

Decision No. 46969

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
CALMAY VAN LINES, INC., a California : Application
corporation, for authority to issue) No. 28803
shares of its stock. :
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Arlo D. Poe, for Calmay Van Lines, Inc.
C. P. Von Herzen, for William L. Carpenter.
Jackson W. Kendall, for Bekins Van Lines, Inc.,
interested party.
Harold Blaine, for Lyon Van Lines, Inc.,
interested party.
James J. Broz, for Market Street Van & Storage,
Inc., protestant.

O P I N I O N

In this application, as amended at the hearing had before Examiner Fankhauser, Calmay Van Lines, Inc. asks permission to issue 30 shares (par value \$500 per share) of common stock and 850 shares (par value \$100 per share) of preferred stock for the purpose of acquiring properties from William L. Carpenter, of purchasing new truck equipment, and of maintaining its service. The utilities hereafter mentioned ask permission to acquire stock of Calmay Van Lines, Inc.

Calmay Van Lines, Inc., hereinafter sometimes referred to as Applicant, is a corporation organized and existing under the laws of the State of California. It has an authorized stock issue of 2,050 shares of the aggregate par value of \$225,000. The shares consist of 2,000 shares of preferred stock of the par value of \$100 per share, and 50 shares of common stock of the par

value of \$500 per share.

Applicant was organized by a group of individuals, partnerships and corporations engaged in the business of highway carriers and warehousemen of used household goods within the State of California. Applicant has on file Application No. 28408, in which it seeks a certificate of public convenience and necessity authorizing it to engage in the business of transporting used household goods. Recently it has entered into an agreement, a copy of which is filed in Application No. 28802, to acquire from William L. Carpenter certain operative rights and other properties. If that transaction is consummated, Applicant will ask the Commission to dismiss Application No. 28408.

The by-laws of Applicant contain the following provisions with respect to the holding of common stock:

"Section 1. Restrictions On Holding and Transfer Of Common Shares. The holders of common shares of the stock of this corporation shall be restricted to individuals, partnerships and corporations engaged in the business of transporting used household goods in the State of California and having their principal places of business in said state. No individual, partnership or corporation shall hold more than one common share of the stock of this corporation.

"The common shares of the stock of this corporation shall not be transferable, except by will or descent or by operation of law, without the approval of the Board of Directors.

"If the holder of any common share ceases to be engaged in the business of transporting used household goods in California, or if any common share shall be transferred by will, descent, or operation of law, to any individual, partnership or corporation not so engaged in the business of transporting used household goods in California, the corporation shall have the option to purchase such common share at the book value thereof, such book value to be determined by mutual agreement, or by a board of arbitration composed of one certified public accountant selected by the shareholder, one certified public

accountant selected by the Board of Directors of the corporation, and a third certified public accountant selected by the first two. The expenses of such arbitration shall be borne equally by the shareholder and the corporation. Such option shall be exercised within a reasonable time after the event creating the option privilege, and in any event within one year thereafter. The provisions of this section shall be binding upon any assignee, executor, administrator or other legal representative of every holder of common shares. If the corporation shall not exercise its option to purchase any such common share, the holding thereof shall be free from the restrictions provided in this section except the restriction upon transfer without the approval of the Board of Directors."

At this time, Applicant proposes to issue at par one share of its common stock to each of 24 individuals, partnerships and corporations listed in the application as modified at the hearing, and later to issue the remaining six shares to others. It will also offer at par to such individuals, partnerships and corporations 850 shares of preferred stock. The preferred shares may, by the holders thereof, be disposed of at any time.

The 24 individuals, partnerships and corporations include, among others, the following public utilities, to wit: U. C. Express & Storage Co., A.A.A. Van & Storage Co., Inc., Baker & Stanton Transfer & Storage Co., Hickey Warehouse Co., Lawrence Moving & Storage Co., Parton Van & Storage Co., and C. A. Buck. In the amendment filed at the hearing, Applicant asks that the Commission authorize said public utilities to acquire and hold stock of Applicant.

Applicant's Articles of Incorporation provide that the holders of preferred shares shall be entitled to receive out of any funds of the corporation at any time legally available for the declaration of dividends, dividends at the rate of 4% per

annum of the par value thereof payable in cash semi-annually. Such dividends are cumulative and must be paid before any dividends can be paid on the common shares. Upon the payment of the 4% dividend on the outstanding preferred stock, the Articles of Incorporation provide for the payment, if and when declared by the Board of Directors, of dividends on the common shares at the rate of 8% per annum. The dividends on the common shares are not cumulative. After the cumulative dividends on the preferred shares have been paid or declared and set apart for payment, and 8% noncumulative dividend has been paid on the common shares, the Board of Directors may declare further dividends, but such dividends shall be paid on all shares and the amount of any such dividend on each preferred share shall be one-fifth of the amount on each common share. Applicant's Articles of Incorporation further provide for the redemption of the preferred shares at \$105 per share plus an amount equal to all unpaid dividends thereon. Applicant's Articles of Incorporation further provide that the voting powers, except as otherwise provided by law or expressly provided in the Articles of Incorporation, shall vest exclusively in the holders of the common shares. In the event Applicant fails to pay four semi-annual cumulative dividends on its preferred shares, the exclusive voting power passes to the holders of such preferred shares and remains with said holders of such shares until all arrears have been paid. (1)

(1) "(f) In the event that at any time four semi-annual cumulative dividends on the Preferred shares as provided in (a) of this Article Fifth shall be in arrears, then so long as any such cumulative dividends on the Preferred shares are in arrears, and no longer, the voting rights of the holders of Common shares shall cease and the voting powers shall be vested exclusively in the holders of Preferred shares, except where otherwise provided by law or otherwise expressly provided in these Articles of

Applicant's officers are of the opinion that inasmuch as both its common and preferred shares will be acquired by individuals, partnerships and corporations who caused applicant corporation to be formed, no need exists for giving the holders of the preferred shares a greater voice in the management of Applicant's affairs than that now provided in its Articles of Incorporation. It will be observed that under Applicant's program the holders of preferred shares will contribute about 85% of the money invested in Applicant's business. While its by-laws contain restrictions on the disposition of common shares, no restrictions on the disposition of the preferred stock are in either Applicant's by-laws or its Articles of Incorporation. In view of the fact that the holders of the preferred shares do not occupy the position of a creditor, we believe that Applicant's Articles of Incorporation should be amended so as to give the holders of such shares voting rights in the event Applicant fails to pay any dividend on its shares of preferred stock.

Applicant will use the proceeds from the sale of its stocks to make a \$29,000 payment on the purchase price of the properties which it will acquire from William L. Carpenter, to acquire new equipment, and for the maintenance and improvement of its business.

The protest filed by James J. Broz relates to the transfer of the properties of William L. Carpenter and is dis-

(1) - continued

Incorporation. If and when all such cumulative dividends on Preferred shares shall have been paid or declared and set apart for payment, the voting rights of the holders of Preferred shares shall thereupon cease and the exclusive voting power shall again be vested in the holders of the Common shares, subject to renewal and termination again from time to time on the same terms and conditions."

posed of by the decision in Application No. 28802.

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 by the issue of the shares of stock herein authorized is reasonably required by Calmay Van Lines, Inc. for the purposes herein stated, which purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income, and that this application should be granted, subject to the provisions of this order, therefore,

IT IS HEREBY ORDERED as follows:

1. Calmay Van Lines, Inc. may, after the effective date hereof and on or before June 30, 1948, issue and sell at not less than their par value not exceeding thirty (30) shares of its common capital stock and not exceeding eight hundred fifty (850) shares of its preferred stock, and use the proceeds to pay in part for the properties which it will acquire from William L. Carpenter, to pay for equipment, and to establish and maintain its business.

2. U. C. Express & Storage Co., A.A.A. Van & Storage Co., Baker & Stanton Transfer & Storage Co., Hickey Warehouse Co., Lawrence Moving & Storage Co., Parton Van & Storage Co., and C. A. Buck may acquire and hold shares of the capital stock of Calmay Van Lines, Inc.

3. The authority herein granted will become effective when Calmay Van Lines, Inc., has filed with this Commission an amendment to its Articles of Incorporation along the lines indicated in the foregoing opinion, such amendment to be certified by the Secretary of State of California.

4. Calmay Van Lines, Inc. shall file with the Commission a report, or reports, as required by the Commission's General Order No. 24-A, which order, insofar as applicable, is made a part of this order.

Dated at San Francisco, California, this 12th day of November, 1947.

Harold P. Kula
Justus J. Gallen
Frank H. Russell
A. E. Dickinson

Commissioners