

**ORIGINAL**

Decision No. 73402

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's  
 own motion into the operations,  
 rates and practices of ROBERT S.  
 KAHN, an individual, doing business  
 as ROBERT'S VAN & STORAGE, ROBERT'S  
 VAN LINES OF CALIFORNIA, ROSSMOOR  
 VAN & STORAGE and ROBERT S. KAHN  
 and ALBERT NEWBERG, copartners,  
 doing business as ALLSTATE MOVING  
 & STORAGE OF CALIFORNIA, BOY'S  
 TRANSFER & STORAGE and MARINA  
 MOVING & STORAGE.

Case No. 8623  
 (Filed April 25, 1967)

Robert S. Kahn and Al Newberg, in  
propriae personae, respondents.  
Jackson W. Kendall, for Bekins Van &  
Storage Company, interested party.  
Elinore C. Morgan, Counsel, and E. E.  
Cahoon, for the Commission staff.

O P I N I O N

By its order dated April 25, 1967, the Commission instituted an investigation into the rates, operations and practices of Robert S. Kahn, an individual, doing business as Robert's Van & Storage, Robert's Van Lines of California and Rossmoor Van & Storage, hereinafter referred to as respondent Kahn, and into the rates, operations and practices of Robert S. Kahn and Albert Newberg, copartners, doing business as Allstate Moving & Storage of California, Boy's Transfer & Storage and Marina Moving & Storage, hereinafter referred to as respondent partners.

Public hearing was held before Examiner Mooney in Los Angeles on September 27, 1967, on which date the matter was submitted.

It was stipulated that respondent Kahn was issued Household Goods Carrier Permit No. 19-52787; that respondent partners were issued Household Goods Carrier Permit No. 19-54561; and that both respondents were served with Minimum Rate Tariff No. 4-B, together with all supplements and additions thereto.

A representative of the Commission's Field Section testified that he visited the place of business of both respondents at 3762 Catalina Street, Los Alamitos, and also respondent Kahn's home on various days during the period February through June 1966 and checked the records of each respondent. The witness stated that in addition he examined the classified section of the telephone directories in effect during the latter part of 1965 and January 1966 for Los Angeles, Orange and San Diego Counties to determine whether either or both respondents were complying with the rules governing relationships with the public set forth in Item No. 30 of Tariff No. 4-B. He testified that he prepared Exhibit 4 which includes true and correct photostatic copies of the pages in the classified section of certain of said directories which contain listings and advertisements of respondent Kahn (Parts 1 through 10) and respondent partners (Parts 12 through 14) and also true and correct photostatic copies of eight freight bills issued by respondent Kahn during the first half of 1966 (Part 11).

Exhibit 4 shows that both respondents had violated paragraphs 5 and 7(b) of Item No. 30 of Tariff No. 4-B which provide, respectively, that a carrier listing more than one fictitious name in the classified section of a telephone directory shall cross-reference each such name to all other such names so listed and that a carrier shall not advertise or otherwise represent that carrier operations are conducted at addresses or locations where

the carrier or his duly authorized agent does not maintain a place of business. Said exhibit also indicates that respondent Kahn had violated paragraphs 7(a) and 7 of said item which provide, respectively, that a carrier shall not advertise or otherwise represent himself under any fictitious names different than those on file with the Commission and that a carrier shall not misrepresent the scope of the operations he is authorized to perform. In addition, the exhibit discloses that respondent Kahn, as evidenced by the eight freight bills in Part 11 thereof, had performed services beyond the scope of his permitted authority which is limited to a radius of 50 miles from Long Beach.

The manager and supervisor of the Telephone Answering Bureau in Garden Grove was subpoenaed as a witness by the Commission staff to confirm the fact that said telephone answering service answered for respondent Kahn the telephone number listed for Home Transfer & Storage on the classified directory page in Part 10 of Exhibit 4. In this connection, the staff representative testified that Kahn had not filed said fictitious name with the Commission.

Respondent Kahn testified on his own behalf and on behalf of respondent partners. He asserted that there was never any willful intent on the part of either respondent to violate any provision of the Public Utilities Code or any rule of the Commission.

The witness testified as follows regarding Parts 9 and 11 of Exhibit 4 which include an advertisement by him in the San Diego Telephone Directory and the freight bills showing he had operated beyond the scope of his operating authority: It was his understanding that the scope of his operations was restricted only by the geographical limits of the insurance coverage he carried; when he commenced operations in 1959, his insurance was limited to a

50-mile radius of Long Beach, and for this reason, he stated in the application for his permit that his operations would be within said area; shortly thereafter his insurance was extended to include state-wide coverage; he was not aware that it was necessary to have his permit amended before he could operate beyond the 50-mile radius; there was never any attempt on his part to conceal in either his public advertisements or business records that he would and at times had operated beyond said 50-mile radius; he had included the revenue from this transportation in his quarterly gross revenue reports to the Commission and had paid all applicable transportation taxes thereon to the Board of Equalization and to the Commission.

With respect to the telephone listings and advertisements under his fictitious names in Parts 1 through 8 and 10 of Exhibit 4 and under those of respondent partners in Parts 12 through 14 of the exhibit, respondent Kahn testified that: Most of the box advertisements and listings for both respondents clearly show the address of their main place of business at 3762 Catalina, Los Alamitos; the failure to cross-reference all fictitious names was in part the fault of the telephone company which should have seen to it that this was done; cross-referencing was shown on proofs but not included in the directories for all advertisements; neither respondent had a place of business at 13263 E. Imperial Highway, Whittier, the address shown in the box ad included in Part 1; although neither respondent ever conducted operations at 556 W. 182nd, Gardena, the address shown for various listings in Parts 2 and 13, respondents had made arrangements with the owner to have office space there; just prior to publication of the directories, said premises were sold, and the new owner did not make the space available; the respondents had never intended to mislead the public;

and any errors that might exist were due to misunderstanding and lack of knowledge on the part of respondents.

Counsel for the Commission staff argued that the record clearly establishes that both respondents had violated Section 5285 of the Public Utilities Code by willfully failing to comply with applicable statutes and regulations. Staff counsel pointed out that respondent Kahn had been admonished in writing by a staff representative on November 23, 1964, for failure to comply with Item 30 of Tariff No. 4-B (Exhibit 6). The staff recommended that, pursuant to said Section 5285, respondent Kahn be fined in the amount of \$3,000 and respondent partners be fined in the amount of \$1,000.

Respondent Kahn stated in closing that the record does not show any willful intent by either respondent to evade or violate any law or regulation. He asserted that respondent Kahn now operates only one piece of equipment; that respondent partners barely exist; that neither is in a financial position to pay fines in the exorbitant amounts recommended by the staff should the Commission find against respondents; and that such fines would bankrupt respondents. If the Commission should impose any fines, which he urged the record does not warrant, he requested that the fines be realistic in amount and that respondents be allowed to pay them in installments.

Motions made by respondent Kahn on behalf of both respondents were to dismiss the action and to strike from the record all testimony of the staff investigator based upon statements made to him by respondents and also the photocopies of documents. He pointed out the record shows that said investigator had not informed either respondent at the beginning of or at any other time

during the investigatory period that the investigation could result in a formal proceeding before the Commission and possible sanctions against either or both respondents and, in addition, had failed to advise them of their right to remain silent and be represented by counsel. The validity of the motions depends on whether the instant proceeding is at the least quasi-judicial and criminal in nature; whereas, the law is well settled that administrative disciplinary actions before an administrative tribunal are not criminal proceedings, even though the licensee may be subject to penalties.<sup>1/</sup> Furthermore, it is the duty and obligation of permit carriers (including household goods carriers) to make full and complete disclosures of their operations insofar as they relate to the compliance or lack of compliance with the rules established by the Commission. Hence, a permit carrier (including household goods carriers) need not be informed prior to an investigation of its operations that information requested by the staff might result in the imposition of a fine on such carrier.<sup>2/</sup>

The evidence clearly establishes violations of Item 30 by both respondents and operations by respondent Kahn beyond the scope of his operating authority. In this connection, Section 5285 of the Public Utilities Code provides in part that the Commission may impose a fine not exceeding \$5,000 upon a household goods carrier for willful failure to comply with any provision of the Household Goods Carriers' Act or with any lawful order, rule or regulation of

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<sup>1/</sup> In re Tracey L. Aust, doing business as Aust Trucking, Decision No. 69237, in Case No. 8037, unreported (1965).

<sup>2/</sup> In re Denio Bros. Trucking Co., Decision No. 69907, in Case No. 8124, 65 Cal.P.U.C. 66 (1965).

the Commission promulgated thereunder. Before we can consider whether a fine should be imposed and, if so, the amount thereof, we must first determine whether the violations herein were in fact willful. The term "willful" contemplates that an act or omission was deliberate and intentional. The witness for respondents contends that all of the violations set out in Exhibit 4 were unintentional; whereas, the staff asserts that they were willful.

We concur with the staff that the telephone listings and advertisements by respondent Kahn in Parts 1 through 8 and 10 of Exhibit 4 and those by respondent partners in Parts 12 through 14 of the exhibit were willful violations of Item 30. The record shows that respondent Kahn was admonished in writing in 1964 for failure to comply with this item. The telephone listings and advertisements in issue were published in telephone directories issued in October, November and December 1965. Having been warned and placed on notice of his obligation to comply with Item 30, the subsequent failure by Kahn both in his capacity as an individual and as a partner to comply with the regulations set forth in said item cannot be excused as unintentional or as an oversight or due to lack of knowledge of said regulations. In situations of this type, the knowledge of one partner should and must be imputed to each partner. Furthermore, in the absence of clear, concise and convincing evidence to the contrary, a household goods carrier cannot avoid his responsibility for compliance with the requirements of Item 30. The opinion expressed by respondent Kahn that the telephone companies were somewhat at fault, and his explanation of certain other irregularities in listings are not sufficient to overcome this general rule.

As to the advertising and operations by respondent Kahn beyond the scope of his operating authority as evidenced by Parts 9 and 11 of Exhibit 4, the element of willfulness has not been established on this record. Respondent Kahn has explained that it was his sincere belief that the geographical scope of his operating authority was governed by the geographical scope of his insurance coverage and not by any area description in his permit. Had he been aware of any problem in this regard, he could have taken the necessary steps to have his permit amended accordingly.

Based on a review of the record, we are of the opinion that a fine of \$750 should be imposed on respondent Kahn and a fine of \$150 should be imposed on respondent partners. In accordance with the request of respondents to pay any fine which might be imposed in installments, the order which follows will provide that said fines may be paid in six equal monthly installments of \$125 by respondent Kahn and \$25 by respondent partners.

Upon consideration of the evidence, the Commission finds that:

1. Respondent Kahn operates pursuant to Household Goods Carrier Permit No. 19-52787. Said permit limits the scope of respondent Kahn's operations to a radius of 50 miles from Long Beach.
2. Respondent partners operate pursuant to Household Goods Carrier Permit No. 19-54561.
3. Respondents were each served with a copy of Minimum Rate Tariff No. 4-B, together with all supplements and additions thereto.
4. Respondent Kahn has willfully violated Item 30 of Minimum Rate Tariff No. 4-B by advertising in the classified section of various telephone directories that operations are conducted at places where he does not maintain a place of business, by advertising



therein under names other than those on his household goods carrier permit and by failing to cross-reference all names under which he lists his business in the directories, in the instances set forth in Parts 1 through 8 and 10 of Exhibit 4.

5. Respondent Kahn has violated Item 30 of Minimum Rate Tariff No. 4-B and his permit authority by advertising and operating beyond the geographical scope of his household goods carrier permit, in the instances set forth in Parts 9 and 11 of Exhibit 4; but, said violations have not been shown on this record to be willful.

6. Respondent partners willfully violated Item 30 of Minimum Rate Tariff No. 4-B by advertising in the classified section of various telephone directories that operations are conducted at places where they do not maintain a place of business and by failing to cross-reference all names under which the partners list their fictitious names in the directories, in the instances set forth in Parts 12, 13 and 14 of Exhibit 4.

7. A household goods carrier need not be informed prior to the beginning of or at any time during an investigation of its operations by a representative of the Commission that information requested by said representative might result in the imposition of a fine or other sanctions on such carrier.

Based upon the foregoing findings of fact, the Commission concludes that:

1. Respondent Kahn violated Section 5285 of the Public Utilities Code and should pay a fine of \$750 pursuant to said section.

2. Respondent partners violated Section 5285 of the Public Utilities Code and should pay a fine of \$150 pursuant to said section.

3. Respondents should be authorized to pay the fines referred to in conclusions 1 and 2 in six equal monthly installments.

4. The motions by respondents to dismiss the action and to strike from the record all testimony of the staff investigator based on statements made to him by respondents and the photocopies of the respondent Kahn's documents should be denied.

O R D E R

IT IS ORDERED that:

1. Respondent Kahn shall pay a fine of \$750 to this Commission on or before the fortieth day after the effective date of this order, or as an alternative thereto, respondent Kahn may pay said fine in six equal monthly installments of \$125 each, with the first installment due on the first day of the month following the effective date of this order and each succeeding payment due on the first day of each month thereafter.

2. Respondent partners shall pay a fine of \$150 to this Commission on or before the fortieth day after the effective date of this order, or as an alternative thereto, respondent partners may pay said fine in six equal monthly installments of \$25 each, with the first installment due on the first day of the month following the effective date of this order and each succeeding payment due on the first day of each month thereafter.

3. Respondent Kahn shall cease and desist from failing to comply with the lawful orders and rules of the Commission, and is hereby directed to observe and obey the provisions of Minimum Rate Tariff No. 4-B and the terms, conditions and restrictions set forth in Household Goods Carrier Permit No. 19-52787.

4. Respondent partners shall cease and desist from failing to comply with the lawful orders and rules of the Commission, and are hereby directed to observe and obey the provisions of Minimum Rate Tariff No. 4-B.

5. The motions by respondents to dismiss and to strike testimony of the staff investigator based on statements made to him by respondents and photocopies of documents of respondent Kahn are hereby denied.

The Secretary of the Commission is directed to cause personal service of this order to be made upon each respondent. The effective date of this order as to each respondent shall be twenty days after the completion of such service on said respondent.

Dated at San Francisco, California, this 28th day of NOVEMBER, 1967.

[Signature]  
President

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Commissioners