

ORIGINAL

Decision No. 43517

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
C. A. GUSSMAN for Radial Highway) Application No. 43-3476
Common Carrier Permit.)

In the Matter of the Application of)
C. A. GUSSMAN for Highway Contract) Application No. 43-3477
Carrier Permit.)

James F. Boccardo by Lee Orr and Jean Blum, for
applicant; H. F. Wiggins, for Transportation
Department of the Public Utilities Commission.

O P I N I O N

This proceeding was instituted by the Commission pursuant to Section 14½ of the Highway Carriers' Act, for the purpose of determining whether C. A. Gussman (hereafter sometimes referred to as Gussman) should be granted permits as a highway contract carrier and as a radial highway common carrier. Applicant's proposed service is a dump truck operation. A public hearing was held in San Jose on June 27, 1949, before Examiner R. K. Hunter.

At the hearing the Chief of the Division of Permits and Fees of the Public Utilities Commission presented testimony showing the dates on which permits were issued to the applicant and on which they were revoked. This record reveals the following in connection with Gussman's previous operations.

On August 2, 1938, Radial Highway Common Carrier Permit No. 43-842 was issued and on September 9, 1938, revoked for failure to keep on deposit continuous adequate insurance. On November 30, 1938, Permit No. 43-890 was issued and on May 12, 1939, revoked because the insurance coverage was transferred to another person. On June 2, 1942, Radial Permit No. 43-1436 was issued and on

November 2, 1942, revoked because of Gussman's failure to pay the quarterly fee on the gross operating revenue for the quarterly period ending June 30, 1942. On June 2, 1942, Gussman applied for another radial highway common carrier permit which was not issued because of his failure to place on deposit adequate insurance and, accordingly, the application was cancelled on November 14, 1947. Radial Permit No. 43-3100, Contract Carrier Permit No. 43-3101 and City Carrier Permit No. 43-3102 were issued on December 10, 1947, and revoked, March 16, 1948, for failure to pay the quarterly fee on the gross operating revenue for the period ending December 31, 1947, and for failure to pay the 1948 permit reregistration fees. Radial Permit No. 43-3232, Contract Carrier Permit No. 43-3233 and City Carrier Permit No. 43-3234 were issued on April 19, 1948, and revoked on September 4, 1948, for failure to keep on deposit continuous adequate insurance. Radial Permit No. 43-3318, Contract Carrier Permit No. 43-3319 and City Carrier Permit No. 43-3320, were issued October 15, 1948, and revoked on February 20, 1949, because of failure to keep on deposit continuous adequate insurance.

Since that date, Gussman has not been licensed by the Commission to conduct for-hire operations. In each of these instances, applicant was formally advised of the cancellations, said notices containing the statement "all operations as such a carrier must be discontinued immediately, and all license plates issued by this Commission must be destroyed."

On April 20, 1949, the Division of Permits and Fees received an application from Gussman for reregistration of the permits that had been revoked on February 20, 1949. Applicant was informed

on April 27, 1949, that because his previous permits were revoked on February 20, 1949, they could not be reregistered but that he would have to file properly completed application forms before any action could be taken. The letter containing this information included the following:

"Pending issuance of Commission authority, you are placed on notice that any prior operations conducted by you over the public highways of the State of California are in violation of the statutes administered by the Commission and subject you to severe penalty provided therein."

The record indicates that applicant held no operating authority during the intervals between the cancellations of his permits and the issuance of new permits.

The records show that Gussman conducted trucking operations during the periods of November 14, 1947, to December 10, 1947; March 16, 1948, to April 19, 1948; September 4, 1948, to October 15, 1948; and after February 20, 1949, during which periods he did not hold any effective permits from this Commission.

A certified copy of the docket entries of the Justice's Court of San Jose Township was introduced. ⁽¹⁾ This shows that on May 27, 1949, a complaint was filed in that court by the Commission's field representative charging Gussman with the crime of violation of Section 3 of the Highway Carriers' Act and that on May 31, 1949, Gussman pleaded guilty and applied for probation. Exhibit No. 2 is a certified copy of the Order for Probation which provided for the suspension of the imposition of sentence for one year and was conditioned upon Gussman paying a fine of \$100, as directed by the probation officer, within six months, and further, upon the provision that he shall not violate Section 3 of the Highway Carriers' Act of the State of California.

(1) Exhibit No. 1

Testimony was also introduced by two individuals to the effect that they had performed subhauling for Gussman but had experienced difficulty in collecting the amounts due for such services. However, this evidence was not conclusive as apparently some confusion in the records exists.

It would appear that Gussman was covered by insurance from April 25 to May 25, 1949, but the insurance company did not file the necessary certificate with the Commission. This was during the pendency of his present applications. It appears that the insurance was cancelled on the latter date by the insurer for the reason that it did not want to be on the risk.

From the applicant's testimony, it appears that he is in a rather poor financial condition due to his inability to collect certain accounts receivable. He stated that some of the contractors for whom he had worked had gone broke and therefore, he had been unable to collect the amounts due. He testified further that he had been advised by his counsel to go through bankruptcy but he had preferred to endeavor to try to work his way out of his difficulties. Gussman had been unable to secure possession of his books which are in the custody of his bookkeeper who refuses to relinquish them for various reasons which are not material to this proceeding. Due to his inability to secure his books, it has been impossible for Gussman to present a properly verified and accurate statement of his financial condition for the period just prior to the filing of the applications herein, as required by the Commission's rules and regulations. As a consequence, the applicant was allowed 60 days in which to gain possession of the books and to file with the Commission the necessary financial statements. This, however, was not done. For this reason, the Commission is unable to ascertain the financial condition of the applicant.

It appears that this applicant has, notwithstanding repeated admonitions and warnings, conducted for-hire truck operations without a permit. He testified, however, that he was under the impression that it was in order for him to start operation after waiting two or three days from the filing date of his application.

It appears that prior to his arrest, Gussman was not sufficiently impressed with the importance of strictly complying with the provisions of the Highway Carriers' Act but that with the conviction of violating Section 3 thereof and the payment of a fine, he has learned that he must comply with the Commission's rules and regulations. Due to his inability to furnish the Commission with accurate information as to his financial condition, it is impossible to ascertain whether he is now able to properly conduct for-hire truck operations. After carefully considering the entire record, it is our conclusion, and we so find, that the permits applied for should not be granted at this time.

O R D E R

A public hearing having been held in the above entitled proceedings, evidence having been received, and based upon the conclusions and findings set forth in the foregoing opinion, and the Commission being fully advised,

IT IS ORDERED

That Application No. 43-3476 for a radial highway common carrier permit and Application No. 43-3477 for a highway contract carrier permit, filed by C. A. Gussman, be, and they are hereby denied.

Dated at San Francisco, California, this 7th
day of November, 1949.

R. Z. [unclear]
Justice F. Cooney
Robert [unclear]
Harold P. Kula
Herbert H. Potter
COMMISSIONERS