

Decision No. 42014

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application of)
 MERLE THORNHILL (Thornhill's Express))
 for permit to operate as a radial) Application No. 19-34810
 highway common carrier.)

In the Matter of the Application of)
 MERLE THORNHILL (Thornhill's Express))
 for permit to operate as a highway) Application No. 19-34811
 contract carrier.)

Merle Thornhill in propria persona; John E. Hunt
 for Auto Purchasing Agency, interested party;
H. F. Wiggins for Transportation Department,
 Public Utilities Commission.

O P I N I O N

This proceeding was instituted by the Commission for the purpose of determining whether or not Merle Thornhill, doing business as Thornhill's Express, should be granted permits as a radial highway common carrier and a highway contract carrier. A public hearing was held in Los Angeles on June 24, 1948, before Commissioner Potter and Examiner Syphers.

At the hearing the Chief of the Division of Permits and Fees of the Public Utilities Commission presented testimony showing that this carrier was issued Radial Highway Common Carrier Permit 19-25133 on April 24, 1946, and Highway Contract Carrier Permit 19-30040 on February 24, 1947. Both of these permits were revoked on May 18, 1947, because of failure to keep on deposit continuous adequate insurance as provided for in Section 5 of the Highway Carriers' Act. (Statutes 1935, Chapter 223, as amended.) Subsequently, on July 15, 1947, this applicant was issued Radial Highway Common Carrier Permit 19-31501 and Highway Contract Carrier Permit 19-31694. These

A.19-34810 & 19-34811 FJ,

two permits were revoked on March 20, 1948, because of failure to keep on deposit continuous adequate insurance. On May 11, 1948, the applications here under consideration were filed. The applicant has filed a certificate of insurance dated May 5, 1948.

The record shows that applicant conducted trucking operations during the months of May and June, 1947, although he did not have any effective permits from May 18, 1947, to July 15, 1947.

Applicant also has been delinquent in remitting C. O. D. collections to shippers during the period August 2, 1947, to October 25, 1947; October 30, 1947, to March 20, 1948; and March 20, 1948, to April 27, 1948. These C.O.D. collections, in some cases, were held by the applicant for as long as 168, 170, and 172 days. In other cases C.O.D. collections have not been paid as yet. The total amount of unpaid C.O.D. collections is shown to be \$1,542.55.⁽¹⁾ Applicant testified that he would make arrangements to pay all of these unpaid C.O.D.'s and that evidence of such arrangements would be submitted to the Commission within a few days. This evidence has now been presented in the form of letters and statements indicating that the shippers to whom money is owed have either been paid or have agreed to accept payments from Thornhill at the rate of \$5.00 per week.

Exhibits 11 and 12 are certified copies of the records of two proceedings before the Justice Court of the 15th Township of Kern County, which proceedings were held on May 15, 1948. These cases resulted from complaints filed charging applicant with a violation of Section 3 of the Highway Carriers' Act in that applicant was

(1) Highway Carriers' Tariff No. 2, together with a copy of the Decision in Case 4808 covering the rules and charges for C.O.D. shipments, were served on applicant on February 28, 1947.

conducting operations without the necessary permits as provided therein. As a result of these proceedings applicant was sentenced to 180 days in jail, which sentence was suspended and the applicant was placed on probation for a period of two years on condition that he not thereafter violate the Highway Carriers' Act and that he pay off all unpaid C.O.D.'s within 120 days.

Testimony of five shipper witnesses was presented indicating that applicant had been delinquent in remitting C.O.D. collections. Four of these shippers specifically testified that Thornhill's trucking service had been satisfactory and their only complaint was the delinquency in remitting C.O.D.'s. The record shows that applicant has performed satisfactory hauling for a limited number of shippers and that they desired to continue to use his services.

Applicant Merle Thornhill testified that he had started his own trucking business after spending three years overseas in World War II. Prior to the war he had been employed as a driver for various truck lines. At the present time he has one pick-up truck, one tractor, and two trailers which he intends to use in the trucking business. This equipment is being purchased, and he owes about five thousand dollars on the purchase price. He specifically stated that, if he were allowed to remain in the trucking business, he would not handle C.O.D. shipments and that he would abide by the rules and regulations of the Commission.

Applicant's prior operations have been unlawfully conducted in the handling of C.O.D. monies, and during the periods which he operated without permits or adequate insurance on file with the Commission.

Applicant is an inexperienced operator, not well versed in regulatory requirements. He is a relatively new operator but because of his assurances that he will operate lawfully in the future; his good demeanor since the court proceeding, heretofore referred to, and

in the hearings before this Commission, we will grant applicant a limited permit.

The record shows that applicant proposes to perform service under contract with a very limited number of shippers. A contract carrier permit will be issued with a prohibition against the handling of C. O. D. monies. There is no evidence in this record to support the issuance of a permit to applicant to operate as a radial highway common carrier.

Applicant is admonished that if he conducts illegal operations in the future his contract carrier permit will be revoked permanently.

O R D E R

Public hearing having been held in the above-entitled proceedings, evidence having been received, the matter having been submitted, and the Commission being fully advised,

IT IS ORDERED that Merle Thornhill, doing business as Thornhill's Express, be granted a permit to operate as a highway contract carrier, subject to the following restriction:

Applicant shall not transport C.O.D. shipments, nor shall he handle any C.O.D. monies.

IT IS FURTHER ORDERED that Application No. 19-34810, for a permit to operate as a radial highway common carrier be, and it hereby is, denied.

The effective date of this order shall be the date hereof.

Dated at San Francisco, California, Sept 3rd, 1948.

A. J. D. [Signature]
Justus F. [Signature]
Herbert [Signature]

Commissioners