

Decision No. 76618

ORIGINAL

## 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 HENRY NOMURA and SAM J. NOMURA, partners, doing business as NOMURA BROS.; JOHN ARITA and BENNY MUKOGAWA, partners, doing business as A&M PRODUCE CO.; ATLAS VEGETABLE EXCHANGE, INC., a California corporation; CALO PRODUCE COMPANY, INC., a California corporation, doing business as CAL-O VEGETABLE EXCHANGE, INC.; LEM ONG and FRANK ONISHI, partners, doing business as DIAMOND VEGETABLE COMPANY; JOE KIYOSHI, an individual, doing business as I&T PRODUCE COMPANY; KAI MATSUSHITA and GEORGE ARIURA, partners, doing business as K&M PRODUCE; L.A. VEGETABLE EXCHANGE, INC., a California corporation; MORITA PRODUCE CO., a California corporation; AL MUNARI PRODUCE CO., INC., a California corporation; SY WONG and GETT WONG, partners, doing business as MUTUAL PRODUCE COMPANY; T. OGAWA, M. SHINMEI and HENRY MIYAHARA, partners, doing business as OGAWA BROS.; PACIFIC GAMBLE ROBINSON CO., a Delaware corporation, doing business as PACIFIC FRUIT AND PRODUCE COMPANY; SUPREME BROKERS AND DEALERS, INC., a California corporation; ERNEST F. JURADO and A. J. ROMO, partners, doing business as T 'N' T PRODUCE CO.; HY HAYATO TAKANO and HAROLD T. HIRASUNA, partners, doing business as TRIO PRODUCE COMPANY; and W & S PRODUCE CO., INC., a California corporation.

Case No. 8959  
(Filed September 3, 1969)

Tom Pavone, consultant, for Henry Nomura and Sam J. Nomura, doing business as Nomura Bros., respondents.

W. J. McNertney, counsel, and E. E. Cahoon, for the Commission staff.

O P I N I O N

This is an investigation on the Commission's own motion into the rates, operations and practices of Henry Nomura and Sam J.

Nomura, doing business as Nomura Bros., for the purpose of determining whether Nomura Bros. violated Sections 3664, 3667 and 3737 of the Public Utilities Code by charging and collecting less than the minimum rates and charges and failing to comply with the unit of measurement requirements provided in Minimum Rate Tariff No. 8 in connection with the transportation of fresh vegetables from growers to the Wholesale Terminal Market in Los Angeles for the 16 wholesalers named in the above caption.

Public hearing was held before Examiner Mooney in Los Angeles on November 18, 1969. Testimony and exhibits were presented by a representative and a rate expert of the Commission's Transportation Division. A written stipulation by Nomura Bros. and the staff was received in evidence as Exhibit 6. The following matters were stipulated to therein: All rates and undercharges in the total amount of \$4,187.22, computed by the staff rate expert in Exhibits 2-A through 2-P are true and correct; Nomura Bros. will make every effort to collect said undercharges; Nomura Bros. are willing to pay a fine in the amount of the undercharges and, in addition thereto, a punitive fine of \$500; and Nomura Bros. were cooperative during the staff investigation and did not alter or falsify any of their records. No other evidence was presented.

The undisputed evidence, including the written stipulation in Exhibit 6, establishes and we find as follows:

1. Nomura Bros. operate pursuant to radial highway common carrier and highway contract carrier permits.

2. Nomura Bros. were served with Minimum Rate Tariff No. 8 and Distance Table No. 7, together with all supplements and additions to each.

3. Nomura Bros. have a terminal in Los Angeles. As of May 29, 1969, Nomura Bros. employed six drivers and one dispatcher, engaged the services of an accountant and operated 12 tractors and trailers and two trucks. Said respondents' gross operating revenue for the year ending June 30, 1969 was \$196,606.

4. An undercharge letter was issued to Nomura Bros. in July 1968 alleging rate violations similar to those involved herein. Nomura Bros. did not comply with the directives in the undercharge letter. Because of this lack of compliance, the staff conducted an investigation of said respondents' operations for the months of January, February and March 1969. Approximately 1300 shipments of produce were transported by Nomura Bros. during this period. Less-than-minimum rates and charges were assessed by Nomura Bros. on over 1100 of said shipments, and in excess of 90 percent of the rate errors resulted from charging rates on a per-package basis rather than on the per-100-pound-weight basis stated in Minimum Rate Tariff No. 3. True and correct summaries of the freight bills for said incorrectly rated shipments and information regarding the precise location of all origins and destinations are included in the staff's Exhibit 1.

5. Nomura Bros. charged less than the lawfully prescribed minimum rates and charges in the instances set forth in the staff's Exhibits 2-A through 2-P. The wholesaler (debtor-consignee) for whom the transportation covered by each of said exhibits was performed and the amount of the undercharges shown therein are as follows:

| <u>Exhibit<br/>No.</u> | <u>Wholesaler<br/>(Debtor - Consignee)</u>                                 | <u>Amount of<br/>Undercharges</u> |
|------------------------|--|-----------------------------------|
| 2-A                    | John Arita and Benny Mukogawa, partners,<br>dba A & M Produce Co.          | \$162.73                          |
| 2-B                    | Atlas Vegetable Exchange, Inc.   | 447.53                            |
| 2-C                    | Calo Produce Company, Inc., dba Cal-0<br>Vegetable Exchange, Inc.          | 68.48                             |
| 2-D                    | Lem Ong and Frank Onishi, partners,<br>dba Diamond Vegetable Company       | 276.71                            |
| 2-E                    | Joe Koyoshi, an individual, dba I&T<br>Produce Company                     | 113.82                            |
| 2-F                    | Kai Matsushita and George Ariura, partners,<br>dba K&M Produce             | 326.87                            |
| 2-G                    | L.A. Vegetable Exchange, Inc.  | 11.69                             |
| 2-H                    | Morita Produce Co., a corp.  | 600.97                            |
| 2-I                    | Al Munari Produce Co., Inc.  | 310.77                            |
| 2-J                    | Sy Wong and Gett Wong, partners,<br>dba Mutual Produce Company             | 18.30                             |
| 2-K                    | T. Ogawa, M. Shinmei and Henry<br>Miyahara, partners, dba Ogawa Bros.      | 507.39                            |
| 2-L                    | Pacific Gamble Robinson Co., a corp.,<br>dba Pacific Fruit and Produce Co. | 16.30                             |
| 2-M                    | Supreme Brokers and Dealers, Inc.  | 260.42                            |
| 2-N                    | Ernest F. Jurado and A. J. Romo,<br>partners, dba T "N" T Produce Co.      | 231.13                            |
| 2-O                    | Hy Hayato Takano and Harold T. Hirasuna,<br>partners, dba Trio Produce Co. | 124.39                            |
| 2-P                    | W&S Produce Co., Inc.  | 709.72                            |

6. The total amount of the undercharges shown in Finding 5 is \$4,187.22.

7. Nomura Bros. were cooperative with the staff investigators and did not alter or falsify any of their documents.

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

1. Nomura Bros. violated Sections 3664, 3667 and 3737 of the Public Utilities Code.

2. Nomura Bros. should pay a fine pursuant to Section 3800 of the Public Utilities Code in the amount of \$4,187.22, and in addition thereto, should pay a fine pursuant to Section 3774 of said Code in the amount of \$500.

The Commission expects that Nomura Bros. will proceed promptly, diligently and in good faith to pursue all reasonable measures to collect the undercharges. The staff of the Commission will make a subsequent field investigation into the measures taken by said respondents and the results thereof. If there is reason to believe that either said respondents or their attorney have not been diligent, or have not taken all reasonable measures to collect all undercharges, or have 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. Henry Nomura and Sam J. Nomura, partners, doing business as Nomura Bros., shall pay a fine of \$4,687.22 to this Commission on or before the fortieth day after the effective date of this order.

2. Said respondents shall take such action, including legal action, as may be necessary to collect the amounts of undercharges set forth herein, and shall notify the Commission in writing upon the consummation of such collections.

3. Said respondents shall proceed promptly, diligently and in good faith to pursue all reasonable measures to collect the undercharges, and in the event undercharges ordered to be collected by paragraph 2 of this order, or any part of such undercharges, remain uncollected sixty days after the effective date of this order, said respondents shall file with the Commission, on the first Monday of each month after the end of said sixty days, a report of the undercharges remaining to be collected, specifying the action taken to collect such undercharges and the result of such action, until such undercharges have been collected in full or until further order of the Commission.

4. Said respondents shall cease and desist from charging and collecting compensation for the transportation of property or for any service in connection therewith in a lesser amount than the minimum rates and charges prescribed by this Commission.

The Secretary of the Commission is directed to cause personal service of this order to be made upon Henry Nomura and Sam J. Nomura, partners, doing business as Nomura Bros. The effective date of this order, as to this respondent, shall be twenty days after completion of personal service. The Secretary is

further directed to cause service by mail of this order to be made upon all other respondents. The effective date of this order, as to these respondents, shall be twenty days after completion of service by mail.

Dated at San Francisco, California, this 30<sup>th</sup>  
day of DECEMBER, 19 64.

William S. Jones  
President

Robert J. [illegible]  
Thomas [illegible]  
Vernon L. Stinger  
Commissioners

Commissioner A. W. Gatov, being necessarily absent, did not participate in the disposition of this proceeding.