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**ORIGINAL**

Decision No. \_\_\_\_\_

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA.

Investigation on the Commission's  
own motion into the operations,  
rates and practices of ALVIN C.  
MARTIN, doing business as A. C.  
MARTIN TRUCKING.

Case No. 6896

Morris Michelson, for respondent.  
J. Calvin Simpson, for the Commission staff. ✓

O P I N I O N

On August 30, 1960 the Commission instituted its investigation into the operations, rates and practices of Alvin C. Martin, doing business as A. C. Martin Trucking, a radial highway common carrier as defined in Section 3561 of the Public Utilities Code, for the purpose of determining:

1. Whether respondent has violated Section 3737 of the Public Utilities Code in that he failed to issue shipping documents in connection with certain transportation containing the specific information required by Item 93-A, paragraph (b) of Minimum Rate Tariff No. 7.

Pursuant to the order of investigation a public hearing was held in San Francisco before Examiner Martin J. Porter on December 6, 1960.

The position of the staff is that certain transportation performed by the respondent was transportation of property for compensation on the public highways and therefore subject to the provisions of the Highway Carriers' Act (Sections 3501-3809 of the

Public Utilities Code) and to the regulatory jurisdiction of the Commission.

The respondent's position is that the transportation in question was performed by respondent as a seller of property and therefore these movements of property were not the performing of transportation for compensation.

Facts

It was stipulated that A. C. Martin Trucking holds Radial Highway Common Carrier Permit No. 54-4440 and that respondent was served with Minimum Rate Tariff No. 7 and applicable supplements thereto.

Exhibit No. 1, dated July 21, 1959, is a document entitled "Quotation" and is from Pollards Concrete Company to A. C. Martin Trucking, quoting coarse aggregates at 80 cents per ton and fine aggregates at 60 cents per ton. This quotation was signed July 22, 1959 by A. C. Martin as an acceptance and agreement to purchase. The job identified for this quotation is Cal Mobile Inc., Lemoore, California.

Exhibit No. 2 is an agreement to sell and purchase entered into on July 22, 1959 by and between Cal Mobile Inc., designated as Buyer, and A. C. Martin Trucking and Pollards Concrete Company, hereinafter called Seller. It quotes coarse aggregates at \$2.10 per ton and fine aggregates at \$1.87 per ton.

Exhibit No. 3E is a number of invoices from Pollards Concrete Company to Martin Trucking representing the alleged amount of aggregate sold by Pollards Concrete Company to Martin Trucking on a daily basis for the month of October, 1959.

This exhibit shows that on 12 days out of 23 days A. C. Martin Trucking was billed for aggregate not at the agreed quotation price but at the price fixed in the agreement to sell and purchase.

This was because A. C. Martin Trucking did not have a truck available for the hauls to the job site and Pollards Concrete Company performed the transportation.

The evidence shows that A. C. Martin had no inventory or storage of aggregates or rock pits. The shipments in question could not be rated to determine the applicable minimum rate because of the failure to issue proper shipping documents. The respondent presented no witnesses.

Findings and Conclusions

Upon the evidence of record the Commission finds that:

The alleged "buy-sell" transactions were merely colorable and constituted a sham and device to circumvent regulation.

The property transported under the alleged agreement to sell and purchase was in fact transportation of property for compensation on the public highways and therefore subject to the provisions of the Highway Carriers Act (Sections 3501-3809 of the Public Utilities Code).

The respondent failed to issue shipping documents in connection with the transportation in question as required by Item 93-A, paragraph (b) of Minimum Rate Tariff No. 7.

O R D E R

Public hearing having been held and based upon the evidence therein adduced,

IT IS ORDERED:

1. That the Radial Highway Common Carrier Permit No. 54-4440 issued to Alvin C. Martin, doing business as A. C. Martin Trucking,

is hereby suspended for five consecutive days starting at 12:01 a.m. on the second Monday following the effective date of this order; and that he shall not lease the equipment or other facilities used in operations under this permit for the period of the suspension or directly or indirectly allow such equipment or facilities to be used to circumvent the suspension.

2. That Alvin C. Martin shall post at his terminal and station facilities used for receiving property from the public for transportation, not less than five days prior to the beginning of the suspension period, a notice to the public stating that his radial highway common carrier permit has been suspended by the Commission for a period of five days; that within five days after such posting Alvin C. Martin shall file with the Commission a copy of such notice, together with an affidavit setting forth the date and place of posting thereof.

The Secretary of the Commission is directed to cause personal service of this order to be made upon Alvin C. Martin and this order shall be effective twenty days after the completion of such service upon the respondent.

Dated at San Francisco, California, this 14th day of FEBRUARY, 1961

Grant W. Page  
President

Walter D. Mitchell

E. Lynn Fox

George G. Gerver

Frederick B. Holoboff  
Commissioners