

Decision No. 40898

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application  
of WILLIAM L. CARPENTER, doing  
business under the fictitious  
name and style of ARGONNE VAN  
LINES, to sell, and CALMAY VAN  
LINES, INC., a California Cor-  
poration, to purchase the High-  
way Common Carrier Rights and  
perations of the Seller.

Application  
No. 28802

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C.P. Von Herzen, for William L. Carpenter  
Arlo D. Poe, for Calmay Van Lines, Inc.  
Jackson W. Kendall, for Sekins Van Line, Inc.,  
interested party  
Harold Blaine, for Lyon Van Lines, Inc.,  
interested party  
James J. Broz, for Market Street Van and  
Storage, Inc., Protestant

O P I N I O N

In this application, as amended, William L. Carpenter doing business under the fictitious names and styles of Argonne Van Lines and Argonne Van and Storage Company asks permission to sell his operative rights, trucking equipment, office furniture, fixtures and certain real property and the improvements thereon to Calmay Van Lines, Inc. A copy of the agreement of sale is on file in this application.

Applicant, William L. Carpenter is engaged in the transportation of second-hand household goods, office furniture, fixtures, and related items, under the authority granted by Decision No. 26992 (1) dated April 30, 1934 (Volume 39-PUC page 207). He

(1) The Commission, by its order in Decision No. 26992, authorizes William L. Carpenter to operate for compensation as a common carrier an auto truck service for the "transportation of second-hand (used) household goods and office furniture, fixtures and equipment, packed or unpacked, trunks, boxes, barrels, crates or

also engages in the storage of household furniture and related items.

For 1946 applicant, William L. Carpenter reports revenues, both operative and non-operative of \$91,480.36 and net income before Federal taxes of \$19,653.32. For 1945, his revenues amounted to \$93,000 and his net income before Federal taxes, \$26,253.77. The record shows that he has at all times accepted for transportation all commodities offered him and that he has not abandoned any of his operative rights.

By Decision No. 39145, dated June 25, 1946 in Application No. 27444, which Decision was affirmed by Decision No. 39537, dated October 15, 1946, the Commission authorized William L. Carpenter to sell his operative rights to The Neal Storage

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(1) Cont'd.

bundles containing household goods or personal effects, musical instruments radios and other household equipment between Los Angeles and San Diego, San Francisco and Sacramento, and all intermediate points - which routes are as follows:

- "1- Between Los Angeles and San Diego, via State Highway, via Whittier, Santa Ana, San Juan Capistrano, Oceanside and Del Mar.
- "2- Between Los Angeles and San Francisco, via Coast Highway (Highway No. 101), via Cahuenga Pass, Calabasas, Oxnard, Santa Barbara, San Luis Obispo, San Jose and Palo Alto; and Via Valley route (Highway No. 99), via Pasadena, San Fernando, Castaic, Ridge Route, Sakersfield, Fresno and Manteca, with diversion therefrom between Delano and Goshen to serve Richgrove, Porterville, Lindsay, Exeter and Visalia etc. and diverting therefrom at San Fernando via Chatsworth and Santa Susana, Moorpark, Semis and Oxnard and/or Ventura; also diverting therefrom at Castaic via Fillmore, Sespe and Santa Paula, Saticoy and Ventura.
- "3- Between San Jose and Oakland via Highway 101 E; between Oakland and Sacramento via Vallejo (Carquinez bridge), Suisun-Fairfield and Davis; also between Oakland and Manteca, via Hayward and Tracy.
- "4- Between Manteca and Sacramento via Highway No. 99, via Lathrop and Stockton, or direct between Manteca and Stockton;
- "5- Said routes set forth above to constitute through routes for the movement of commodities between any two points."

Company. That transaction however, was not consummated for the reason that the Interstate Commerce Commission did not grant The Neal Storage Company the necessary permit to operate as a common carrier in California.

William L. Carpenter has agreed to sell to Calmay Van Lines, Inc., a California corporation, Lots 40 and 41 of the Kendall Berryland Tract, as shown in Book 8, page 129 of Maps, official records of Los Angeles County, together with all buildings and fixtures thereon and appurtenances thereto. There is located on one of the lots a five story concrete building, 50' X 55', which has been used for storage purposes. Calmay Van Lines, Inc., intends to use such building for the same purposes.

Calmay Van Lines, Inc. has agreed to pay \$97,500 for the properties described in the agreement of sale. Of this sum it will pay \$29,000 in cash and the remainder, \$68,500, in monthly installments of \$750.00 plus interest on the unpaid balance at the rate of 5% per annum. The first of such payments is to be made on January 2, 1948 and the others on the first day of each calendar month until January 2, 1956. The Buyer has the right, privilege and option to pay the entire balance due upon said agreement of purchase of real property by payment of the following premiums, to wit: If paid after January 2, 1949 and before December 31, 1949, a premium of 5%; if paid after January 2, 1950 and before December 31, 1950, a premium of 4%; if paid after January 2, 1951 and before December 31, 1951, a premium of 3%; if paid after January 2, 1952 and before December 31, 1952, a premium of 2%; if paid at any time after January 2, 1953, a premium of 1%. Such premium in each instance is to be computed upon the deferred balance remaining unpaid at the time of payment thereof.

The agreement of sale segregates the purchase price of \$97,500 as follows:

a. Certificate of public convenience and necessity issued by the Public Utilities Commission of the State of California	\$ 2,500.
b. Trucks and equipment	9,500.
c. Office furniture, fixtures and equipment	1,500.
d. Lots 40 and 41 and the improvements thereon together with the business and good will of Argonne Van Lines and Storage Company and Argonne Van Lines	<u>84,000.</u>
Total	<u>\$97,500.</u>

The testimony shows that the \$84,000 represents the value of the building and appurtenances and does not include any monetary amount for the business and good will.

The agreement of sale is an evidence of indebtedness coming within the provisions of Section 52 of the Public Utilities Act. The order herein will authorize its execution.

Market Street Van and Storage Company protests the granting of this application on the same grounds it protested the transfer of William L. Carpenter properties to The Neal Storage Company. That protest was considered by the Commission in Decision No. 39537 dated October 15, 1946 in Application No. 27444. In that decision the Commission said "Petitioner's (Market Street Van and Storage Company) claims and equities, if any, against Carpenter are now before the Superior Court in the action brought by petitioner.

"With the rights of an intending purchaser the Commission has nothing to do. Nor has it power to determine whether a valid contract of sale exists or whether either party has a legal claim

against the other under such a contract. These are questions for the courts and not for the Railroad Commission, which is merely authorized to prevent an owner of a public utility from disposing of it where such disposition would not safeguard the interests of the public. If the owner does not desire to sell, the Commission cannot compel him to do so. If, having contracted to sell, he refuses to comply with the contract, the Commission is not empowered to determine that he should carry out his bargain. The provision of the Public Utilities Act that an owner may not sell without the consent of the Commission implies that there must be an owner ready to sell and seeking authority so to do before the Commission is called upon to act. (Hanlon v. Eshleman (1915) 169 Cal.200, 202-3)"

Protestant offered no evidence why the pending application should not be granted.

The testimony shows that Calmay Van Lines, Inc., will be in a position to render the services now conducted by William L. Carpenter.

Calmay Van Lines, Inc., is hereby 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 a number of rights which may be given.

The action taken herein shall not be construed to be a finding of the value of the properties herein authorized to be transferred.

O R D E R

The Commission having considered the evidence submitted at the hearing had on this application and it being of the opinion that the money, property or labor to be procured or paid for through the execution of the agreement of sale on file in this application is reasonably required by Calmay Van Lines, Inc., for the purposes herein stated, and that this application should be granted, as herein provided, therefore,

IT IS HEREBY ORDERED as follows:

1. William L. Carpenter, doing business under the fictitious names and styles of Argonne Van Lines and Argonne Van and Storage Company may, after the effective date hereof and on or before December 31, 1947 sell and transfer to the Calmay Van Lines, Inc., the operative rights, property, equipment and business to which reference is made in this application. Such sale and transfer shall be made pursuant to the terms and conditions of the agreement of sale on file in this application, which agreement William L. Carpenter and Calmay Van Lines, Inc., may execute and deliver for the purpose of consummating said sale and transfer.
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 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 when Calmeyer Van Lines, Inc., has paid the fee prescribed by Section 57 of the Public Utilities Act, which fee is Sixty-nine (\$69.00) dollars.

Dated at San Francisco, California, this 12<sup>th</sup> day of November 1947.

Harold P. Kula  
Justice J. C. Brewer  
Mark K. Kucell  
R. J. [unclear]

Commissioners

