

ORIGINALDecision No. 51425

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
 own motion into the operations,
 practices, rates, rules, regulations,
 charges, classifications, contracts,
 and tariffs of FURNITURE RETAILERS'
 ASSOCIATION, INC., a corporation.

Case No. 5612

Cyril Saroyan and Charles P. Barrett, for
 the Commission's staff.

Cromwell Warner and J. S. Williams, for
 the respondent.

Anthony V. Danna, for Furniture Manufacturer's
 Association of Southern California; R. O. Cowling,
 for Inland Shippers' Association; Lester Bey, for
 William Walker and Co.; J. C. Kaspar and Arlo D. Poe,
 for California Trucking Associations; Jackson W.
Kendall, for Bekins Van and Storage Company;
R. C. Fels, for Crocker Mohawk Lines, Inc.;
Melvin A. Pixley, for Pixley Transportation,
 interested parties.

O P I N I O N

The Commission commenced this proceeding on January
 25, 1955, by filing an order instituting an investigation to
 determine whether or not Furniture Retailers' Association, Inc.,
 a corporation, is or has been a highway or city carrier engaged
 in the transportation of property for compensation or hire as
 a business within the meaning of Sections 213, 3511 and 3911 of
 the Public Utilities Code, and to enter any order or orders
 that may be appropriate in the lawful exercise of the Commission's
 jurisdiction in the premises. Copies of the order were served on
 respondent's president and managing director on February 2, 1955.

The respondent filed no pleading in response to the order instituting investigation. The matter was set for hearing in Los Angeles on March 23, 1955, before Commissioner Ray E. Untereiner and Examiner Kent C. Rogers. The respondent appeared through its attorney at the time and place set, stipulations were entered into and the matter was submitted. It is ready for decision.

At the commencement of the hearing the Commission's attorney, Cyril Saroyan, made a statement substantially as follows:

The investigation herein is on the Commission's own motion to determine whether Furniture Retailers' Association, Inc., (hereinafter referred to as respondent) is a highway or city carrier engaged in the transportation or delivery of new furniture, crated, or in certain instances blanket wrapped, in the Los Angeles drayage area, and also outside the drayage area. This organization is a non-profit corporation with some five hundred or more members who are retail furniture dealers. It does not own any trucking equipment and it does not have any permits. The actual transportation is carried on by California Pool Car Distributors, Inc., a corporation, having radial and city permits. This latter corporation is completely owned by respondent and owns no trucking equipment, but leases some from Windsor Delivery, Inc. Offices and warehouse space are shared in common by California Pool Car Distributors, Inc., and Windsor Delivery, Inc. Respondent charges its members some 14% less than the minimum tariff rates for the transportation of the furniture (less 10% discount from tariff, less 3% tax on

delivery, less 1% insurance charges). Written complaints were received by the Commission from certain trucking associations. These complaints were the basis for investigation by the Commission in July and August, 1954. After said investigation the Commission's staff, on October 14, 1954 (see Exhibit 1), advised respondent that an informal investigation had revealed that respondent was engaged in the business of transporting property to its members for compensation; that certain sections of the Public Utilities Code prohibited these operations without permits, and made charges less than minimum unlawful. Respondent was directed to cease such operations or, in lieu thereof, to give the Commission a written explanation of its reasons and justification for continuing the operations. Respondent replied by letter dated October 18, 1954 (see Exhibit 2). Thereafter other correspondence passed between the Commission's staff and the respondent, including the letter from the Commission, dated December 22, 1954 (see Exhibit 3), which outlined certain code sections and advised the respondent that, despite its non-profit nature, it was subject to regulation by the Commission. This letter ordered respondent to cease and desist operations as a carrier. Respondent replied by a letter dated December 27, 1954 (see Exhibit 4), in which it advised the Commission that effective as of that date it had discontinued the operations complained of and requested that the matter be set for hearing in order that a formal determination of the legality of its operations could be had. This request started the formal machinery in motion, and gave rise to the herein involved order instituting investigation. By a letter dated March 11, 1955 (see Exhibit 8), the

respondent requested that the proceedings be discontinued. This letter was received by the Commission on March 14, 1955, at about the time that a letter and stipulation of facts were sent to respondent (Exhibit 9). The stipulation was never signed by respondent.

Respondent's attorney stated that the opening statement of the Commission's attorney was correct, except that the operation was solely for the members and the transportation was not by California Pool Car Distributors, Inc., but was performed by the respondent in leased trucks and the drivers thereof were on respondent's payroll. The attorney stated that with the exceptions noted above the respondent stipulated that the matters recited in the staff counsel's opening statement were true. He further stated that on December 22, 1954, the respondent ceased operations, disposed of its trucking equipment, and terminated the employment of its drivers. He went on to state that he saw no need for a cease and desist order but had no objection to such an order.

The staff and the respondent agreed that the correspondence between the respondent and the Commission's staff be received in evidence. The correspondence was received in evidence as Exhibits 1 to 12 inclusive, and includes the letters referred to by staff counsel in his opening statement.

The representative of California Trucking Associations, Inc., stated that he had no doubt of the respondent's good faith in the matter but that the Commission should consider the effect on truckers of operations of the nature of that formerly conducted by respondent. He was of the opinion that the Commission should spell out its interpretation of the law, order the

respondent to cease and desist, and publicize the decision. Respondent's attorney objected, stating that the legal questions have not been explored and that lengthy research and further hearings would be required in order to present both sides of the matter. This objection appears to be well taken.

Respondent has discontinued its trucking business, has released its drivers, and has no equipment. Inasmuch as the respondent has ceased doing business, a cease and desist order is not necessary. The investigation will be dismissed.

ORDER

An order instituting investigation having been filed, a hearing having been held thereon, and the Commission having found that the respondent has ceased doing business,

IT IS ORDERED that the order instituting investigation herein be, and the same hereby is, dismissed.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 3rd day of May, 1955.

John L. Mitchell
President

Justus J. Carmichael

Robert Winters

William D. ...

Commissioners