

ORIGINAL

Decision No. 77949

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations and practices of Oxnard Van & Storage, Inc., a California corporation, doing business as Conejo Van & Storage and Ventura Van & Storage, Marjorie Duarte, an individual, doing business as Oxnard Transportation Company, Oxnard Van & Storage Company, A-1 Oxnard Moving & Storage, Thousand Oaks Moving & Storage, and Nation Wide Movers, Christopher J. Duarte, an individual, doing business as Oxnard Van Lines, Oxnard Moving & Storage, Ventura Van Lines, and Aaro Van & Storage, and Christopher J. Duarte and Marjorie Duarte, individuals, and Oxnard Van & Storage, Inc., a California corporation, doing business as A Allstates Discount Movers, A Ventura County Van & Storage, Allstates Discount Movers Storage & Packing, and Certified Nation Wide Movers the Ladies Choice.

Case No. 9056
(Filed May 5, 1970)

Andrew J. Marsh, for respondents.
Garv L. Hall, Counsel, and E. K. Hiehl,
for the Commission staff.

INTERIM ORDER DENYING MOTION AND
DIRECTING PRODUCTION OF RECORDS

This is an investigation on the Commission's own motion into the operations and practices of the respondents named in the above caption for the purpose of determining whether any or all of said respondents violated Sections 3705, 5225 and/or 5285 of the Public Utilities Code by failing to make records relating to their household goods carrier and/or highway permit carrier operations available for inspection by authorized employees of the Commission and by failing to comply with Item 30 of Minimum Rate Tariff No. 4-B by securing telephone listings under fictitious names not filed

with the Commission, by advertising or representing themselves under names different from those under which their effective household goods carrier permits were issued and by advertising and representing that their operations are conducted at an address or location where they do not maintain a place of business.

The investigation was initially set for public hearing on June 25 and 26, 1970 in Oxnard. Prior to said dates, the hearing was rescheduled to September 15 and 16, 1970 in Oxnard at the request of Mr. Andrew J. Marsh, attorney for respondents. Mr. Marsh had informed the Commission that because of earlier commitments which could not be rescheduled, he would be involved in other matters until after September 7, 1970.

At the outset of the public hearing on September 15, 1970, before Examiner Mooney, Mr. Marsh requested a further continuance of the matter to a later date. In support of his request, he asserted as follows: He has, in the past, represented respondents in general law matters; his practice is in this field; he is not too familiar with public utility and related laws and regulations; for this reason, he has advised respondents to employ counsel specializing in such matters to represent them herein; Mr. Christopher R. Duarte, one of the respondents, has been attempting to contact an attorney who is a specialist in public utility and related matters to represent respondents; said attorney has heretofore represented respondents before the Commission. Staff counsel objected to any further continuances.

Mr. Duarte was directed to determine forthwith when the new attorney would be available to proceed with the hearing. A recess was taken, and Mr. Duarte contacted said attorney and obtained the dates he would be available. A continuance to December 9 and 10,

1970, the earliest dates open to all parties involved, was granted. Respondents were admonished for not having obtained counsel sufficiently familiar with regulations governing household goods carriers to represent them prior to the instant hearing and were cautioned that no further request by them or any attorney representing them for a continuance beyond December 9, 1970 would be considered. As stated in People v. Lee, 57 Cal. Reprtr. 281, "Certainly one who desires to retain counsel is required to act with some degree of diligence (People v. Terry, 224 Cal. App. 2d 415, 419, 36 Cal. Reprtr. 722); he is not entitled to unlimited continuances for that purpose. (People v. Thomas, 58 Cal. 2d 121, 131, 23 Cal. Reprtr. 161, 373 P. 2d 97; People v. Stewart, 240 Cal. App. 2d 1, 6, 50 Cal. Reprtr. 26-)."

A motion was made by staff counsel for the suspension of all permits issued by the Commission to respondents until such time that respondents produce all records relating to their for-hire carrier operations for inspection by the staff investigator assigned to this matter. Counsel asserted that the staff had repeatedly requested said records; that only a few selected records were made available; and that respondents had continually refused access to all records. He pointed out that Section 5225 of the Household Goods Carriers Act (Secs. 5101, et seq., Public Utilities Code) specifically provides that the Commission or its authorized employees, representatives or inspectors shall, at all times, have access to documents, books, papers and correspondence kept or required to be kept by household goods carriers. Mr. Duarte argued that all records requested by the staff investigator were made available to him and that the reason there were not many records was due to the fact that respondents' main business is now car rental and the

volume of their household goods carrier business has been substantially reduced.

The Commission finds that:

1. Respondents are engaged in the business of transporting property over the public highways for compensation pursuant to permits issued by the Commission.

2. Two delays in the scheduled hearing dates in the investigation herein have been granted to respondents. No further delays beyond the currently scheduled hearing dates of December 9 and 10, 1970 in Oxnard should be granted to any respondent herein or to any attorney representing any or all of said respondents unless an extreme emergency is clearly shown to exist.

3. Respondents may not have made all records relating to their for-hire carrier operations available to representatives of the Commission for their review as required by Sections 3705 and/or 5225 of the Public Utilities Code. However, this has not been conclusively shown on the record so far developed in this proceeding.

4. The motion by staff counsel for an order temporarily suspending all permits issued to respondents should be denied.

The Commission concludes as follows:

1. No further delays in the scheduled hearing dates in the investigation herein shall be granted to any respondent or to any attorney representing them unless an extreme emergency is clearly shown to exist.

2. The motion by staff counsel to have all permits issued to respondents temporarily suspended shall be denied.

3. In the event they have not done so, respondents shall make all records relating to their for-hire carrier operations available for inspection by representatives of the Commission as required by Sections 3705 and/or 5225 of the Public Utilities Code.

O R D E R

IT IS ORDERED that:

1. No delay in the public hearing in the investigation herein scheduled for December 9 and 10, 1970, in Oxnard, shall be granted to any respondent or any attorney representing them unless an extreme emergency is clearly shown to exist.

2. The motion by the Commission staff for a temporary suspension of all permits issued to respondents to operate as for-hire carriers is hereby denied.

3. Each and every respondent herein shall comply with all rules and regulations governing their for-hire carrier operations, including Sections 3705 and/or 5225 of the Public Utilities Code.

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

Dated at San Francisco, California, this 10th day of NOVEMBER, 1970.

Augustin Chairman
William J. Simon
Thomas H. ...
Commissioners

Commissioner J. P. Vukasin, Jr., being necessarily absent, did not participate in the disposition of this proceeding.

Commissioner Vernon L. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.