

ORIGINAL

Decision No. 80000

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, F. W. Turcotte and Jack O. Goldsmith, Attorneys at Law, for respondents.^{1/}
Gary L. Hall, William J. McNertney, W. David Figg-Hoblyn, Attorneys at Law, and E. H. Hjelt,
for the Commission staff.

O P I N I O N

This is an investigation on the Commission's own motion for the purpose of determining whether any or all of the respondents named in the above caption violated Sections 3705, 5225 and/or 5285 of the Public Utilities Code by failing to make records relating to

^{1/} Marsh withdrew as attorney of record for respondents on September 15, 1970, and Turcotte withdrew as attorney of record for respondents on January 27, 1971.

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 paragraphs 1, 7(a) and 7(b) of Item 30 of Minimum Rate Tariff 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, respectively.

Sections 3705 and 5225 of the Public Utilities Code relate to radial highway common carriers, among others, and to household goods carriers, respectively. Said provisions both provide in part as follows:

"The commission or its authorized employees, representatives, or inspectors shall at all times have access to all lands, buildings, or equipment of.... (such) carriers used in connection with the operation of their business as such carriers in this State, and also all accounts, records, and memoranda, including all documents, books, papers, and correspondence kept or required to be kept by.... (such) carriers."

Section 5285 of the Public Utilities Code provides in part as follows:

"The permit of any household goods carrier may...., on the commission's own initiative, after notice and hearing, be suspended, changed or revoked, in whole or in part, for failure to comply with any provision of this chapter or with any lawful order, rule or regulation of the commission promulgated thereunder....

"As an alternative to the cancellation, revocation, or suspension...., the commission may impose upon the holder of such permit....a fine of not exceeding five thousand dollars...."

Item 30 of Minimum Rate Tariff 4-B (MRT 4-B) sets forth regulations governing the relationship of household goods carriers with the public. Paragraphs 1, 7(a) and 7(b) thereof, with which we are concerned herein, provide as follows:

"1. Any carrier doing business under one or more fictitious names shall, with respect to each fictitious name comply with Division 3, Part 4, Title X, Chapter II of the Civil Code of California entitled 'Of the Use of Fictitious Names,' and subsequent amendments thereto, and to show compliance therewith such carrier shall file with this Commission certified copies of any certificate and affidavits of publication required to be filed with the clerk of the county in which the principal place of business of the carrier is, or in the case of cessation of doing business was, situated."

"7. Carriers shall not, in any manner, misrepresent the scope of their services which are offered and made available to the public. Specifically carriers shall:

(a) Not advertise or otherwise represent themselves under any name different from that under which their effective permits are issued by the Commission.

Exception: Carriers who are duly authorized agents for other carriers as defined herein, for highway common carriers as defined in the Public Utilities Act, or for motor carriers operating under the jurisdiction of the Interstate Commerce Commission, may advertise and represent themselves as such an agent.

(b) 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. The location of a telephone answering service is not 'a place of business' as such term is used in this item."

Oxnard Van & Storage, Inc., Marjorie Duarte, an individual, and Christopher J. Duarte, an individual, the three respondents herein, operate pursuant to household goods carrier permits. In

addition, Christopher J. Duarte operates pursuant to a radial highway common carrier permit. Said respondents are also in the car rental business which is not involved herein. The principal place of business of Oxnard Van & Storage, Inc., and Christopher J. Duarte is at 1505 Pine Street, Oxnard, and the principal place of business of Marjorie Duarte is at 330 Calle Jazmin, Thousand Oaks. Marjorie Duarte is the president of Oxnard Van and Storage, Inc. All three respondents have been served with copies of MRT 4-B (Household Goods Tariff), together with all supplements and additions thereto. Each of the three respondents does business under fictitious names. The following fictitious names of each comply with the Civil Code provisions relating thereto and have been filed with the Commission as required by paragraph 1, Item 30, MRT 4-B:

Oxnard Van & Storage, Inc., doing business as
Conejo Van & Storage and Ventura Van & Storage.

Marjorie Duarte, doing business as Oxnard
Transportation Co., Oxnard Van & Storage Co.,
A-1 Oxnard Moving & Storage, Thousand Oaks
Moving & Storage and Nation Wide Movers.

Christopher J. Duarte, doing business as Oxnard
Van Lines, Oxnard Moving & Storage, Ventura
Van Lines and Aaro Van & Storage.

Nine days of public hearing were held before Examiner Mooney in Oxnard and Los Angeles during latter 1970 and 1971. The matter was submitted on oral argument on July 26, 1971. Evidence on behalf of the staff was presented by Customer Representative Supervisors from the Thousand Oaks and Oxnard offices of General Telephone Company of California, by a Commission staff representative and by three officials of the City of Thousand Oaks. Evidence on behalf of the three respondents was presented by Christopher J. Duarte and by Marjorie Duarte.

Interim Decision No. 77949, dated November 10, 1970, in this proceeding, directed each and every respondent herein, among other things, to 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, if they had not already done so.

Each of the three issues herein will be discussed under separate headings followed by our determination of the penalties, if any, that should be imposed on any or all respondents.

Respondents' Records

Following is a summary of the testimony and exhibits presented by the staff representative regarding this issue: The representative and a second member of the staff attempted to make a preliminary investigation of the operations of Marjorie Duarte and Oxnard Van & Storage, Inc., on July 29, 1969, at 1560 Pine Street, Oxnard; all warehouse and storage records of said respondents after July 23, 1969 were requested; the purpose of said investigation was to determine whether said respondents were complying with Decision No. 75820 which had revoked, effective July 23, 1969, the prescriptive warehouse rights of Marjorie Duarte which were being exercised by Oxnard Van & Storage, Inc.;^{2/} Marjorie Duarte made available 53 five by eight index cards which she described as her accounts receivable ledger covering the storage of automobiles and motorcycles; while said records were being reviewed Christopher J. Duarte took them away and stated that none of the records would be made available without a written demand therefor; written demand letters were served on Oxnard Van & Storage, Inc., Marjorie Duarte

^{2/} Decision No. 75820, dated June 24, 1969, in Case No. 8845, stated that Marjorie Duarte had been granted a prescriptive right as a public utility warehouseman; that the public utility warehouse business was being conducted by Oxnard Van & Storage, Inc. without authority from the Commission to transfer said rights; and that annual reports for the warehouse operation were filed late and the staff was denied access to warehouse records. Said decision revoked the prescriptive rights and canceled the warehouse tariff of Marjorie Duarte and ordered Oxnard Van & Storage, Inc. to cease and desist operating as a public utility warehouseman without proper authority from the Commission.

and Christopher J. Duarte on August 1, 1969 and again on August 23, 1969 directing each of said respondents to produce at the Commission's office in Los Angeles all records and documents kept or required to be kept by them and their respective fictitious business entities for the period January 1, 1969 to August 18, 1969, including all records relating to warehousing by any of said respondents under any name, fictitious or otherwise, and whether or not authorized by the Commission for said period; as a result of said demand letters and conversations with the staff, Christopher J. Duarte appeared at the Los Angeles office on August 27, 1969 and had with him 45 combination documents relating to household goods movements by him under his various fictitious names on file with the Commission; the representative made a list of said documents but was not allowed to photocopy them by said respondent; Marjorie Duarte did not appear; the representative made a verbal demand for all records referred to in the two letters at the outset of the meeting; no other documents for the three respondents or any of their fictitious name enterprises were produced by Christopher J. Duarte; he stated to the representative that he had additional records in the trunk of one of his rental cars which Marjorie Duarte had inadvertently rented out and that said records were, therefore, not available, but in any event, they were not for the staff's review; in this regard, he informed the representative that he would have to review all of the other records to determine if any were subject to the Commission's jurisdiction; no additional records were made available for the staff review subsequent to Decision No. 77949.

Christopher J. Duarte testified on behalf of respondents as follows: When the staff investigators called on respondents on or about July 29, 1969, they stated the purpose of their visit was to determine whether Marjorie Duarte and Oxnard Van & Storage, Inc., had complied with the cease and desist order regarding the warehousing of general commodities (Decision No. 75820, supra); they were

informed that no warehousing subject to the Commission's jurisdiction had been performed by any of the respondents subsequent to the effective date of the cease and desist order; Marjorie Duarte showed them some tags for a motorcycle and autos that had previously been picked up by their owners and some records for used household goods storage which is not subject to the Commission's jurisdiction; they did not look at the used household goods storage records; respondents now store only used household goods and motor vehicles which the staff informed them it was not interested in; when he met with the staff representative in Los Angeles on August 27, 1969, the representative looked only at the freight bills he listed although the witness had other records with him in his car which the representative did not request; he had also planned to bring other records relating to the storage of used household goods with him, but the car in which they had been stored in the trunk was inadvertently rented out, and they were not available; he did not know what records the staff wanted to review; after said meeting, he wrote a letter to the Commission stating all records would be made available for its inspection; no member of the staff has contacted him subsequent to the August 27, 1969 meeting.

In rebuttal to the testimony by Christopher J. Duarte, the staff representative stated that the only records made available to him at the August 27, 1969 meeting were the 45 documents he listed, and Mr. Duarte did not mention that he had any records outside in a car.

Sections 3705 and 5225 of the Public Utilities Code, quoted hereinabove, require radial highway common carriers and household goods carriers, respectively, to make all records relating to their operations available to authorized representatives of the Commission for inspection. Said legislative mandates must be obeyed implicitly by any and all parties and entities subject thereto. Furthermore, it is apparent that said sections require prompt adherence to such

requests. This, respondents had not done. A review of the evidence in the light most favorable to respondents shows at best a complete lack of cooperation on their part in complying with the various requests by the staff to review their records.

In his closing argument, counsel for respondents asserted that the demand letters served on respondents on August 1, 1969 and August 23, 1969 directing the production of records were so broad in scope as to constitute an unlawful search and seizure in violation of the Fourth Amendment of the United States Constitution. We do not agree. The reasonable interpretation of said letters is that they demanded the production of all records kept or required to be kept in connection with activities subject to the jurisdiction of the Commission.

As hereinbefore pointed out, respondents have been directed by interim Decision No. 77949 to make all records relating to their for-hire carrier operations available for inspection to representatives of the Commission. The order herein will repeat this directive and include all operations subject to the Commission's jurisdiction.

Fictitious Names

Testimony and exhibits in support of the staff allegation that respondents were doing business and advertising under fictitious names not filed with the Commission in violation of paragraphs 1 and 7(a) of Item 30 of MRT 4-B, quoted hereinabove, were presented by the two Customer Representative Supervisors of the General Telephone Company of California and by the staff representative. According to said evidence, the following four fictitious names, which had not been filed with the Commission by any of the respondents, were listed in the Classified Yellow Pages of the 1970 General Telephone Company of California Telephone Directory for Oxnard, Thousand Oaks and the surrounding area under telephone numbers used by one or more of the respondents: A Ventura County Van & Storage, Allstate Discount Movers Storage and Packing, Certified Nationwide Movers The Ladies Choice and A Allstate Discount Movers. The exhibits presented by the

telephone company witnesses show that two of said fictitious name listings were requested by Christopher J. Duarte. The staff representative testified that his investigation disclosed that Allstate Discount Movers Storage and Packing, one of said four fictitious names, was filed with the County Clerk on February 15, 1967 by Oxnard Van & Storage, Inc., and was published as required by the applicable provisions of the Civil Code. The others, he explained, were not so filed or published.

Marjorie Duarte testified that she wrote a letter, dated March 27, 1967, to the Licensing Section of the Commission requesting that the fictitious name "Allstate Discount Movers Storage and Packing" be added to the permit of Oxnard Van & Storage, Inc.; that a certified copy of the registration thereof with Ventura County and a copy of the affidavit of publication were included therewith; that when said respondent became aware during the investigation herein that the original request was not acted upon by the staff, a second letter, dated December 23, 1970, renewing the request was sent to the staff; and that carbon copies of said letters are included in Exhibit 21. Christopher J. Duarte testified that he personally mailed said letters on or about the dates shown thereon. The staff asserted that only the second letter had been received by it.

Christopher J. Duarte testified that A Ventura County Van & Storage books interstate shipments for Sherwood Van Lines, which has interstate authority, and rents vans which are loaded with household goods by the customer and placed in storage and that Certified Nationwide Movers The Ladies Choice books interstate shipments for Allstates and Rocky Ford, both of whom have interstate rights.

In his closing argument, counsel for respondents reiterated the testimony of the Duartes and in commenting thereon asserted that there had been reasonable compliance with the Commission's filing requirements for Allstate Discount Movers Storage and Packing and that the additional fictitious names in issue were so similar to this

or other fictitious names which were properly filed that the differences were in reality de minimus. In addition, he argued that the Commission does not have jurisdiction to require the filing of fictitious names. In this regard, he asserted that the State Legislature had preempted and occupied this field by the enactment of the provisions in the Civil Code which require the filing of fictitious names with the County Clerk and the publication thereof; that the only penalty set forth in said provisions for noncompliance therewith is that the offender cannot maintain an action in court on a contract entered under the fictitious name; and that since the Commission has additional penalties for noncompliance with its fictitious name filing requirements, said requirements are unconstitutional. In answer thereto, staff counsel argued that paragraphs 1 and 7(a) of Item 30 of MRT 4-B are not unconstitutional; that said tariff rules were promulgated under the plenary and statutory authority conferred on the Commission by the State Constitution and the Legislature; that the purpose of said tariff rules is to protect the public; and that said regulations do not conflict with the Civil Code.

We will accept the explanation by the Duartes that they had, to the best of their knowledge and recollection, mailed to the Commission, on or about March 27, 1967, the required copies of the filing with the County Clerk and affidavit of publication by Oxnard Van & Storage, Inc., regarding the use of the fictitious name "Allstate Discount Movers Storage and Packing". While for the purposes of this proceeding we will not find a violation regarding said fictitious name, respondents are placed on notice that in the future if they do not receive an acknowledgment from the Commission for any fictitious name filing within a reasonable time, it will be their duty and responsibility to determine whether said filing had been received by the Commission. It is noted that the second filing sent to the Commission on December 23, 1970 was received.

As to the three remaining fictitious names in issue, the evidence clearly establishes violations of paragraphs 1 and 7(a) of Item 30 MRT 4-B. The fact that they may be somewhat similar to other names which have been filed is irrelevant. The tariff rules require that in addition to compliance with the Civil Code provision, each and every fictitious name be filed with the Commission. This was neither done nor was there an attempt to do so. The listings and advertisements in the telephone directory referred to above for said three names are under the heading "Moving & Storage Service" and do not state or otherwise indicate that the services offered to the public under said names are limited to interstate shipments and the storage of used household goods only. The reasonable interpretation thereof is that there is a holding out to the public to perform household goods carrier service subject to the jurisdiction of the Commission.

We concur with the staff that the Commission has not exceeded its authority in promulgating rules regarding the filing of fictitious names. The argument by counsel for respondents that said rules are unconstitutional is not supported by the law and is without merit.

Place of Business

This issue involves the question as to whether 2320 North Moorpark Road, referred to in the record also as Moorpark Road, Thousand Oaks, is a "place of business" as that term is used in paragraph 7(b) of Item 30 of MRT 4-B, quoted hereinabove, which provides in essence that a carrier shall not advertise or represent that it conducts business at addresses or locations where it does not maintain a place of business. The staff alleges that it is not a place of business. Respondents assert that it is. A substantial amount of testimony and exhibits were presented on this issue on behalf of the staff, by the staff representative and by the Zoning Enforcement Officer, Assistant Planner and the Business License Supervisor for the City of Thousand Oaks and on behalf of respondents by Christopher J. Duarte.

There is no dispute between the parties regarding the present physical layout of the property designated as 2320 by respondents. It is as follows: The property in issue abuts on two streets, Calle Jazmin on the east and North Moorpark Road on the west; there is a single-story residence on the property; it is on the eastern portion of the property and faces Calle Jazmin; there are no other structures on the property; it is approximately 100 feet from the back of the house to the end of the property abutting on North Moorpark Road; the property is approximately 80 feet wide; Calle Jazmin is a residential street; North Moorpark Road is a thoroughfare with two lanes in either direction separated by a divider median of approximately 20 feet in this part of town; across the road from the property is a school; a chain link fence with a locked pedestrian gate facing said road encloses the property behind the house; there are signs along said road which state "No Stopping Anytime"; there is a curb approximately eight inches high at the edge of the road; there are no openings in the curb for vehicles to drive through; between the curb and the property in issue and the neighboring property on the same side of said road there is no sidewalk or other pavement; there are residences on the neighboring property on Calle Jazmin, and all are near and face said street; there is a relatively small sign attached to the back of the house which shows the address "2320" and includes a diagram thereunder showing that the entrance to the property is at 330 Calle Jazmin and is reached by going around the block; there are no other signs on the property facing North Moorpark Road; there are several businesses along North Moorpark Road in the general vicinity where said property is located; the closest thereto is a drive-in dairy at the corner to the south of the property; in the center of town, which is a distance to the south, North Moorpark Road is a business street; Calle Jazmin extends only a few blocks.

All parties are in agreement that 330 Calle Jazmin is a place of business within the meaning of said paragraph 7(b). Marjorie Duarte has lived on the premises for over eight years. One room of the house has continually been used as an office and has all the necessary office equipment, records and telephones. Someone has always been present to answer the telephones during normal working hours. Packing cartons used in the moving business have been stored in the garage.

2320 North Moorpark Road is listed in the 1970 Telephone Directory referred to above for six of the fictitious names used by respondents. All of the listings for the 2320 address show the telephone number 495-3505. Most of said fictitious names are also listed under other telephone numbers and addresses in the directory. Of the six fictitious names, two were filed by Marjorie Duarte and one by the corporation with the Commission, one was filed with the County Clerk and published (Allstate Discount Movers Storage and Packing) by Oxnard Van and Storage, Inc., but was not filed with the Commission until after the hearings herein were in progress and two were not filed with either the County Clerk or the Commission.

Christopher J. Duarte testified as follows regarding 2320 North Moorpark Road: Moving and storage business has been conducted at this location for the past eight or more years; there is a door on the North Moorpark Road side of the building on the premises; during this entire time, there has been a sign with the number 2320 on the side of the building facing North Moorpark Road; the present sign was put up around June 1, 1970, and the purpose of the street diagram thereon is to show a customer of respondents' car rental business the better entrance to the property at 330 Calle Jazmin if he should pick up or return a rental auto at this location; five separate mailboxes were put up next to the curb on North Moorpark Road; the number 2320 was shown on both the box and the pole holding it; mail was delivered to the box; each was either knocked down or removed by someone, and after the fifth such occurrence, the box was not replaced; a board had been placed against the curbing so an auto could be driven over the curb from North Moorpark Road onto the property; the board was removed when the property was enclosed with the present fence in 1970; a sign similar to the one now on the building showing the number 2320 and the street diagram to the Calle Jazmin entrance was affixed to the fence; said sign was covered over with an election poster and was removed along with the poster in December 1970; until 1969, there was a trailer on the property which could be easily seen from North Moorpark Road; 2320 and business names were clearly painted on the trailer; it was removed at the direction of the city; the required business license to engage in the moving and storage business and home occupation permit to have an office for said business in her home have been obtained by Marjorie Duarte; the address 2320 North Moorpark Road is shown on said license and permit; she has also had prior licenses for said address; in the household moving business, a customer would, in the ordinary course of business, never go to a carrier's office; generally, all business the customer has with the carrier is conducted

over the telephone or at the customer's residence; people would not know where to find Calle Jazmin which is a short residential street; whereas, North Moorpark Road is a major street, and the 2300 block could be easily located; the property in question is bordered by two streets and the use of the number for either street is proper.

The three officials of the City of Thousand Oaks testified that the official address for the property in issue is 330 Calle Jazmin, and no official North Moorpark Road number has been given for it by the city; that said road is a limited access street in this part of town, and it is necessary to have approval from the city to have access between it and adjacent property in said area; that no such authority has been given by the city for said property, and if it were given, the property would continue to have the Calle Jazmin address only; that there had been changes in the city ordinances regarding zoning, business licenses and home occupation permits in 1970; that consideration would be given to cancelling any business license or home occupation permit that might have inadvertently been issued for 2320 North Moorpark Road; that home occupation permits are only issued for tangible locations with known, official addresses; and that a permit issued for 330 Calle Jazmin would meet this test.

A number of photographs of the property in issue taken by the staff representative were received in evidence. The representative testified that during his investigation, he did not see any signs on the property in issue showing the number 2320 North Moorpark Road; that there was no access between said property and road; and that the only addresses he found on said road within the vicinity of said property were for a high school across the street therefrom at 2322 and for a drive-in dairy on a corner at 2220.

The oral argument presented on behalf of respondents and the staff reiterated the evidence each had presented on this issue. Additionally, the attorney for respondents asserted that the City of Thousand Oaks was incorporated in 1964 or 1965 and any addresses in use prior thereto, which would include 2320 North Moorpark Road,

continued as legitimate addresses thereafter; that there are businesses along North Moorpark Road in the vicinity of said property; that there is a market two blocks away and a gas company and a dairy nearby; and that said property is a "place of business" within the meaning of the tariff rule in question. In addition staff counsel asserted that a small sign on the back of a building does not constitute it a place of business and that both the post office and city had informed the staff that there is no 2320 North Moorpark Road address.

Upon careful review of the entire record on this issue, we are of the opinion that the street address "2320 North Moorpark Road" used in the telephone listings and advertisements in issue cannot reasonably be considered to be "a place of business" within the meaning of said term as used in paragraph 7(b) of Item 30 of MRT 4-B. To hold otherwise would not be in keeping with the clear purpose and intent of said item which is to govern the carriers relationship with the public. The rules in said item are for the benefit of the public and are to assure that he is adequately informed of all circumstances and conditions surrounding any business relationships he might have with the carrier. Generally, many shippers of household goods are not skilled or knowledgeable shippers, and it is necessary that we have additional regulations designed for their benefit which are not needed for regular shippers of general freight.

We have here a situation where there is a single piece of property between two streets. There is one structure on the property, a residence. The residence is on the part of the property near Calle Jazmin and faces said street. One room of the residence is maintained as an office and is a place of business within the meaning of the tariff rule. Anyone wishing to locate 330 Calle Jazmin could readily locate it from a street map. The end of the backyard is bordered by North Moorpark Road. There is no reasonable access between it and said road. Because of the distance between the house and North Moorpark

Road, it would be extremely difficult for a motorist driving along said road to see the relatively small sign with the number 2320 and the street diagram to the 330 Calle Jazmin entrance.

There is a substantial question as to whether the address 2320 North Moorpark Road can be legitimately used. However, even assuming this were not a problem, we would not alter our holding on this issue. The purpose of paragraph 7(b) is to make certain that if a customer wishes to visit a carrier's place of business, whether it be in connection with a claim, a dispute over charges or any other business reason, he can readily locate the address shown in the carrier's advertisements and have reasonable access at said address. This, as the evidence shows, is not the situation here. The fact that it is not possible to park in front of many business buildings and offices is of no significance. Not only is it not possible to park along North Moorpark Road at this location, but, as stated, there is no reasonable access from said road to the property in question.

Discussion

The evidence has been discussed in detail hereinabove. The only item remaining to be discussed is the penalty, if any, that should be imposed on any or all respondents. Based on a review of the entire record, we are of the opinion that a punitive fine of \$350 should be imposed on each respondent, and that in addition thereto, each respondent should be directed to make all records relating to all operations subject to Commission jurisdiction readily available for inspection by duly authorized Commission personnel when requested to do so, to cease and desist from advertising under fictitious names that have not been published and filed in accordance with the requirements of paragraph 1 of Item 30 of MRT 4-B and to cease advertising in the telephone book or otherwise that a household goods business is conducted at 2320 North Moorpark Road.

The attorney for respondents in his closing argument asserted that the staff has failed to establish that any of the household goods carrier violations alleged in the Order Instituting Investigation herein, if any do in fact exist, were wilful. He pointed out that said order refers to "wilful" violations. In this regard, staff counsel pointed out that Section 5285 of the Public Utilities Code does not require that the alleged violations be wilful for the Commission to take punitive action against a household goods carrier; that said section was amended in 1968 to eliminate the prior requirement therein that the violations be wilful; that the use of said term in the Order Instituting Investigation was inadvertent; and that in any event, the violations herein were wilful. The question of whether the violations were wilful is irrelevant. All the Commission need find is what is required by Section 5285 and that is that the violations existed. In any event, with the possible exception of the use of the 2320 North Moorpark Road in the telephone listings, the weight of the evidence would support a finding that the violations were wilful. Furthermore, in determining the amount of the punitive fines, we did not include in our consideration thereof the advertising of said address as a place of business because of the unique circumstances surrounding this issue.

The attorney for respondents further argued that irrespective of any culpability the other two respondents might have for the unauthorized use of the fictitious names, the record shows no responsibility whatsoever on the part of Christopher J. Duarte for this. He asserted that there is no evidence that said respondent paid for any of the advertisements and that, likewise, there is no evidence that establishes which of the respondents might have used any of the fictitious names. A review of the telephone listings in the 1970 telephone book referred to above shows that one of said unauthorized fictitious names was listed for the same telephone number (642-6641) as Ventura Van Lines, a fictitious name shown on the permit held by Christopher J. Duarte. Also, said directory also

shows that said unauthorized fictitious names are also listed therein with the same telephone numbers shown for fictitious names shown on the permits of either or both respondents Marjorie Duarte and Oxnard Van and Storage, Inc. Furthermore, the records of the telephone company show the listing for two of the unauthorized names was ordered by Christopher J. Duarte and that Marjorie Duarte paid some of the telephone bills for said unauthorized names. It is evident that each of the three respondents had some involvement with one or more of the unauthorized fictitious names. In the circumstances, each of the respondents will be held accountable therefor.

Findings

The Commission finds that:

1. Christopher J. Duarte has been issued radial highway common carrier and household goods carrier permits. Four fictitious names which comply with the requirements of paragraph 1 of Item 30 of MRT 4-B are listed on the permit rider attached to his household goods carrier permit.
2. Marjorie Duarte has been issued a household goods carrier permit, and five fictitious names which comply with the requirements of paragraph 1 of Item 30 of MRT 4-B are listed on the permit rider attached thereto.
3. Oxnard Van & Storage, Inc., has been issued a household goods carrier permit, and two fictitious names which comply with the requirements of paragraph 1 of Item 30 of MRT 4-B are attached thereto.
4. All respondents have been served with copies of MRT 4-B, together with all supplements and additions thereto.
5. Requests by authorized representatives of the Commission to review records have been made verbally to Marjorie Duarte and Oxnard Van & Storage, Inc., on July 29, 1969, and by demand letters, dated August 1 and 23, 1969, to all three respondents.

6. The demand letters referred to in Finding 5 did not constitute an unlawful search and seizure in violation of the Fourth Amendment of the United States Constitution.

7. Respondents have demonstrated a complete lack of cooperation with the verbal and written demands for records referred to in Finding 5 and have not fully complied therewith. At most, the compliance with said requests by all three respondents has been de minimus and not in accordance with the requirements of Sections 3705 and/or 5225 of the Public Utilities Code which provide that all records be made available for inspection by authorized representatives of the Commission.

8. There was colorable compliance by Oxnard Van & Storage, Inc., with the applicable tariff provisions in connection with the fictitious name "Allstate Discount Movers Storage and Packing", and for the purpose of this proceeding, no violation will be found in connection therewith.

9. The fictitious names, "A Ventura County Van & Storage", "Certified Nationwide Movers The Ladies Choice" and "A Allstate Discount Movers", were listed in the Classified Yellow Pages of the 1970 General Telephone Company of California Telephone Directory for Oxnard, Thousand Oaks and the surrounding area.

10. The fictitious names referred to in Finding 9 were not filed with the county clerk and published and, likewise, certified copies of such filing and publication were not filed with the Commission as required by paragraph 1 of Item 30 of MRT 4-B.

11. The telephone listings of the fictitious names referred to in Finding 9 were not in accordance with the requirements of paragraph 7(a) of Item 30 of MRT 4-B.

12. Each of the three respondents listed or advertised in the telephone directory referred to in Finding 9 one or more of the fictitious names shown on their individual permits with the identical telephone number or numbers also listed in said directory for one or more of the fictitious names referred to in said Finding 9.

13. The records of the General Telephone Company of California show that Christopher J. Duarte ordered listings for two of the fictitious names referred to in Finding 9 in said telephone company's directory and that Marjorie Duarte paid some of the telephone bills for the fictitious names referred to in said Finding 9.

14. Each of the respondents had some involvement with the fictitious name telephone listings referred to in Finding 9.

15. The telephone listings referred to in Finding 9 are not limited or otherwise restricted to interstate or other services not subject to the jurisdiction of the Commission, and the reasonable interpretation thereof is that there is a holding out to the public to perform household goods services subject to the jurisdiction of the Commission.

16. The fact that there may be some similarity between the fictitious names referred to in Finding 9 and fictitious names listed in the permits of the three respondents is irrelevant. They are not identical, and Item 30 of MRT 4-B requires that each and every fictitious name used by a household goods carrier comply with the provisions therein.

17. The Commission has not exceeded the authority bestowed on it by the State Constitution and the Legislature in promulgating Item 30 of MRT 4-B, and none of the provisions of said tariff item are unconstitutional.

18. 2320 North Moorpark Road, Thousand Oaks, was listed in the telephone directory referred to in Finding 9 as an address for six of the fictitious names herein, of which two were filed by Marjorie Duarte, two were filed by Oxnard Van & Storage, Inc., and two were not filed by any of the three respondents.

19. There is a question as to whether the address "2320 North Moorpark Road, Thousand Oaks" can be legitimately used; however, based upon the physical circumstances described hereinabove, said address, if it can be legitimately used, cannot reasonably be considered a "place of business" within the meaning of said term as used in paragraph 7(b) of Item 30 of MRT 4-B.

20. The telephone directory listings referred to in Finding 18 do not comply with the provisions of paragraph 7(b) of Item 30 of MRT 4-B.

21. Section 5285 of the Public Utilities Code does not require a finding by the Commission that violations were wilful as a condition precedent to imposing punitive penalties on a household goods carrier. The use of the term "wilfully violated" in the Order Instituting Investigation herein in connection with said section was inadvertent and does not in any way alter said statutory provision that if a violation exists, a punitive penalty may be imposed. In any event, the failure by each of the respondents to comply with Sections 3705 and/or 5225 of the Public Utilities Code and paragraph 7(a) of Item 30 of MRT 4-B was wilful. They had prior knowledge of and experience with said Code and tariff provisions. Furthermore, although respondents will be directed to cease and desist advertising 2320 North Moorpark Road as a place of business, this issue has not been included in the consideration of any punitive fine herein.

Conclusions

The Commission concludes that:

1. Each of the three respondents herein violated Sections 3705 and/or 5225 and also Section 5285 of the Public Utilities Code.
2. Each of the three respondents herein should pay a fine pursuant to Section 5285 of the Public Utilities Code in the amount of \$350.
3. Each of the three respondents herein should be directed to make all records relating to operations subject to the Commission's jurisdiction readily available for inspection by authorized representatives of the Commission when requested to do so and to cease and desist from violating Sections 3705 and/or 5225 of the Public Utilities Code.
4. Each of the three respondents herein should be directed to cease and desist violating Section 5285 of the Public Utilities Code, and in particular, paragraphs 1 and 7(a) of Item 30 of MRT 4-B.

5. Each of the respondents herein should be ordered to cease and desist advertising "2320 North Moorpark Road, Thousand Oaks" as a place at which household goods carrier business is conducted.

The staff of the Commission will make a subsequent field investigation into the measures taken by each of the respondents herein to comply with the provisions of the order which follows. If there is reason to believe that any or all of said respondents have not diligently or in good faith complied therewith, the Commission will reopen this proceeding as to that respondent or respondents for the purpose of formally inquiring into the circumstances and for the purpose of determining whether further sanctions should be imposed against said respondent or respondents.

O R D E R

IT IS ORDERED that:

1. Christopher J. Duarte, an individual, shall pay a fine of \$350 to this Commission on or before the fortieth day after the effective date hereof.

2. Marjorie Duarte, an individual, shall pay a fine of \$350 to this Commission on or before the fortieth day after the effective date hereof.

3. Oxnard Van & Storage, Inc., shall pay a fine of \$350 to this Commission on or before the fortieth day after the effective date hereof.

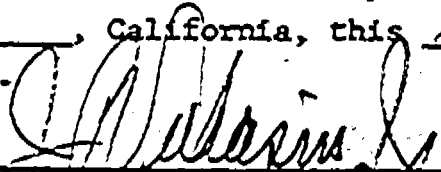
4. Each of the respondents herein shall make all records relating to all operations subject to the Commission's jurisdiction readily available for inspection by authorized representatives of the Commission when requested to do so and shall cease and desist violating Sections 3705 and/or 5225 of the Public Utilities Code.

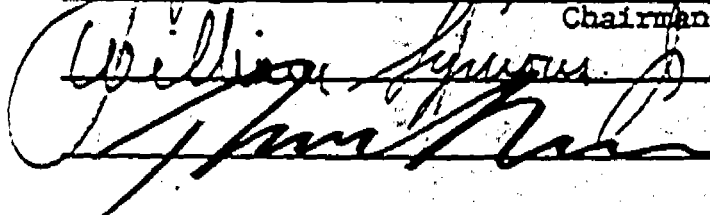
5. Each of the three respondents herein shall cease and desist violating Section 5285 of the Public Utilities Code and in particular paragraphs 1 and 7(a) of Item 30 of Minimum Rate Tariff 4-B.


6. Each of the respondents herein shall cease and desist advertising "2320 North Moorpark Road, Thousand Oaks" as a place at which household goods carrier business is conducted.

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

Dated at San Francisco, California, this 2nd
day of MAY, 1972.



Chairman




Commissioners

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