Storage Co., Inc. named on this transfer application are: Bennet D. Mattingly, President/CEO and Sigrid Mattingly, Vice President. The permit names Bennet D. Mattingly, President as the person who has established his knowledge and ability to enable the permittee to engage in business as a household goods carrier.

#### THE INVESTIGATION

The Staff says that it opened its investigation into ABMS primarily in response to serious customer complaints and allegations received by the Consumer Services Division. The complaints alleged: bait and switch tactics; excessive loss or damage; no booklet informational given; a lack of responsiveness

to their complaints on the part of ABMS; and rude or threatening behavior by ABMS' President Bennet D. Mattingly. Complainants alleged that verbal estimates were given from ABMS then not honored. One complainant further alleges that Bennet D. Mattingly personally made violent threats to her. A member of the staff, Supervisor Wilson E. Lewis, was also threatened during the course of this investigation by Bennet D. Mattingly. Other complainants alleged that they were overcharged on shipments for which they had received written estimates.

#### Inspection of Documents

In October, 1996, in response to these allegations, the staff special agent says that he examined documents from three-hundred twenty [320] shipments, provided to him by Bennet D. Mattingly and Sigrid Mattingly, from ABMS facilities at 6640 Fair Oaks Blvd., Carmichael, CA. These documents were provided to Staff pursuant to a prior, written request by staff to Marc LeForestier, Counsel for ABMS, which specified the types of documents and the time period, the months of June, July and August, 1996, subject to examination. The more than three hundred shipments which staff reviewed disclosed a large number of improperly documented moves in violation of MAX4 Rules. Deficiencies noted included: a failure to include the not to exceed price on freight bills or the Agreement For Service; failure to record loading, driving, unloading times; lack of points of origin and destination; improper time computations, failure to issue an Agreement For Service for each move performed; failure to issue a change order for charges increased in excess of written estimates; failure to obtain customer signatures and acknowledgments of insurance options available. Further, apparently many of these shipments were not accompanied by a receipt showing that the shipper received the consumer information booklet. If true, we find this especially distressing, as the booklet and contracts, properly and timely executed and issued, are the very documents which we intended for

all shippers to receive, sign (or sign for), and rely on prior to any service commencing. As such, they are often the only guarantee that shippers have the opportunity to be informed of their rights and obligations, and those of the carrier, and of the rates and charges for transportation and other services, before the move begins and the carrier takes possession of the shipper's personal belongings.

Staff also observed that over 50 of the two hundred Shipping Orders and Freight Bills [Freight Bills] examined failed to show an accurate measure of the time spent on loading, unloading, and driving, in violation of MAX 4. This is the only written record showing the basis for charges under the hourly rates contained in MAX 4. Staff's investigation reveals that there were disputes stemming from some of these moves as to how much time the carrier actually spent performing services.

#### Survey of Customers

Staff says that it mailed a survey to each of the customers shown on Freight Bills they had examined. 249 Surveys were mailed to ABMS customers in November and December 1996. Staff received responses from 129 customers. Forty three [43] did not recall receiving the consumer booklet. Sixty one [61] replied they had received verbal estimates. The surveyed customers had complaints in the following areas: loss and damage; verbal estimates; charges exceeding the estimate; no booklet given; threats and rude treatment by ABMS owner and failure to bring a truck large enough to transport the goods.

#### Better Business Bureau

Staff found nine complaints on file in the Sacramento Office of the Better Business Bureau [BBB] from September, 1994 to August, 1996. Five complaints involved overcharges or service and five related to loss and damage or theft. BBB staff advised Mr. Mattingly "had a problem with his temper".

Additional Complaints/Consumer Interviews

The records of the Consumer Services Division complaint files disclosed four additional complaints against ABMS. These complaints included allegations of loss and damage to goods and property; overcharges, unfair business practices and threats against customers. Consumers interviewed complained of "bait and switch" tactics; "holding goods hostage" for additional payments; overcharges on estimated shipments (written and verbal); rude and abusive behavior from ABMS President Bennet Mattingly; the dispatch of inexperienced crews and inadequate equipment; a failure to provide written estimates, agreement for services documents, to state not to exceed prices or to provide shipper information booklets as required by MAX 4 rules. These and other allegations are detailed further in the declaration in support of issuance of this investigatory proceeding by Special Agent Curtis Jung.

DISCUSSION

After the issuance of operating authority, the Commission exercises continuing oversight of the carrier's fitness. Public Utilities Code Section 5285 authorizes the Commission, upon complaint or on the Commission's own initiative, after notice and opportunity to be heard, to suspend, change, or revoke a permit for failure of the carrier to comply with any of the provisions of the "Household Goods Carriers Act" or with any order, rule, or regulation of the Commission or with any term, condition, or limitation of the permit. Section 5139 gives the Commission power to establish rules for the performance of any service of the character furnished or supplied by household goods carriers.

The Commission requires carriers, in MAX 4 (Item 88), to furnish to each prospective shipper a copy of the information contained in Item 470, the booklet entitled Important Information For Persons Moving Household Goods. We further

require the carrier to provide this information at the time of first in-person contact between the carrier's personnel and the shipper or shipper's representative. To ensure that this is done, the Tariff also requires the carrier to obtain the shipper's signature that the shipper has received this booklet, and to retain these receipts in the carrier's records for three years. We are distressed to learn of Staff's inability to locate receipts for the booklet among many of the shipments for which they examined the carrier's documents. When we promulgated MAX 4, we were so concerned that each and every prospective shipper obtain this vital informational booklet at the outset of their dealings with movers that we mandated that carriers pay one hundred dollars [\$100.00] to the shipper upon completion of the move, for failing to comply with these requirements in their entirety. The very least we expected to accomplish by ensuring that the booklet is provided to each customer is that they would know the name of the primary agency to which to complain.

MAX 4 (Item 128) requires the carrier to properly and timely execute prescribed documents containing specified information, and signed by carrier and shipper prior to commencement of any service. These documents, referred to collectively herein as "contracts", are to contain such information as the scope of service to be provided, the rates and/or charges for those services, information regarding insurance and valuation, number and names of drivers and helpers, equipment to be provided, and rights and obligations of carrier and shipper. Under MAX 4, this "Agreement For Service" is to be provided to the shipper, where possible, no less than three days prior to the date of the move. The Agreement For Service is also to contain a "Not To Exceed Price". All of these provisions are intended to be a further guarantee that the shipper has an opportunity to be fully informed before relinquishing to the carrier their most personal and valuable possessions. Again, we are dismayed by Staff's report that there is no evidence of

properly or timely executed contracts among many of the ABMS documents examined.

MAX 4 (Item 108) contains rules governing the issuance of estimates. Paramount among these requirements are that all estimates shall be in writing upon prescribed forms, and shall be based upon visual inspection of the goods to be moved. The Tariff provides for a maximum allowable charge for estimated shipments. These estimating rules were intended to protect both consumers and competing carriers from the illegitimate practice of deliberate underestimating by household goods carriers as a competitive practice. We note the apparent presence of disturbing patterns among the consumer complaints brought to our attention by Staff, both with regard to the issuance of verbal estimates without visual inspection, and charging in excess of verbal and written estimates.

MAX 4 (Item 132) requires carriers to properly execute and provide to the shipper a Freight Bill upon prescribed forms, and containing specified information about the shipment, services provided and their rates and charges, units of measurement, helpers and packers, signatures of carrier, and the "Not To Exceed Price". Also required, under this Item and Item 36 of the MAX4 Tariff, is a legible record of all starting and ending times for each phase of service: packing, loading, driving, and unloading, and a record of deductions in time, if any. Again, we are distressed at Staff's report of its finding numerous Freight Bills and other documents which failed to meet this requirement, and we note that there are instances where the amount of time spent performing these services is in dispute.

Commission General Order 142(2)(a) requires that household goods carriers have competent, trained, and supervised crews on all household goods moves, and we generally share staff's view that at the very least the mover's crew chief should be trained and experienced and provide adequate supervision of the other crew members. G.O. 142 was promulgated by the Commission to protect shippers from excessive charges resulting



from inexperienced, inefficient crews, and from excessive loss and damages which such crews could cause, and further to protect the crew itself from on-the-job injuries.

General Order 142(1)(b) further requires that for shipments transported at hourly rates, the carrier shall make a reasonable effort to determine the size of motor vehicle appropriate to provide an adequate transportation service under the particular circumstances of the movement the carrier is requested to perform. This rule provides that if the carrier fails to make such a reasonable effort, or having made it, fails to provide such equipment, the shipper shall not be charged any driving time for excess motor vehicle equipment which is supplied.

MAX 4 (Item 92) also prescribes rules governing the handling of claims for loss or damage. Claims must be filed in writing and must meet the minimum filing requirements contained in Item 92, paragraph 2. Upon receipt of such a claim, carriers are required to acknowledge receipt to the claimant, in writing, within thirty [30] days. Carriers are further required, where possible, to pay, decline to pay, or make a firm compromise settlement offer in writing within 60 days, or to advise the claimant, in writing, the status of the claim and reasons for the delay. Staff reports to us that several of the claims of which it has knowledge failed to meet the minimum filing requirements under Item 92. We also note the apparent existence of another disturbing pattern among the allegations contained in these consumer complaints: that ABMS appears to employ a variety of intimidation and other tactics to discourage anyone attempting to file or pursue such a claim. It does not escape our attention that the rules governing claims, including filing requirements and carriers' obligations, are spelled out clearly in the booklet which, it would appear, ABMS is somewhat reluctant to provide to all of its customers.

We place tremendous trust in household goods carriers in granting them operating authority, a trust equaled by that of

our citizens who tender their most personal and treasured belongings to movers. This carrier's alleged pattern of violations and the mistreatment of consumers alarms us. Respondents should recognize that the Consumer Services Division's allegations described herein are grave, and if substantiated through hearing may well constitute grounds for revocation of the respondents' operating authority or other appropriate sanctions and remedies.

When we view this record and alleged pattern of conduct, it appears to us that this is a matter of such a serious nature that we believe an Order To Show Cause is the appropriate regulatory response. If the allegations accompanying this proceeding are substantiated, we feel that the facts of the case would most closely resemble those in the "Nice Jewish Boy" matter [D.92-03-089], the Starving Students matter [D.93-07-020], the Best Move case [D.91-12-040] and the Harrington Brothers Case [D. 95-03-018].

It appears that the respondents may have:

1. Demonstrated their unfitness to hold operating authority under Section 5135 of the Public Utilities Code by threatening State of California public officers and members of the public;
2. Violated Section 5139 of the Public Utilities Code by failing to furnish to each prospective shipper a copy of the information specified in Item 470 of MAX 4, in violation of Item 88 of MAX 4;
3. Violated Section 5139 of the Public Utilities Code 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;
4. Violated Section 5139 of the Public Utilities Code by charging in excess of the maximum allowable charge on estimated services, and failing to issue a change order for increased charges in violation of Items 108 and 120 of MAX4;

5. Violated Section 5139 of the Public Utilities Code by failing to execute and provide to each shipper prior to commencement of any service, a Confirmation of Shipping Instructions and Rate Quotation, or an Agreement for Service, in violation of Item 128 of MAX 4;
6. Violated Section 5139 of the Public Utilities Code by failing to execute and provide to each shipper an Agreement for Service no less than three days before the day of the move, in violation of MAX 4 Item 128(1);
7. Violated Section 5139 of the Public Utilities Code by failing to include upon the Agreement For Service a Not To Exceed Price, in violation of MAX 4 Item 128(2)(q);
8. Violated Section 5139 of the Public Utilities Code 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;
9. Violated Section 5139 of the Public Utilities Code by failing to have shippers acknowledge and execute insurance valuation options, in violation of MAX 4 Item 136;
10. Violated Section 5139 of the Public Utilities Code by failing to acknowledge and process loss and damage claims in a timely manner in violation of Item 92 of MAX 4;
11. Violated Section 5139 of the Public Utilities Code by permitting drivers, helpers, or packers to be used in the transportation of used household goods or in the performance of accessorial services, who are not trained and experienced in the movement of used household goods, or who were not adequately supervised, in violation of Commission General Order 142(2)(a);

12. Violated Section 5139 of the Public Utilities Code by failing to make a reasonable effort to determine the size of motor vehicle equipment appropriate for moving service requested, in violation of Commission General Order 142(1)(b); and
13. Violated Section 5139 of the Public Utilities Code by failing to include its Cal T number in advertising in violation of Item 88 of MAX 4.

IT IS ORDERED that an investigation on the Commission's own motion is instituted into the operations and practices of the respondents, A Better Moving and Storage Co., Inc. and its President, Bennet D. Mattingly. A public hearing on this matter shall be held expeditiously before an Administrative Law Judge (ALJ) at a time and date to be set. At the hearing, respondents shall appear and show cause;

(a) why their permit should not be revoked for cause and lack of fitness in view of the allegations made by Staff, assuming the allegations are proven at the hearing;

During the pendency of this investigation, it is ordered that the respondents shall cease and desist from any violations of the Penal Code and the Household Goods Carriers Act, including Maximum Rate Tariff 4 and General Order 142.

The Consumer Services Division staff, if it elects to do so, may present additional evidence beyond that described in the attached declaration, either by testimony or through documentation, bearing on the operations of the respondents and their treatment of shippers.

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The Executive Director shall cause a copy of this order and the Staff declaration to be personally served upon respondents, Bennet D. Mattingly, President, A Better Moving and Storage Co., Inc. 6640 Fair Oaks Boulevard, Carmichael, CA 95608.

This order is effective today.

Dated May 21, 1997, at Sacramento, California.

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