

Decision No. 61963**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the application of LAVERNE M. VILLIERME and NELL V. LEWIS, dba Certified Transport, for authority to transfer to NELL V. LEWIS and ORGANIZATION TO REPEAL FEDERAL INCOME TAXES, INC., dba Certified Transport, Highway Contract Carrier Permit (Appl. No. 1-6095, File No. T-64063), City Carrier Permit (Appl. No. 1-9048, File No. T-64063), and Radial Highway Common Carrier Permit (Appl. No. 1-5966, File No. T-64063) with change of business address from Richmond to Los Angeles. )

Application  
No. 40537

Investigation on the Commission's own motion into the operations, rates and practices of Nell V. Lewis and Laverne M. Villierme, doing business as CERTIFIED TRANSPORT, D. B. Lewis, LEWIS FOOD COMPANY and ORGANIZATION TO REPEAL FEDERAL INCOME TAXES. )

Case No. 6320

(Appearances set forth in Appendix A attached hereto.)

### O P I N I O N

The above-entitled Application and Order Instituting Investigation were heard at Los Angeles on April 9, 1959, and November 17, 18 and 19, 1959, before Examiner Mark V. Chiesa. Briefs were filed by applicant on January 28, 1960, and by the Commission's staff on February 29, 1960. The Commission having directed that a proposed report be prepared, Examiner Chiesa filed his report herein on August 4, 1960, and copies thereof were served upon all parties to these proceedings. Applicants in Application 40537 and respondents in Case 6320 filed exceptions to the report, and the Commission's staff filed a reply to the exceptions. The Commission has considered the proposed report, exceptions, and reply, and also the evidence presented at the hearing.

The Examiner recommended that Application 40537 be denied, that the Highway Contract Carrier Permit, City Carrier Permit, and Radial Highway Common Carrier Permit issued in 1955 to Laverne M.

Villierme and Nell V. Lewis be revoked, and that D. B. Lewis, Lewis Food Company, Nell V. Lewis, Organization to Repeal Federal Income Taxes, and Certified Transport be ordered to cease and desist from operating as Highway Contract Carrier, City Carrier, and Radial Highway Common Carrier. These recommendations were based upon two major grounds: (a) that Certified Transport is the alter ego of D. B. Lewis and a means and device by which he obtains transportation at less than the minimum rates prescribed by this Commission, and (b) that transportation operations were illegally conducted while said permits were under suspension for failure to maintain adequate liability insurance. The exceptions to the proposed report attack both of these grounds.

The findings of the Examiner with respect to the claimed alter ego relationship of the parties are fully justified, and indeed compelled, by the evidence. The contention that no harm has resulted from Mr. Lewis' control of Certified Transport is without merit, for the record discloses that an originally legitimate permit carrier has been taken over and controlled by a shipper for the purpose of enabling the shipper to pay less than the minimum lawful rates for transportation performed by others. The instruments and nominal beneficiaries of this device are Nell V. Lewis and Organization to Repeal Federal Income Taxes, each selected and directed by D. B. Lewis. The victims of this device are both the subhaulers (who are the actual carriers and who receive less than minimum rates) and also the minimum rates themselves, which are thereby violated.

We find and conclude in view of such alter ego relationship, that the order recommended by the Examiner is proper. Specifically, we find that Application 40537 should be denied, that the three permits issued in 1955 should be revoked, and that the recommended cease and desist order should be issued - all without reference to the claimed violation of insurance requirements. It becomes unnecessary,

therefore, to consider that part of the proposed report relating to insurance or to consider the exceptions which are directed to the insurance issue.

We hereby adopt as the remainder of our opinion herein certain portions of the Examiner's proposed report which discuss the case generally and the alter ego issue. We do not adopt that portion of the proposed report in which the Examiner finds that respondents violated insurance requirements, and we make no ultimate findings on the insurance issue. We hereby adopt as our order herein the order recommended by the Examiner.

The portions of the proposed report thus adopted, including the order, are as follows:

#### FINDINGS OF FACT AND CONCLUSIONS.

##### Carrier Operations:

That on October 15, 1955, LaVerne M. Villierme and Nell V. Lewis entered into a partnership agreement under the fictitious firm name of Certified Transport, for the purpose of engaging in the operation of a trucking business. That on November 15, 1955, said copartnership was granted Highway Contract Carrier Permit No. 1-6045, City Carrier Permit No. 1-9048 and Radial Highway Common Carrier Permit No. 1-5966. That since November 15, 1955, said partnership has operated a transportation service as a Contract Carrier for Lewis Food Company, a corporation. That said service consists of the transportation of canned and dry dog and cat food (marketed under various names, such as Dr. Ross, Skippy and Roscoe) from the plant of said food company situated at 817 East 18th Street, in Los Angeles, California, to points and places in Northern California. That Certified Transport has no equipment of its own with which to perform said service, but instead hires subhaulers to perform the actual transportation service on a percentage basis. That Certified Transport has not operated as a City Carrier and only on rare occasions has it performed services as a Radial Highway Common Carrier. That Certified Transport hires subhaulers who usually are Northern California carriers who back haul shipments of the Lewis Food Company on a percentage of the prescribed minimum rates. That the percentage is usually 30 to 35 percent for Certified Transport, and 65 to 70 percent for the subhauler, and on occasion the subhauler is paid an agreed amount per truck load. That Certified Transport maintains an office at 725 No. Western Avenue and also rents desk space in the shipping department of the Lewis Food Company where it employs one person, a Mr. Bolduc, as an expeditor and whose principal duties are to handle shipping orders, route shipments, prepare master bills of lading, call subhaulers and prepare subhaul

agreements. The shipment is loaded by the trucker or by employees of the Lewis Food Company, the latter company charging Certified Transport when loading service is performed by its employees. That at all times since the granting of said permits, up to and including the final date of hearing, Certified Transport has conducted its transportation business in the aforesaid manner and has not otherwise engaged in any transportation service.

For the thirty-nine-month period of July 1956 to and including September 1959, Certified Transport's average monthly gross operating revenue was \$17,676.82. The average monthly payment to subhaulers was \$10,775.46, and the average monthly gross operating profit of Certified Transport was \$6,901.36.

APPLICATION NO. 40537 (Transfer of Permits).

That LaVerne M. Villierme, on or about June 21, 1958, sold her interest in and to the copartnership of LaVerne M. Villierme and Nell V. Lewis to Organization To Repeal Federal Income Taxes, a District of Columbia corporation (hereinafter sometimes referred to as ORFIT). That the "Sale of Partnership Interest" is dated June 1, 1958, although the signature was affixed by LaVerne M. Villierme on June 21, 1958 (Exhibits Nos. 2 and 7 and Transcript pages 50-53, inclusive).

That ORFIT is a non-profit corporation incorporated June 14, 1953, and was organized for "educational purposes" but specifically "to make researches and studies pertaining to government taxation" and with the apparent purpose of repealing the Sixteenth Amendment to the Constitution of the United States. The corporation is also authorized to engage in other businesses of various kinds, including the trucking business, in furtherance of its specific purpose. It has no capital stock. It has qualified to do business in California and its only active business office is in Los Angeles, California, at 725 North Western Avenue, which is also the location of the office of Nell V. Lewis and Organization To Repeal Federal Income Taxes, doing business as Certified Transport. It also has its so-called principal place of business in the District of Columbia.

That on May 29, 1958, Nell V. Lewis and ORFIT executed Articles of Limited Partnership to do business under the fictitious firm name of Certified Transport, whereby Nell V. Lewis is declared to be the General Partner having a 51 percent interest in the business and ORFIT is declared to be the limited partnership with a 49 percent interest. That the business of said partnership is "trucking, hauling and contracting for transportation."

That on August 8, 1958, Application No. 40537 was filed with this Commission, requesting that LaVerne M. Villierme and Nell V. Lewis, doing business as Certified Transport, be authorized to transfer the three carrier permits hereinabove mentioned to Nell V. Lewis and Organization To Repeal Federal Income Taxes, a corporation, doing business as Certified Transport. That said application is properly before the Commission for consideration.

ALTER EGO.

That Lewis Food Company, a corporation, for many years has been in the business of manufacturing and selling canned and dry dog and cat food products at 817 East 18th Street, in Los Angeles. Its outstanding capital stock is owned by D. B. Lewis. Its officers and directors are:

D. B. Lewis, President and director  
Horace C. Lewis, Vice President and director  
(brother of D. B. Lewis)  
a Mr. Sharrett, Executive Vice President and director  
a Mrs. Parker, Treasurer  
a Mr. Wilbur, Secretary and director, and  
Nathan Lewis, director (brother of D. B. Lewis).

The corporation is under the direct control and management of D. B. Lewis.

That Organization To Repeal Federal Income Taxes has no capital stock. Various kinds of memberships are available but members as such have no voice in the operation and management of the business. The present officers and directors are:

D. B. Lewis, President and director, of Los Angeles  
P. C. Morgenthaler, Vice President and director, of Los Angeles  
Mildred Carlin, Secretary, of Los Angeles  
Bruce Ball, Treasurer, of Los Angeles  
L. A. Alesen, M.D., director, of Los Angeles  
Mary D. Cain, director, of Summit, Mississippi  
Robert E. Nesbeth, director, of Houston, Texas  
C. Edward Murray, director, of Trenton, New Jersey  
one vacancy, director.

That its office is located at the same address as that of applicant Certified Transport, which latter company also maintains an operating office at the address of Lewis Food Company. That ORFIT's income is derived from the sale of literature or pamphlets, contributions, membership payments, and, since May or June 1958, from its 49 percent interest in Certified Transport.

That in 1948 LaVerne M. Villierme, doing business as Villierme Trucking Service, commenced transporting, as a contract carrier, northbound shipments of dog and cat food for Lewis Food Company, transporting approximately two or three truck loads per week from Los Angeles to points and places in the San Francisco Bay area. That the volume of said shipments steadily increased until in 1955 she was transporting approximately twenty truck loads per week. That in the performance of this service she operated as the prime carrier and used her own equipment, owning at one time as many as five trucks. That on or about October 1, 1955, Mrs. Villierme was contacted by D. B. Lewis, President of Lewis Food Company, and was informed that she should form a partnership with a member of Mr. Lewis' family if she desired to retain any of his company's transportation business. As a result

the partnership of LaVerne M. Villierme and Nell V. Lewis, doing business as Certified Transport, was formed on October 15, 1955. That Nell V. Lewis was then the wife of Horace C. Lewis who was then an officer and/or director of Lewis Food Company. That said partnership agreement was entered into at the request of D. B. Lewis, and provides among other things that Mrs. Villierme's share of the profits of the partnership is limited to \$500 per month and that Mrs. Lewis' share of the profits is the entire profit of the partnership less the amount of Mrs. Villierme's share. That Mrs. Lewis was given the option to purchase, on or before October 15, 1958, Mrs. Villierme's interest in said partnership for the sum of \$1,000. That each of said partners invested \$1,000 in the partnership. That Mrs. Lewis had no previous experience in the truck transportation business nor any previous business connection with Mrs. Villierme. That the attorney for the Lewis Food Company prepared said partnership agreement.

That about the time of the formation of the copartnership of LaVerne M. Villierme and Nell V. Lewis, doing business as Certified Transport, Mrs. Villierme was informed that Lewis Food Company did not want Certified Transport to operate its own equipment, and therefore Mrs. Villierme disposed of her trucking equipment and Certified Transport commenced operations by hiring of subhaulers as hereinabove set forth.

That on or about June 1, 1958, Mrs. Villierme was told by a member of Lewis Food Company that she was no longer a partner in Certified Transport. That thereafter Mrs. Villierme continued as an employee until sometime after October 15, 1958, when Mr. Bruce Ball became interested in Certified Transport as the representative of ORFIT, Mrs. Villierme remaining with Certified Transport as an employee for several weeks, instructing Mr. Ball about Certified Transport's trucking operations.

That on or about June 19, 1958, Mrs. Villierme received, by mail, from Mr. D. B. Lewis a "Sale of Partnership Interest" in words and figures as follows:

"SALE OF PARTNERSHIP INTEREST

"The undersigned, LAVERNE M. VILLIERME, in consideration of the sum of ONE THOUSAND DOLLARS (\$1,000.00) and other good and valuable consideration, does hereby sell, transfer and assign to ORGANIZATION TO REPEAL FEDERAL INCOME TAXES, INC., all of her right, title and interest in and to that certain partnership known as CERTIFIED TRANSPORT.

"DATED: \_\_\_\_\_, 1958.

\_\_\_\_\_  
"LAVERNE M. VILLIERME"

That said agreement was accompanied by a transmittal note, signed by D. B. Lewis, upon an inter-office correspondence form of the Lewis Food Company, as follows:

"Inter Office Correspondence  
Lewis Food Co.

Date June 19, 1958

TO

FROM

SUBJECT

COPIES TO

Mrs. Villierme

Please sign and return.

D. B. Lewis"

That said agreement of sale was signed by Mrs. Villierme on June 21, 1958, but was not dated at the time it was returned to Mr. D. B. Lewis. That the consideration paid to Mrs. Villierme for her interest by ORFIT was \$1,000.

That beginning approximately October 15, 1958, the business of Certified Transport has been operated and managed on behalf of Nell V. Lewis and ORFIT by Bruce Ball, an officer and director of ORFIT, and one other employee, the aforementioned Mr. Bolduc.

The record shows and we find that D. B. Lewis is President and a director of Lewis Food Company and that he is the sole owner, and controls, the company; that he is President and a director and exercises a predominant influence upon the business and operations of Organization To Repeal Federal Income Taxes; that directly and indirectly D. B. Lewis has influenced and controlled the affairs of both partnerships, LaVerne M. Villierme and Nell V. Lewis, doing business as Certified Transport, and Nell V. Lewis and ORFIT, doing business as Certified Transport. That there is such a unity of interest between D. B. Lewis, Lewis Food Company, Organization To Repeal Federal Income Taxes, and applicants herein that adherence to the fiction of their separate existence, in so far as the transportation business conducted by applicants is concerned, would not only promote an injustice to other carriers but discriminates between carriers, and would sanction a device or means by which D. B. Lewis, by influence, ownership and/or control over the said companies and businesses, would obtain transportation for property at less-than-minimum rates.

The Commission will disregard the corporate entities of Lewis Food Company and Organization To Repeal Federal Income Taxes, and finds that under the circumstances of record, in so far as applicants' transportation business is concerned, D. B. Lewis is the alter ego of the Lewis Food Company, the Organization To Repeal Federal Income Taxes, and Certified Transport, and that they are a means and device by which D. B. Lewis obtains and has obtained transportation of property within the State of California at less-than-minimum rates prescribed by this Commission.

O R D E R

A public hearing having been held in the above-entitled matters, the Commission being fully advised in the premises, having made its findings of fact and conclusions as hereinabove set forth, and good cause appearing,

IT IS ORDERED:

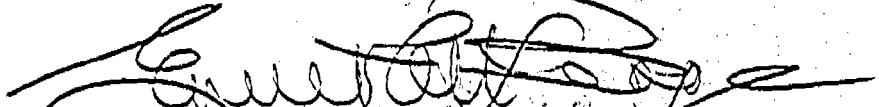


(1) That Application No. 40537 be, and it hereby is, denied.  
(2) That Highway Contract Carrier Permit No. 1-6045, City Carrier Permit No. 1-9048, and Radial Highway Common Carrier Permit No. 1-5966, issued to LaVerne M. Villierne and Nell V. Lewis (now known as Nell V. Green), doing business as Certified Transport, on November 15, 1955, be and the same are hereby cancelled and revoked as of the effective date of this order.

(3) That D. B. Lewis, Lewis Food Company, a corporation, and Nell V. Lewis (now known as Nell V. Green) and Organization To Repeal Federal Income Taxes, Inc., a corporation, doing business as Certified Transport, be, and they hereby are, ordered to cease and desist from operating as Highway Contract Carrier, City Carrier, and Radial Highway Common Carrier, as defined in Chapters 1 and 2, Division 2, of the Public Utilities Code of the State of California.

(It will be noted that the adopted portions of the report begin at line 7 of page 2 thereof and continue through line 11 of page 11 thereof, except that the paragraph beginning at line 5 of page 5 is not adopted and has been deleted here. Also, a typographical error in line 16 of page 4 of the report has been corrected, and the word RECOMMENDED on pages 2 and 10 of the report has been deleted.)

The Secretary of the Commission is directed to cause service of this order to be made upon all respondents in Case No. 6320 and this order shall be effective twenty days after completion of such service.

Dated at San Francisco, California, this 22<sup>nd</sup> day of May, 1961.

  
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President  
  
\_\_\_\_\_  
George L. Groover  
  
\_\_\_\_\_  
Frederick B. Hilborn  
Commissioners



APPENDIX A

Harry B. Dowsing and Fred L. Brown, Jr.,  
attorneys, and Bruce Ball, for  
applicants.

Arlo Poe, J. C. Kasper, James Quintrall  
and Laurence R. Exley, for California  
Trucking Associations, Inc., interested  
party.

Karl Roos and A. J. Lyon, for the Commis-  
sion staff.