

ORIGINAL

Decision No. 72524

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, rates, charges and practices of ED PROVENSAL, doing business as SECURITY TRUCKING COMPANY.

Case No. 8126
(Order Reopening Proceeding issued April 26, 1966)

Jerome A. Reiner, for respondent.

David R. Larrouy, Counsel, for the Commission staff.

O P I N I O N

On August 17, 1965, the Commission issued Decision No. 69570 in Case No. 8126 ordering Ed Provensal, the respondent herein, to pay a fine of \$500 on or before October 5, 1965, to pay an additional fine of \$1,500 on or before September 15, 1966, and to take such action, including legal action, as may be necessary to collect the amounts of undercharges described in said decision. On April 26, 1966, the Commission issued its order reopening the proceeding for the purpose of determining whether said respondent has complied with the Commission's order in said decision and for the purpose of determining whether any other order or orders that may be appropriate should be entered in the lawful exercise of the Commission's jurisdiction.

Hearing was held before Examiner Cline in Los Angeles on June 28, 1966. The matter was taken under submission upon the return on or before July 14, 1966, of a copy of Exhibit No. 10, and subject to the filing of the following late-filed exhibits on or before July 14, 1966:

<u>Exhibit No.</u>	<u>Description</u>
11	Copy of 1965 Federal Income Tax Return filed by Ed Provensal.
12	Copy of 1965 State of California Income Tax Return filed by Ed Provensal.
13	Copies of 1963 and 1964 Federal Income Tax Returns filed by Ed Provensal, if available.
14	Copies of 1963 and 1964 State of California Income Tax Returns filed by Ed Provensal, if available.
15	Copy of financial statement of Ed Provensal recently furnished to Mr. Morgan of Riverside, the attorney for Mr. Provensal's former wife.

A copy of Exhibit No. 10 was filed with the Commission on July 15, 1966. By letter dated July 15, and received by the Commission July 18, 1966, the attorney for respondent submitted the individual income tax returns of respondent, both Federal and State of California, for the years 1963, 1964 and 1965 and the copy of the financial statement which was to have been filed as Exhibit No. 15. Copies were made by the Commission of the following Schedules C of the Federal Returns for the years indicated:

<u>Schedule C of Federal Income Tax Return</u>	<u>Year</u>
Edward L. Provensal, Business name, Security Trucking Co.	1963
Edward A. Provensal, Business name, Security Trucking	1964
Edward L. Provensal, Business name, Security Trucking Co.	1965
Edward L. Provensal Business name, Equipment Associates	1965

and the financial papers were then returned to the attorney for respondent as requested. No copies of the late-filed exhibits were placed in the formal file. Subsequently, by letter dated January 11, 1967, the attorney for respondent was requested to resubmit the late-filed exhibits. Said attorney by letter dated January 12, 1967, advised the Commission that he has requested respondent again to furnish the late-filed exhibits. However, as respondent has not done so, the matter is hereby taken under submission without said exhibits being made a part of the record herein.

Based upon a consideration of the record herein the Commission finds as follows:

1. Respondent Ed Provensal has paid no part of the fines which he was directed to pay by ordering paragraph 1 of Decision No. 69570 issued herein on August 17, 1965.
2. Said respondent has filed no notice or reports with the Commission pursuant to ordering paragraphs 2 and 3 of said Decision No. 69570.
3. The operating authority of said respondent was suspended by the Commission on October 26, 1965.
4. Respondent has conducted no trucking business subsequent to the suspension of his operating rights.
5. The Commission hereby takes notice of the letter from the attorney for respondent to the Commission dated July 13, 1966, enclosing a copy of the summons and complaint in the action filed by Ed Provensal, doing business as Security Trucking Company, against Pyramid Rock filed in the Superior Court for the County of Riverside and bearing No. 89593.
6. The Commission hereby also takes notice of the letter from the attorney for respondent to the Commission dated January 12,

1967, in which he advised that service of the summons and complaint in the action of Provensal against Pyramid Rock Co., Inc., had not been made because the assets of Pyramid Rock Co., Inc., had been sold to Premier Marble Company of Alhambra and, the property at the former address of Pyramid Rock Co., Inc., was under the control of Allied Mineral Company at the time the marshal attempted to make service of the papers.

7. Lucerne Valley Limerock Products, the other concern against which the respondent has been found to have undercharge claims has been dissolved, and it may be necessary for respondent to proceed against the individual stockholders. Further research will be required before any action can be filed involving such claims.

8. Respondent lives in a home acquired by his present wife prior to their marriage and owned by her as her separate property. She is employed as a school teacher and pays more than 75 percent of the household living expenses.

9. Respondent is now engaged in the business of selling cars, trucks and other equipment on consignment, and once or twice a month he drives trucks for other truckers.

10. Respondent has an office at 190 Main Street, Riverside for which he pays \$50 per month rent. He has office supplies assessed for tax purposes at \$100 and an inventory of less than \$1,000 which has a forced sale value of less than \$500. In 1965, respondent had an income tax loss of \$6,000.

11. Respondent is not a director or stockholder of any corporation.

12. Respondent has an account in the name of Security Trucking Co. at the Riverside National Bank with less than \$100 on

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deposit and a joint account with Robert Rios in the name of Equipment Associates also at the Riverside National Bank with \$50 to \$100 on deposit.

13. Respondent has no safe-deposit box and no right of access to any safe-deposit box.

14. Respondent has no special savings account and no accident or life insurance policy.

15. Respondent is the equitable owner of a 1962 Falcon Ranchero worth \$800 wholesale. Legal title to this automobile is held by Garst and Dillworth to whom respondent owes \$3,500.

16. Respondent's wife is the legal owner of a 1962 Valiant which she purchased before their marriage.

17. Respondent owns three cemetery lots.

18. Respondent has no interest in the estate of any deceased person.

19. Respondent owns two old trailers worth \$1,000 on which he owes \$500. These trailers have not been licensed for two years.

20. Respondent has been paid no moneys on any judgment in his favor since the fines were imposed by Decision No. 69570.

21. Respondent owes some \$40,000 including \$7,000 to his attorneys. All of these obligations have not been reduced to judgments, however. He makes no regular payments to his creditors but gives priority to child support and alimony payments which amount to \$270 per month.

22. Respondent is unable to pay his debts as they become due but he is not willing to be adjudged a bankrupt. No receiver of his assets has been appointed.

At the conclusion of the hearing the Commission staff attorney recommended that the fines imposed upon the respondent by

the Commission be rescinded, that his operating authority be revoked, and that the Commission satisfy itself that respondent has made every reasonable effort to collect the undercharges and rebates prior to granting respondent any new operating authority.

Based upon the foregoing findings and the recommendations of the Commission staff attorney, the Commission concludes as follows:

1. Respondent Ed Provensal is financially unable to pay the fines imposed upon him by the Commission pursuant to ordering paragraph numbered 1 in Decision No. 69570, issued herein on August 17, 1965.

2. Said respondent has failed to file the reports required by ordering paragraph numbered 3 of said Decision No. 69570.

3. Said respondent's operating authority pursuant to Radial Highway Common Carrier Permit No. 36-3913 and Highway Contract Carrier Permit No. 36-3914 which are now suspended should be revoked.

O R D E R

IT IS ORDERED that Radial Highway Common Carrier Permit No. 36-3913 and Highway Contract Carrier Permit No. 36-3914 issued to respondent Ed Provensal are revoked at 12:00 P.M. on the effective date of this order.

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

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effective date of this order shall be twenty days after the completion of such service.

Dated at San Francisco, California, this 31st day of MAY, 1967.

Paul E. Mitchell
President

William L. Bennett

Augusta

William Symons J.

Jud P. Monsey
Commissioners