

**ORIGINAL**Decision No. 74533

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's )  
 own motion into the operations, )  
 rates, and practices of PHILIP )  
 ABOUMRAD, dba PHIL'S TRUCKING. }

Case No. 8792  
 (Filed April 30, 1968)

Philip Aboumrad, in propria persona.

Sergius M. Boikan, Counsel, and J. B.  
Hannigan, for the Commission staff.

O P I N I O N

By its order dated April 30, 1968, the Commission instituted an investigation into the operations, rates, and practices of Philip Aboumrad, doing business as Phil's Trucking, hereinafter referred to as respondent, for the purpose of determining whether respondent has engaged subhaulers without having filed with the Commission a bond to secure payment of claims of subhaulers, in violation of Sections 3541 and 3575 of the Public Utilities Code and General Orders Nos. 102-B and 102-C, and whether respondent entered into an agreement to pay, and has made payments to a shipper in satisfaction of an alleged claim of that shipper against a third party, in order to obtain the business of said shipper, in violation of Sections 3541, 3667 and 3668 of the Public Utilities Code.

Public hearing was held before Examiner O'Leary on June 26, 1968 at San Francisco, at which time the matter was submitted.

Respondent operates pursuant to Radial Highway Common Carrier Permit No. 1-8639. He owns 3 tractors, 1 truck and 5 trailers and employs 4 drivers and 3 office personnel. Terminals

are maintained at Oakland and Los Angeles. His gross operating revenue for the four quarters ending March 31, 1968 was \$322,829. Respondent was served with Minimum Rate Tariffs Nos. 2 and 8, Exceptions Rating Tariff No. 1 and Distance Table No. 5.

A transportation representative of the Commission's Field Section testified that on May 25, 1967 he called at respondent's office at 1401 Middle Harbor Road, Oakland, at which time he was informed by respondent's dispatcher that respondent was in Southern California but could be reached by phone. The transportation representative then telephoned respondent and arrangements were made whereby the representative would meet with respondent the following week for the purpose of examining respondent's records. When the representative called at respondent's office the following week, he was advised by respondent's dispatcher that respondent was not available. On numerous occasions thereafter the representative attempted to communicate with respondent by telephone and by presenting himself at respondent's office. Each attempt resulted in the representative being advised that respondent was unavailable. Respondent's records were finally made available to the representative for examination on October 31, 1967. Respondent's records were examined from September 1966 to October 1967, inclusive.

The transportation representative further testified that a review of the records of the Commission's Field Section disclosed a report advising that respondent appeared before an Assistant District Attorney of San Francisco for violation of Section 3575 of the Public Utilities Code. The report discloses that the Assistant District Attorney advised respondent that if he continued to use subhaulers and lease equipment without having a bond on file with

the Public Utilities Commission, misdemeanor proceedings would be instituted. A copy of the report was received in evidence as Exhibit 1. Subsequently the necessary bond was filed with the Commission effective November 30, 1967. An amendment to the bond was later filed showing an effective date of November 10, 1967.

Exhibit 3 consists of 12 subhaul agreements entered into between respondent as prime carrier and various carriers as sub-haulers between October 26, 1967, the day after respondent's conference with the Assistant District Attorney of San Francisco, and November 9, 1967, the day before the effective date of the bond subsequently filed.

Exhibits 2 and 4 pertain to payments made by respondent to American Home Foods, one of his major shippers. Exhibit 2 is a copy of a claim for overcharges against Viking Transportation Co. in the amount of \$2,400.17. The testimony of the transportation representative disclosed that A. C. Scott, a freight solicitor, employed by respondent had previously been employed by Viking Transportation. The overcharge occurred while Scott was employed by Viking. Scott and respondent met with the traffic manager of American Home Foods in an attempt to obtain that company's transportation business. At the meeting respondent agreed to settle the overcharge claim filed against Viking by paying American Home Foods \$100.00 per month. Each check in Exhibit 4 refers to Claim No. 829 which is the number of the claim in Exhibit 2.

The respondent testified that Scott wanted to clear the overcharge claim against Viking. He further testified that although the checks contained in Exhibit 4 were made payable to American Home Foods, the amounts were actually paid by him on behalf of Scott and

were charged to Scott as part of his commission. With respect to the use of subhaulers without having a bond on file respondent testified that he was never notified by his broker or the Commission that his bond had been canceled. He also testified that he was informed by the Assistant District Attorney and by the transportation representative who prepared the report contained in Exhibit 1 that if he obtained a bond as soon as possible no further action would be taken. He further testified that all subhaulers had been paid.

After consideration the Commission finds that:

1. Respondent operates pursuant to Radial Highway Common Carrier Permit No. 1-8639.
2. Respondent employed subhaulers to perform transportation on 12 occasions between October 26, 1967 and November 9, 1967 as set forth in Exhibit 3.
3. Respondent did not have on file a bond to secure the payment of claims of subhaulers as required by Section 3575 of the Public Utilities Code and General Order No. 102-C between October 26, 1967 and November 9, 1967, inclusive.
4. American Home Foods was one of respondent's major shippers.
5. American Home Foods filed a claim for overcharge with Viking Transportation Co. in the amount of \$2,400.17.
6. There is no evidence to show that A. C. Scott was liable for the payment of said claim.
7. There is no evidence to show that respondent was liable for the payment of said claim.
8. Respondent made 11 payments of \$100.00 in partial payment of said claim in the instances set forth in Exhibit 4.

Based upon the foregoing findings of fact, the Commission concludes that respondent has violated Sections 3541, 3575, 3667 and 3668 of the Public Utilities Code and should pay a fine pursuant to Section 3800 of the Public Utilities Code in the amount of \$1,100 and in addition thereto respondent should pay a fine pursuant to Section 3774 of the Public Utilities Code in the amount of \$1,000.

The Commission expects that respondent will proceed promptly, diligently and in good faith to pursue all reasonable measures to collect the payments made to American Home Foods. The staff of the Commission will make a subsequent field investigation into the measures taken by respondent and the results thereof. If there is reason to believe that either respondent or his attorney has not been diligent, or has not taken all reasonable measures to collect the payments made to American Home Foods, or has not acted in good faith, the Commission will reopen this proceeding for the purpose of formally inquiring into the circumstances and for the purpose of determining whether further sanctions should be imposed.

O R D E R

IT IS ORDERED that:

1. Respondent shall pay a fine of \$2,100 to this Commission on or before the fortieth day after the effective date of this order.
2. Respondent shall take such action, including legal action, as may be necessary to collect the payments to American Home Foods set forth herein, as well as any other payments of the aforementioned claim, and shall notify the Commission in writing upon the consummation of such collections.
3. Respondent shall proceed promptly, diligently and in good faith to pursue all reasonable measures to collect the payments, and

in the event payments ordered to be collected by paragraph 2 of this order, or any part of such payments remain uncollected sixty days after the effective date of this order, respondent shall file with the Commission, on the first Monday of each month after the end of said sixty days, a report of the payments remaining to be collected, specifying the action taken to collect such payments and the result of such action, until such payments have been collected in full or until further order of the Commission.

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 twenty days after the completion of such service.

Dated at San Francisco, California, this 13<sup>th</sup>  
day of AUGUST, 1968.

William Synnott, Jr.  
President  
Robert E. Mitchell  
Augusta  
Commissioners

Commissioner William M. Bennett, being necessarily absent, did not participate in the disposition of this proceeding.

Commissioner Fred P. Morrissey, being necessarily absent, did not participate in the disposition of this proceeding.