

Decision No. 5522A**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

DESERT EXPRESS, a corporation, and
VICTORVILLE-BARSTOW TRUCK LINE, a
corporation,

Complainants,

vs.

LYLE V. SCOTT, an individual doing
business as SCOTT TRANSPORTATION
COMPANY,

Defendant.

Case No. 5922

ORDER OF DISMISSAL

The complaint herein alleges in substance that in 1954, by Application No. 36350, as amended, defendant applied for a highway common carrier certificate, and that a certificate was granted in 1955 by ex parte Decision No. 51748; that complainants are prepared to present evidence to establish that said application, as to material matters, contained inaccurate, misleading, incorrect, and untrue statements; that some part of the evidence complainants propose to offer has been placed in evidence at hearings held in Application No. 36350; that because the granting of the hearing of December 20, 1955 in that application was issued after Decision No. 51748 therein became effective, and because the notice of that hearing did not specify that it was held to consider rescission of the certificate under Public Utilities Code sec. 1708, complainants have not had a full opportunity to present evidence on the question of the lawfulness of Decisions Nos. 51748 and 54518; that because

defendant made allegations in the application which were incorrect and misleading the Commission was induced to issue Decision No. 51748 upon the basis of incorrect and inaccurate information; and that such orders would not have been justified had the Commission been fully advised of the true facts.

The complaint prays that a notice issue that defendant appear and show cause why Decisions Nos. 51748 and 54518 in the application proceeding should not be rescinded, and that after hearing, said orders be rescinded.

Pursuant to Rule 12, counsel for defendant submitted a statement of asserted defects, taking the position that the decisions in the application proceeding have become final, and that the pleading does not state a cause of complaint under Public Utilities Code section 1702. Formal service of the complaint was withheld, and complainants' counsel advised of the informal staff opinion that the complaint failed to state a cause of action in that it did not allege any act of commission or omission claimed to be in violation of statute or Commission order, and that any request for rescission of decisions in the application matter should be filed in that proceeding. Counsel was requested to advise whether complainants desired to dismiss, amend, or rely upon the present pleading.

By letter of July 17, 1957 counsel stated that complainants did not desire to dismiss the complaint. The letter noted that complainants had filed four documents, each designed to reach the same end result by different procedural means, such documents being a petition for reconsideration and oral argument in Application No. 36350, a petition filed in Application No. 36350 for further hearing upon notice and order to show cause for rescission of the existing

certificates, the complaint in the present proceeding, and a request for action by the Commission on its own motion. Complainants' counsel requests that the complaint not be dismissed, but that all phases of the matter be handled in a single hearing.

Although formal service of the complaint has not been made, defendant has filed an answer, in part taking the position that the complaint is merely a dilatory and collateral action for the purpose of harassment and causing defendant undue financial hardship and distress.

Public Utilities Code section 1702 provides in part that complaint may be filed

"setting forth any act or thing done or omitted to be done by any public utility, including any rule or charge heretofore established or fixed by or for any public utility, in violation or claimed to be in violation, of any provision of law or of any order or rule of the commission."

The complaint does not allege any violation of statute or Commission order, but is based solely upon alleged misrepresentations in an application proceeding, and seeks rescission of orders issued therein. Under section 1708 the Commission, after notice and opportunity to be heard, may rescind, alter or amend a decision. But any request for the taking of such action should be made in the particular proceeding wherein the decision was issued. Complainants have made such requests in petitions filed in Application No. 36350. The statute does not contemplate that such requests may also be made the basis for a cause of action in a complaint proceeding.

Good cause appearing, IT IS ORDERED that Case No. 5922 is hereby dismissed for failure to state a cause of action.

Dated at Los Angeles, California; this 31th day of July, 1957.

[Signature]
 President

[Signature]

[Signature]

[Signature]

[Signature]
 Commissioners