

ORIGINAL

Decision No. _____

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation on)
the Commission's own motion, into the)
operations, rates, charges, classifica-)
tions, contracts and practices, or any)
thereof, of ARTHUR E. MIZEN, doing)
business as GEARY VAN & STORAGE CO.)

Case No. 4309

LEIGH DEMING, for Respondent.

J. W. BARKER, for San Francisco Movers, Inc.

BY THE COMMISSION:

O P I N I O N

In this proceeding the Commission, upon its own motion, instituted an investigation in order to ascertain whether Arthur E. Mizen, respondent herein, doing business as Geary Van & Storage Co., has violated any of the provisions of the City Carriers' Act, Chapter 312, Statutes of 1935, as amended, or any order, rule or regulation of the Railroad Commission issued pursuant thereto, and more particularly to determine whether said respondent is or has been engaged in the transportation of property for compensation or hire, as a business, by means of motor vehicles over any public highway in the City and County of San Francisco without first having obtained from the Railroad Commission a permit authorizing such operation as required by Sections 2 and 3 of said City Carriers' Act.

Respondent holds a radial highway common carrier permit No. 38-1567 and a city carrier permit No. 38-1568, both of which are dated February 18, 1938.

A public hearing was held before Examiner Paul on May 2, 1938, at which time respondent appeared and was represented by counsel. Evidence was received and the matter having been duly

submitted is now ready for decision. The facts as established by public witnesses, an inspector of the Railroad Commission, and the respondent voluntarily testifying are undisputed.

Mrs. Robert S. Calvin, Jr. testified that some time on or about the 4th to the 9th of December, 1937, respondent at her request moved one lot of household furniture from 1213, 25th Avenue, San Francisco, to 1501, 35th Avenue, San Francisco. For this service she paid to respondent, by check dated December 3, 1937, the sum of \$38.25. Although the check was dated on the 3rd of December the witness testified that the moving was done at some later date.

Mrs. Esther Nathan testified that on the 30th of November, 1937, respondent at her request moved one lot of household furniture from 2330 Cecolia Avenue to 543, 40th Avenue, both points being in San Francisco. For such service Mrs. Nathan paid to the respondent, by check dated November 30, 1937, the sum of \$27.50. Both of the checks drawn by these two witnesses were endorsed and cashed by respondent, the endorsement appearing on each of the checks as Geary Van & Storage Co. by A. E. Mizen.

Mrs. H. Hanson testified that although she had never seen respondent she had used the services of Geary Van & Storage Co. for the moving of a few articles of furniture on December 14, 1937, from Cervantes Boulevard to 430, 41st Avenue, San Francisco, for which a cash payment of \$6.75 was paid to the driver of the truck.

By the testimony of E. H. Griffiths, Supervising Inspector for the Railroad Commission, it was shown that on February 8, 1938, respondent, in response to a telephone request of Inspector Griffiths, called at the Commission's office in the Kohl Building, San Francisco, taking with him the records of his business for the inspection of Mr. Griffiths, which records he told Mr. Griffiths were records of services performed by him. Mr. Griffiths, at that time, made a list of the jobs performed by respondent subsequent to the effective date of the revocation of respondent's permits. Mr. Griffiths examined

these records and testified that they showed that on various dates beginning with January 27, 1938, to and including February 9, 1938, respondent made several movements of household goods, baggage, etc., for different persons over the public streets of and between points in San Francisco, for which various sums were charged and collected. It was pointed out to respondent that at that time he held no permit for the conduct of such operations, that because of the lack of such permit these operations were illegal, and that he should immediately make application at the office of the Railroad Commission for a new permit. It was shown that respondent failed to heed this advice notwithstanding that again on February 11, 1938, he was further advised as to the necessity of obtaining a permit. Applicant refused to file such application for permits at that time but subsequently, on February 18, 1938, applied for and received a radial highway common carrier permit and a city carrier permit.

Miss Edna Bauerlein, of the Commission's staff, testified that the records of the Commission show that during the period beginning November 27, 1937, extending to but not including February 18, 1938, respondent possessed no permit for the conduct of an operation as a city carrier in the city of San Francisco. On January 14, 1938 notice of such revocation, dated December 30, 1937, was mailed respondent, showing permits revoked as of November 27, 1937. On January 10, 1938, the Commission duly adopted resolution confirming, ratifying and approving such revocation. The reason for the revocation was the failure of respondent to maintain continuously on deposit with the Commission adequate public liability and property damage insurance as required by Sections 4, 5 and 6 of the City Carriers' Act, Chapter 312, Statutes of 1935, as amended, and Sections 5, 6 and 7 of the Highway Carriers' Act, Chapter 223, Statutes of 1935, as amended, and the rules and regulations of the Commission.

From this witness' testimony it is further shown that respondent filed new insurance policy on December 17, 1937; however he failed to make application for new permits until February 18, 1938, upon the filing of which application the Commission promptly issued on the same date a new city carrier permit and radial highway common carrier permit. The record clearly shows that from November 27, 1937, to and including February 17, 1938, respondent did not possess a permit to conduct his city carrier operation.

J. T. Haviland, supervising insurance clerk for the Railroad Commission, testified that the records of the Commission show that respondent, prior to December 30, 1937 was the holder of radial highway common carrier permit No. 38-958 and city carrier permit No. 38-959, and had on file with the Commission a policy of public liability and property damage insurance issued by Angelus Indemnity Corporation No. D36137, covering a one-year period beginning October 21, 1937. Effective October 26, 1937, Angelus Indemnity Corporation was prohibited by the Insurance Commissioner of California from further conducting insurance business in this state. Beginning October 26, 1937, the coverage contained in the policy of insurance issued by Angelus Indemnity Corporation was taken over by the Commercial Standard Insurance Company under the terms of a blanket insurance binder for a period of thirty days. Approximately eleven hundred policies of Angelus Indemnity Corporation were on file with the Commission and in order to notify the holders of said policies the Commission issued a form letter (No. 255) notifying the holders that Angelus Indemnity Corporation could no longer do business in this state, that a binder was in effect which would terminate on November 26, 1937, and unless other insurance was offered the permits of such holders would be revoked. A copy of this letter was mailed to respondent on November 6, 1937. The Commission, on January 14, 1938, by form letter (No. 167-B), one of which was mailed to respondent, acknowledged receipt on December 17, 1937, of American Indemnity

policy No. 505756, which policy was effective as of December 13, 1937, and stated that the blanket coverage of policy No. D36137 expired as of November 26, 1937, that respondent's permits Nos. 38-958 and 38-959 were revoked as of November 27, 1937, in accordance with notice attached and asked for a return of truck plates theretofore issued to respondent; that respondent's permits were revoked for failure to provide continuous insurance or other liability protection on deposit with the Commission as required by the Highway Carriers' Act and the City Carriers' Act.

Respondent voluntarily testified in his own behalf that he had received the notice of the Commission in regard to the requirement of insurance from another company because of the inability of Angelus Indemnity Corporation to continue its insurance business in the state of California and he thereupon notified Mr. Nathan N. Brown, his insurance broker, who assured him that new and adequate insurance would be obtained and filed with the Commission. Respondent testified that it was his belief that his old permits would be reinstated when a new policy of insurance was filed with the Commission, notwithstanding that he had been informed by Inspector Griffiths that such permits would not be reinstated and that respondent would have to file an application for new permits.

Respondent admitted that he had received notice about November 4, 1937, that his insurance would lapse on November 26, 1937, and that unless new insurance was deposited effective on that date his permits would be revoked, and that he had failed to respond thereto, offering as his only reason that he had "procrastinated."

Nathan N. Brown, an insurance broker, testified that he had been instructed by respondent to keep proper and adequate public liability and property damage insurance on file with the Commission. Brown testified that he did not know that the binder of Commercial

Standard Insurance Company was merely temporary in nature and further testified that he had made payment to the agent for the Angelus Indemnity Corporation on November 12, 1937, and was informed that such payment was being turned over to the Commercial Standard Insurance Company. It was his understanding that the Commercial Standard Insurance Company's policy would take up and continue the term formerly covered by Angelus Indemnity Corporation. He did not learn until about the 17th or 18th of February that respondent's insurance did not properly cover the period of time subsequent to the expiration of the temporary binder of Commercial Standard Insurance Company.

A summary of the events affecting respondent's insurance and permits, as disclosed by the record, shows that on October 26, 1937, respondent's public liability and property damage insurance on deposit with the Commission lapsed because of the inability of respondent's insurer to continue to do business in California beginning on said date; that this condition was immediately corrected through the prompt deposit of an adequate thirty-day binder of another insurance company which expired November 26, 1937; that during the period November 27, 1937, to and including December 16, 1937, no public liability and property damage insurance was on deposit with the Commission, notwithstanding that adequate notice had been given to respondent as to the necessity therefor; that on December 17, 1937, an adequate public liability and property damage insurance policy was deposited with the Commission; that although this policy stated on its face that it became effective December 13, 1937, it was not on deposit with the Commission until December 17, 1937; that respondent was operating as a city carrier and a radial highway common carrier during the period November 27, 1937, to and including December 16, 1937, without adequate public liability and property damage insurance or other protection on deposit with the

Commission as required by Sections 5, 6 and 7 of Chapter 223 and Sections 4, 5 and 6 of Chapter 312, Statutes of 1935, as amended; that on December 30, 1937, a notice of revocation of respondent's radial highway common carrier and city carrier permits was issued; that said notice of revocation was mailed to respondent on January 14, 1938; that on January 10, 1938, a resolution was adopted by the Commission confirming, notifying and approving such revocation; that on February 18, 1938, respondent filed applications for new radial highway common carrier and city carrier permits which were issued on said date.

It is plainly evident from the record that respondent's permits Nos. 38-958 and 38-959 were properly revoked because of his failure to maintain adequate insurance on deposit with the Commission during the period November 27, 1937, to but not including December 17, 1937.

The record further shows that although adequate insurance was deposited with the Commission on December 17, 1937, respondent failed to make application for new permits until February 18, 1938; that during the period January 14, 1938, to but not including February 18, 1938, respondent was operating his vehicles over the public streets of the City and County of San Francisco without a permit therefor. It will be ordered that respondent's city carrier permit No. 38-1568 will be suspended for a period of five (5) days, and that he desist from city carrier operations during that period.

An order of the Commission directing the suspension of an operation is in its effect not unlike an injunction by a court. A violation of such order constitutes a contempt of the Commission. The California Constitution and the Public Utilities Act vest the Commission with power and authority to punish for contempt in the same manner and to the same extent as courts of record. In the event a person is adjudged guilty of contempt, a fine may be imposed in the

amount of \$500 or he may be imprisoned for five (5) days, or both. C. C. P. Sec. 1218; Motor Freight Terminal Co. v. Bray, 37 C.R.C. 224; re Ball and Hayes, 37 C.R.C. 407; Wermuth v. Stamper, 36 C.R.C. 458; Pioneer Express Company v. Keller, 35 C.R.C. 371.

It should also be noted that under Section 13 of the City Carriers' Act (Chapter 312, Statutes of 1935), one who violates an order of the Commission is guilty of a misdemeanor and is punishable by a fine not exceeding \$500 or by imprisonment in the County Jail not exceeding three months, or by both such fine and imprisonment.

O R D E R

Public hearing having been had in the above entitled matter, evidence having been received, the matter having been duly submitted, and the Commission being now fully advised,

IT IS HEREBY FOUND AS A FACT that respondent Arthur E. Mizen did on January 27, 29, and 31, 1938, and February 4, 5, 8, and 9, 1938, and on each of said days engage in the transportation of property for compensation as a business over the public highways within the corporate limits of the City and County of San Francisco, State of California, by means of a motor vehicle as a city carrier, as defined in said City Carriers' Act, without a permit therefor.

IT IS ORDERED by reason of said offense, that

1. City carrier permit No. 38-1568 issued to Arthur E. Mizen (Mitzen) be and it is hereby suspended for a period of five (5) days; that said five (5) day period of suspension shall commence on the 7th day of June, 1938, and continue to the 11th day of June, 1938,

both dates inclusive, if service of this order shall have been made upon respondent more than twenty (20) days prior to said 7th day of June, 1938; otherwise said five (5) day period of suspension shall begin on the effective date of the order.

2. During said period of suspension respondent shall, cease, desist and abstain from engaging in the transportation of property for compensation as a business over any public highway or street in said City and County of San Francisco, as a city carrier as defined in said City Carriers' Act.

The effective date of this order shall be twenty (20) days after the date of service hereof upon respondent.

Dated at San Francisco, California, this 16th day of May, 1938.

[Signature]
Leon A. [Signature]
George [Signature]
Ralph [Signature]
Ray L. [Signature]
COMMISSIONERS