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**ORIGINAL**

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

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
 (1) KLEIMER VAN LINES, INC., a  
 California corporation, for authority  
 to sell its operative rights and  
 personal property to T.O.P. VAN LINES,  
 INC., a California corporation, and  
 T.O.P. VAN LINES, INC., for authority  
 to purchase said operative rights and  
 personal property, and (2) T.O.P. VAN  
 LINES, INC., for authority to issue  
 stock to KLEIMER VAN LINES, INC., at  
 par, in payment of the purchase price.

Application No. 44599

F. W. Turcotte, for applicants.Sidney J. Webb, for the Commission  
staff.O P I N I O N

This matter was heard before Examiner Power at San Francisco on August 28, 1962. An amendment to the application was filed at the hearing.

Kleimer proposes to sell the authorities and property described below and furnish \$1,500 in cash to T.O.P. Van Lines, Inc., in return for 1,350 shares of T.O.P. stock. The authorities involved are (1) a radial highway common carrier permit; (2) a highway contract carrier permit; (3) a city carrier permit; (4) a household goods carrier permit; and (5) a highway common carrier certificate.

The certificate, which makes this proceeding necessary, was originally created by Decision No. 53086 in Application No. 35966. The grantee was Fabiano Intra-Cal Lines, Inc. Fabiano transferred to John D. Worley. Worley's trustee transferred the

certificate to Loyd B. Turner. Under authority of Decision No. 61997 in Application No. 42442 Turner transferred the right as amended to Kleimer. It authorizes the transportation of blanket-wrapped new furniture between the Los Angeles area and San Luis Obispo with lateral rights and certain specific off-route points.

The application alleges that Kleimer held certain operating rights from the Interstate Commerce Commission. These authorized the transport of similar commodities over both regular and irregular routes. When Kleimer was in operation 95 percent of its business was conducted under the Interstate Commerce Commission authority.

The application alleges that the interstate authorities are the subject of a contract for sale to North American Van Lines, a nationwide carrier. As part of this agreement Kleimer agreed that North American should have the right to use the name Kleimer Van Lines, Inc., or any of these words alone or in combination with other words in conducting the business purchased from Kleimer under the interstate authorities. This agreement is not in evidence. At the time of the hearing the Interstate Commerce Commission's approval had not been given. Subsequently, however, the report and order of the Interstate Commerce Commission examiner were filed on November 16, 1962, approving the sale of the interstate rights. This order was declared final on December 20, 1962 and during January the sale was consummated.

The stock proposal cannot be authorized in its entirety. The property to be transferred consists of two semitrailers. The original cost was \$7,455.52 each. The depreciated value is alleged to be \$3,211.02 each, or \$6,422.04 for both. Cash is to be supplied in the sum of \$1,500. Applicants included \$5,000 for the

operating right. Articles of Incorporation attached to the application reveal that the stock has a par value of \$10.

Applicant T.O.P. requested authority to issue 1,350 shares. The following order will authorize 790 shares.

The Commission finds that:

1. The proposed transfer would not be adverse to the public interest.
2. The money, property or labor to be procured or paid for by the issue of the stock herein authorized is reasonably required for the purposes specified herein and such purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income.

T.O.P. Van Lines, Inc., is hereby placed on notice that operative rights, as such, do not constitute a class of property which may be capitalized or used as an element of value in rate fixing for any amount of money in excess of that originally paid to the State as the consideration for the grant of such rights. Aside from their purely permissive aspect, such rights extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be modified or canceled at any time by the State, which is not in any respect limited as to the number of rights which may be given.

In issuing our order herein, we place T.O.P. Van Lines, Inc., and its shareholders on notice that we do not regard the number of shares outstanding, the total par value of the shares nor the dividends paid as measuring the return applicant should be

allowed to earn on its investment and that the approval herein given is not to be construed as a finding of value of applicant's stock or properties.

O R D E R

IT IS ORDERED that:

1. On or before July 1, 1963, Kleimer Van Lines, Inc., a corporation, may sell and transfer, and T.O.P. Van Lines, Inc., may purchase and acquire, the operative rights and property referred to in the application.

2. Within thirty days after the consummation of the transfer herein authorized, T.O.P. Van Lines, Inc., shall notify the Commission, in writing, of that fact and within said period shall file with the Commission a true copy of any bill of sale or other instrument of transfer which may be executed to effect said transfer.

3. T.O.P. Van Lines, Inc., shall amend or reissue the tariffs on file with the Commission, naming rates, rules and regulations governing the common carrier operations herein to show that it has adopted or established as its own, said rates, rules and regulations. The tariff filings shall be made effective not earlier than thirty days after the effective date of this order on not less than thirty days' notice to the Commission and the public, and the effective date of the tariff filings shall be concurrent with the consummation of the transfer herein authorized. The tariff filings made pursuant to this order shall comply in all respects with the regulations governing the construction and filing of tariffs set forth in the Commission's General Order No. 30-A.

4. T.O.P. Van Lines, Inc., is authorized to issue 790 shares of its \$10 par value common capital stock to Kleimer Van Lines, Inc., for the purposes set forth in the application.

5. T.O.P. Van Lines, Inc., shall file with the Commission a report, or reports, as required by General Order No. 24-A, which order, insofar as applicable, is made a part of this order.

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

Dated at San Francisco, California, this 23<sup>rd</sup> day of April, 1963.

Herbert A. Trover  
 President

[Signature]

[Signature]

Frederick B. Hallock

[Signature]  
 Commissioners