

82664

ORIGINAL

Decision No. _____

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 Moisi & Son Trucking, Inc., a California corporation; Polymir Industries, Inc., a California corporation; and Superior Roofing Company, doing business as H & H Supply, a California corporation.

Case No. 9624

(Filed October 24, 1973)

Joseph A. Moisi, for Moisi & Son Trucking, Inc., and Dale W. Sobek, for Polymir Industries, Inc., respondents.

Robert T. Baer, Attorney at Law, and Edward H. Hjelt, for the Commission staff.

O P I N I O N

A public hearing on the investigation was held before Examiner Rogers in Anaheim on January 3, 1974. Notice thereof, as required by this Commission, was given to all respondents. No appearance was made by or on behalf of Superior Roofing Company, a California corporation, doing business as H & H Supply, although, pursuant to subpoena, original documents in its possession were presented to the Commission staff.

The purpose of the investigation was to determine:

1. Whether Moisi & Son Trucking, Inc. (Moisi) has violated Sections 3664, 3667, 3668, and 3737 of the Public Utilities Code by charging, demanding, collecting or receiving a lesser compensation for transportation performed for Superior Roofing Company, dba H & H Supply, (Superior) and Polymir Industries, Inc. (Polymir)

than the applicable minimum rates by using the device of free transportation of some loads and by assessing less than the minimum rates on others.

2. Whether Superior and Poymir have received service from Moisi in the form of transportation of property for compensation over the public highways.

3. Whether Superior and Polymir have paid less than the applicable minimum rates and charges for transportation performed by Moisi.

4. Whether Superior and Polymir received transportation services from Moisi without charge.

5. Whether any sum or sums are now due or owing by Superior and Polymir to Moisi for transportation performed by Moisi.

6. Whether Moisi should be ordered to collect from Superior and Polymir the difference between charges billed or collected and charges due under the Commission's minimum rate tariffs, and to collect from Superior and Polymir sums due under said tariffs for any unbilled shipments.

7. Whether Moisi should be ordered to cease and desist from any unlawful operations or practices.

8. Whether, in the event undercharges are found to exist, a fine in the amount of such undercharges should be imposed upon Moisi pursuant to Section 3800 of the Public Utilities Code.

9. Whether, in the event failure to bill and collect for certain shipments is found to have occurred, a fine in the amount of the lawful tariff charges for such shipments should be imposed upon Moisi pursuant to Section 3800 of the Public Utilities Code.

10. Whether any or all of Moisi's operating authority should be cancelled or suspended or, in the alternative, a fine imposed pursuant to Section 3774 of the Public Utilities Code.

11. Whether any other order or orders that may be appropriate should be entered in the lawful exercise of the Commission's jurisdiction.

Moisi conducts operations pursuant to radial highway common carrier and highway contract carrier permits. It has a single terminal located in Anaheim. It operates ten tractors and 20 sets of trailers, including vans, flats, and bottom dumps. It has ten drivers and one mechanic in addition to office personnel. Its total gross revenue for the fiscal year ended June 30, 1973 was \$375,615. It has, and at all times referred to herein had, copies of all pertinent tariffs and distance tables.

Joseph A. Moisi, the person who appeared for Moisi, is the president of the corporation.

Evidence for the Commission staff was presented by associate transportation representatives Olsen and Peeples and rate expert Wilkins. In addition, pursuant to subpoenas duces tecum, original documents were produced by both shipper respondents (debtors), and copies substituted therefor.

History of Violations

Moisi has been investigated formally on two prior occasions.

In 1966, after hearing, the Commission found that Moisi had misstated destination points on shipments and these misstatements were deliberate and intentional with the intent of misleading the Commission and securing a preference for the shipper and consignee, and as a result had performed transportation at less than the lawful minimum rates and required it to collect the undercharges (Decision No. 70844 dated June 14, 1966 in Case No. 83336).

In 1971, after hearing, the Commission found that Moisi had performed transportation at less than the lawful minimum rates and required it to collect the lawful rates and pay a fine of \$2,000 (Decision No. 79111 dated August 31, 1971 in Case No. 9240).

Debtors

The investigation herein involves transportation by Moisi for (a) Polymix between branches in Orange, Richmond, San Leandro, and Oakland; and (b) Superior from the W. W. Henry Company in Huntington Park, and Superior in Sacramento. In Decision No. 79111 Moisi was found to have charged less than the minimum rates for transportation involving Superior.

Exhibit 4

The material gathered by the Commission's staff is contained in Exhibit 4. This exhibit contains all available documents relative to 11 shipments by Moisi for Superior and seven shipments by Moisi for Polymix.

The investigation was commenced because of an informal complaint advising the Commission that free, or partially free, shipments had been carried by Moisi for Superior from W. W. Henry Company.

Olsen testified that on November 1, 1972 he called on Moisi and requested records relative to shipping for Superior and received those for the period August 1, 1971 to September 30, 1972. He found no shipments originating at W. W. Henry. He then secured from Henry, on November 3, 1972, documents (Parts 1, 2, 4, 6, and 7 of Exhibit 4) which appeared to indicate free loads by Moisi. He returned to Moisi on November 6, 1972, but could find no evidence Moisi had billed or collected for such transportation. He asked Mr. Moisi if he had been transporting free loads for Superior from W. W. Henry and Mr. Moisi said yes. He asked Mr. Moisi for documents relative to these shipments and on November 20, 1972 Mr. Moisi told him no charges were made or collected relative to Parts 1 through 7 of Exhibit 4. Olsen further testified that on November 6, 1972 Mr. Moisi said he was approached by Polymix about a deal for light weight on shipments and later to carry shipments free one way and at the actual, or an excess weight on one-half load. Olsen said

Mr. Moisi informed him on November 14, 1972 that the only free loads he hauled were those reflected in Part 1, Exhibit 4, for Superior.

Mr. Peebles testified that he was assigned to investigate Moisi; that on April 2, 1973 he called on the Anaheim Builders Supply, a public weighmaster; that he found records of several loads carried by Moisi into or out of Polymix; that he made copies of the weighmaster's certificates and called on Moisi (see Parts 2 and 6 of Part 2, Exhibit 4); that on May 2, 1972 he asked Mr. Moisi for all supporting documents of shipments for the first quarter of 1972 and all of 1971; that some of these were produced, but those for December 1971 and January and February 1972 were not; that subsequently Mrs. Moisi found the missing documents at home and delivered them to him; that he found four freight bills (Parts 8, 9, 10, and 11, Part 1, Exhibit 4), issued the same date (November 9, 1972) but showing delivery dates of August 5, 1972, September 11, 1972, October 6, 1972, and October 20, 1972, respectively. The witness stated that Mr. Moisi told him the shipments were billed after Mr. Olsen found other unbilled loads hauled for Superior.

Mr. Peebles said that November 9, 1972 was three days after Mr. Olsen talked to Mr. Moisi about supplying all documents relative to free loads.

Mr. Peebles further testified that on May 1, 1973 he went to W. W. Henry Company in Huntington Park and asked for all documents relative to shipments to Superior by Moisi for the year 1972. Mr. Edsel Jackson (chief accountant for W. W. Henry Company) said he would help; that Jackson pulled documents concerning six shipments (Parts 6, 7, 8, 9, 10, and 11 of Part 1 of Exhibit 4);

that on June 26, 1973 he requested that Mr. Moisi give him documents relative to all shipments in 1971, 1972, and 1973 to date and that later, after he confronted Moisi with evidence of hauling for Polymir, Moisi produced the documents in Part 2, Exhibit 4.

Mr. Peeples further testified relative to Parts 2, 3, 4, 5, and 6 (Part 2, Exhibit 4) that no bill was sent to Polymir; that Mr. Moisi said the service was performed but not billed; that Mr. Moisi told him Mr. Sobek (president of Polymir) and he agreed that Moisi would not bill some loads; that it was agreed that Moisi would carry some truckloads between Orange and one of Polymir's Bay area plants for a flat \$200 each way regardless of weight or classification; and that after a few such loads Mr. Moisi and Polymir agreed mutually to bill northbound loads at or above minimum rates and to haul the reverse loads free of charge. Mr. Peeples said Mr. Moisi said he handled the traffic basically that way until about one year ago when he dropped the account.

Mr. Peeples further testified that Parts 1 and 7 of Part 2 of Exhibit 4 show shipments hauled for Polymir at \$200 per load in each direction; that the actual weights of the loads were secured from a public weighmaster in Anaheim; and that the empty weights of each of the Moisi vehicles used was obtained from the vehicle registration certificate.

Mr. Dale Sobek, the president of Polymir, called as a witness by the staff, identified the originals of certain documents in Part 2 of Exhibit 4 which are listed therein as having been obtained from the debtor (Polymir). (Copies of such documents were substituted and received in evidence.)

Mr. Dale Wilkins, a rate expert for the Commission, testified that he prepared Exhibit 5 (relative to transportation performed by Moisi for Superior). The witness testified that the total undercharges on shipments for Superior listed in Exhibit 4 were \$2,641.47

(Exhibit 5) and the total undercharges on shipments for Polymir listed in Exhibit 4 were \$2,316.45 (Exhibit 6).

Mr. Sobek asked Mr. Wilkins what the responsibility of an independent shipper was to determine the accuracy of rates charged.

Mr. Wilkins stated: "It has long been an established fact in transportation that a shipper is required to be knowledgeable of his transportation." He said, "The tariffs that govern the carrier's rates are open to public inspection and the Commission constantly checks the carriers to see that they assess the proper rates." He said a permitted carrier, such as Moisi, can charge more, but he cannot charge less than the Commission's established minimum rates.

Mr. Moisi declined to be sworn.

Mr. Sobek was sworn and testified that Polymir was not familiar with rates; that the company makes about 450 products and issues 500 to 1,000 invoices a month; that the company feels it is the responsibility of the carrier to assess the correct rates and that Polymir "never intentionally engaged in any process nor did we want to engage in any process whereby we were trying to breach any rules, regulations, laws, or whatever, as set forth by the State."

Mr. Sobek said that he feels the Commission did an inadequate job of providing documentation to indicate the charges in Part 2, Parts 2, 4, 5, and 6, Exhibit 4; that in April 1971 Polymir had a fire and lost all its records.

On cross-examination by staff counsel, Mr. Sobek testified that he does not know whether or not the bills have been paid. He said, "I never did negotiate any no charge shipments with any freight carrier in the State of California since I've been in business since 1964."

The witness said he was not certain he paid for the shipments reflected in Exhibit 6 and he had no reason to doubt that he received the shipments. He said he did agree with Mr. Moisi to pay \$200 each way for shipments and he did not agree to pay for only the one-way shipments.

On rebuttal, Mr. Peeples testified that Mr. Moisi said he performed the carriage represented by Exhibit 4, Part 2, Parts 2, 3, 4, 5, and 6, and made no charge because he had an agreement with Polymir for free loads. Mr. Peeples said that the other loads in Part 2, Exhibit 4, were transported by Moisi at an agreed flat rate of \$200 per load in each direction. Mr. Peeples said that during the Polymir review period (June 9, 1971 to April 25, 1972), he found 15 shipments by Moisi for Polymir; that of these, five (Parts 2, 3, 4, 5, and 6) showed no charge for the transportation, two (Parts 1 and 7) were undercharged, and the remainder were properly billed.

We had considered imposing a 60-day suspension because of the severity of the current violations and because this is Moisi's third formal complaint resulting in a finding of violations. Nevertheless, because of the number of innocent employees who might lose their livelihood for two months, we will not suspend Moisi's permits, but will impose a \$5,000 fine. However, Moisi should not assume that the Commission will continue to be lenient.

Findings

1. Respondent Moisi & Son Trucking, Inc. operates pursuant to radial highway common carrier and highway contract carrier permits issued by this Commission.

2. Respondent Moisi & Son Trucking, Inc. was at all times herein considered in possession of all applicable tariffs and distance tables.

3. Respondents Moisi & Son Trucking, Inc., Polymir Industries, Inc., and Superior Roofing Company were served with copies of the Order Instituting Investigation herein, and more than twenty days prior to the hearing herein were notified, in writing, of the time and place of hearing.

4. Respondent Moisi & Son Trucking, Inc. charged less than the lawfully prescribed minimum rate for transportation it provided for respondent Superior Roofing Company in each instance set forth in Exhibit 5, resulting in undercharges of \$2,641.47.

5. Respondent Moisi & Son Trucking, Inc. charged less than the lawfully prescribed minimum rate for transportation it provided for respondent Polymir Industries, Inc., resulting in undercharges of \$2,316.45.

6. The undercharges by Moisi & Son Trucking, Inc. for the transportation represented by Exhibits 4, 5, and 6 herein were deliberate and intentional in each instance on the part of Moisi & Son Trucking, Inc. and on the part of Superior Roofing Company and Polymir Industries, Inc. for the shipments attributable to each company. This is the third formal complaint resulting in a finding of violations by Moisi & Son Trucking, Inc.

Conclusions

1. Respondent Moisi & Son Trucking, Inc. violated Section 3664 of the Public Utilities Code.

2. Respondent Moisi & Son Trucking, Inc. and Joseph A. Moisi, president, violated Section 3667 of the Public Utilities Code.

3. Respondent Moisi & Son Trucking, Inc. and Joseph A. Moisi, president, violated Section 3668 of the Public Utilities Code.

4. Respondent Moisi & Son Trucking, Inc. violated Section 3737 of the Public Utilities Code.

5. The violations of Moisi & Son Trucking, Inc. and Joseph A. Moisi, president of Moisi & Son Trucking, Inc., were deliberate and intentional on their part and were done with the knowledge and participation of Superior Roofing Company and Polymir Industries, Inc.

6. Respondent Moisi & Son Trucking, Inc. should be required to collect the undercharges set forth in Findings 4 and 5 from Superior Roofing Company and Polymir Industries, Inc., respectively.

7. Respondent Moisi & Son Trucking, Inc. should pay a fine pursuant to Section 3800 of the Public Utilities Code in the amount of \$4,957.92, and in addition thereto should pay a fine pursuant to Section 3774 of the Public Utilities Code in the amount of \$5,000.

8. Respondents Superior Roofing Company and Polymir Industries, Inc. should be placed on notice that actions of shippers to obtain transportation at less than the minimum rates can result in criminal / prosecution pursuant to Section 3802 of the Public Utilities Code and/or civil prosecution pursuant to Section 3804.

As we have heretofore advised Moisi & Son Trucking, Inc. and Joseph A. Moisi, president, we expect them diligently and in good faith to pursue all reasonable measures to collect from the other named respondents the undercharges. The staff of the Commission will make subsequent field investigations thereof. If there is a reason to believe that Moisi & Son Trucking, Inc., or Joseph A. Moisi, president, has not been diligent, or has not taken all reasonable measures to collect all undercharges, or has not acted in good faith, the Commission will reopen this proceeding for the purpose of formally inquiring into the circumstances for the purpose of determining whether further penalties, such as complete cancellation of permits, should be imposed.

O R D E R

IT IS ORDERED that:

1. Moisi & Son Trucking, Inc. shall pay a fine of \$5,000 to the Commission pursuant to Public Utilities Code Section 3774 on or before the fortieth day after the effective date of this order. Moisi & Son Trucking, Inc. shall pay interest at the rate of seven percent per annum on the fine; such interest is to commence upon the day the payment of the fine is delinquent.

2. Moisi & Son Trucking, Inc. shall pay a fine to this Commission pursuant to Public Utilities Code Section 3800 of \$4,957.92 on or before the fortieth day after the effective date of this order.

3. Moisi & Son Trucking, Inc. shall take such action, including legal action, as may be necessary to collect the undercharges set forth in Findings 4 and 5, and shall notify the Commission in writing upon collection.

4. Moisi & Son Trucking, Inc. shall proceed promptly, diligently, and in good faith to pursue all reasonable measures to collect the undercharges. In the event the undercharges ordered to be collected by paragraph 3 of this order, or any part of such undercharges, remain uncollected sixty days after the effective date of this order, respondent shall file with the Commission, on the first Monday of each month after the end of the 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. Failure to file any such monthly report within fifteen days after the due date shall result in the automatic suspension of Moisi & Son Trucking, Inc.'s operating authority until the report is filed.

5. Moisi & Son Trucking, Inc. 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.

6. Superior Roofing Company and Polymir Industries, Inc. are placed on notice that violations of any of the provisions of the California Public Utilities Code can result in prosecution pursuant to Sections 3802 and 3804 of the Public Utilities Code.

The Secretary of the Commission is directed to cause personal service of this order to be made upon respondent Moisi & Son Trucking, Inc. and to cause service by mail of this order to

be made upon all other respondents. The effective date of this order as to each respondent shall be twenty days after completion of service on that respondent.

Dated at San Francisco, California, this 2nd day of APRIL, 1974.

Veronica L. Stearns
President
William J. Sygorski
[Signature]
[Signature]
Commissioners

I abstain
Thomas Moran