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Decision No. 81805

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
Gordon Reynolds, doing business
as Viking Moving Specialists.

Case No. 9485
(Filed December 12, 1972)

Ronald R. Rossi, Attorney at Law, for
respondent.
Robert T. Baer, Attorney at Law, and
E. H. Hjelt, for the Commission staff.

O P I N I O N

This investigation was instituted by order of the Commission dated December 12, 1972 for the purpose of determining whether respondent was operating as a household goods carrier (Section 5109, Public Utilities Code) without having been issued the required permit (Section 5133, Public Utilities Code).

Hearings were held before Examiner Gilman in San Jose on April 2 and in San Francisco on April 10, 1973. Two ex-customers and the proprietor of the truck rental firm supplying the vehicles used were called by the staff. Respondent testified in his own behalf. Following briefs by staff and respondent, the matter was submitted on June 12, 1973.

Respondent advertises himself as providing moving services, including packing, loading and unloading, use of a vehicle and the services of a driver. Respondent nevertheless claims not to be subject to the jurisdiction of this Commission. This contention rests on the assertion that the vehicle is rented to the householder, and that the transportation services are provided free.

Respondent's billings break the services down into several categories. Charges are assessed separately for packing, loading, and unloading; no charge is assessed for driving time. The truck is provided and billed as a rental on a separate document. The customer pays respondent for the loading, unloading, and packing. A separate payment is made to 4-Point Rents (4-Point) for use of the truck.

Respondent or one of his helpers has always driven the truck, except in one instance where the customer asked for and received permission to drive.

Respondent does not own a truck. He uses trucks owned by 4-Point. Initially, 4-Point supplied the truck on a month-to-month basis; respondent guaranteed that 4-Point would be paid at least \$300 per month plus 8 cents per mile for mileage in excess of 8,000 miles per month. In some instances, the customers' payments did not equal the guarantee and respondent was required to make up the difference from his own pocket. Respondent now obtains the truck from 4-Point at the standard trip rental fee. He takes possession of the vehicle just before beginning a job and returns it as soon as the job is complete.

Free Transportation

The claim that transportation services are "free" has no objective basis either in terms of the carrier's operations and costs or the customer's needs and expectations. They are no more free than the premiums in a cereal box.

It was not necessary for the staff to prove that respondent actually received money consideration for the transportation in question. It is enough that he received an economic benefit (Inv. of Stahl (1965) 64 CPUC 405).

It is highly unlikely that respondent would have many patrons for his loading services if he could not also provide transportation. Also, he can set a higher price for his loading services because of the value to the customer of the "free" transportation. Furthermore, the customer pays for the use of the truck. Even if the payment is ostensibly made to another, it discharges a liability which would otherwise be borne by respondent.

Consequently, respondent is engaged in a business which includes carriage of household goods and receives compensation for all the services provided.

Truck Rental

A householder who rents a truck to carry his own goods and drives it himself is not a carrier. However, respondent's customers play no active role in the movement of the goods and never actually obtain possession of the vehicle.

A person who rents trucks without drivers is not a carrier (cf. Section 3543, Public Utilities Code; General Order No. 130, I.I.). However, respondent's standard practice is to offer and provide his customers with both a truck and a driver. He or his employee possesses the truck before, during, and after the moving operations.

In substance, the customer receives the same services from respondent he would receive from an admitted household goods carrier. The "rental" forms have no basis in the objective needs of customer or respondent and are in reality a sham and device to evade regulation.

Summary

Respondent is in a business which provides much or all of his personal income. The business offers the same services as those carriers which are unquestionably household goods carriers and is capable of inflicting on the public the same type of injuries which the Household Goods Carriers Act is intended to prevent.

Findings

1. Respondent engages in the transportation by a motor vehicle exclusively of used household goods and personal effects.
2. The transportation is conducted as a business and for compensation.
3. Respondent has no household goods carrier permit from this Commission.

Conclusions

1. Respondent is a household goods carrier and has violated Sections 5131 and 5133 of the Public Utilities Code.
2. Respondent should be ordered to cease and desist from operating as a household goods carrier.

O R D E R

IT IS ORDERED that Gordon Reynolds shall cease and desist from operating as a household goods carrier.

The Secretary of the Commission is directed to cause personal service of this order to be made upon respondent Gordon Reynolds. The effective date of this order shall be twenty days after completion of service on respondent.

Dated at ^{San Francisco} _____, California, this 28th day of AUGUST, 1973.

Vernon L. Stryker
resident
William J. Stryker
William J. Stryker
William J. Stryker
Commissioners

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