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Writer's Direct Dial No.

**STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL
CONSUMER PROTECTION DIVISION**

410-576-6557

July 18, 2018

CERTIFIED MAIL / RETURN RECEIPT REQUESTED
7017 1000 0000 2895 6460

Juan Carlos Martinez
10317 Geranium Ave
Hyattsville, Maryland 20783

VIA INTRA-OFFICE MAIL
Patrick Henry McCormally
Office of the Attorney General
Consumer Protection Division
200 St. Paul Place, 16th Floor
Baltimore MD 21202

RE: Consumer Protection Division v. Juan Carlos Martinez et al.,
OAH Case No.: OAG-CPD-04-17-35091
CPD Case No.: 17-035-289014

Dear Parties:

Enclosed please find an executed copy of the Final Order issued in the above captioned case.

Sincerely,

A blue ink signature of Desiree D. DeVoe.

Desiree D. DeVoe
Administrative Hearings Clerk

Enclosures

FILED

JUL 18 2018

ADMINISTRATIVE HEARING PROCESS

CONSUMER PROTECTION DIVISION,
OFFICE OF THE ATTORNEY GENERAL,

Proponent,

v.

JUAN CARLOS MARTINEZ,
et al.,

Respondents.

* IN THE CONSUMER
* PROTECTION DIVISION
* OF THE
* OFFICE OF THE
* ATTORNEY GENERAL

* CPD No.: 17-035-289014
* OAH No.: OAG-CPD-04-17-35091

* * * * *

FINAL ORDER

1. The Consumer Protection Division of the Office of the Attorney General (the “Agency”)¹ hereby orders Swift Van Lines, LLC (formerly known as Revolution Moving and Storage, LLC) and Juan Carlos Martinez (hereinafter collectively “Respondents”) to cease and desist from violating the Consumer Protection Act and the Maryland Household Goods Moving Act, and to take affirmative action pursuant to § 13-403(b)(1) of the Consumer Protection Act as described herein.

Findings of Fact and Conclusions of Law

2. The Agency hereby adopts and incorporates the Findings of Fact and Conclusions of Law made by Administrative Law Judge John L. Leidig (the “ALJ”) that are attached hereto, as if they were fully set forth herein.²

¹ The Consumer Protection Division acting in its capacity as a quasi-judicial agency is referred to herein as the “Agency,” while the Consumer Protection Division acting as the Proponent in the instant matter is referred to as “Proponent.”

² In its Request for Entry of Final Order, the Proponent requested that the Agency draw a negative inference based on (1) the failure of Respondents Swift Van Lines, LLC and Juan Carlos Martinez to produce discovery requested by the Proponent and ordered to be produced by the Office of Administrative Hearings and (2) Respondent Martinez’s invocation of his Fifth Amendment privilege against self-incrimination during the hearing of this matter. However, in his Proposed Decision, Administrative Law Judge John L. Leidig stated that:

The CPD made a motion for sanctions for discovery violations, including a request that I draw adverse inferences to reach certain factual findings and legal conclusions. While I conclude that

Application

3. The provisions of this Final Order shall apply to Juan Carlos Martinez and his agents, employees and assigns, and any partnership, corporation or entity in which he either currently, or in the future, has an ownership interest, has authority to control, has authority to create estimates or bills, or has the authority to establish policy.

4. The provisions of this Final Order shall apply to Swift Van Lines, LLC and its owners, members, partners, employees, agents, successors, assignees, and all other persons acting in concert or in participation with Swift Van Lines, LLC.

Definitions

5. “Moving services” shall mean the loading, packing, moving, transporting, storing while in transit, unloading, or otherwise taking possession or control from a consumer of household goods for the purpose of moving them to another location at the direction of the consumer for a fee, and the offer or sale of any goods and services provided in connection with the moving services including, but not limited to, the offer or sale of packing materials.

6. “Storage services” shall mean the storage of a consumer’s household goods for a fee.

Cease and Desist Provisions

7. The Respondents shall immediately cease and desist from engaging in any unfair or deceptive trade practices in violation of the Maryland Consumer Protection Act in connection

the Respondents failed to produce their proposed exhibits prior to the date of the hearing and committed other discovery violations, it is not necessary for me to draw any negative inferences in reaching the proposed findings stated above and the proposed conclusions stated below.

Proposed Decision, p. 15, n. 3. Accordingly, while the Agency believes that the Proponent should have made the request in the form of an Exception to the Proposed Decision, the Agency also believes that drawing the negative inference would have no impact on the relief contained in this Final Order and, therefore, has not included the requested inference.

with the offer, sale or performance of moving or storage services.

8. The Respondents shall not make any representation that has the capacity, tendency or effect of misleading any consumer in connection with the offer, sale or performance of moving or storage services.

9. The Respondents shall not fail to state any material fact, the omission of which would deceive or tend to deceive a consumer, in connection with the offer, sale or performance of moving or storage services.

10. The Respondents shall not represent that the goods or services they offer or sell have a sponsorship, approval, accessory, characteristic, ingredient, use, benefit, or quantity which they do not have, or that a Respondent has a sponsorship, approval, status, affiliation, or connection that he or it does not have, including, but not limited to, representing that they have rankings, statuses, accreditations, affiliations, insurance, or licenses that they do not have.

11. The Respondents shall immediately cease offering, selling, and providing moving and storage services in the State of Maryland, and shall not offer, sell, or provide moving or storage services in Maryland unless and until they, or any entity through which they are operating, comply with all requirements of this Final Order and post a surety bond (the "Bond") with the Proponent, in a form acceptable to the Proponent, in the amount of Seventy Five Thousand Dollars (\$75,000.00), that meets the following conditions:

- a. The Bond shall be issued by a surety licensed to do business in Maryland (the "Surety") and shall provide that Respondents and the Surety are held and firmly bound to consumers who suffer any damages or loss in connection with the Respondents' offer and sale of moving or storage services, including, but not limited to, any damages or loss that result from the Respondents' collection of

amounts from consumers in violation of one or more of the provisions of this Final Order.

b. The Bond shall permit any consumer who suffers any damages or loss in connection with the Respondents' offer and sale of moving or storage services to file a claim for their damages or loss with the Surety and, if the claim is not paid, to bring an action based on the Bond in a court of competent jurisdiction, and recover against the Surety any damages or loss suffered by the consumer in connection with the Respondents' offer and sale of moving or storage services, as well as the costs of the legal action.

c. The Bond shall also permit the Proponent to file a claim with the Surety for any damages or loss suffered by a consumer in connection with the Respondents' offer and sale of moving or storage services and, if the claim is not paid, to bring an action based on the Bond, in a court of competent jurisdiction, and recover against the Surety any damages or loss suffered by the consumer in connection with the Respondents' offer and sale of moving or storage services, as well as the costs of the legal action.

d. The Bond shall also permit the Proponent to file a claim with the Surety for costs and expenses it incurs in connection with its enforcement of this Final Order and, if the claim is not paid, to bring an action based on the Bond, in a court of competent jurisdiction, for the costs and expenses incurred by the Proponent in connection with its enforcement of this Final Order.

e. The Bond posted by Respondents pursuant to this paragraph shall remain in effect until five (5) years from the date the last claim is made against it, or if no

claims are made, five (5) years from the date it was first posted.

f. The Respondents shall provide the Proponent with a copy of the Bond and shall maintain accurate records of any premium payments made on it or claims payments made from it. Commencing ninety (90) days from the date of this Final Order, and annually thereafter for the duration of the Bond, the Respondents shall provide the Proponent copies of all such records maintained by the Respondents concerning the Bond.

g. Notice: If a claim is filed with the Surety by the Proponent, notice shall be given to the Respondents by mailing a copy of the claim to the Respondents. Any notice to the Respondents that is made under this or any other paragraph of this Final Order shall be made by mailing such notice, first class mail, postage prepaid, to Juan Carlos Martinez at 10317 Geranium Avenue, Hyattsville, Maryland 20878, or to such other address as the Respondents may designate by written notice to the Proponent.

In determining the amount of the Bond, the Agency has considered the severity of the violations, as discussed in the Proposed Decision, the amounts that consumers paid over their estimates as a result of the Respondents' violations, and the risk that future consumers will be harmed in the absence of a bond.

12. The Respondents shall not offer or sell moving services in Maryland without complying with all requirements of the Maryland Household Goods Movers Act, Md. Code Ann., Com. Law §§ 14-3101 through 14-3106 (hereinafter, the "Movers Act").

13. The Respondents shall not, in connection with providing moving services, refuse to deliver, threaten to refuse to deliver, or represent that they have the right to refuse to deliver

the household goods of a consumer.

14. The Respondents shall, once they have loaded any of a consumer's household goods onto the Respondents' vehicle, promptly deliver all of the consumer's household goods to the interior of the final destination chosen by the consumer, unless the consumer specifically requests, in writing, that the Respondents deliver the household goods to an exterior location.

15. The Respondents shall not collect, attempt to collect, request, or demand any money from a consumer until the Respondents have delivered all of the consumer's household goods, apart from an initial deposit which may not exceed the lesser of the amount the Respondents charge for one (1) hour of labor or \$100.

16. The Respondents shall not misrepresent the amount they charge to provide moving goods, moving services, or storage services.

17. The Respondents shall not, in connection with moving services for which the Respondents provide a *nonbinding estimate*, collect or attempt to collect any amount from a consumer that exceeds 125% of the amount listed on the Respondents' written estimate.

18. The Respondents shall not, in connection with moving services for which the Respondents provide a *binding estimate*, collect or attempt to collect any amount from a consumer that exceeds 100% of the amount listed on the Respondents' written estimate.

19. The Respondents shall, within five (5) days of the date of this Final Order, remove from all advertisements, including, but not limited to, all websites any one of them controls, all images, statements, references, and any other representations that state, suggest, or imply that any of them have any status, accreditation, or affiliation that they do not have, including, but not limited to, any representations that any one of them is accredited by the Better Business Bureau, that any one of them holds any rating or has won any awards from Angie's

List, that any one of them is affiliated with Children's National Medical Center, or that any one of them is licensed, bonded, or insured to provide moving or storage services, unless such statements can be truthfully made.

20. The Respondents shall provide a single written estimate to a consumer before providing moving services, which shall comply with the requirements for written estimates in Movers Act § 14-3103(b), in addition to the requirements contained in this Final Order. The written estimate must be provided to the consumer promptly after the consumer's initial inquiry regarding any moving goods or services, and in any event, at least forty-eight (48) hours prior to the day of any scheduled move. Within seven (7) days of the date of the move, the Respondents may not amend or revise a written estimate, and may not create a new, supplemental, or superseding estimate to alter or replace the original written estimate, unless the consumer for whom the moving services are to be provided requests any new or additional services that are beyond the scope of the original estimate.

21. The Respondents shall separately identify on each written estimate each moving service they will provide and the cost of each service, including, but not limited to, the price for packing services and packing materials.

22. The Respondents shall separately identify on each written estimate each fee that a consumer will or may be required to pay, and the amount of each such fee, including, but not limited to, any fee charged for overtime or for additional trips.

23. The Respondents shall state on each written estimate, in at least 14 point font type, the estimated total price for all moving services the Respondents will provide. The estimated total price required by this paragraph shall be the Respondents' best approximation, made in good faith, of the total final cost the consumer will pay for all moving services provided

by the Respondents, including the cost of all goods, services, and fees.

24. The Respondents shall conduct a physical survey of a consumer's household goods, and base their written estimate on that survey, for any move that originates within a radius of 35 miles of any location from which Respondents conduct business, unless the consumer waives the right to a physical survey in writing.

25. The Respondents shall include on each written *nonbinding estimate* the following notice:

YOUR RIGHTS:

YOU WILL NOT BE REQUIRED TO PAY MORE THAN \$[amount of estimated total price multiplied by 1.25] FOR YOUR MOVE, BECAUSE WE ARE NOT PERMITTED TO CHARGE YOU MORE THAN 125% OF THIS ESTIMATE.

WE MAY NOT REFUSE TO DELIVER YOUR GOODS FOR ANY REASON AFTER THEY HAVE BEEN LOADED ON THE TRUCK. APART FROM YOUR DEPOSIT, WE MAY NOT CHARGE YOU ANY AMOUNT UNTIL YOUR GOODS ARE FULLY UNLOADED.

IF YOU HAVE ANY QUESTIONS OR CONCERNS ABOUT THIS ESTIMATE OR OUR SERVICES, YOU MAY CALL THE MARYLAND ATTORNEY GENERAL'S CONSUMER PROTECTION DIVISION AT (888) 743-0023.

The notice required by this paragraph shall appear in at least the same font size used to display the estimated total price required by paragraph 23 of this Final Order, and shall be placed directly below the place where Respondents list the estimated total price.

26. The Respondents shall state on each written estimate the time and method of payment for the moving services, which shall comply with the requirements of paragraph 15 of this Final Order.

27. The Respondents shall include in each written estimate a good faith estimate of the total timeframe in which all moving services will be provided, which shall include the

estimated duration of the move, and the approximate start and end times.

28. The Respondents shall not misrepresent the amount of time it will take them to move a consumer's household goods, or the timeframe in which they will complete the move.

29. The Respondents shall not charge a consumer any amount for a service that is not separately listed on the consumer's written estimate, along with a price estimate for that service.

30. The Respondents shall not charge a consumer any fee that is not separately listed on the consumer's written estimate, along with the amount of that fee.

31. The Respondents shall not charge a consumer any amount for packing materials or packing services that are not expressly listed in the written estimate.

32. The Respondents shall provide all moving services described in the written estimate.

33. If the Respondents do not complete all of the moving services described in the written estimate within the timeframe provided in the written estimate, the Respondents shall complete the moving services, or cause them to be completed, at the earliest time acceptable to the consumer thereafter, at no additional cost to the consumer, provided that, if the Respondents are unable to complete the moving services within three (3) days of the date of the initial move, the Respondents shall offer the consumer the option to cancel the moving contract without penalty or to select a mutually-agreeable date to complete the moving services. If the consumer chooses to cancel the contract, the Respondents shall promptly relinquish possession of any of the consumer's goods that they possess (by delivering them to the closer of the origin or destination of the consumer's move); refund all amounts paid by the consumer, including any deposit, and may not collect or attempt to collect any amount from the consumer.

34. The Respondents shall not request or require a consumer to sign a form or other document that may contain a price term unless, at the time the consumer is presented with the document, the final price is clearly listed on the document in direct proximity to the place where the consumer signs. For example, but without limitation, the Respondents shall not request or require a consumer to sign any form purporting to list the packing materials for which the consumer will be charged unless the total final price for all such packing materials is listed on the form in direct proximity to the place where the consumer signs.

35. The Respondents shall not charge a consumer any amount for packing materials, which include, without limitation, boxes, tape, shrink wrap, and bubble wrap, unless the Respondents include in the written estimate an invoice listing (a) a description of the packing materials to be provided; (b) the quantity of each type of packing material to be provided; (c) the per-unit price of each type of packing material to be provided; and (d) the total cost of all packing materials to be provided.

36. The Respondents shall provide each consumer with a written receipt at the completion of the consumer's move that complies with the requirements of the Movers Act.

37. For at least ten (10) years from the date of this Final Order, the Respondents shall maintain copies of all estimates, contracts, invoices, or other documents that the Respondents provide to any consumer in connection with the offer, sale, or provision of moving or storage services. The Respondents shall produce to the Proponent upon request the documents that they must maintain pursuant to this paragraph.

38. For at least ten (10) years from the date of this Final Order, the Respondents shall maintain records concerning all moving and storage services that they provide, and all payments they accept for moving and/or storage services. The Respondents shall produce to the Proponent

upon request the documents that they must maintain pursuant to this paragraph.

39. The Respondents shall not offer, sell, or provide storage services in Maryland unless they have all licenses necessary to provide those services, including, but not limited to, the storage warehouse license required by Md. Code Ann., Bus. Reg. § 17-1202 for each county in which goods are stored for a fee.

40. The Respondents shall not collect, or attempt to collect, any amounts from consumers for storage services pursuant to any agreement to provide such services that was entered into before the date of this Final Order.

41. The Respondents shall, within thirty (30) days of the date of this Final Order, provide notice to all consumers for whom the Respondents are providing storage services in Maryland for a fee, by both electronic and first class mail to the consumers' last known electronic and mailing addresses, that the consumers may collect the goods being stored by any of the Respondents at any time convenient to the consumers.

42. The Respondents shall respond within thirty-six (36) hours to any consumer request to retrieve their goods, and shall promptly provide consumers with unrestricted access to their goods.

43. If, due to changed circumstances, any of the specific prohibitions or affirmative obligations that are imposed by this Final Order become unnecessary, any party may petition the Agency to amend this Final Order.

Restitution and Economic Damages

44. Consumers were harmed as a result of the Respondents' unfair and deceptive trade practices in connection with their offer and sale of moving and storage services. The Respondents shall pay restitution to the Proponent equal to the sum of the following (the

“Restitution Amount”):

- a. all monies collected from consumers to whom the Respondents provided moving services, but to whom the Respondents did not provide a written estimate;
- b. for consumers to whom the Respondents provided written estimates, all monies collected from the consumers for moving services that exceeded the Respondents’ written estimates; and
- c. all monies the Respondents collected from consumers for storage services at any storage warehouse in Maryland.

45. Consumers are entitled to receive restitution under this Final Order if they paid the Respondents for moving services without being provided a written estimate; if they paid the Respondents more than the amount listed on a written estimate provided by the Respondents; or if the consumers paid the Respondents any amount for storage services in Maryland.

46. Within thirty (30) days after the date of this Final Order, the Respondents shall provide the Proponent with a list of all consumers from whom the Respondents have collected any amount for moving or storage services (the “Consumer List”). For each consumer, the Respondents shall provide the following information in the form of an Excel spreadsheet, with each item in a separate field:

- (a) the consumer's first name;
- (b) the consumer’s last name;
- (c) the consumer’s last known address;
- (d) the consumer’s last known city, state, and postal code;
- (e) the consumer’s last known telephone number;
- (f) the consumer’s last known email address;
- (g) whether the consumer was provided a written estimate for moving services;
- (h) the amount listed on the consumer’s written estimate, if one was provided;
- (i) the total amount paid to any of the Respondents by the consumer for moving services;
- (j) the total amount the consumer paid for storage services for any goods stored by any of the Respondents at a warehouse in Maryland; and

(k) the amount of any refund(s) provided to the consumer.

The Respondents shall provide the Consumer List required under this paragraph in both electronic and paper formats.

47. Within thirty (30) days of the date of this Final Order, the Respondents shall provide the Proponent with copies of (a) all estimates the Respondents provided to consumers to whom they provided moving services, (b) all documents that show the final amount paid by each consumer for whom the Respondents provided moving services, regardless of whether the consumer was provided a written estimate, (c) all documents that show the amount paid by each consumer for whom the Respondents provided storage services in Maryland, and (d) all documents reflecting any refunds paid to consumers.

48. Within thirty (30) days of the date of this Final Order, the Respondents shall make an initial payment to the Agency in the amount of Two Hundred Thousand Dollars (\$200,000.00) to be placed by the Agency into an account to pay restitution to consumers (the "Restitution Account").

49. The Restitution Account shall be maintained by the Agency. The Proponent shall make disbursements from the Restitution Account to pay restitution to eligible consumers and to pay the costs of the claims process.

50. The Proponent shall perform a claims process that will be conducted by a person or persons appointed by the Agency (hereinafter the "Claims Administrator"). The Claims Administrator may be an employee of the Agency or an independent claims processor.

51. The claims process shall consist of identifying and locating each consumer who is eligible to receive restitution pursuant to this Final Order, gathering all information necessary to determine the amounts of restitution due to each consumer who is eligible to receive restitution,

and the Claims Administrator mailing restitution payments to all such eligible consumers and any other mailings necessary to the claims process.

52. If it is possible to determine a consumer's entitlement to relief from sources other than the consumer, that relief shall be provided to the consumer without the necessity of the consumer submitting information in the claims process.

53. The Claims Administrator shall perform the tasks necessary to ensure a thorough and efficient determination of consumers' claims pursuant to the terms of this Final Order.

54. The Claims Administrator shall perform the above duties under the supervision and control of the Proponent.

55. The Respondents shall give the Claims Administrator complete access to all records, data, and personnel necessary for the Claims Administrator to complete his or her duties.

56. The Respondents shall be liable for the costs of conducting the claims process, including the payment provided for under paragraph 68 of this Final Order. The Claims Administrator shall notify the parties of all costs incurred in connection with the claims process.

57. If, at any stage of the claims process, it is determined that the Restitution Account will require additional payments to satisfy all consumer restitution due under this Final Order or to pay the costs of the claims process, the Respondents shall deposit additional money in the amount specified by the Proponent within thirty (30) days of being notified by the Proponent of the additional amount.

58. If there are insufficient funds collected to provide full restitution to each victim, benefits shall be distributed to consumers on a *pro rata* basis.

Civil Penalties

59. The factors to be considered by the Agency pursuant to Md. Code Ann., Com.

Law § 13-410 in setting the amount of a civil penalty are:

- (i) The severity of the violation for which the penalty is assessed;
- (ii) The good faith of the violator;
- (iii) Any history of prior violations;
- (iv) Whether the amount of the penalty will achieve the desired deterrent purpose; and
- (v) Whether the issuance of a cease and desist order, including restitution, is insufficient for the protection of consumers.

Each of these factors, considered below, supports the imposition of a substantial penalty.

60. The Respondents' violations were severe. The Respondents engaged in a pattern of conduct specifically designed to deceive and bilk consumers. The Respondents' practice was to provide consumers with low estimates that they knew they would not honor, and to surprise consumers with huge price increases after they loaded the household goods onto their trucks. If consumers refused to pay the increased prices, the Respondents held the consumers' goods hostage to make them pay. The Respondents took advantage of the fact that consumers have little option but to pay when they are faced with the prospect of having all of their goods taken away. The Respondents used these tactics to extract more than 125% of the estimate in all but one of the moves about which consumers testified. In that single case, the consumer was able to avoid the Respondents' demand for more than twice his estimate only by calling the police (and even then, the Respondents illegally held his household goods for one week while trying to extract their increased demand). In every other case, consumers were less fortunate, having to pay several times the amount of their estimate. On several occasions, the Respondents failed to move all of a consumer's goods, but still charged significantly more than their estimate. When consumers refused or were unable to pay the Respondents' illegally increased prices, the

Respondents drove off with the consumers' goods and held them until they paid. The Respondents acted without any regard for the harm they could cause, and as a result, one consumer was deprived of important medications and medical devices, while another consumer had his work clothes taken away the day before he was to start a new job. Despite the obvious severity of the harm caused by the Respondents' actions, Mr. Martinez showed nothing but contempt for the consumers' plight.

61. The Respondents also acted in bad faith. The Respondents provided lowball estimates that they had no intention of honoring, and which they knew would attract consumers who would not have used their services if they were aware of the true cost. Though the Respondents advertised that they would be "on time" and "on budget," they made no effort to determine how long a move would take or how much it would cost. The Respondents falsely claimed to be accredited by the Better Business Bureau, fabricated an award from Angie's List to make consumers think they were trustworthy, and lied about being affiliated with a children's hospital to garner goodwill from consumers. The Respondents' bad faith is further shown by their practice of tricking consumers into paying undisclosed amounts for packing materials by having the consumers sign blank order forms for the materials and then filling in the prices later. This practice kept consumers in the dark about the extent of the charges they would incur, and gave the Respondents carte blanche to charge consumers unlimited amounts. The Respondents waited to spring their increased prices on consumers until they were in possession of at least some of the consumers' goods, and then used that as leverage to secure payment of the substantially increased bills. Most glaringly, the Respondents lack of good faith is shown by the fact that if consumers refused to pay the Respondents' illegally inflated prices, the Respondents refused to deliver the consumers' goods, without any regard for the hardship the consumers

would face as a result.

62. The violations of law committed by the Respondents' are numerous, and the Respondents likely committed far more violations than those described at the hearing on this matter. It is clear that the Respondents committed several violations of the Consumer Protection Act and Movers Act in each of the moves about which consumers provided testimony. The Respondents violations were uniform in each case about which consumers' testified, and demonstrated a clear pattern and practice of deceptive conduct that involved luring consumers in by making false and misleading representations in advertisements, providing unrealistic low estimates that the Respondents had no intention of honoring, requiring consumers to sign blank forms before moves, charging consumers significantly higher prices after taking possession of goods, and refusing to deliver consumers' goods if they did not pay. The Respondents also made several misrepresentations to consumers on the websites that they operated, including false claims that they held accreditations and had won awards that they had not, that they were licensed and insured to provide the services they offered when they were not, and that they were affiliated with a Children's Hospital when that was not the case.

The Respondents conducted their moving business at least between February 6, 2015 and November 11, 2017, the dates on which consumers Barker and Singleton used their services, respectively. The Respondents withheld evidence and refused to testify at the hearing about the true extent of their operations, choosing instead to invoke the Fifth Amendment privilege against self-incrimination, but it is certain that the Respondents operated their business both before and after these dates. The Respondents also withheld information about how long the misrepresentations on their websites were displayed to the public, though one of their websites was active between at least March 16, 2016 and September 1, 2017. It is appropriate to conclude

that the Respondents engaged in at least one violation of the Consumer Protection Act on each day that the business has operated. The record shows that the Respondents operated at the absolute least between February 6, 2015 and November 11, 2017, for a total of at least 1,010 days. Accordingly, the Respondents committed at least 1,010 violations of the Consumer Protection Act.

63. Injunctive provisions and an order to pay restitution alone are not likely to deter the Respondents from continuing the same course of illegal conduct. The Respondents demonstrated their contempt for the law by holding multiple consumers' goods hostage to extract their illegally inflated payments. A requirement that the Respondents pay restitution to consumers that weren't provided with written estimates and to consumers who were charged more than their written estimates only has the effect of putting the Respondents in the financial situation they would have been in if they had complied with the law in the first place. This restitution amount does not account for the fact that the Respondents would not have obtained consumers' business in the first place without the use of their deceptive practices. A significant penalty is necessary to deter the Respondents and those similarly situated from engaging in this or a similar type of illegal conduct in the future.

64. Section 13-410(a) of the Consumer Protection Act provides that a merchant who engages in a violation of the Act is subject to a fine of not more than \$1,000 for each violation.

65. In recognition of the number of violations committed by the Respondents and the factors set forth in Md. Code Ann., Com. Law, § 13-410(d), the Agency has determined that the Respondents shall, no later than thirty (30) days from the date of this Final Order, pay civil penalties totaling Two Hundred Fifty-Two Thousand, Five Hundred Dollars (\$252,500.00), representing a penalty of \$250 for each of the Respondents' 1,010 violations of the Consumer

Protection Act.

66. If there are insufficient funds received by the Agency to cover full restitution for consumers and the civil penalty, the funds received shall be credited first toward restitution and shall only be credited toward the civil penalty after all restitution claims are satisfied.

Costs

67. Within thirty (30) days from the date of this Final Order, the Respondents shall pay the Agency Thirteen Thousand, Ninety-Five Dollars and Forty-Five Cents (\$13,095.45) for the Proponent's costs incurred investigating and prosecuting this matter.

68. Within thirty (30) days from the date of this Final Order the Respondents shall pay the Agency Five Thousand Dollars (\$5,000.00), which shall be used by the Agency to pay for the claims procedure provided under this Final Order.

69. The Respondents are jointly and severally responsible for all payments due hereunder.

Resolution of Disputes

70. The Chief of the Agency or his designee shall resolve any disputes regarding this Final Order and enter any supplemental orders needed to effectuate its purpose.

Notice to Respondents

71. Pursuant to Md. Code Ann., Com. Law § 13-403(d), the Respondents are hereby notified that if the Agency determines that the Respondents have failed to comply with this Final Order within thirty (30) days following service of this Final Order, the Proponent may proceed with enforcement of the Final Order pursuant to Title 13 of the Commercial Law Article.

Appeal Rights

72. A party aggrieved by the Findings of Fact and Conclusions of Law or this Final Order is entitled to judicial review of the decision as provided by § 10-222 of the State Government Article of the Annotated Code of Maryland. Generally, a petition for judicial review must be filed within thirty (30) days after the date of the order from which relief is sought. The time for filing a petition is regulated by Rule 7-203 of the Maryland Rules and the rules regulating judicial review of administrative agency decisions as set forth in Rules 7-201 to 7-210 of the Maryland Rules.

CONSUMER PROTECTION DIVISION
OFFICE OF THE ATTORNEY GENERAL

Date: July 18, 2018

By: _____

Steven M. Sakamoto-Wengel
Consumer Protection Counsel for
Regulation, Legislation and Policy and
Chief's Designee

Copies to:

Patrick Henry McCormally
Consumer Protection Division
Office of the Attorney General
200 St. Paul Street, 16th Floor
Baltimore, MD 21202

Juan Carlos Martinez
10317 Geranium Avenue
Hyattsville, Maryland 20783

CONSUMER PROTECTION
DIVISION, OFFICE OF THE
ATTORNEY GENERAL,
PROPONENT

v.

JUAN CARLOS MARTINEZ AND
SWIFT VAN LINES, LLC,
RESPONDENTS

* BEFORE JOHN J. LEIDIG,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE OF
* ADMINISTRATIVE HEARINGS
* OAH No: OAG-CPD-04-17-35091
* CPD No.: 17-035-289014

* * * * *

PROPOSED DECISION

STATEMENT OF THE CASE
ISSUES
SUMMARY OF THE EVIDENCE
PROPOSED FINDINGS OF FACT
DISCUSSION
PROPOSED CONCLUSIONS OF LAW

STATEMENT OF THE CASE

On October 20, 2017, the Consumer Protection Division (CPD) of the Office of the Attorney General filed a Statement of Charges alleging that Juan Carlos Martinez (Martinez) and Swift Van Lines, LLC, (Swift) violated Maryland's Consumer Protection Act (CPA) and the Maryland Household Goods Movers Act (Movers Act) in connection with the offer and sale of intrastate household goods moving services in the State of Maryland. Md. Code Ann., Com. Law §§ 13-101 through 13-501 (2013 and Supp. 2017); Md. Code Ann., Com. Law §§ 14-3101 through 14-3106 (2013). The CPD filed a First Amended Statement of Charges on October 31, 2017, and a Second Amended Statement of Charges on December 14, 2017.

The CPD referred the matter to the Office of Administrative Hearings (OAH) and delegated authority to issue proposed Findings of Fact and Conclusions of Law.^c See COMAR

02.01.02.04B ("Unless the [CPD] notifies the parties of a different delegation, the authority delegated shall issue proposed findings of fact and proposed conclusions of law, but not recommend proposed relief.").

On January 23, 2018, I convened a hearing at the OAH, 11101 Gilroy Road, Hunt Valley, Maryland. Code of Maryland Regulations (COMAR) 02.01.02.04A, B. Assistant Attorney General Patrick Henry McCormally represented the CPD. Mr. Martinez represented himself. No attorney appeared on behalf of Swift.

The contested-case provisions of the Maryland Administrative Procedure Act, the CPD's procedural directives and the OAH Rules of Procedure govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2017); COMAR 02.01.02; COMAR 28.02.01.

ISSUES

1. Did the Respondents violate section 14-3102 of the Movers Act by refusing to deliver consumers' household goods when providing intrastate moving services?
2. Did the Respondents violate section 14-3103(c)(1) of the Movers Act by providing estimates to consumers that fail to identify (i) each moving service they would provide and (ii) the price for each moving service they would provide?
3. Did the Respondents violate section 14-3103(c)(2) of the Movers Act by providing estimates that fail to identify each fee that the consumer will or may be required to pay and by charging consumers for overtime charges that were not disclosed on the estimates?
4. Did the Respondents violate section 14-3104 of the Movers Act by failing to provide written receipts after completing moves and failing to provide receipts that contained the Respondents' legal name and the address and telephone number of their resident agent in Maryland?

5. Did the Respondents violate section 14-3103(d) of the Movers Act by requiring consumers to pay final amounts for moving services that were more than permitted under the Movers Act?

6. Did the Respondents violate section 14-3105 of the Movers Act and section 13-303 of the CPA by (a) violating the Movers Act as set forth above; (b) making false and misleading statements to consumers that have the capacity, tendency, or effect of deceiving or misleading consumers; and (c) failing to state material facts to consumers?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits offered by the CPD:

- CPD 1 Estimate provided to Alphonso Wilkins (Wilkins), May 30, 2017
- CPD 2 Deposit record for Wilkins, June 16, 2017
- CPD 3 Check from Wilkins, June 21, 2017
- CPD 4 Estimate provided to John Barnard (Barnard), July 12, 2017
- CPD 5 Deposit record for Barnard, July 14, 2017
- CPD 6 Text messages to and from Barnard, undated
- CPD 7 Estimate provided to Sherray Gibson (Gibson), June 21, 2016
- CPD 8 Emails between Gibson and the Respondents, June 21-22, 2016
- CPD 9 Estimate provided to Gibson, June 30, 2016
- CPD 10 Transaction record for Gibson, August 22, 2016
- CPD 11 First Estimate provided to Steven Keuper (Keuper), October 17, 2016
- CPD 12 Second Estimate provided to Keuper, October 17, 2016
- CPD 13 Third Estimate provided to Keuper, October 17, 2016
- CPD 14 Bank records for Keuper, June 20, 2016 to December 26, 2016
- CPD 15 Bill of Lading provided to Keuper, faxed January 10, 2017

CPD 16 Credit Card Authorization form signed by Keuper, undated

CPD 17 Not admitted but retained in the record

CPD 18 Not admitted but retained in the record

CPD 19 Not admitted but retained in the record

CPD 20 Thumbtack messages to and from Patricia Bereson (Bereson), August 17-20, 2015

CPD 21 Credit card records for Bereson, August 8, 2015 to September 7, 2015

CPD 22 Articles of Organization for Revolution Moving and Storage (Revolution), November 19, 2013 .

CPD 23 Articles of Amendment, March 10, 2016

CPD 24 Website registration information for swiftmovingservices.com, updated March 4, 2017

CPD 25 Affidavit of Angela Obitz, Better Business Bureau, December 21, 2017

CPD 26 Affidavit of Carl W. Butler, Angie's List, December 28, 2017

CPD 27 Affidavit of Yanira Van Den Broeck, Children's National Health System, January 19, 2018

CPD 28 Affidavit of Jon Neal, Metropolitan Moving and Storage, January 17, 2018

CPD 29 Screenshots from swiftmovingservices.com, undated

CPD 30 Affidavit of Thomas Barker, January 5, 2018

CPD 31 Affidavit of Carolyn Robinson, January 9, 2017

CPD 32 Affidavit of Ashok Nair, January 16, 2018

CPD 33 Affidavit of Nelson Brown, January 18, 2018

CPD 34 Affidavit of Matthew Straw, January 16, 2018

CPD 35 Affidavit of Tekora Singleton, January 15, 2018

CPD 36 Affidavit of Lakeisha Mays, January 12, 2018

CPD 37 Affidavit of Rob Poole, January 22, 2018

CPD 38 Affidavit of Elizabeth Chima, January 19, 2018

- CPD 39 Certification of the Maryland Insurance Administration (MIA), December 18, 2017, with attached Order issued by the MIA in Case No. MIA 2016-04-012, April 14, 2016
- CPD 40 Affidavit of Lisa Henneman (Henneman), Deputy Chief License Inspector of the State License Bureau of the Comptroller of Maryland, January 22, 2018, regarding Juan Carlos Martinez (Martinez)
- CPD 41 Affidavit of Henneman, January 22, 2018, regarding Revolution
- CPD 42 Affidavit of Henneman, January 22, 2018, regarding Swift
- CPD 43 Deposit Transaction record for Eric Oquendo (Oquendo), September 26, 2017
- CPD 44 Email from American Express to Oquendo, October 12, 2017

I admitted the following exhibits offered by the Respondents:

- RESP 1 Estimate, Bill of Lading, and Consumer Acknowledgement for Barnard, July 22, 2017; Packing Materials Charges form, undated and unsigned; Release form for Barnard, July 22, 2017; Check/Credit Card Authorization Form, blank and undated; Customer survey, blank and undated
- RESP 2 Estimate, Bill of Lading, Consumer Acknowledgement, Packing Materials Charges form for Wilkins, June 18, 2017; Release form, blank and undated; Check/Credit Card Authorization Form, blank and undated; Customer survey, blank and undated
- RESP 3 Not admitted but retained in the record
- RESP 4 Text messages to and from phone number (240) 528-0151, undated
- RESP 5 Not admitted but retained in the record
- RESP 6 Text messages to and from phone number (240) 355-5457, July 22-29 (year not indicated)
- RESP 7 Not admitted but retained in the record
- RESP 8 Not admitted but retained in the record
- RESP 9 To Whom It May Concern letter from Martinez, undated
- RESP 10 To Whom It May Concern letter from Martinez, undated

Testimony

The CPD presented testimony from the following six consumer witnesses: Alphonso Wilkins, Eric Oquendo, John Barnard, Steven Keuper, Sherray Gibson, and Patricia Bereson. The CPD also presented the testimony of Diana McGee, a CPD investigator, and Martinez.

Martinez testified on behalf of the Respondents.¹

PROPOSED FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

1. Swift is a Maryland limited liability company located at 10317 Geranium Avenue, Hyattsville, Maryland 20878.
2. Martinez originally organized Swift on November 19, 2013, under the name Revolution Moving and Storage, LLC. Martinez changed the name of the company to Swift Van Lines, LLC on March 10, 2016.
3. Martinez is a Maryland resident who resides at 10317 Geranium Avenue, Hyattsville, Maryland 20878. He is the sole owner and manager of Swift.
4. Martinez has been the resident agent for Swift since it was organized.
5. Swift holds itself out to the public as movers of household goods. Specifically, Swift publicly offers to load, pack, move, transport, store while in transit, unload, and otherwise take possession or control of consumer goods for a fee.

¹ No attorney appeared for Swift. Section 9-1607.1 of the State Government Article does not specifically address whether a member of a limited liability company may represent a limited liability company in an administrative proceeding before the OAH. *See* Md. Code Ann., State Government § 9-1607.1 (listing the types of cases in which non-lawyers may represent corporations, partnerships and sole proprietorships before the OAH); *see also* COMAR 28.02.01.08B (“A party may be represented by an attorney authorized to practice law in Maryland or, when authorized by law, appear through a representative who is not an attorney.”). A limited liability company is an “unincorporated business organization.” Md. Code Ann., Corps. & Ass’ns § 4A-101(k) (2015). Martinez did not submit a power of attorney authorizing him to act on behalf of Swift, and he did not cite any law authorizing him to represent Swift before the OAH. I conclude that Swift failed to appear and I proceeded in its absence. COMAR 28.02.01.23; COMAR 02.01.02.17B.

6. Swift provided intrastate moving services to consumers including Alphonso Wilkins, Eric Oquendo, John Barnard, Steven Keuper, Sherray Gibson, Patricia Bereson, Thomas Barker, Carolyn Robinson, Ashok Nair, Nelson Brown, Matthew Straw, Tekora Singleton, Lakeisha Mays, Robert Poole, and Elizabeth Chima. Each of these consumers encountered problems with their moves.

7. Wilkins contacted Swift to move the contents of his four-bedroom home. Swift provided a written estimate of \$590.00 to complete the move. Swift's crew arrived two hours late and took far longer than estimated by Swift, in part due to the fact that Swift sent a crew of three rather than four as promised. When Swift arrived with the moving truck at the new address, it demanded \$2,800.00 from Wilkins. When Wilkins balked at paying the higher amount, Swift left with some of Wilkins furniture (and his medications) still in the truck. Swift did not provide Wilkins with a receipt or a final bill for the move, and Wilkins ultimately paid \$2,518.00 to Swift for its services.

8. Oquendo contacted Swift based on the information contained on Swift's website; in particular, the Better Business Bureau (BBB) logo. Swift estimated that the move would cost \$300.00-\$400.00, but it did not provide a written estimate to Oquendo. When the move was completed, Swift's crew demanded \$700.00 and told Oquendo that the payment had to be made in cash. Oquendo paid the \$700.00. Later, Oquendo discovered that Swift's crew had damaged a wall in his old apartment. Despite repeated attempts by Oquendo, Swift never paid for the damage or repaired the wall.

9. Bereson hired Swift when it was still operating under the name Revolution. She discovered Swift's business through Thumbtack, a website that connects consumers with service providers. Bereson was moving from Roland Park to Towson. Swift told Bereson that the cost of the move would be \$65.00 per hour, plus \$65.00 for the cost of fuel, but it did not provide a

written estimate. The moving crew arrived one hour later than promised. Although the move took only one and a half hours, Swift demanded that Bereson pay for the move based on a four-hour minimum that had not been previously disclosed to her. When Bereson questioned the price, Swift refused to deliver Bereson's property until she paid for the move in full. Bereson ultimately paid \$325.00 for her move.

10. Barnard hired Swift to move the contents of his two-bedroom apartment. Swift told Barnard that it could beat the price quoted to him by another company and gave Barnard a written estimate to complete the move for \$310.50. Swift did not inspect the items prior to providing the estimate. Swift then charged Barnard for nine hours of crew time, and demanded more than \$700.00 to complete the move. Barnard refused to pay immediately and, as a result, Swift left with Barnard's property still on the moving truck. Approximately one week later, Swift released Barnard's property after Barnard paid the cost of the estimate, but Barnard discovered that some of his property had been damaged and some of his clothes were wet because Swift's truck had a hole in the roof. Swift did not give Barnard a receipt for the move.

11. Gibson hired Swift for an intrastate move, and Swift provided her two written estimates: an initial estimate for \$207.00, and a second estimate for \$276.00. Swift required Gibson to sign a blank price list for the move. Swift's crew did not bring supplies to pack Gibson's kitchen items, and ultimately Swift left behind a significant amount of the goods that were to be moved. At the end of the move, Swift demanded \$727.00 in cash or credit to release Gibson's property, and Gibson paid that amount by credit in order to get her property released.

12. Keuper hired Swift for a move of approximately 1.5 miles in or around Severn, Maryland. In doing so, Keuper relied on a statement he read on Swift's website that Swift was insured. Swift provided Keuper three written estimates, the highest of which was for \$693.00. When the move was completed, Swift demanded \$2,114.50 from Keuper, in addition to the

\$79.00 deposit previously paid. In order to secure the release of his property, Keuper paid the additional amount demanded by Swift. Swift charged Keuper for twenty-three hours of crew time, and also required him to pay an "extra trip" charge that had not been previously disclosed. Swift damaged some of Keuper's wood furniture by applying tape directly to the finishes. In addition, Swift failed to deliver Keuper's bed and some shelving, and it also damaged Keuper's refrigerator and his wife's jewelry cabinet. Keuper asked Swift for insurance information in order to make a claim for the damage, but Swift never supplied the information. When Keuper called BBB to complain about Swift, he was told that Swift was not a BBB member.

13. Barker hired Swift (then operating as Revolution) for an interstate move, and Swift estimated that the move would take five hours and cost \$325.00. However, no written estimate was provided. Swift told Barker that the company was licensed and insured. At the end of the move, Swift demanded \$1,385.00 from Barker and refused to release Barker's property unless the entire amount was paid in cash. After Swift held Barker's goods for longer than agreed, Barker relented and paid \$1,385.00 in cash to Swift to secure the release of his property.

14. Robinson hired Swift (then operating as Revolution) after the company estimated that her move would cost between \$130.00 and \$260.00 (although no written estimate was provided). Swift arrived more than three hours late. The move took several hours longer than expected, and Robinson ultimately paid Swift the \$473.20 it demanded to complete the move.

15. After seeing Swift's website, Nair hired Swift for an intrastate move. Swift assured Nair that Swift would cover the cost of any property damage that occurred during the course of the move. Swift provided a written estimate stating that the move would require seven hours with four movers and one truck at a total cost of \$693.00. During the move, Swift left Nair's office chair out in the rain and the chair was damaged. Swift refused to move several lamps and plants, even though the parties agreed that they would be moved. In addition, Swift

refused to unload the second truckload of Nair's property until Nair agreed to pay at least \$2,000.00 for the move.² Swift did not provide Nair a copy of the final bill or a receipt for payment. Nair paid the amount demanded, even though it was substantially more than the estimate. Swift also damaged the hardwood floor of Nair's old home and then failed to respond to Nair's requests that Swift pay for the necessary repairs.

16. Brown hired Swift for an intrastate move. Swift gave an oral estimate of \$434.50. Brown's decision to hire Swift was based on statements on Swift's website that the business was BBB accredited and rated #1 on Angie's List. Swift showed up approximately two hours late for the move and did not have tools to disassemble some of the furniture, even though Swift had previously promised that disassembly and reassembly was included in the estimate. When the move was done, Swift demanded \$1,300.00. Brown stated that he would not pay that amount, and Swift threatened to drive off with his property. Later, Brown paid \$1,099.00 to Swift, but for that amount Swift refused to move Brown's property into his new residence and instead unloaded Brown's property onto the street and left it there.

17. Straw hired Swift for an intrastate move after receiving a written estimate to complete the move in approximately three hours for \$207.00. After placing Straw's property on the moving truck, Swift demanded \$380.00 to complete the move, even though there had not been any unanticipated delays or added items to be moved. To secure the release of his property, Straw paid Swift \$380.00.

18. Swift provided a written estimate to complete Singleton's move at a cost of \$207.00. Swift arrived approximately one hour late for the move and took longer than expected. After damaging Singleton's headboard and a shelving unit during the move, Swift demanded \$712.32 to complete the move while threatening to drive off with the goods and charge Singleton

² See CPD 32 (Nair Affidavit) at ¶ 5.

additional storage fees if Singleton did not immediately pay in full. Faced with this choice, Singleton paid Swift \$712.32 to secure the release of the property.

19. Mays hired Swift after receiving a written estimate of \$310.50 for two movers to spend four and a half hours using one truck to complete the move. Mays relied on statements from Swift's website that the company was BBB accredited and #1 on Angie's List. Swift told Mays that the company was insured. Swift broke a lamp and two bedframes during the move. When the move was completed, Swift demanded \$906.30 from Mays, threatening to drive away with Mays' property unless the entire amount was paid immediately in cash. To get the property released, Mays paid Swift \$906.30 in cash. Swift did not respond to Mays' subsequent requests for proof of insurance.

20. Poole hired Swift to move goods for one of Poole's clients. Swift provided a written estimate of \$434.50 for four and a half hours using one truck and three crewmembers. Swift told Poole that the company was licensed and insured. Swift arrived late for the move, brought a truck that was too small, and even after twelve hours failed to move all of the goods promised. Swift demanded \$1,500.00 for the work it did perform, threatening not to unload the property unless the amount was paid in full in cash. Poole paid the entire \$1,500.00 in cash to secure the release of the goods. Despite Poole's request, Swift failed to provide proof of insurance. Swift left so many goods unmoved that Poole had to arrange for the rental of a fifteen-foot moving truck to move them. Poole went to the address for Swift listed on its website—13230 Mid Atlantic Boulevard in Laurel, Maryland—and discovered that Swift does not operate a business at that address.

21. Chima hired Swift after obtaining a written estimate for \$434.50 for four hours using three movers and one truck. Swift arrived more than two hours late, and upon arriving told Chima that the move would cost approximately \$900.00. Chima agreed. While Swift was

unloading Chima's property at her new address, Swift stated that Chima would have to pay \$1,552.59 in cash, and that these charges included overtime even though Swift had not previously mentioned the possibility of any overtime charges. Chima then paid Swift \$900.00 (rather than the \$1,552.59 demanded by Swift), at which point Swift threatened to drive off with Chima's property unless the entire amount was immediately paid in cash. When Chima stated that she would not pay the increased amount, Swift drove off with some of Chima's property still on the moving truck. Ultimately, Chima paid the additional amount demanded by Swift, but when Swift returned with the moving truck, some of Chima's property was missing (including a jump starter for her car and some clothing), and some of her furniture was damaged.

22. Swift also offers storage services to consumers for a fee.

23. In those instances where Swift did provide a written estimate, Swift typically would attach a page to the estimate entitled "Understanding Your Estimate." These attachment sheets describe the types of charges that may be incurred by consumers, but they do not specifically list each service that Swift will provide as to each individual consumer and they do not state the amount (or even the rate) that Swift will charge for each service.

24. On more than one occasion, Swift required consumers to sign blank moving documents before it would start working on the scheduled day of a move, including a blank copy of the bill of lading, and a blank "Packing Materials Charges" form. Swift later filled in these forms with the prices it charged consumers for moving services and packing materials. As a result, consumers were not made aware of charges for packing materials until presented with the final bill.

25. Swift advertises its services on two websites, www.movingcompanysilverspring.com, and www.swiftmovingservices.com. The latter was active between at least March 16, 2016 and September, 2017. Martinez registered the websites and controls their content.

26. Swift's websites claim that Swift is licensed, bonded, and insured to provide household goods moving services and storage services, that it will be "on time" and "on budget," and that it has accreditations and approvals from the BBB and Angie's List. In fact, Swift does not hold such accreditations and approvals.

27. Swift does not hold, and has never held, general liability insurance, automobile insurance, or cargo insurance. Despite this fact, Swift would sometimes attach a sheet to its written estimates entitled "Understanding Your Estimate" that states as follows:

INSURANCE COVERAGE

Insurance is included at a rate of \$0.60 per pound per article regardless of the value of the piece. Items packed by SWIFT Moving & Storage LLC will be applicable for insurance claims if damages occur per local regulations with Federal Motor Carrier Safety. If you are transporting an expensive piece and would like additional coverage, please refer to www.movinginsurance.com to purchase additional coverage.

28. Swift's representations that it is bonded and licensed are false.

29. Swift has never held a storage warehouse license.

30. Swift prominently advertises the logo of Children's National Medical Center, a pediatric hospital in Washington, D.C., on the consumer testimonial section of their website. However, Swift has never had any affiliation or any other relationship with that organization.

31. Many of the estimates prepared by Swift misstate Swift's business address as 13230 Mid Atlantic Boulevard in Laurel Maryland. This is actually the address of a large, well-established moving company with a newly-constructed storage facility, Metropolitan Moving and Storage (Metropolitan).

32. Swift charged some consumers, including Keuper and Chima, fees for overtime, even though that fee is not disclosed in the Respondents' estimates.

33. In some instances, Swift charged by the hour for moves. For those moves, Swift charged consumers for every hour that elapsed during a move, regardless of whether they

actually provided moving services during that time. Swift failed to inventory or determine the amount of goods a consumer had prior to the day of the move. Consequently, Swift routinely took longer to complete consumers' moves than the amount of time listed on Swift's written estimates, and charged substantially more than the amounts estimated as a result.

34. On numerous occasions, Swift had consumers sign a mostly blank bill of lading at the beginning of the move, and Swift filled in the bill of lading with a final price before the end of the move. However, on more than one occasion, Swift failed to give consumers a copy of the bill of lading, or any other type of receipt for their payment. On the occasions that Swift did provide a bill of lading, the documentation did not include the address or telephone number of Martinez as registered agent.

DISCUSSION

As explained below, I conclude that the CPD met its burden of proving each and every violation of the Movers Act and the CPA alleged in its Second Amended Statement of Charges.

Movers Act § 14-3102

Section 14-3102 of the Movers Act provides in pertinent part as follows: "A household goods mover may not . . . refuse to deliver, a consumer's household goods when providing household goods moving services for an intrastate move." Md. Code Ann., Com. Law § 14-3102.

The evidence clearly shows that Swift violated this section of the Movers Act by failing to deliver the property of Wilkins, Bereson, Barnard, Gibson, Keuper, Barker, Nair, Brown, Straw, Singleton, Mays, Poole, and Chima as promised. It is fair to say that Swift held their property hostage until they paid a higher price than shown on the estimate. Instances in which Swift demanded a higher price than agreed, and then threatened to drive away with a consumer's property if the demand was not met, constitute a refusal to deliver a consumer's goods. In some cases, Swift dumped goods on the street forcing consumers to load the goods themselves. On

one occasion Swift left so many goods behind that a consumer had to rent a fifteen-foot moving truck, make two trips with his pickup truck, and hire helpers to move all of the remaining goods. The evidence also shows that even when Swift failed to complete a move, instead of adjusting their final bills downward, Swift demanded significantly more than the estimate.

When provided the opportunity to testify, Martinez offered no reasonable explanation for the Respondents' actions. He "took the Fifth" in response to most of the CPD's questions on cross-examination and provided no meaningful defense to the credible witness testimony, exhibits, and affidavits presented by the CPD. He never opened the exhibit binder prepared by the CPD, and as a result he did not follow along as the CPD presented testimony and evidence from Swift's former customers. I agree with the CPD that Martinez showed contempt for the proceedings.³

Movers Act § 14-3103(b), (c)(1)

Section 14-3103(b) of the Movers Act requires movers of household goods to provide a written estimate to a consumer before providing services for an intrastate move. Md. Code Ann., Com. Law § 14-3103(b). In addition, subsection (c)(1) of the statute provides that the written estimate must "[s]eparately identify each household goods moving service the [mover] will provide and the price of each service." Md. Code Ann., Com. Law § 14-3103(c)(1).

Swift failed to provide Oquendo, Bereson, Barker, Robinson, and Brown with written estimates of the cost of their move before agreeing to provide moving services. In addition, the written estimates provided to Wilkins, Barnard, Gibson, Keuper, Nair, Straw, Singleton, Mays, Poole, and Chima do not separately identify each service Swift will provide and the price of each

³ The CPD made a motion for sanctions for discovery violations, including a request that I draw adverse inferences to reach certain factual findings and legal conclusions. While I conclude that the Respondents failed to produce their proposed exhibits prior to the date of the hearing and committed other discovery violations, it is not necessary for me to draw any negative inferences in reaching the proposed findings stated above and the proposed conclusions stated below.

service. *See* CPD 1, 4, 7, 9, 12, 32, 34, 35, 36, 37, and 38. The estimates provided by Swift contain very little meaningful information other than stating that an hourly rate of \$69.00 will apply. In addition, Swift failed to conduct pre-move inspections. As a result, its estimates were deficient in fundamental respects: failing to adequately estimate the time and crew size, the truck size, and the packing materials required. Although Swift did attach a page to each written estimate entitled “Understanding Your Estimate,” these attachment sheets only generally describe the types of charges that may be incurred by consumers. *Id.* The attachments do not specifically list each service that Swift will provide as to each individual consumer; even more concerning, these sheets do not state the amount (or even the rate) that Swift will charge for each service. *Id.*

Movers Act § 14-3103(c)(2)

Subsection (2) of Section 14-3103(c) of the Movers Act requires the written estimate to “[s]eparately identify each fee that the consumer will or may be required to pay” the mover. Md. Code Ann., Com. Law § 14-3103(c)(2).

Swift violated this section by failing to provide written estimates to Oquendo, Bereson, Barker, Robinson, and Brown. In addition, as explained above, the Respondents further violated this section by failing to inform Wilkins, Barnard, Gibson, Keuper, Nair, Straw, Singleton, Mays, Poole, and Chima of each fee they might be required to pay. The estimates and attached “Understanding Your Estimate” sheets do not specifically list each service that Swift will provide as to each individual consumer and do not state the amount or rate that Swift will charge for each service. *Id.*

Movers Act § 14-3104

Section 14-3104 of the Movers Act provides that “on completion of household good moving services for an intrastate move for a consumer, a household goods mover shall provide

the consumer with a written receipt that states: (1) the household goods mover's legal name; and the (2) the address and telephone number of (i) the household goods mover's resident agent in the state; or (ii) if the household goods mover does not have a resident agent in the state, the household goods mover's principal place of business." Md. Code Ann., Com. Law § 14-3104.

Swift failed to provide receipts that comply with section 14-3104 to any of the consumers who testified or provided affidavits in this case; namely, Wilkins, Oquendo, Bereson, Barnard, Gibson, Keuper, Barker, Robinson, Nair, Brown, Straw, Singleton, Mays, Poole and Chima. In fact, Swift required many of these consumers to sign a blank copy of the bill of lading and a blank "Packing Materials Charges" form. Swift later filled in these forms with the prices it charged the consumers for moving services and packing materials. However, there is no credible evidence that any of the consumers agreed to the information shown on these bills of lading or packing forms after they were filled in by Swift. Moreover, the bills of lading and packing forms do not comply with section 14-3104 because they do not list Swift's legal name, address, telephone number and resident agent. See, for example, CPD 15 and 19 (the bills of lading for Keuper and Chima do not contain statutorily required names, numbers and address).

Movers Act § 14-3103(d)

Section 14-3103(d) of the Movers Act provides as follows:

- (1) A consumer who receives a binding estimate from a household goods mover may not be required to pay more than the estimated total price stated in the estimate for the household goods moving services described in the estimate.
- (2) A consumer who receives a nonbinding estimate from a household goods mover may not be required to pay more than 125% of the estimated total price stated in the estimate for the household goods moving services described in the estimate, plus any applicable excess charges.

Md. Code Ann., Com. Law § 14-3103(d). Section 14-3103(a) defines “excess charges” as follows:

an amount in excess of the estimate provided to a consumer, charged by a household goods mover for additional services that:

- (1) are provided before or during an intrastate move; and
- (2) are necessary because of circumstances that
 - (i) are beyond the control of the household goods mover; and
 - (ii) could not have been reasonably anticipated by the household goods mover.

Md. Code Ann., Com. Law § 14-3103(a).

Swift provided written estimates to Wilkins, Gibson, Keuper, Nair, Straw, Singleton, Mays, and Poole. These estimates are nonbinding estimates for purposes of the Movers Act because the estimates do not “[i]ndicate clearly whether the estimate is binding on the consumer and household goods mover.” Md. Code Ann., Com. Law § 14-3103(c)(5).

Swift violated section 14-3103 because it charged Wilkins, Gibson, Keuper, Nair, Straw, Singleton, Mays, and Poole more than 125% of the amount listed on each of their non-binding written estimates. The following chart summarizes these illegal charges:

Consumer Name	Amount Quoted on Non-Binding Estimate	Amount Paid	Amount Paid as a Percentage of the Amount Quoted on the Non-Binding Estimate
Wilkins	\$590.00	\$2,518.00	427%
Gibson	\$276.00	\$727.00	263%
Keuper	\$693.00	\$2,193.50	317%
Nair	\$693.00	at least \$2,000.00 ⁴	289%

⁴ See CPD 32 (Nair Affidavit) at ¶ 5.

Straw	\$207.00	\$380.00	184%
Singleton	\$207.00	\$712.32	344%
Mays	\$310.50	\$906.30	292%
Poole	\$434.50	\$1,500.00	345%

None of the amounts charged by Swift to the consumers were necessary due to circumstances that were beyond Swift's control and that could not have been reasonably anticipated by Swift. There was no credible evidence that Swift encountered unexpected obstacles or conditions that made the moves more difficult or burdensome. While many of the moves described in testimony at the hearing can fairly be described as chaotic and confrontational, the chaos and confrontation were the direct result of the actions of Swift and Martinez.

CPA § 13-303 and Movers Act § 14-3105

Section 13-303 of the CPA prohibits unfair or deceptive trade practices in, among other things, "the sale, lease, rental, loan, or bailment of any consumer goods, consumer realty, or consumer services." Md. Code Ann., Com. Law § 13-303. Section 13-301 provides in pertinent part as follows:

Unfair or deceptive trade practices include any:

- (1) False, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind which has the capacity, tendency, or effect of deceiving or misleading consumers;
- (2) Representation that:
 - (i) Consumer goods, consumer realty, or consumer services have a sponsorship, approval, accessory, characteristic, ingredient, use, benefit, or quantity which they do not have;
 - (ii) A merchant has a sponsorship, approval, status, affiliation, or connection which he does not have;
 - (iii) Deteriorated, altered, reconditioned, reclaimed, or secondhand consumer goods are original or new; or

(iv) Consumer goods, consumer realty, or consumer services are of a particular standard, quality, grade, style, or model which they are not;

(3) Failure to state a material fact if the failure deceives or tends to deceive;

....

Md. Code Ann., Com. Law § 13-301. Section 3105 of the Movers Act provides that each violation of the Movers Act “is an unfair or deceptive trade practice within the meaning of Title 13.” Md. Code Ann., Com. Law § 14-3105.

Swift’s deceptive advertisements give consumers the false impression that it is insured and accredited. CPD investigator Diana McGee testified credibly that she contacted BBB in Washington and confirmed that Swift is not a BBB member; that Swift is not rated number one by Angie’s List (in fact, she learned that Angie’s List does not award numerical designations of a company’s performance); and that the address used by the Respondents—13230 Mid Atlantic Boulevard, Laurel, Maryland—is not a valid address for the Respondents and is, in fact, the address of another moving company, Metropolitan. These facts are corroborated by the affidavits from the BBB, Angie’s List, and Jon Neal (Metropolitan’s owner). CPD 25, 26, 28.

The CPD presented credible affidavits from Lisa Henneman, Deputy Chief License Inspector of the Maryland State License Bureau, showing that neither Swift nor Swift’s predecessor, Revolution, was ever licensed to operate a storage warehouse business in Maryland. CPD 40, 41 and 42.

Despite claims on their website that they will be “on time” and “on budget,” Swift arrived late for many of their moves and made no effort to honor their estimates. Although Swift collected initial deposits by credit card, and specifically told some consumers that they could make their final payments by credit card, Swift many times insisted that final bills be paid in cash. As a result, consumers who paid cash had little if any opportunity to dispute the charges

and request chargebacks from their credit card company after Swift forced them to pay the increased charges. Swift engaged in a pattern of conduct specifically designed to deceive consumers. Swift knew that it could obtain consumers' business by providing low estimates that it had no intention of honoring. Swift did so knowing that once consumers agreed to use it for their moves, the consumers would have little choice but to agree to whatever terms Swift forced on them the day of the move. At the hearing, Martinez's demeanor displayed a troubling indifference as to how his actions affected Swift's customers.

These and other circumstances show that the Respondents acted in bad faith. Swift was never insured, but provided estimates to consumers stating that it was. Swift even tried to make it appear as if they were associated with a children's hospital in order to lure consumers to use their services. The testimony and affidavits of affected consumers clearly show that the Respondents' violations are severe and numerous, and lasted for a significant period of time. Md. Code Ann., Com. Law § 13-410(d).

Personal Liability of Martinez

Martinez is personally liable for all of the violations of the Movers Act and the CPA identified above. He is the sole owner and manager of Swift, and he had full authority to control all actions of the limited liability company. He is clearly an appropriate party to hold liable for Swift's actions. Further, he is individually liable for each of the unfair or deceptive trade practices engaged in by Swift. *Hartford v. Scarlett Harbor*, 109 Md. App. 217, 265 (1996) ("a CPA violation is in the nature of a tort action; it is a legal wrong that is not equivalent to a breach of contract."). In Maryland, "corporate officers or agents are personally liable for those torts which they personally commit, or which they inspire or participate in, even though performed in the name of an artificial body." *Tedrow v. Deskin*, 265 Md. 546, 550-551 (1972). I see no

reason why this policy should not be applied equally to members of limited liability companies who personally commit violations of the Movers Act and the CPA.

In *Consumer Protection Division v. Morgan*, 387 Md. 125, 176 (2005), the Court of Appeals held that “the Consumer Protection Division may hold individuals jointly and severally liable for restitution for the [CPA] violations of corporations, when the [Proponent] proves that (1) the individual participated directly in or had authority to control the deceptions or misrepresentations, and (2) the individual had knowledge of the practices.” *See also F.T.C. v. Amy Travel Service, Inc.*, 875 F.2d 564, 573-74 (7th Cir. 1989).

PROPOSED CONCLUSIONS OF LAW

Based upon the above Proposed Findings of Fact and Discussion, I propose the following Conclusions of Law:

Juan Carlos Martinez is personally liable for all of the acts, omissions and violations of Swift Van Lines, LLC, discussed in this decision. *Hartford v. Scarlett Harbor*, 109 Md. App. 217, 265 (1996); *Tedrow v. Deskin*, 265 Md. 546, 550-551 (1972).

Swift is a household goods mover that provided household goods moving services pursuant to section 14-3101 of the Movers Act. Md. Code Ann., Com. Law §§ 14-3101(d), (e) and (f) (2013).

Swift violated section 14-3102 of the Movers Act by refusing to deliver consumers’ household goods when providing intrastate moving services. Md. Code Ann., Com. Law § 14-3102 (2013).

Swift violated section 14-3103(c)(1) of the Movers Act by failing to provide some consumers with a written estimate, charging consumers fees for packing materials that were not disclosed on the consumers’ estimates, and failing to separately identify in written estimates each

service that it would provide and the price of each service. Md. Code Ann., Com. Law § 14-3103(c)(1) (2013).

Swift violated section 14-3103(c)(2) of the Movers Act by failing to separately identify in the estimates each fee that the consumers will or may be required to pay and by charging consumers for overtime charges that were not disclosed on the estimates. Md. Code Ann., Com. Law § 14-3103(c)(2) (2013).

Swift violated section 14-3104 of the Movers Act by failing to provide consumers with a receipt, and failing to provide receipts that contained Swift's legal name and the address and telephone number of their resident agent in Maryland. Md. Code Ann., Com. Law § 14-3104 (2013).

Swift violated section 14-3103(d) of the Movers Act by charging some consumers more than 125% of the amount shown on nonbinding estimates. None of the amounts Swift charged consumers qualify as "excess charges" under section 14-3103(a). Md. Code Ann., Com. Law § 14-3103(d) (2013).

Swift violated section 13-303 of the CPA and section 14-3105 of the Movers Act as follows:

- a. Swift's misrepresentations and material omissions regarding its moving services constitute unfair or deceptive trade practices, Md. Code Ann., Com. Law §§ 13-301(1)-(3), 13-303 (2013 and Supp. 2017);
- b. Swift made false and/or misleading representations that had the capacity, tendency, or effect of misleading consumers and that are unfair or deceptive trade practices, Md. Code Ann., Com. Law §§ 13-301(1), 13-303 (2013 and Supp. 2017);
- c. Swift made representations that its services had characteristics, benefits, or qualities that they did not have, each of which constitutes an unfair or deceptive trade practice,

Md. Code Ann., Com. Law § 13-301(2), and is prohibited under Md. Code Ann., Com. Law § 13-303 (2013 and Supp. 2017);

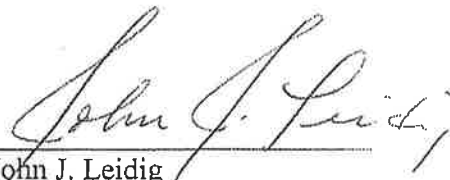
d. Swift failed to disclose material facts about its moving services that deceived or tended to deceive consumers, each of which constitutes an unfair or deceptive trade practice prohibited by the CPA, Md. Code Ann., Com. Law § 13-301(3), and is prohibited under Md. Code Ann., Com. Law § 13-303 (2013 and Supp. 2017);

e. Swift engaged in unfair practices that caused injuries to consumers which consumers could not have reasonably avoided. The injuries that consumers suffered are not offset by any benefit to consumers or to competition. Md. Code Ann., Com. Law § 13-303 (2013);

f. Swift's unfair and deceptive trade practices are severe and numerous, lasted for a significant period of time, and demonstrate the Respondents' bad faith. Md. Code Ann., Com. Law § 13-410 (2013);

g. In addition to engaging in unfair and deceptive trade practices by violating provisions of the Movers Act as set forth above, the Respondents falsely claimed accreditations and approvals from the BBB, Angie's List and the Children's National Medical Center; advertised a false address; falsely claimed to provide warehouse storage services that they were not licensed for; published false advertisements that they will be "on time" and "on budget;" and falsely claimed to be licensed, bonded and insured.

April 23, 2018
Date Decision Issued


John J. Leidig
Administrative Law Judge

JJL/dlm
#173156

NOTICE OF RIGHT TO FILE EXCEPTIONS

A party aggrieved by this proposed decision may file exceptions thereto and request an opportunity to present oral argument. Such exceptions and any request for argument must be made within thirty (30) days from the date of this proposed decision. COMAR 02.01.02.21. The written exceptions and request for argument, if any, should be directed to Clerk, Administrative Hearings, Consumer Protection Division, 200 St. Paul Place, 16th Floor, Baltimore, Maryland 21202.

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