

Decision No. 22210 .

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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In the Matter of the Application of  
S. H. TOBIAS for an Order Authorizing  
the transfer of Ownership of the  
Warehouse Business Operated under the  
name of Elmer E. Frost and Co.

**ORIGINAL**

Application No. 15339.

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THE LOS ANGELES WAREHOUSEMEN'S ASSOCIATION  
a non-profit organization,

Complainant,

vs.

Case No. 2673.

S. H. TOBIAS, operating under the  
fictitious name of ELMER E. FROST & CO.,

Defendant.

Hal Clark - For Applicant in Application No. 15339  
and for Defendant Tobias in Case No. 2673.

I. Henry Harris - For Elmer E. Frost & Co., et al.

Gibson, Dunn & Crutcher, by Paul R. Watkins, -  
For Los Angeles Warehousemen's Association,  
Protestant in Application No. 15339 and  
Complainant in Case No. 2673.

BY THE COMMISSION:

O P I N I O N

In Application No. 15339 the Commission is asked to make its order authorizing the transfer to applicant of a certain warehousing business located at 1939 East 16th Street, Los Angeles. At the initial hearing in these matters counsel for applicant moved the dismissal of Application No. 15339 on the ground that his client no longer desired to engage in the warehousing business. The motion to dismiss will be granted.

In Case 2673 the amended complaint alleges that defendants Elmer E. Frost and Ina M. Frost, operating under the fictitious name of Elmer E. Frost & Co., have been in violation of the Public Utilities Act in the following respects;

- (1) That said warehouse business has not been open to the public for at least sixty (60) days.
- (2) That said defendants have committed gross violations of their duties to the public as warehousemen in that they have (a) Failed to deliver goods stored with them, pursuant to proper demand; (b) improperly withheld from the legal owner funds obtained through collection of cash on delivery orders; (c) Failed to account for shortages in merchandise stored with said defendants.

Wherefore complainant prays that this Commission cancel all tariffs on file in the name of each and all of said defendants, and that they be restrained from further operating as warehousemen in the State of California unless and until they shall have procured from this Commission authorization so to do.

Defendants duly filed their answer denying all of the material allegations of said amended complaint and praying that the complaint be dismissed.

Upon the issues thus joined, public hearings were held by Examiner Cannon at Los Angeles. According to the record in this proceeding Elmer E. Frost owns the building at 1939 East 16th Street and under the name of Elmer E. Frost and Co. conducted a public utility warehousing business therein continuously from 1923 to the first day of May, 1928. On that date he transferred said business to one S. H. Tobias, granting him also the right to use the name of Elmer E. Frost and Co. The Railroad Commission did not authorize said transfer and lease, as provided for in Section 51(a) of the Public Utilities Act. Subsequently Tobias moved to another warehouse at Bay

and Wilson Streets where he continued to do business under the name of Elmer E. Frost & Co. At one stage of the proceedings it was contended by defendant Frost that Tobias was merely acting as his agent, but whether the transaction established the relation of principal and agent or was an outright assignment the transfer was nevertheless in violation of the Public Utilities Act.

Defendant Frost first took the position that his failure to operate the warehouse was due to the fact that he had been restrained from so doing by order of the Superior Court, in certain proceedings involving Frost and Tobias, and that the restraining order was still in effect. It was shown at the final hearing in this matter, however, that judgment dissolving the restraining order had been entered on March 20, 1929, and that there was nothing to prevent Frost from engaging in the warehouse business since that date, had he chosen to do so. Frost then took the position that operation of his warehouse had not been abandoned, but only temporarily suspended.

From the record before us we are satisfied that defendant Frost deliberately abandoned operation of his warehouse and had no intention of resuming such operation, at least from the date of March 20, 1929. It is true, no certificate of public convenience and necessity had ever been issued to Frost by this Commission, but by reason of operation in good faith prior to the enactment of Section 2 $\frac{1}{2}$  of the Public Utilities Act, he was in that respect, exempt from the provisions of the Act. Having filed his tariffs with the Commission he was

in no different situation than any other public utility warehouseman, and is in no less degree answerable to the law. It is fundamentally true that every public utility must meet all reasonable demands for service and refusal to do so cannot be based on mere personal grounds, outside the operations of such public utility. The defendant herein locked the door of his warehouse, refused to receive goods in storage, and for a period of nearly a year has declined to function as a public utility, for no other apparent reason than a personal disinclination so to do. The rule is well established that a public utility must maintain itself in a position to furnish service when called upon and cannot abandon such service until authorized to do so.

We find as a fact that Elmer E. Frost and Ina M. Frost, defendants herein, operating under the fictitious name of Elmer E. Frost & Co. are not at the present time conducting a public utility warehouse, and that their operating rights should be revoked and all their warehouse tariffs cancelled.

#### O R D E R

Public hearings having been held in the above entitled proceedings, the matters having been submitted, and being ready for decision,

IT IS HEREBY ORDERED BY THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA that Application No. 15339 be, and the same is hereby dismissed, and

IT IS HEREBY FURTHER ORDERED that all operative rights of Elmer E. Frost and Ina M. Frost, operating under the

fictitious name of Elmer E. Frost & Co. to conduct a public utility warehouse business in the City of Los Angeles, be and the same are hereby revoked, and

IT IS HEREBY FURTHER ORDERED that all warehouse tariffs on file with the Railroad Commission in the name of said Elmer E. Frost & Co. be and the same are hereby cancelled.

Dated at San Francisco, California, this 18<sup>th</sup> day of March, 1930.

CC. Bailey

Leon A. Bailey  
W. J. Latta

W. J. Latta  
Commissioners.