

ORIGINAL

Decision No. 47321

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Commission investigation into the )  
rates, charges, classifications, )  
rules, regulations, operations, )  
practices, and contracts, or any )  
of them, of VICTOR GARIBALDI, )  
JAMES GARIBALDI, and D. GARIBALDI, )  
JR., a partnership doing business )  
as Garibaldi Brothers Trucking )  
Company. )

Case No. 5239

J. T. Phelps, for the Transportation Department of the Commission.

Arlo D. Poe, for respondents.

Russell Bevans, for Draymen's Association of San Francisco, interested party.

O P I N I O N

This case was submitted on respondents' motion to dismiss an investigatory proceeding, filed October 30, 1950. The order charges that Garibaldi Bros., a copartnership engaged in transportation of livestock as a highway common carrier, in 1949 leased certain trucks and trailers to three livestock shippers in the Los Angeles area through the instrumentality of a subsidiary corporation, Livestock Truck and Equipment Company, thereby allegedly violating certain provisions of the Public Utilities Code; viz., transfer of utility operative property (Sec. 851), observance of tariff rates (Sec. 494), preference (Sec. 453), and assisting a corporation, by device, to obtain transportation at less than established rates (Sec. 458). Sanctions sought include an order to cease and desist, direction to collect the difference between tariff rates and compensation received under the leases, and cancellation of all of the carrier's operative authority.

Respondents, by their answer, admit the making of the leases but they deny that thereby they violated any provision of the statute. The motion to dismiss, to which counsel for the Commission's staff entered no objection, was made at the hearing held April 30, 1952, at Los Angeles, before Examiner Gregory.

The motion was based upon the fact, established by testimony, that on or about April 12, 1952, Garibaldi Bros., pursuant to a written agreement, a copy of which is in evidence, sold all the issued and outstanding stock of Livestock Truck and Equipment Company, amounting to 600 shares, which they had acquired as consideration for the transfer by them to the corporation of the vehicles leased to the livestock shippers, and thereafter completely and permanently severed all connection with the corporation.

The memorandum of agreement recites, among other things, a consideration of \$36,000 as the purchase price of the stock, of which \$9,000 has been paid. The balance of \$27,000, represented by a promissory note, is to be paid in three annual instalments of \$9,000 each, commencing April 12, 1953, with interest at five per cent per annum on unpaid portions of the obligation. There is nothing in the record to suggest that the transaction was consummated otherwise than in good faith by all participants.

In view of the changed conditions under which the leasing of the vehicles in question is now effected, we do not deem it necessary to pursue the investigation further nor to enter upon a discussion of facts or law which would otherwise be appropriate under different circumstances.

O R D E R

Public hearing having been held in the instant proceeding, respondents having moved to dismiss or discontinue ✓

said proceeding, counsel for the Commission's staff having entered no objection to the granting of said motion, the Commission now being fully advised and good cause appearing,

IT IS ORDERED that the investigation herein be and it hereby is discontinued and Case No. 5239 be and it hereby is dismissed.

Dated at San Francisco, California, this 24<sup>th</sup> day of June, 1952.

*R. Z. [Signature]* President  
*Justin F. Coe*  
*Harold P. Kula*  
*James H. Potter*  
*John E. [Signature]* Commissioners