

ORIGINAL

Decision No. 80084

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 COMSTOCK LEASEWAY, a California corporation; PHILIP S. ROGERS, an individual doing business as CARVER TRUCKING; ROSARIO J. RUSSO, an individual doing business as Russo Farms; BILLY R. GREER, an individual doing business as Greer Enterprises; LUTHER SCOTT, an individual doing business as Scott Trucking; WILLIAM E. JOHNSON, an individual doing business as Johnson Trucking; RAY J. DAVIS, an individual doing business as Davis Trucking; BRADEN FARMS, a California corporation; FRANK AIELLO, an individual doing business as Continental Trucking; RONALD DUNBAR and O. A. DUNBAR, individuals doing business as Dunbar Trucking; M. L. KIEMAN, an individual doing business as Producers Transport; JOHN S. LOPES, JR., an individual doing business as Lopes Trucking Service; and EDDIE MEDRIN an individual.

Case No. 9340
(Filed March 7, 1972)

Frank Hayashida and Gordon Iler, for
Comstock Leaseway, respondent.
James J. Cherry, Attorney-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 into the operations and practices of Comstock Leaseway, a California corporation (Comstock), for the purpose of determining whether said respondent violated Section 3737 of the Public Utilities Code by

failing to pay any or all of the other respondent carriers named in the above caption for subhaul services within the time period specified in General Order No. 102-C. Paragraph 4 of said general order requires a prime carrier to pay subhaulers on or before the twentieth day of the calendar month following completion of the shipment.

Public hearing was held before Examiner Mooney in Sacramento on April 19, 1972, on which date the matter was submitted.

Stipulation and Findings

The Commission staff and Comstock stipulated as follows and we find said stipulations to be facts:

1. Comstock was issued a radial highway common carrier permit in 1965 which is still active although Comstock has not performed any transportation services recently.

2. A representative of the Commission staff visited Comstock's place of business in Sacramento during the latter part of 1971 and reviewed its accounts payable to subhaulers.

3. At the time of the staff investigation, Comstock had an operations manager and office manager, a terminal in Sacramento, one tractor and trailer and a subhaul bond on file with the Commission as required by General Order No. 102-C. It has no employees now. Its gross operating revenue for 1971 was \$131,770.94.

4. Exhibit 1 prepared by Comstock shows that as of October 31, 1971, said respondent owed \$36,791.42 to the subhauler respondents named herein and the following three additional subhaulers: Basic Materials, Casperson Trucking and DeWitt Trucking. With the exception of a \$100 advance to Frank Aiello on November 2, 1971, none of said amount has been paid to the subhaulers as of the date of the hearing herein. The shipper for whom the transportation was performed was Naturcal, Inc., and the commodities transported were fresh fruits and bins.

5. Comstock has not paid the amounts listed in Exhibit 1 as due and payable to the subhaulers shown therein within the time period specified in paragraph 4 of General Order No. 102-C.

6. Naturcal owes Comstock \$96,992.41 for transportation services, including those referred to in paragraph 4 hereinabove. Comstock presently has no other assets. Naturcal has not paid Comstock because of lack of funds. However, Naturcal does have a substantial claim, in excess of the amount owed Comstock, against ABC Warehouse Company and is suing on said claim in the State of Washington. Comstock has engaged an attorney who will intervene in said lawsuit, investigate Naturcal to determine if it has any other assets or affiliated companies that can be levied against and file a separate lawsuit against Naturcal and all affiliated companies, if there are any, for the \$96,992.41. Payment to the subhaulers is contingent on the success of said suits.

7. Claims have been filed by some of the subhaulers against the bonding company with which Comstock has its subhaul bond.

Conclusions

The Commission concludes that:

1. Comstock violated Section 3737 of the Public Utilities Code.

2. Said respondent should be directed to take all reasonable measures to collect the transportation charges due and owing from Naturcal, to pay the subhaulers the amounts set forth in Exhibit 1 upon the collection of said charges from Naturcal, to file quarterly reports with the Commission showing the action taken to collect said charges and make said payments and the status thereof, to cease and desist using subhaulers until all payments listed in Exhibit 1 have been made in full and to cease and desist violating Commission rules and regulations, as more specifically set forth in the order which follows.

The Commission expects that Comstock will proceed promptly, diligently and in good faith to pursue all reasonable measures to collect the transportation charges and pay the subhaulers. The staff of the Commission will make a subsequent field investigation into the measures taken by said respondent and the results thereof.

If there is reason to believe that either said respondent or its attorney has not been diligent, or has not taken all reasonable measures to collect the transportation charges and pay the subhaulers, 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. Comstock Leaseway, a California corporation, shall immediately pursue all reasonable measures, including any necessary legal action, to collect the \$96,992.41 in transportation charges owed to it by Naturcal.

2. Upon collection of the amount referred to in ordering paragraph 1 from Naturcal or any portion thereof, said respondent shall immediately pay to each subhauler listed in Exhibit 1 the amount shown therein as due and payable to each. In the event the amount collected from Naturcal is less than the total amount shown in Exhibit 1, payments to the subhaulers shall be prorated in accordance with the amount owed each, and any subsequent amounts that may be collected from Naturcal shall be applied towards said payments until they have been satisfied in full.

3. Said respondent shall file with the Commission, on the first Monday of each third month after the effective date hereof, a written report of the action taken to collect the transportation charges referred to in ordering paragraph 1 and to make the payments to subhaulers referred to in ordering paragraph 2 and the current status of such action, until such collections and payments have been completed or until further order of the Commission.

4. Said respondent shall cease and desist utilizing the services of subhaulers forthwith until all amounts owed subhaulers listed in Exhibit 1 have been paid in full.

5. Said respondent shall cease and desist violating the rules and regulations of the Commission, including General Order No. 102-C and the credit rules in the applicable minimum rate tariffs.

The Secretary of the Commission is directed to cause personal service of this order to be made upon Comstock Leaseway. 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 18th day of MAY, 1972.

William J. Vukasin, Jr. Chairman
James L. Stinson
Commissioners

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