

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application No. 56171
(Filed December 30, 1975)

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O P I N I O N

O. J. Plummer, Jr. has operational control and management of Peninsula Moving & Storage Company, a corporation, as well as ownership, management, and control of Consolidated Van Lines, a proprietorship.

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Assembly Resolution No. 57, entered May 22, 1972, requested the Commission to investigate deliberate underestimating by household goods carriers and to issue orders and regulations designed to eliminate deliberate underestimating as a competitive practice. Responsive to that request the Commission undertook an investigation in Case No. 5330 and issued orders and regulations in its Decisions Nos. 81518 and 83505 directed towards that objective. Some of the regulations are set forth in Item 33.7 of Minimum Rate Tariff 4-B. Paragraph 5 of that item requires every household goods carrier to file with the Commission a semiannual report, in a form to be provided by the Commission, of data regarding estimates given during the reporting period.

On June 26, 1975 there was mailed to all household goods carriers, including applicants, two copies of Form HG 2 together with instructions to complete and return one copy in an enclosed pink envelope by July 31, 1975. The instructions further stated that if the properly completed report form is postmarked after July 31, 1975 a fine of \$25 will be levied; and that failure to file the report and pay the fine, if required, may result in a suspension or revocation of the household goods carrier permit or subject the carrier to the imposition of an additional fine, not to exceed \$5,000.

In July 1975 the accountant for applicants requested and received from J. L. Asman of the Commission's Transportation Division an extension of time until August 12, 1975 within which to file the reports. Between the period August 12 and September 30, 1975 the HG 2 forms to be completed and filed by applicants were not received by the Commission.

By Resolution No. 17651 dated September 30, 1975, the Commission ordered the household goods carrier permits of applicants suspended effective October 30, 1975 unless on or before that date

the HG 2 form is completed and filed and a fine of \$25 paid; and the operating authority so suspended revoked December 1, 1975, unless the fine is paid and the required HG 2 forms filed on or before the revocation date, in which event the suspended operating authority shall be reinstated. The resolution further ordered that the suspension and revocation become operative unless prior to the suspension date the carrier requests that a public hearing be held, in which event the suspension and revocation be deferred until further order of the Commission.

On September 30, 1975 notices of the Commission's order in Resolution No. 17651, together with copies of that resolution, were placed in envelopes, sealed, and mailed postage prepaid addressed to O. J. Plummer, Jr., Consolidated Van Lines, Box 230, Monterey, California 93940; and addressed to Peninsula Moving & Storage Company Box 230, Monterey, California 93940.

On December 22, 1975 the Commission received completed HG 2 forms of Peninsula Moving & Storage Company and of Consolidated Van Lines attached to a letter dated December 19, 1975 and signed by Gary M. Plummer. The letter requests reinstatement of the permits and was docketed by the Commission as the instant applications.

Gary M. Plummer is the son of O. J. Plummer and is engaged in a business separate and apart from transportation. He testified that his father is elderly and has been under medical care with respect to his eyesight. He has been overseeing his father's household goods carrier business during the times involved here. The HG 2 forms had been received but had been forwarded in error by office personnel to Byron B. Blout, the carriers' accountant. After he received them and examined them, Mr. Blout realized that the information necessary to complete the forms would have to come from the records maintained in the office of the carriers. Foreseeing

that by the time that he could return the forms to the carriers' office for the forms to be completed from the office records and for them to be signed either by O. J. Plummer or his son, the due date for mailing would have been past, he requested and obtained the extension of time from Mr. Asman.

Gary M. Plummer further testified that he signed the forms on August 8, 1975 and is reasonably certain that they were mailed immediately thereafter in the regular course of business. He was unaware that the Commission had not received the forms and that the permits had been suspended and then revoked until after December 1, 1975. A search by him of office records disclosed that the notice mailed by the Commission addressed to Peninsula Moving & Storage Company had been received and had been filed away by the office staff with no action having been taken. The search did not disclose the notice to Consolidated Van Lines and to the best of his knowledge had not been received by it. He stated that 95 percent of the business conducted by both carriers is transportation for the United States Military and the other 5 percent is interstate and international shipments transported by other carriers from whom applicants receive commissions as agents. Neither carrier transported any California intrastate shipments subject to MRT 4-B during the first six months of 1975.

The HG 2 form reports that were received on December 22, 1975 show on their face that they are photocopies of duplicate originals which the instructions by the Commission mailed June 26, 1975 directed should be retained by the carrier. The forms were signed by Gary M. Plummer and were dated August 8, 1975. The reports show that no used household goods shipments were completed and that no "Probable Cost of Services" documents were issued by either applicant during the period January 1, 1975 through June 30, 1975.

Exhibits 2 and 3 set forth the records of these carriers regarding notices sent to them by the Commission and resolutions by the Commission pertaining to applicants' household goods carrier permits. Excluding notices and resolutions of suspension of the permits because of failure to maintain evidence of insurance on file with the Commission, those records show that during the five-year period 1970 through 1974 O. J. Plummer, doing business as Consolidated Van Lines, on six separate occasions, was sent notices by the Commission that he was delinquent in the filing of required reports and that his permit would be suspended or revoked if the report was not filed by a certain date. In two of those instances the permit was suspended and later reinstated after the reports were filed. During that same five-year period on three separate occasions, Peninsula Moving & Storage Company was sent three notices by the Commission that it was delinquent in the filing of required reports and that its permit would be suspended or revoked if the report was not filed by a certain date. In two of those instances the permit was suspended and later reinstated after the reports were filed.

The principal issue in these applications is simple: Are there somewhere envelopes postmarked prior to August 13, 1975 that contain the original HG 2 forms completed as set forth in the photocopies submitted in these applications? If there are, no just cause for revocation or the \$25 fine exists; if not, there is just cause for revocation.

On that issue we have the testimony of Gary M. Plummer and the photocopies of the aforesaid HG 2 forms maintained by the carriers. We also have evidence showing a disposition by applicants' management to be delinquent in the filing of required reports. The fact that the notice of suspension and revocation was filed away rather than acted upon is indicative either of sloppy office procedures or a propensity to disregard notices or correspondence from the Commission.

We are aware of criticisms of the U. S. Postal Service that mail pickup and/or delivery is not as frequent or prompt as it has been in the past. We must reject, however, a possibility that mail which is properly posted may not be delivered. A letter correctly addressed and properly mailed is presumed to have been received in the ordinary course of mail. (Evidence Code, Section 641.) It is not that we disbelieve Gary M. Plummer's testimony that he signed the HG 2 forms on August 8, 1975; there is no direct evidence that after he signed the forms they were placed in envelopes properly addressed to the Commission and properly mailed with postage prepaid. The weight of the evidence indicates that the completed and signed forms were not properly mailed. We find that the permits were properly revoked for cause.

The next matters are whether the permits should be reinstated; and if so, should there be any conditions relating thereto. An explanation has been given by Gary M. Plummer regarding the missing HG 2 forms. He has also pointed out that the requirements of his own business and the health of his father have prevented them from continuous supervision of the businesses of applicants. We also must take into consideration, however, that reports are filed on time by thousands of household goods carriers. It is a relatively few that are delinquent. Many of the required reports are prescribed by the Legislature. The others have been ordered by the Commission in order to implement a system of regulation which has been directed by the Legislature. Delay in the filing of the reports, or the failure to file them, impedes the collection, collation, and analysis of the data contained therein which is to be used to implement a statutory, regulatory scheme to the best interest of the public. The Commission's actions to obtain delinquent reports are costly to household goods carriers generally and to the taxpayers.

The fact that neither of the carriers transported any California intrastate shipments of household goods subject to MRT 4-B during the reporting period is not a mitigating factor. That circumstance could not be known to the Commission until it received the reports, and until the reports were received the necessary information regarding the practices of all household goods carriers was incomplete.

Resolution No. 17651 calls for a \$25 fine for reports filed after the delinquent date but prior to October 30, 1975. After consideration we are of the opinion that the permit of each applicant should be reinstated upon the payment of that fine and an additional fine of \$100, or a total of \$125 by each applicant. In the event the Commission receives a pink envelope postmarked on or before August 12, 1975 containing the HG 2 completed report form for the reporting period January 1, 1975 to June 30, 1975 from either applicant, the fines imposed upon both applicants will be remitted.

We find that:

1. Applicants are household goods carriers. They failed to file HG 2 reports in the prescribed manner and at the specified time.
2. After due notice applicants' household goods carrier permits were properly revoked for just cause effective December 1, 1975.
3. It was the intent of Gary M. Plummer that the HG 2 reports be filed prior to the delinquent date.

We conclude that:

1. The household goods carrier permits of each applicant should be reinstated upon the payment by each of them of a fine of \$125 as provided in the order which follows.
2. The fines imposed upon both applicants should be remitted in the event the Commission receives a pink envelope postmarked on or before August 12, 1975 containing the HG 2 reports of either of the carriers for the reporting period January 1, 1975 to June 30, 1975.

