

ORIGINAL

Decision No. 71495

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the operations,
rates and practices of W. O. WARD,
an individual.

Case No. 7950

Oran W. Palmer and William L. Caraway, for
respondent.
Elmer Sjoström, Elinore C. Morgan and
Frank O'Leary, for the Commission staff.

O P I N I O N

Decision No. 68432 in the above matter was issued on January 5, 1965. Respondent filed for rehearing on January 14, 1965. Rehearing was denied May 4, 1965. The operative effect of Decision No. 68432 was stayed by an order dated July 7, 1965, while respondent sought review before the Supreme Court of the State of California. Review was denied on November 24, 1965 and the Commission by its order dated December 14, 1965 fixed the effective date of Decision No. 68432 as January 4, 1966.

On March 29, 1966 the matter was reopened because of respondent's failure to comply with Decision No. 68432.

Public hearing pursuant to the order reopening this proceeding was held before Examiner Gravelle at Bakersfield on August 11, 1966.

Ordering paragraph 1 of Decision No. 68432 ordered respondent to pay a fine of \$4,000. Said fine was due by January 24, 1966. It has not been paid.

Ordering paragraph 3 of Decision No. 68432 ordered respondent to report to the Commission the results of a review of his records to determine undercharges. Said report was due by April 3, 1966. It has not been filed.

Ordering paragraph 4 of Decision No. 68432 ordered respondent to notify the Commission in writing of the collection of the undercharges found by the decision as well as those discovered by a review of his records. Said notification was due by May 3, 1966. It has not been received by the Commission.

Ordering paragraph 5 of Decision No. 68432 ordered respondent to periodically notify the Commission regarding the status of uncollected undercharges. Said reports were due on June 6, 1966, July 4, 1966 and August 1, 1966. No such reports have been made.

Respondent's operating authority, which consisted of Radial Highway Common Carrier Permit No. 15-2665 and Highway Contract Carrier Permit No. 15-6111, was revoked on May 26, 1965 upon notification from respondent to the Commission that he had sold his business and his operating equipment. Decision No. 68432 found that respondent had been engaged in "buy and sell" transactions which constituted a device in violation of Section 3668 of the Public Utilities Code.

Respondent testified at the hearing on August 11, 1966. He is sixty years of age, married and the father of three children aged twenty-three, twenty-one and sixteen. He lives in his own home purchased in 1954 and owned jointly with his wife. He had been unemployed for the two months prior to the hearing, due primarily to back trouble. His wife is employed on a part-time basis. A son and daughter live with him; the daughter has one child and was expecting another. He is the sole support of the resident son and the partial support of his daughter and grandchild.

Respondent sold his operating equipment in May of 1965 for \$52,500, with interest at 6 percent. He received \$15,000 in cash at that time and received a \$12,000 installment on January 1, 1966. The "pink slips", or certificates of ownership on the equipment, are still in respondent's possession. A \$12,000 payment is due January 1, 1967.

Respondent's home is located on a three-acre plot of ground adjacent to U. S. Highway 99 at McFarland. It contains in addition to the home a rental unit and a partially built gas station and cafe. Respondent estimated the value of his real estate at \$45,000. Deeds of trust amounting to about \$21,000 are outstanding against said property. Three weeks prior to the hearing respondent had bought a 1966 Chevrolet Capri at a cost of \$4,300 on which he was making payments of \$109 monthly.

Respondent testified that he had made no effort of any kind to collect the undercharges found in Decision No. 68432 and that he felt such moneys were not owed to him. He had told the United Hay Co. that the Commission ordered him to collect undercharges but made no attempt at collection.

Respondent claims inability to pay the fine imposed by the Commission due to his lack of regular income and other outstanding debts which he has attempted to retire instead of going through bankruptcy.

The actions of respondent from the date of Decision No. 68432 to the present have been directed, as far as that decision is concerned, wholly toward overturning it. Respondent has directed absolutely no effort toward even partial compliance with the Commission's order. \$27,000 in cash has passed through his hands on the payment for his equipment between May 1965 and January 1966. Other creditors have been paid but this Commission

and the State of California have been ignored. While respondent may not now be in a fluid cash position the record discloses that he is most certainly solvent.

The Commission finds that:

1. W. O. Ward has failed to pay any part of the fine of \$4,000 imposed upon him by Decision No. 68432.
2. W. O. Ward has the ability to pay the fine of \$4,000 imposed upon him by Decision No. 68432.
3. W. O. Ward has failed to comply with any of the provisions of ordering paragraphs 3, 4 and 5 of Decision No. 68432.
4. W. O. Ward has the ability to comply with ordering paragraphs 3, 4 and 5 of Decision No. 68432.

The Commission concludes that W. O. Ward has failed to pay the fine imposed upon him by Decision No. 68432 and that said fine should be paid within 180 days of the effective date of this order.

W. O. Ward should be mindful of the authority of this Commission to impose upon him further sanctions pursuant to the Public Utilities Code for failure to comply with the lawful orders of this Commission.

O R D E R

IT IS ORDERED that:

1. The fine imposed upon W. O. Ward by Decision No. 68432 is hereby reaffirmed.
2. W. O. Ward shall pay to this Commission the fine of \$4,000 imposed by Decision No. 68432 not later than February 1, 1967.

3. W. O. Ward shall in all other respects fully comply with ordering paragraphs 2 through 6 of Decision No. 68432.

The Secretary of the Commission is directed to cause personal service of this order to be made upon respondent.

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

Dated at San Francisco, California, this 15th day of NOVEMBER, 1966.

John E. Mitchell
President

George T. Grover

Frederick B. Hobloff

Augusta

William W. Bennett
Commissioners