

**ORIGINAL**

Decision No. 40497

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of	)	
E. DEL CIELO, G. ROSSI, R. ROSSI and	:	
G. IACOPI, d.b.a. PESCADERO FARMS	)	
ASSOCIATION DRAYAGE, to sell and	:	Application
E. DEL CIELO to purchase an automotive	)	No. 28544
freight line operated between San	:	
Francisco Bay points and San Mateo	)	
County points.	:	
-----	)	

OPINION AND ORDER

E. Del Cielo, G. Rossi, R. Rossi and G. Iacopi, partners doing business under the firm name and style of Pescadero Farms Association Drayage, are engaged in business as highway common carriers of property generally, subject to certain limitations, between Ano Nuevo Point, Half Moon Bay and intermediate points in San Mateo County, on the one hand, and Colma, San Francisco, Oakland, Emeryville and San Leandro, on the other hand. (1) The extent of the undivided interest of each of the partners, as of December 31, 1946, as carried on the books of account, is as follows:

<u>Name of Partner</u>	<u>Extent of Interest</u>	<u>Partnership Capital</u>
E. Del Cielo	One-third	\$3,158.11
G. Rossi	One-third	3,158.11
R. Rossi	One-sixth	1,579.06
G. Iacopi	One-sixth	<u>1,579.06</u>
	Total	<u>\$9,474.34</u>

(1) The operating revenues of the business were reported at \$39,042 in 1944, at \$46,899 in 1945 and at \$41,328 in 1946, and the net income at \$2,823 in 1944, at \$2,417 in 1945 and at \$8,046 in 1946.

It is reported that the partners have agreed to dissolve the partnership. It appears that G. Rossi, R. Rossi and G. Iacopi desire to retire from business and accordingly, under a verbal agreement, have arranged to sell their undivided two-thirds interest to E. Del Cielo for the sum of \$7,332.00. Although the purchase price exceeds by \$1,015.77 the book value of the two-thirds interest as of December 31, 1946, the purchaser, E. Del Cielo, reports that the consideration is a reasonable amount and, in fact, is low compared with present day prices of motor vehicles.

The motor vehicle equipment consists of five trucks, one tractor and one flat bed semi-trailer. The application shows that E. Del Cielo intends to carry on to his books, the same ledger values of the equipment and other assets now maintained by the partnership. In Exhibit "B" he reports a pro forma balance sheet giving effect to the transfer of the partnership interests to him, which is as follows:

<u>Assets</u>		
Cash and working funds		\$ 991.41
Accounts receivable		1,370.16
Carrier operating property	\$18,313.55	
Less-Depreciation reserve	<u>11,200.78</u>	7,112.77
Franchise		150.00
Other intangible property		<u>865.77</u>
	Total	<u>\$10,490.11</u>
<u>Liabilities</u>		
Proprietorship capital		<u>\$10,490.11</u>

Of the \$1,015.77 increase in the proprietorship capital he proposes to assign to franchises, the sum of \$150, representing fees paid to the State in connection with the

acquisition of operative rights, and \$865.77 to other intangible capital. He proposes to amortize this latter amount over a period of two years.

We have no objection to the proposed accounting treatment. In making this order, however, we wish to place E. Del Cielo 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 Commission has considered this matter and is of the opinion that a public hearing is not necessary, that the application should be granted, as herein provided, therefore,

IT IS HEREBY ORDERED as follows:

1. E. Del Cielo, G. Rossi, R. Rossi and G. Iacopi, after the effective date hereof and on or before October 31, 1947, may sell and transfer to E. Del Cielo the operative rights, business and properties now being operated under the firm name and style of Pescadero Farms Association Drayage, such sale and transfer to be in accordance with the terms referred to herein.

2. Applicants shall comply with the provisions of General Order No. 80 and Part IV of General Order No. 93-A, by filing, in triplicate, and concurrently making effective,

appropriate tariffs and time tables within sixty (60) days from the effective date hereof and on not less than one (1) day's notice to the Commission and to the public.

3. The authority herein granted will become effective twenty (20) days from the date hereof.

Dated at San Francisco, California, this 8<sup>th</sup> day of July, 1947.

Harold P. Kula  
Justice J. C. Cramer  
Frank H. Powell  
A. F. D. ...  
Levitt Potter  
Commissioners