

Decision No. 28092.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation)
by the Commission on its own Motion)
into the rates, rules, regulations,)
charges, practices, operations and) Case No. 4007.
schedules, or any of them, of A. E.)
DREW, doing business at Wilmington)
under the fictitious name of HARBOR)
WAREHOUSE.)

ORIGINAL

M. Lewis Lehman, for Respondent.

C. G. Munson, for Los Angeles Warehouse-
men's Association, Interested Party.

BY THE COMMISSION:

O P I N I O N

This proceeding was instituted by the Commission on its own motion, for the purpose of investigating the rates, rules, regulations, etc., of A. E. Drew, an individual having on file with this Commission a tariff naming charges for storage and incidental handling of merchandise at Wilmington and, particularly, to determine whether or not said A. E. Drew had abandoned any or all of his operations.

A public hearing was conducted by Examiner Gorman at Los Angeles on May 29th, 1935, at which time the matter was duly submitted.

The facts in this case may be briefly summarized as follows:

A. E. Drew, operating under the fictitious name of Harbor Warehouse, established a warehouse business at 310 "C" Street, Wilmington, during 1919 and operated at that location for approximately eight years; he was required to vacate the premises at 310 "C" Street and therefore moved his warehousing business to 711 West "B" Street, Wilmington. At the former address he had approximately 12,000 and at the latter 3,600 square feet of floor space available for warehousing purposes. The warehousing operations at the West "B" Street address were conducted in conjunction with a wholesale and retail hay, grain and feed business. During 1930 the building at 711 West "B" Street was leased to Motor Freight Terminal Company. This lease was in effect for one year. No provision was included in said lease to retain unto respondent any right to utilize any portion of said building for public warehousing.

Respondent testified that, subsequent to the expiration of said lease, arrangements were made with Motor Freight Terminal Company for a continuation of the rental of the property on a month-to-month basis, with the understanding that respondent would have the right to utilize any or all of said property for public warehousing purposes. Respondent also testified that, at the time the lease was made with Motor Freight Terminal Company, arrangements were made with Mr. C. B. Carter, of the Wilmington Transfer and Storage Company, for the utilization of his warehouse for any business which might have been offered to respondent. Subsequent to respondent's moving into the warehouse at 711 West "B" Street, the property was lost by respondent and acquired by respondent's wife through a foreclosure sale. At the present time, respondent alleges that the building is rented from his wife and that no equipment for conducting a warehousing business or any warehouse

employees are maintained at that address. The only asset of A. E. Drew is the operative right, which he values at \$10,000.00.

The annual reports of respondent show that no warehousing for the public had been performed for the past four years. Respondent alleged that he had been continuously engaged in the public utility warehousing business since 1919; that during this entire period he had space available for the storage of merchandise for the public; that, during the past few years, he has not stored any merchandise for the public; and that, due to many and costly provisions of the N.R.A. codes, the high insurance rate on his building and the cutting of rates by warehousemen, it was impossible for him to solicit business to maintain his warehouse in the competitive market. The matter of cutting rates by other warehousemen was a condition which prevailed until about three years ago (Decision No. 25024, dated August 1st, 1932), and that situation having been corrected, it cannot logically be urged as detrimentally affecting respondent in the securing of business during these latter years.

The record shows that the building at 711 West "B" Street carried no sign or other advertisement, signifying that said building was utilized by the Harbor Warehouse, for the past two years but that a sign was placed in the window of said property on May 27th, two days prior to the hearing in this matter, and that the only merchandise stored for the public at said location for more than four years was a shipment of Manomar (fertilizer) on May 28th. Mr. A. E. Drew, respondent, testified that he had secured this business by his personal solicitation but was unfamiliar with the rate charged for storing said commodity.

The record is clear that respondent has not performed any warehouse service for the public during the past four years,

with the exception of the commodity referred to above, and that he had been desirous of retaining his operative right, even though for a period he possessed no facilities for warehousing purposes, so that, in the event he were in a position to again actively engage in the warehouse business, he would be able to do so without the necessity of securing a certificate of public convenience and necessity from this Commission. In the determination of this matter, we believe it reasonable to look further than to the mere desire of respondent and, in view of his various acts during this long period, consideration must be given to respondent's intent and as to whether or not there had been an actual abandonment of warehouse service.

The annual report filed by respondent for the year 1930, under the headings "Name and location of each warehouse owned" and "Name and location of each warehouse operated," is left blank. Under the heading "Name and location of each warehouse leased and from whom" shows, "space as needed may be obtained from the Wilmington Transfer and Storage Company until conditions warrant new warehouse building," and under the heading "Name and location of each warehouse owned or leased but not operated and reasons for not operating the same" states, "former building lost through foreclosure; temporary space available from the Wilmington Transfer and Storage Company until business depression warrants securing of further warehouse facilities."

The only statement under these headings in the 1931 report is as follows: "Space as needed may be obtained from the Wilmington Transfer and Storage Company until conditions warrant new warehouse building." In addition to this, on the page providing for operating revenues, there appears the statement, "None - All storage during this year was taken care of by Wilmington

Transfer and Storage Company who will include same with their report."

This latter statement clearly indicates, in our opinion, that respondent had actually intended to and did discontinue all of his warehousing facilities and had merely arranged with the Wilmington Transfer and Storage Company for it to accept any commodities, which were offered to him, for storage in its warehouse under its own name and at its own rates.

After carefully considering all of the evidence in this proceeding, we are of the opinion and hereby conclude that respondent had intended to and did actually abandon his warehouse business and that his operative right should be revoked and his tariff cancelled.

O R D E R

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES AND FINDS AS A FACT that A. E. Drew, doing business under the fictitious name of Harbor Warehouse, intended to and had actually abandoned his public utility warehouse in the City of Los Angeles (Wilmington) and that whatever operating right he possesses should be revoked and annulled and his tariff cancelled.

IT IS HEREBY ORDERED that the operating right of A. E. Drew, doing business under the fictitious name of Harbor Warehouse, in the City of Los Angeles (Wilmington), is hereby revoked and annulled and the tariff on file with this Commission in connection therewith is hereby cancelled.

The effective date of this Order shall be twenty (20)

days from and after the date hereof.

Dated at San Francisco, California, this 17th day
of June, 1935.

Leon A. Williams

M. H. Cur

M. B. Lewis

Walter J. ...

Frank R. ...

Commissioners.