

ORIGINAL

Decision No. 36887

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 ELLIS BROWN and P. M. FOLLENSBEE,)
 partners, doing business under the)
 name of TRIANGLE TRANSFER AND STORAGE)
 COMPANY, to sell and COAST VAN LINES,) Application No. 25660
 INC., a California corporation, to)
 purchase a truck line operated between)
 San Diego and Los Angeles, California.)

CYRIL A. WALTON and ARTHUR GLANZ, for applicants.

HAROLD J. BLAINE, for Lyon Van Lines, Inc.,
interested party.

DANIEL C. BRYANT, for Bekins Van Lines, Inc. and
Bekins Van and Storage Co., interested
parties.

F. W. TURCOTTE and MELVIN A. PIXLEY, for Furniture
Fast Freight, protestant.

H. P. MERRY, for Southern California Freight Lines,
interested party.

CLARK, Commissioner:

O P I N I O N

This is an application of Ellis Brown and P. M. Follensbee, partners, doing business as Triangle Transfer & Storage Company, hereinafter referred to as Triangle, to sell, and Coast Van Lines, Inc., referred to as Van Lines, to purchase the operative right and equipment used by the seller in the operation of its automotive truck service between San Diego and Los Angeles and various other points. Public hearings were held in Los Angeles and the matter was duly submitted.

The agreement filed in this application as Exhibit "A" contains a description of the property which Triangle has agreed to sell to Van Lines for \$11,620.10. The property consists of the

common carrier certificates issued by the Railroad Commission by Decision No. 15085, dated June 22, 1925, and by Decision No. 27919, dated April 29, 1935, the common carrier certificate issued by the Interstate Commerce Commission by its Order No. MC79160, and the following automotive equipment:

1936 Dodge Tractor Engine No. T27-7359
1939 Utility Van Serial No. 9165
1937 Reo Tractor Engine No. 14DH677
1934 Well Built Van Serial No. 104
1940 Dodge Tractor Engine No. DR79068
1941 Utility Van Serial No. 9785

Generally speaking, Decision No. 15085, dated June 22, 1925, authorizes Triangle to transport new and second-hand, crated or uncrated office, store and house furniture, show cases, household goods, pianos, musical instruments, trunks, baggage and personal effects between San Diego and Los Angeles via the coast route and to or from intermediate points and for a distance of 30 miles on either side of the highway comprising such route. Subsequently, by Decision No. 27919, the right was extended between Los Angeles and Serra and intermediate points via Long Beach and Seal Beach, as an alternative route between the above-named termini.

As a reason for desiring to sell the business applicants claim that Los Angeles Warehouse Company has withdrawn its warehouse facilities heretofore extended to applicants, and that the latter have been unable to obtain new facilities. In addition to that, both partners wish to permanently retire from the business.

The proposed transfer is protested by Furniture Fast Freight which, under authority of the Commission, operates a highway common carrier service for the transportation of new uncrated and unwrapped furniture between Los Angeles and San Diego, and between Los Angeles and various other points including Riverside, Redlands and San Bernardino. Protestant expresses the fear that Triangle, or Van Lines, may undertake to serve points other than those specifically mentioned in the grant of authority to Triangle.

The protest is based upon allegations that applicants, Brown and Follensbee, have for several years last past at least partially discontinued exercise of the operative right which they propose to sell and that they have permitted Van Lines, the proposed purchaser, to operate under the name and certificated authority of Triangle, and that Van Lines has conducted such operations without authority of the Commission.

At the final hearing protestant changed its position by stating that it was not prepared to offer proof that Van Lines had been operating as a highway common carrier without a certificate from the Railroad Commission, nor would it raise any question as to the ability or fitness of Van Lines to purchase and operate the right now owned by Brown and Follensbee.

The issues are therefore narrowed down to an inquiry into the circumstances surrounding the transaction between the buyer and seller, the alleged abandonment of operations by the seller, and the assumption of such rights by Van Lines since about June 7, 1943, and whether or not such operation constitutes a violation of the Commission's rules and regulations. In other words, protestant questions only the validity of vendee's operations since the time of consummation of the transaction which occurred about said June 7.

Ellis Brown, one of the Triangle partners, testified that for a period of twenty-five to thirty years he had conducted the operation now performed by Triangle and which became a certificated right on June 22, 1925, by virtue of Decision No. 15085, and has been conducted continuously ever since. He had never declined to accept any shipments and had made every effort, by means of advertising and otherwise, to attract new business. He made three trips each way per week and had maintained that schedule over many years, and had adequate equipment to handle such business as came to him. His financial statement indicates that Triangle made a profit of \$7669.58 in 1942. The witness offered in evidence an exhibit containing a list of 291 typical Triangle shipments handled to and from off-route points between January 1, 1941 and August 4, 1943.

Brown testified that for a period of eight years the Los Angeles Warehouse Company had furnished Triangle with terminal space including telephone and clerk service. On May 12, 1943, the

Warehouse Company served notice on Brown that they would have to withdraw such service due to demands of their own customers for additional warehousing space. The testimony of Brown is that he immediately set himself to the task of finding other terminal facilities but with no success. His partner wished to retire and Brown himself did not care to continue with the business. This and other difficulties impelled him to want to dispose of his rights and interests.

On May 18 he telephoned to Harold P. Harris, President of Van Lines, in San Diego, relating the circumstances of the cancellation of Los Angeles Warehouse facilities and inquiring of Harris if he would be interested in purchasing Triangle. Harris agreed to the purchase. Van Lines is admittedly able to finance the deal and there appears no question of its fitness.

In the meantime, Van Lines permitted Triangle to continue the use of the warehouse terminal until such time as the deal should have been completed and the approval of the Commission secured.

On May 28 the agreement of sale and purchase was signed by the parties in interest. Triangle continued in the operation of the business until June 7 when the warehouse company advised that telephones and other equipment were being removed.

The actual physical operation was performed by Van Lines, but under the control and direction of Triangle. On or about June 7 Triangle authorized Van Lines to lease trucks to take care of Triangle business, Harris furnished drivers for the trucks, and the business was conducted from Van Lines offices at Los Angeles and Long Beach, with an accounting made periodically to Triangle.

Testifying on behalf of Van Lines, the purchaser herein, Harris stated that he has been in the transfer and storage business since 1930, and that his company has four warehouses in Los Angeles, and a total of twenty-three units of equipment. Its operations are those of a radial highway common carrier. Van Lines acts as Triangle's agent in moving, checking out, paying charges, billing, warehousing and loading and unloading. Their instructions come from Brown. The service rendered to Triangle resulted from their ejection from the Los Angeles Warehouse Company's terminal and their inability to get terminal facilities and help elsewhere. All monies received in payment on the contract of purchase are placed in escrow, pending the Commission's action on the instant proceeding.

Protestant contends that Triangle, having actually made the transfer without approval of the Commission, has abandoned service under the certificate heretofore issued to it and hence has nothing to transfer.

As we view the record in this proceeding there is no testimony supporting an allegation of abandonment, either wilful or unintentional. As a matter of fact, there was not even a discontinuance of service. Brown exercised control over the management of the business and helped to maintain it on an efficient basis. Triangle rendered an apparently satisfactory service, over a long period of years, complied with the requirements as to the filing of tariffs, held itself out as a common carrier, and never refused to accept and transport any authorized commodity. The service was at all times available to the public. Circumstances beyond the control of the carrier forced him out of his warehouse terminal, and he found himself unable to obtain a new terminal, although he made every reasonable effort to do so.

As previously stated the consideration to be paid for the operative right and equipment is \$11,620.10. Of this amount applicants allocate \$6620.10 to the equipment and \$5000 to the operative right and other intangibles. The \$6,620.10 represents the depreciated value of the equipment. Such may be the understanding between the parties, but it should be clearly understood that the authorization hereinafter granted is not an approval of the purchase price in any respect, nor a finding of value for the purpose of rate fixing, issuance of securities, accounting, or for any other purpose. No examination has been made by this Commission, nor by its authorized representatives of the physical assets involved in this transfer as to their existence, value or ownership.

Section 52(b) of the Public Utilities Act provides that:

"The Commission shall have no power to authorize the capitalization of the right to be a corporation, or to authorize the capitalization of any franchise or permit whatsoever or the right to own, operate or enjoy any such franchise or permit, in excess of the amount (exclusive of any tax or annual charge) actually paid to the State or to a political subdivision thereof as the consideration for the grant of such franchise, permit or right..."

The record does not specifically show what amount, if any, Triangle has paid for the operative rights which it now desires to transfer to Van Lines. We have knowledge, however, of the payment of a \$50 filing fee to the Railroad Commission. In our opinion, based on the record before us, it should charge \$4,950 of the purchase price to surplus.

In view of the record herein the transfer appears to be in the public interest and will be approved.

Coast Van Lines, Inc. is placed upon notice that "operative rights" as such do not constitute a class of property which may be capitalized or used as an element of value in rate fixing for any amount of money in excess of that originally paid to the State as the consideration for the grant of such rights. Aside from their purely permissive aspect, they extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be changed or destroyed at any time by the State which is not in any respect limited to the number of rights which may be given.

The following form of order is recommended.

O R D E R

Application having been made as above entitled, a public hearing having been held, and the Commission being of the opinion, and hereby finding that public convenience and necessity so require,

IT IS ORDERED:

(1) That Ellis Brown and P. M. Follensbee, partners doing business as Triangle Transfer & Storage Company, be and they are hereby authorized to sell, and Coast Van Lines, Inc., a corporation, is authorized to purchase and acquire the operative right and equipment referred to in the foregoing opinion and thereafter to operate thereunder.

(2) That the authority herein granted is subject to the condition that Coast Van Lines, Inc. charge to surplus, \$4,950 of the price paid for said properties, and further to the condition that Coast Van Lines, Inc., its successors and assigns, shall never claim before this Commission, or any court or other public body, a

value for said operative rights or claim as the cost thereof, an amount in excess of that paid to the State as the consideration for such rights.

(3) That applicants shall comply with the rules of the Commission's General Order No. 80 and Part IV of General Order No. 93-A by filing, in triplicate, and concurrently making effective tariffs and time tables satisfactory to the Commission within sixty (60) days from the effective date hereof, and on not less than one (1) day's notice to the Commission and the public.

The effective date of this order shall be twenty (20) days from the date hereof.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at Los Angeles, California, this 14th day of February, 1944.

Richard L. Baker

Francis R. Havenner

Ernest W. Cline
COMMISSIONERS