

ORIGINAL

Decision No. 55546

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)	
WALTER REFISH, dba THE MENDEL CO., for)	
authority to transfer his Radial High-)	
way Common Carrier Permit, City Carrier)	
Permit and Household Goods Carrier)	Application No. 38855
Permit, Oxnard, to CHRISTOPHER J. DUARTE)	
(Appl. No. 19-10954, File No. T-154, Appl.)	
No. 19-39654, File No. T-154, and Appl.)	
No. 19-44977, File No. T-154).)	

Donald Murchison, attorney, for applicant.

Cyril M. Saroyan and J. Lane Barbour for the Commission staff.

O P I N I O N

Walter Refish, doing business as The Mendel Co., is the holder of three highway carrier permits as follows: Radial Highway Common Carrier Permit No. 19-10954, City Carrier Permit No. 19-39654, and Household Goods Carrier Permit No. 19-44977. In this proceeding authority is requested to transfer these three permits to Christopher J. Duarte.

Public hearings were held before Examiner Grant E. Syphers on May 13 and June 20, 1957, in Los Angeles, at which time evidence was adduced and the matter submitted. It now is ready for decision.

The evidence presented at the hearings discloses that Christopher J. Duarte now is employed as operations manager in a

trucking business which is owned by his wife, Marjorie Duarte, and known as the Oxnard Transportation Co. While he intends to continue in this employment, he also intends to conduct operations under the permits which he herein proposes to buy. The type of operation proposed is one that will use van-type containers to transport household goods. The household goods will be loaded in a container which, in turn, will be placed upon a trailer. The trailers are relatively light in weight and will be hauled by a pickup truck.

The three applications to transfer were filed on February 11, 1957, and Exhibit No. 3 is a copy of a postal money order showing payment of the transfer fees amounting to \$75. Subsequent to filing this request for transfer, applicant sent in a form purportedly to cover the first quarter of operations for the year 1957. Inasmuch as no hauling had been performed, he so stated in the form. Under date of April 11, 1957, he received a letter from the Secretary of this Commission which reads as follows:

"Mr. Christopher J. Duarte
1550 Pine
Oxnard, California

Dear Mr. Duarte:

This refers to your report of gross operating revenue for the first quarter of 1957, which was received without the quarterly fee of \$1.00 as indicated on Line 12 of report forms.

We wish to advise that although no operations were performed during this period, the above fee is due and payable during the life of a permit.

"Please return this letter with your check or money order to cover the fee due. We remind you that this period becomes delinquent and subject to penalty of an additional \$1.00 if not paid on or before May 15, 1957."

Very truly yours,

PUBLIC UTILITIES COMMISSION
STATE OF CALIFORNIA

By
R. J. Pajalich, Secretary

In response to the request contained in the letter, applicant Duarte forwarded a one dollar fee by postal money order and a copy of this was received in evidence as Exhibit No. 2. It was the applicant's testimony that after receipt of the above-referred to letter of April 11, 1957, he was under the impression that the permit had been issued. He had paid his original fee of \$75 and also the quarterly fee of one dollar.

The equipment he proposes to use in this operation, and which is presently owned by him, consists of one 1950 Dodge pickup truck, and two tractors - a 1941 GMC and a 1949 GMC. These two tractors are not licensed but are completely owned by applicant Duarte and according to this record will be licensed and placed in use should they be needed.

The application shows Duarte's financial status as of the time of its filing. At the hearing he testified that the amount of accounts or notes payable by him consisted of approximately \$2,500 which sum was owing upon the purchase price of his real property. The real property consists of one-third acre of land with a small warehouse and four rental units located thereon. These units are rented and Duarte receives approximately

\$325 per month therefor. According to this record he has approximately \$900 in cash and about \$450 in receivables. The real estate which he owns is valued at \$12,500, and the trucks and other equipment at \$3,120. His total assets are more than \$17,500, and his total liabilities are approximately \$2,500.

Applicant Duarte has been in the trucking and drayage business for more than thirty years. He has held permits from this Commission during the period from about 1936 to 1949 as follow:

<u>Type of Permit</u>	<u>Date Issued</u>	<u>Date Cancelled</u>	<u>Reason</u>	
Radial Highway Common Carrier	August 3, 1937	January 9, 1938	failure to keep on de- posit con- tinuous adequate insurance.	
"	"	January 14, 1937	March 12, 1937	" "
"	"	September 14, 1938	August 25, 1939	
"	"	December 18, 1940	February 7, 1941	" "
"	"	October 28, 1941	January 5, 1942	" "
"	"	June 5, 1942	September 25, 1942	failure to pay quarterly fee on gross operating revenue.
"	"	October 28, 1942	March 1, 1943	failure to pay registration fee.
"	"	March 10, 1943	June 15, 1943	failure to pay quarterly fee on gross operating revenue.
"	"	July 8, 1943	November 18, 1943	failure to keep on deposit continuous adequate insurance.

<u>Type of Permit</u>	<u>Date Issued</u>	<u>Date Cancelled</u>	<u>Reason</u>
Radial Highway Common Carrier	January 6, 1944	May 18, 1945	failure to keep on deposit continuous adequate insurance.
" "	July 9, 1945	January 24, 1948	" "
Highway Contract Carrier	September 17, 1946	January 24, 1948	" "
City Carrier	September 12, 1945	January 24, 1948	" "
Radial Highway Common Carrier	February 13, 1948	June 18, 1949	" "
Highway Contract Carrier	February 13, 1948	June 18, 1949	" "
City Carrier	February 13, 1948	June 18, 1949	" "
City Carrier	July 6, 1949	August 10, 1949	" "

The testimony discloses that these permits were cancelled at the times set out and for the reasons shown in the foregoing list. Duarte testified that the reason for these cancellations and suspensions was that during the period from 1936 to 1949 permits could be obtained from this Commission upon the filing of a three dollar fee. His whole business was seasonal and therefore it was simpler merely to let a permit lapse during the off season. He stated he followed this course of conduct upon advice of a representative of the Public Utilities Commission. During the past thirty years Duarte has been arrested twice, both times for violations of the Highway Carriers' Act, and both times he paid a small fine. Both fines were levied on July 25, 1949, one of \$100 with \$75 suspended by the Justice Court in Hueneme, Ventura County, California, and the second fine of \$100 with \$50 suspended by the Justice Court of the Moorpark-Camarillo District, Ventura County, California.

On three different occasions Duarte has applied for permits which have not been granted. These applications, together

with the reasons for non-issuance of the permits, are listed as follows:

<u>Application Filed</u>	<u>Type of Permit</u>	<u>Action</u>
April 1, 1938	Highway Contract Carrier	permit not issued- no insurance on file.
March 23, 1942	Radial Highway Common Carrier	" "
September 25, 1951	Radial Highway Common Carrier	application not filed - insufficient filing fee.
September 25, 1951	City Carrier	" "
September 25, 1951	Highway Contract Carrier	" "

It was the contention of the staff counsel that this application should be denied since applicant is not a proper person to operate under permits from this Commission. This allegation was based upon alleged deficiencies in Duarte's financial statement, the fact that he has had the permits listed hereinbefore that have been cancelled or revoked as indicated, that some applications for permits have not been granted, and that he has been fined twice.

A review of all of the record herein leads us to conclude, and we now find, that the application should be granted.

The applicant Duarte appears to be financially qualified to conduct the proposed operations, having a net worth of more than \$15,000 which is not controverted on this record. So far as the two judgments are concerned, it appears that he has paid his fine therefor and that no penalties should now attach to him as a result of those past judgments. While it may not be commendable for a trucker to have so many suspensions of permits, as is disclosed on this record, nevertheless it appears that

these suspensions have been brought about by the following two factors: (1) the applicant was engaged in seasonal haulings, and (2) it was extremely easy to secure a new permit. It should be noted that in securing each new permit applicant apparently fulfilled all the requirements of this Commission. The last of these permits was in 1949. It does not now appear equitable eight years later to use this as a reason for refusing him permission to engage in permitted operations.

As to those applications which have not been granted, this record shows that two of them were denied because of no insurance on file and three because Duarte had not paid the filing fees. No unlawful operations were shown to have been conducted in connection therewith.

There was no showing on this record of any connection between the proposed operations of applicant Duarte and any operations now conducted by his wife. So far as this testimony is concerned, they will be separate operations.

Accordingly we find that the requested transfers are not adverse to the public interest and they will be granted. Applicant Duarte is hereby placed on notice that he must observe all requirements of the Public Utilities Code and the regulations established by the Commission.

O R D E R

Applications as above entitled having been filed, the Commission being fully advised in the premises and hereby finding it to be in the public interest,

IT IS ORDERED:

That Walter Refish, doing business as The Mendel Co., be, and hereby is, authorized to transfer to Christopher J. Duarte

Radial Highway Common Carrier permit secured by Application No. 19-10954, City Carrier permit secured by Application No. 19-39654, and Household Goods Carrier permit secured by Application No. 19-44977, and Christopher J. Duarte be, and hereby is, authorized to purchase and acquire these three permits.

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

Dated at San Francisco, California,
this 10th day of September, 1957.

[Signature]
President

[Signature]

[Signature]

[Signature]

[Signature]
Commissioners