

ORIGINAL

Decision No. 63554

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the Petition of
D. S. KAVANAGH and PAULINE KAVANAGH,
as owners of KAVANAGH VISTA WATER
COMPANY, for consent to transfer
title to BANK OF AMERICA, N.T. &
S.A.

Application No. 44227
Filed March 1, 1962
and Amendment
Filed March 26, 1962

Savage & Shepard, by H. A. Savage, for applicants;
J. T. Phelps, S. J. Webb and E. F. Catey, for the
Commission staff.

O P I N I O N

This is an application for an order of the Commission authorizing D. S. Kavanagh and Pauline Kavanagh, his wife, to transfer all of the assets of Kavanagh Vista Water Company, except the certificate of public convenience and necessity, to Bank of America National Trust and Savings Association, by way of mortgage to secure certain indebtedness.

A duly noticed public hearing was held in this matter before Examiner Donovan in San Francisco on April 4, 1962, at which time a representative of Bank of America National Trust and Savings Association was in attendance and concurred in all evidence and argument offered by applicants pertaining to said bank. The representative of the Commission's Legal Division made a motion to deny the application as requesting authority adverse to the public interest, which motion was taken under

submission. After hearing all evidence and announcing that the hearing was held to give creditors and other interested parties an opportunity to be heard, the examiner took the matter under submission.

By Decision No. 43415, dated October 18, 1949, in Application No. 30509, the Commission granted to D. S. Kavanagh, an individual doing business as Kavanagh Vista Water Company, a certificate of public convenience and necessity to construct and operate a public utility for the distribution and sale of water, for domestic purposes, in Tract No. 1094, Kavanagh Vista, and in certain additional surrounding area, in Fresno County. In addition to the public utility, applicants own a summer home at Huntington Lake and shares of stock of Kavanagh Building Co., a corporation which is heavily indebted to various unsecured and secured creditors, including the bank. Also, they are individually liable, directly or as guarantors, on debts owing to said bank and on bonds of Security Insurance Company of New Haven, a surety company.

Under date of February 26, 1962, applicants entered into a trust agreement with said bank and Kavanagh Building Co., a corporation, whereby the bank, as trustee, would accept for not to exceed two years the fee title to the assets of Kavanagh Vista Water Company (excluding the certificate of public convenience and necessity) and said summer home as security for the benefit of the bank, surety company, and unsecured creditors of Kavanagh Building Co., a corporation.

As justification for the proposed transfer of a public utility as security for indebtedness unrelated to operations of the public utility, applicants assert that the surety company has stated that, otherwise, it would possibly throw Kavanagh Building Co., a corporation, into bankruptcy. They allege further that the creditors of Kavanagh Building Co., a corporation, had taken an equally firm stand that unless such was done they would throw Kavanagh Building Co., a corporation, into bankruptcy and, further, that they would throw applicants into bankruptcy by reason of the fact that they had signed some papers which involved assets of said corporation. Applicants further assert that the consent of this Commission to the proposed transfer will avert the threatened bankruptcy, that orderly liquidation of Kavanagh Building Co., a corporation, can proceed, that they will be able to pay off all the indebtedness, and that the public utility will be assured of not being pulled into any bankruptcy proceedings or other complications, directly or indirectly.

It appears that the financial difficulties of Kavanagh Building Co., a corporation, arose from its construction at a fixed price of a United States Government low-rent housing facility at Firebaugh, in connection with which it, not being able to pay all of the bills for labor and materials, caused the surety company to become obliged and required, under its bond, to pay. The application shows that the surety company

refuses to make payment unless and until the transfer to said bank, as proposed, of Kavanagh Vista Water Company and said summer home is consummated. The application shows further that Kavanagh Building Co., a corporation, has built many thousands of homes and other buildings in the San Joaquin Valley from Tracy to Bakersfield, that by reason of the severe slump in the sales of new housing facilities, it acquired over 300 houses which were completed and unsold, and that many more, some of which had been sold and had been abandoned, were returned to the ownership of said corporation, each mortgaged to savings and loan associations, so that while it had a great many assets, it could not pay its debts except by selling said houses.

Applicants believe that the proposed form of security would be more advantageous than forms more commonly prevailing because (1) if it should become necessary to advance money for replacement of facilities or furnishing additional facilities, said bank would be able to provide the funds with sufficient security, thus insuring to the consumers adequate and complete service; (2) the surety company and all creditors of Kavanagh Building Co., a corporation, have absolute confidence in said bank, which has agreed not to attempt to claim any banker's lien or to assert any offset or other special advantage as a bank by reason of holding said public utility properties by way of security; (3) if they, and Kavanagh Building Co., a corporation, should not be able to pay said indebtedness, the bank will negotiate a sale for a fair consideration to some party financially

responsible who can and will be able to render to their consumers complete and efficient service; and (4) they are aware that such sale would be subject to the approval of this Commission, which would require a transferee to satisfy it that its financial responsibility is unquestionable and that it could and would render adequate service to the consumers of Kavanagh Vista Water Company, both present and future, and would provide additional facilities and improvements, if required.

Generally, this Commission does not look with favor upon the transfer or encumbering of properties of a public utility for the purpose of securing indebtedness incurred for purposes unrelated to public utility activities. In view of the circumstances set forth in this particular proceeding, however, wherein it appears that the alternative would probably be a bankruptcy proceeding involving the public utility, we find and conclude that the proposed transfer by way of mortgage is not adverse to the public interest, and that said motion of the representative of the Commission's Legal Division should be denied. We will enter an order granting the application.

O R D E R

A public hearing having been held in the above-entitled matter and the Commission having considered the evidence and argument and being of the opinion that the application should be granted, therefore,

IT IS ORDERED that -

1. D. S. Kavanagh and Pauline Kavanagh, his wife, on or after the date hereof and on or before July 31, 1962, may transfer by way of mortgage to Bank of America National Trust and Savings Association, in accordance with the provisions of the trust agreement dated February 26, 1962, a copy of which is filed in this proceeding, all of the assets, except the certificate of public convenience and necessity, of Kavanagh Vista Water Company.

2. The motion of the representative of the Commission's Legal Division to deny this application be, and it hereby is, denied.

3. Within thirty days after exercising the authority herein granted, applicants shall file with the Commission a true copy of each instrument executed in connection with said transfer.

4. This order shall become effective on the date hereof.

Dated at San Francisco, California, this 17th day of APRIL, 1962.

[Signature]
 President

[Signature]

[Signature]

[Signature]
 Commissioners

Commissioner Everett C. McKeage, being necessarily absent, did not participate in the disposition of this proceeding.