

ORIGINALDecision No. 51183

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of RICCARDO TUNZI and LOUIS A.)
TOMMASINI, copartners doing busi-)
ness as SALINAS VALLEY FREIGHT)
LINE, to sell, and ARROW DELIVERY)
COMPANY, a corporation, to pur-)
chase, the undivided one half)
interest of LOUIS A. TOMMASINI in)
certain certificated rights.)

Application No. 35678
(First Amendment and
Second Amendment)

John A. O'Connell, for Arrow Delivery Company;
Riccardo Tunzi, for Salinas Valley Freight
Line, applicants.
John Donovan, for the Commission staff.

O P I N I O N

In this application, as amended, the Commission is asked to make an order authorizing Riccardo Tunzi and Louis A. Tommasini to sell the undivided one-half interest of Louis A. Tommasini in and to the operative rights, assets and liabilities of Salinas Valley Freight Line, to Arrow Delivery Company, a corporation, and authorizing said corporation to issue \$1,500 of stock and an \$8,500 note.

The application was filed with the Commission on August 5, 1954. Thereafter, a first amendment was filed on September 10 and a second amendment on November 23. A public hearing in the proceeding was held before Examiner T. E. Daly in San Francisco on February 2, 1955, at which time the matter was taken under submission. The Commission has received no protests.

Riccardo Tunzi and Louis A. Tommasini, as copartners doing business as Salinas Valley Freight Line, are engaged as highway common carriers of general commodities between points in

the San Francisco Bay area on the north, and Salinas and King City on the south. Their operative rights were created by Decisions Nos. 18691 and 18811, dated August 8, 1927, and September 14, 1927, respectively, in Application No. 13611, and by Decisions Nos. 47387 and 47472, dated June 30, 1952, and July 15, 1952, respectively, in Application No. 32455.

Arrow Delivery Company, a corporation, at the time of the filing of this application held highway contract carrier, radial highway common carrier and city carrier permits. However, it is a matter of record that subsequently the corporation, by Decision No. 51063, dated February 2, 1955, received authorization to operate as a highway common carrier for the transportation of general commodities, with certain exceptions, between points in San Francisco and San Mateo Counties and points in Alameda and Contra Costa Counties.

It now appears that Louis A. Tommasini is desirous of divesting himself of his ownership in the business and that he proposes to transfer his interest to Arrow Delivery Company for the agreed sum of \$12,500, of which \$4,000 is payable in cash and \$8,500 will be represented by a promissory note payable over a period of three years at the rate of \$236.11 monthly, together with interest at the rate of four per cent per annum on unpaid balances. The corporation already has paid \$2,000 of the cash down payment and proposes to provide the remaining \$2,000 with funds on hand and funds to be obtained through the sale of \$1,500 of stock to its president.

The assets and liabilities of the partnership as of November 30, 1954, as set forth in the balance sheet introduced in evidence in this proceeding as Exhibit 1, are as follows:

<u>Assets</u>		
Current Assets:		
Cash and Deposits	\$ 629.77	
Accounts Receivable	3,561.28	
Prepaid Expenses	<u>341.37</u>	
Total Current Assets		\$ 4,532.42
Tangible Assets, Less		
Depreciation Reserve		3,346.94
Organization Costs		1,104.39
Goodwill		<u>4,392.13</u>
Total		\$13,375.88
<u>Liabilities and Net Worth</u>		
Current Liabilities		\$ 7,519.39
Net Worth:		
Riccardo Tunzi	\$ 2,683.47	
Louis A. Tommasini	<u>3,173.02</u>	
Total Net Worth		<u>5,856.49</u>
Total		\$13,375.88

The balance sheet shows that Louis A. Tommasini had a capital investment of \$3,173.02 in the assets of the partnership. If the current market value of the revenue equipment, which is reported to be \$7,400 in the second amendment to the application, should be substituted for the net book value of such equipment, shown in the balance sheet at \$3,346.94, the investment of Louis A. Tommasini would be increased to \$5,199.55. However, \$2,196.06 of this balance would represent an amount included in the goodwill account of the partnership. Thus, Tommasini's investment in assets, exclusive of goodwill, would be \$976.96 when based on recorded balances and \$3,003.49 if the market value of the revenue equipment were to be considered.

In effect, then, the applicant corporation is requesting the Commission to authorize the issue of securities having a total par value or face value of \$10,000 in part payment of assets, exclusive of goodwill, having a maximum book value of \$3,003.49. The difference between this amount and the \$10,000, which difference is approximately \$7,000, represents a proposed capitalization of potential earning power, according to the witness for applicant corporation. In his testimony the witness asserted that economies could be effected under the new management and stated that a partial installation of practices already had caused a substantial increase in the earnings of the partnership. Exhibit 1 shows that the partnership had a net profit of \$6,262.80 for the six months ended November 30, 1954, as compared with a net profit of \$5,620.39 for the year ended May 31, 1954, which tends to substantiate the testimony of this witness.

The evidence clearly shows that the new partnership should be able to render a more efficient service than the present operators and that the partial integration of its operations with those of Arrow Delivery Company should result in financial benefits to both the new partnership and the present corporation. Among other things, the San Francisco terminal of the corporation will serve both lines, gasoline will be purchased wholesale for both, and general office expenses will be shared. It also appears that the corporation should have sufficient funds available from its operations, including its depreciation accruals, to meet the monthly payments of the note it now seeks to issue.

From a review of the record it is reasonably clear that there exists sufficient investment in properties and assets, exclusive of goodwill, to warrant an order authorizing the issue of the \$1,500 of stock. However, with respect to the issue of the note it is equally clear that while the revenues from the business on the basis of present performance would appear to be ample to support the note issue, nevertheless we are asked to approve the capitalization of potential values which may or may not be realized in the future.

Section 817 of the Public Utilities Code specifically limits the purposes for which the Commission may authorize the issue of securities, and Section 818 requires the Commission to make a finding with respect to the reasonableness of the issue. It does not appear to us that the purpose for which the proposed issue will be made, that is, the acquisition of goodwill, is one of the purposes specified in the code. Certainly, it is questionable if we could make the required finding as to the reasonableness of the issue. We therefore conclude that the goodwill or potential values set forth in this application do not form a proper base upon which we can predicate an order authorizing issues of securities.

We have no objection to the entrance of Arrow Delivery Company into the operation of Salinas Valley Freight Line and, in fact, we are of the opinion, and so find, that the transfer of the interest of Louis A. Tommasini to the corporation will not be adverse to the public interest. If applicant corporation is willing to pay said sum of \$12,500 to Louis A. Tommasini it may do so, but it should finance the same, except as herein permitted, from some source other than securities requiring the Commission's authorization. The corporation, of course, may incur an outstanding open account

or issue a note payable on or before 12 months after its date without obtaining the authority of the Commission.

The order herein will authorize the transfer of the partnership interest and the issue of shares of stock but will withhold permission to issue the long-term note. In making this order we wish to place applicants on 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, such rights 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 as to the number of rights which may be given.

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

O R D E R

A public hearing having been held on the above-entitled matter, and the Commission having considered the evidence and being of the opinion that the application should be granted, as herein provided, that the money, property or labor to be procured or paid for by the issue of \$1,500 of common stock is reasonably required by Arrow Delivery Company, a corporation, for the purpose specified herein, and that such purpose is not, in whole or in part, reasonably chargeable to operating expenses or to income; therefore,

IT IS HEREBY ORDERED as follows:

(1) Riccardo Tunzi and Louis A. Tommasini, after the effective date hereof and on or before June 30, 1955, may sell and transfer to Arrow Delivery Company, a corporation, the undivided

one-half interest of Louis A. Tommasini in the operative rights granted by Decisions Nos. 18691 and 18811, dated August 8, 1927, and September 14, 1927, respectively, in Application No. 13611, and by Decisions Nos. 47387 and 47472, dated June 30, 1952, and July 15, 1952, respectively, in Application No. 32455, and in the assets and equipment.

(2) Arrow Delivery Company, a corporation, in financing the acquisition of said one-half interest, may issue \$1,500 of its common stock.

(3) The application, in so far as it involves the issue of a promissory note in the principal amount of \$8,500, is denied.

(4) On not less than five days' notice to the Commission and to the public, applicants shall supplement or reissue the tariffs on file with the Commission naming rates, rules and regulations governing the common carrier operations here involved to show that Riccardo Tunzi and Louis A. Tommasini, copartners doing business as Salinas Valley Freight Line, have withdrawn or canceled and Riccardo Tunzi and Arrow Delivery Company, a corporation, have adopted or established, as their own, said rates, rules and regulations. The tariff filings made pursuant to this order shall comply in all respects with the regulations governing the construction and filing of tariffs set forth in the Commission's General Order No. 80.

(5) Arrow Delivery Company, a corporation, shall file with the Commission a report, or reports, as required by General Order No. 24-A, which order, in so far as applicable, is made a part of this order.

(6) The authority herein granted will become effective twenty days after the date hereof.

Dated at San Francisco, California, this 8th day of March, 1955.

John E. Mitchell
President

Justin J. Adams

Rayco Luterman

William J. Dooly

Commissioners