

Decision No. 26114

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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ORIGINAL

In the Matter of the Investigation
on the Commission's own motion into
the practices, operations, regula-
tions, rates, rules, charges, and
classifications, or any of them, of
GROVE TRANSPORTATION COMPANY, HAROLD
HAMANN, FIRST DOE, SECOND DOE, THIRD
DOE, JANE DOE, JOHN DOE and RICHARD
ROE, a copartnership, and JOHN DOE
COMPANY, operating as "passenger
stage corporations" and/or as "motor
carrier transportation agents."

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) Case No. 3367
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Orla St. Clair, for F. A. Savage, Motor
Carriers Association, and Pacific Greyhound Lines.

Philip Zwerin for Harold Hamann.

BY THE COMMISSION:

OPINION, FINDINGS, AND JUDGMENT

Decision 25434, dated December 10, 1932, found as a
fact that Harold Hamann was acting as a motor carrier transporta-
tion agent within the meaning of Statutes 1931, chapter 638,
without having a license. He was ordered to cease and desist
(1)
until a license should have been obtained.

The affidavit of F. A. Savage was filed on April 17, 1933.
It alleges the institution of the prior investigation, hearings
thereon, issuance of the desist order, service thereof, and
ability to comply therewith. It alleges further that notwith-
standing the desist order, with full knowledge thereof and sub-
sequent to its effective date, Harold Hamann has continued to
act as a motor carrier transportation agent, holding himself out
to the public and acting as such agent. The first count of

(1) Decision 25434 was personally served upon Harold Hamann
on December 16, 1932 (Exhibit 2) and by its terms became ef-
fective twenty days thereafter. (January 5, 1933.)

said affidavit alleges a specific violation on April 1, 1933.

On April 24, 1933 the Commission issued its order directing Harold Hamann to appear before Commissioner Seavey on May 10, 1933, and show cause why he should not be punished for contempt. ⁽²⁾ On May 10, 1933, respondent filed an answer denying ⁽³⁾ the allegations of the affidavit.

F. A. Savage testified that, as special agent for Motor Carrier's Association it is his duty to investigate travel bureaus; that he has observed and checked respondent's activities over a period of several months; that respondent has a place of business in a room opposite the desk in the lobby of the Seneca Hotel, 34 Sixth Street, San Francisco; that there is a sign in the door of the hotel indicating a travel bureau; and that further investigations of petitioner's activities have been made by employees of witness.

Witness J. M. Thomas, employed by F. A. Savage and acting under his direction, saw Hamann at the Seneca Hotel about 3:45 p.m. on April 1, 1933. Hamann was seated in the room at the end of a short hall opposite the hotel desk. The witness asked Hamann for transportation to Los Angeles. Hamann stated that a car would be leaving "around 5 o'clock", depending upon the time a car would arrive "from the north." Two other men entered the office and talked with Hamann while the witness sat at the other end of the room behind the desk. After the others left, Hamann asked the witness if he had the fare, and in response

(2) The order to show cause, together with the affidavit, was personally served upon respondent on April 25, 1933. (Exhibit 3.)

(3) "Answering Paragraphs 1, 3, 6, 7, 8, 9, 10, 11, and 12 of the First Count, and Paragraphs 1, 2, 3, 4, and 5, of the Second Count, said Defendant has not sufficient information or belief to enable him to answer, and basing his denial upon that ground, denies each and every, all and singular, generally and specifically, the allegations therein contained."

to a question, stated that the fare was \$5.00. Hamann accepted this sum from the witness and gave him a card upon which Hamann wrote the following: "Mitchell \$5 Pd."⁽⁴⁾ Hamann left the office for some 30 or 40 minutes and returned to advise the witness that the "car would be late in getting out." About 6 p.m., at Hamann's suggestion, the witness went into the restaurant for dinner and sat next to Hamann and a lady whom the witness believed to be Mrs. Hamann.

About fifteen minutes after their return to the office one L. E. "Reed" or "Reid" came in to see Hamann. The latter told Reed that he had collected certain money and would retain that and that Reed owed him fifty cents. Hamann then told the witness that they would not keep him waiting for the arrival of the "car from the north". Hamann introduced the witness to Reed and the latter picked up the witness' bag, and Reed and the witness walked down Stevenson Street to a parking lot, where Reed placed the bag in an automobile (Buick sedan, 1933 California license number 3-J 9439), told the witness to get in the front seat, and collected the card which Hamann had given to the witness. Reed then drove to the Pasadena Hotel on Ellis Street. Three additional passengers boarded the car in San Francisco. Leaving San Francisco via the Bay Shore highway the car proceeded along the coast route to Los Angeles, stopping at the King Edward Hotel in that city. The witness and two of the other passengers were taken to the Pacific Electric station at 6th and Main Streets, Los Angeles.

Harold Hamann has not been granted a certificate of public convenience and necessity to operate as a passenger stage

(4) Witness, whose true name is J. M. Thomas, gave his name as "A. J. Mitchell" to respondent.

corporation nor has a license been issued to him to act as a motor carrier transportation agent. No certificate of public convenience and necessity has been issued to L. E. "Reid" or "Reed" between San Francisco and Los Angeles. (Witness Robotham.)

The evidence on the second specific violation alleged is not sufficient to support a finding thereon.

Upon a careful review of the record in this proceeding the Commission makes the following findings of fact:

FINDINGS

1. On December 10, 1932 the Railroad Commission, in its Decision 25434, found as a fact that Harold Hamann was acting as a motor carrier transportation agent within the meaning of Statutes 1931, chapter 638, without first obtaining a license therefor, and ordered said respondent to cease and desist from so acting. Said order has become final, has never been revoked, annulled, or stayed, and is now in full force and effect.

2. A certified copy of said Decision 25434 was personally served upon Harold Hamann on December 16, 1932; said respondent had personal knowledge and notice of said decision and the contents thereof on and prior to January 5, 1933, the effective date of said decision, and was able at all times thereafter to comply with said order.

3. On April 17, 1933 there was filed with the Railroad Commission the affidavit of F. A. Savage, in which it was alleged in substance that Harold Hamann, notwithstanding the order contained in Decision 25434, with full knowledge of its contents, and subsequent to its effective date, had failed and refused to comply with said order in that he was continuing

to act as a motor carrier transportation agent.

4. Upon said affidavit being filed the Railroad Commission, on April 24, 1933, issued its order directing Harold Hamann to appear before Commissioner Seavey on May 10, 1933, and show cause why he should not be punished for contempt. Said order to show cause, together with the affidavit upon which based, was personally served upon Harold Hamann on April 25, 1933. Hearing was had on May 10, 1933, and the matter submitted.

5. Notwithstanding the order of the Railroad Commission contained in its Decision 25434 and subsequent to the effective date thereof, the said Harold Hamann failed and refused to comply therewith, and continued to act as a motor carrier transportation agent, without first obtaining a license, by negotiating for and providing transportation for persons, for compensation, over the public highways of this state between San Francisco and Los Angeles by other than a carrier holding a valid certificate of public convenience and necessity, on April 1, 1933.

6. The said failure of Harold Hamann to comply with said order of the Railroad Commission and his continuance to act as a motor carrier transportation agent was and is in contempt of the Railroad Commission of the State of California and its order and in violation of Statutes 1931, chapter 638.

JUDGMENT

Respondent's motion to dismiss is denied, and IT IS HEREBY ORDERED AND ADJUDGED that Harold Hamann has been and is guilty of a contempt of the Railroad Commission in disobeying its order made on December 10, 1932, in its Decision 25434, by

having failed and refused to desist from acting as a motor carrier transportation agent; and

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that for his said contempt of the Railroad Commission and its order, said Harold Hamann be punished by a fine of One Hundred (100) Dollars, said fine to be paid to the Secretary of the Railroad Commission within five days after the effective date of this opinion, findings, and judgment, and that in default of payment thereof, said Harold Hamann be committed to the county jail of the City and County of San Francisco until such fine be paid or satisfied in the proportion of one day's imprisonment for each five dollars of said fine that shall so remain unpaid.

IT IS HEREBY FURTHER ORDERED that the Secretary of the Railroad Commission, if said fine is not paid within the time specified above, prepare an appropriate order of arrest and commitment in the name of the Railroad Commission of the State of California, to which shall be attached and made a part thereof a certified copy of this opinion, findings, and judgment.

IT IS HEREBY FURTHER ORDERED that this opinion, findings, and judgment shall become effective twenty days after personal service of a certified copy thereof upon HAROLD HAMANN.

Dated at San Francisco, California, this 30th day of June, 1933.

OC Seaver
W. A. Carr
M. B. ...
Commissioners