

Decision No.                     

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

WILLIAM A. SALE and JESSE R. RUGGLES,  
a copartnership doing business as  
WINTERS DRAY LINE,

Complainants,

vs.

J. J. LEONARDINI, doing business as  
O. K. TRUCKING COMPANY, FIRST DOE,  
FIRST DOE CORPORATION,

Defendants.

ORIGINAL

Case No. 4310

In the Matter of the Application of  
MISENER MOTOR-DRAYAGE COMPANY, a cor-  
poration, for authority to sell, and  
J. J. LEONARDINI doing business under  
the firm name and style of O. K. TRUCK-  
ING COMPANY, for authority to acquire  
the operative rights of MISENER MOTOR-  
DRAYAGE COMPANY, now operated by said  
company under authority of Decisions  
number 9398, 10281, 10939, 11634, 16491,  
and 18129, and any and all amendments  
thereof and supplements thereto.

Application No. 20975

Reginald L. Vaughan, for complainants.  
Edward M. Berol, for defendant J. J. Leonardini.  
O. G. Foelker, for Misener Motor-Drayage Company.  
F. X. Vieira, for Southern Pacific Company and  
Pacific Motor Trucking Company.  
A. Hardin, by Ezra W. Decoto, for Pete Rampone  
(Rampone Bros.)

BY THE COMMISSION:

OPINION AND ORDER

Complainants, operating a common carrier trucking service

between Winters and San Francisco and Oakland, allege that defendant Leonardini is conducting a like operation without a certificate or prior operative right, and request an order directing a cessation of such operation. The answer alleges that service is being rendered under rights acquired in 1937 from Misener Motor-Drayage Company (hereinafter referred to as Misener Corporation), pursuant to a Commission order authorizing a transfer of such rights. The basic theory of the complaint is that Misener Corporation had forfeited its rights by unauthorized abandonment of operation prior to 1937, and thus had no rights to transfer.

After the filing of the answer, complainants petitioned for a reopening of the transfer proceeding and a revocation of the order authorizing the transfer, upon the ground that Misener Corporation, because of suspension of its corporate powers, lacked the legal capacity to seek affirmative Commission action authorizing the transfer of its rights or to effect any transfer of property or rights. That proceeding was reopened, and after the taking of evidence by Examiner McGettigan at a public hearing in San Francisco, the two matters were submitted upon briefs.

Misener Corporation was organized in 1927 and acquired several operative rights from its predecessors. (Decision No. 18129, Application No. 13521.) These rights were broader in scope than the particular operation involved herein, which was conducted under a certificate restricted to seasonal transportation of fruit and vegetables. Mrs. L. A. Misener, now 73 years of age, was the secretary-treasurer and principal stockholder of Misener Corporation. In August of 1936 the corporation applied for authority to suspend service for a six months' period, alleging that its manager, Frank Misener, had died, and that the corporation lacked finances with

which to purchase and operate equipment. Authorization was granted for the suspension of all operations until March 1, 1937. (Decision No. 29089, Application No. 20724.) On January 26, 1937 Misener Corporation applied for authority to transfer its operative rights to Leonardini, and such authorization was granted by ex parte order on February 8, 1937. (Decision No. 29520, Application No. 20975.) The present complaint was filed on April 7, 1938, and complainants' petition for reopening of the transfer proceeding was filed on June 9, 1938.

The record shows that the corporate powers of Misener Corporation were suspended on March 3, 1928, because of non-payment of the 1927 "gross receipts" tax, and have not been revived or restored. Operations continued until January 1, 1935, when the trucks used were seized by the State.

Witness Sale, one of the complainant partners, testified that their business consisted primarily of the hauling of fruit from ranches into Winters and from Winters to Oakland and San Francisco. The partnership commenced such operation about 1924, but did not obtain a certificate until 1936. During that period the witness heard of Misener Corporation but never knew that it was a competitive operator. While he saw Leonardini's office at Winters in 1937, which office bore a large sign reading "O.K. Trucking Company," he made no inquiries concerning Leonardini's operative rights. He testified further that it was not until 1938 that he learned for the first time of the 1936 order authorizing Misener Corporation to suspend operations, and of the 1937 order authorizing the transfer of rights to Leonardini.

Complainants urge that because of unauthorized cessation of service, the Misener rights became non-existent through abandon-

ment prior to the 1937 transfer authorization. Hence, they argue that Leonardini acquired nothing by virtue of the transfer, and should be ordered to desist operation. As heretofore stated, in 1936 the Commission authorized a suspension of operations until March of 1937, and authorized the transfer of the rights in February of 1937. Having thus on two occasions formally recognized the continued existence of the operative right of Misener Corporation, and no protestant having appeared to question its validity, we see no sufficient reason now to inquire whether some other action might then have been justified.

As to the request for rescission of the 1937 order authorizing the transfer to Leonardini, complainants' interest therein is solely that of one who might profit were a competitor removed from the field, and who seeks to accomplish that result by obtaining a revocation of the order some fifteen months after its issuance. The competition is between three points only, and the complaint is directed solely to operation between Winters and San Francisco and Oakland. However, rescission of the 1937 order would affect Leonardini's operations between many other points, (1) and the result would be that the public would be deprived of services presumably needed. Complainants are in no position to render such service, for they have no operative rights for the greater portion of Leonardini's operations. There is nothing in

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(1) The transfer authorization also embraced rights between San Jose, Niles, Centerville, Hayward, San Leandro and other points and Oakland and San Francisco; between Los Gatos and Oakland and certain intermediate points; between Santa Cruz, Soquel, Aptos, Watsonville and Oakland; between Carmel, Monterey, Castroville and Oakland; between Alviso, Menlo Park, Redwood City and other points and Oakland; and between Vacaville, Fairfield, Cordelia and Oakland.

the present record indicating that Leonardini has acted otherwise than in the utmost good faith in continuing to furnish this public need for transportation.

But the complainants, pointing to the provisions of law respecting the incapacity of a suspended corporation to take the legal steps here taken to transfer its operative right, urge the Commission to hold void its order authorizing the transfer. We doubt, however, that a court of law, if confronted by an analogous situation, would vacate a final judgment upon the mere request of one who has no direct interest therein. The complainants had, though they did not exercise, the right to appear and be heard in protest to the granting of the application. But they have no legal or equitable right now, fourteen months afterward, to challenge the validity of an order upon which the defendant has relied as his authority for the operation of public transportation facilities. We cannot hold that he must thus summarily be banished from the highways and the public denied his services.

Public hearing having been had, and good cause appearing, IT IS ORDERED that Case No. 4310 be and it is hereby dismissed and that complainants' request for a rescission of Decision No. 29520 in Application No. 20975 be and it is hereby denied.

Dated at San Francisco, California, this 20<sup>th</sup> day of June, 1939.

Francis P. DeWitt

Justin F. Caemes  
Commissioners.