

ORIGINAL

Decision 84 05 017

MAY 2 1984

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Eliseu Angra Bettencourt doing business as Sand City Movers, Inc., for authority to obtain a Household Goods Carrier Permit to operate in the State of California.

Application 83-11-42
(Filed November 21, 1983)

Eliseu A. Bettencourt, for Sand City Movers, Inc.,
applicant.
James D. Westfall, for the Commission staff.

O P I N I O N

Sand City Movers, Inc. (applicant), a California corporation, requests authority to operate as a household goods carrier as defined in Public Utilities (PU) Code § 5109. Applicant requests authority to serve all points and places within the State of California.

The Commission's Transportation Division opposed granting of the application because of certain alleged unlawful activities previously engaged in by applicant's president, Eliseu Bettencourt, while an officer in another household goods carrier, Cota Transfer & Storage (Cota). Staff believes that applicant may not possess the integrity and honesty required under PU Code § 5135. The pertinent provision contained in § 5135 states: "The commission shall issue a permit only to those applicants who it finds have demonstrated that they possess sufficient knowledge, ability, integrity and financial resources and responsibility to perform the service within the scope of their application." Accordingly, a duly noticed public hearing was held in San Francisco on January 18, 1984 before Administrative Law Judge John Lemke and the matter was submitted on that date.

Evidence

The Staff

The staff presented its case primarily through testimony of two Commission employees and one witness employed by the California Department of Food and Agriculture.

Michael Flaherty, an associate transportation representative, testified that he had received information from the Commission's San Jose District Office that Mr. Bettencourt, while president of Cota, had pled guilty in Monterey Municipal Court in April 1983 to two counts of "bumping" (increasing) weights and presenting bills for charges not verified; and that Bettencourt had paid a fine of \$1,500 and was placed on summary probation for three years. Flaherty pointed out that Bettencourt holds 25% of the outstanding shares of capital stock in applicant, and that his wife owns another 25%. The Bettencourts are also holders of 50% of the outstanding shares of stock in Cota.

David Lazier is a senior investigator with the Weighmaster Enforcement Program, Division of Measurement Standards, California Department of Food and Agriculture. He testified that in February 1982 he received information from the Transportation Office of Fort Ord that it believed Bettencourt had falsified weight certificates, "bumped" weights, not weighed vehicles for tare weights, and presented falsified documents for payment. Lazier subsequently investigated these allegations. He stated that he personally observed Bettencourt manipulating the vehicle scale he was operating. He also observed Bettencourt pick up and load household goods and deliver them to a residence without weighing the shipment. Thereafter, freight bills were presented to Fort Ord for payment, based upon weights shown on falsified weight certificates. He observed Bettencourt's employees "bumping" tare weights by adding fuel to vehicles after obtaining tare weights.

At the time of the alleged violations, Bettencourt was a licensed weighmaster, the license having been issued in the name of Bear Storage Company, the fictitious name used by Cota.

Exhibit 5 is a copy of an investigator's report prepared by Lazier in March 1982 concerning Cota's and Bettencourt's operations and practices. Numerous alleged violations are addressed in the report. One of these concerns a violation of Section 487 of the California Penal Code - Grand Theft. This violation concerned a shipment of household goods within Prunedale, a community near Salinas. A freight bill was presented on which charges were assessed based upon a weight of 4,720 pounds. Lazier reweighed the shipment and found an actual weight of only 2,220 pounds resulting in a "bump" of 2,500 pounds. Application of a rate per 100 pounds of \$8.25 resulted in a loss to the government of approximately \$206. At the time of the violation, this amount constituted grand theft, although the dollar amount constituting a grand theft violation has since been increased to \$400.

Lazier stated that his report contained 26 alleged violations and that the District Attorney filed an action in connection with 18 of those charges. He stated the result of the filings was that on April 1, 1983 through a plea bargaining arrangement Bettencourt pled guilty to one count of violation of Section 12720, Chapter 7, Division 5, California Business and Professions Code (CBPC) and one count of Section 12726 of Chapter 7, Division 5 of that Code. Both violations are misdemeanors.

Applicant

Bettencourt stated that applicant is presently in the warehousing business and desires to establish a household goods operation in connection with the storage activity. He explained that he has left Cota and his wife is operating that business at the present time. Cota and applicant, although both owned by the

Bettencourts, are two separate businesses, situated about 20 miles apart. Bettencourt has not been a weighmaster since March 1982. He stated that one of applicant's employees has successfully completed the written examination for a household goods carrier permit, as required under PU Code § 5135.

With respect to certain of the allegations made against him, Bettencourt explained that it is true that on occasion he inserted weights on weight certificates without the shipments having been weighed in order to receive payment for the transportation performed. On occasion, employees had neglected to obtain weight certificates, and the Transportation Office at Fort Ord would not pay a freight bill without a weight certificate being attached.

Bettencourt explained, with respect to Lazier's testimony, that because of the often extremely busy nature of his operations, trucks were sometimes weighed the night before so that he could have a tare vehicle weight available first thing in the morning. In two instances, he testified, employees delivered shipments without getting weight certificates due to emergency family situations.

Regarding the shipment within Prunedale, weighing 4,720 pounds, Bettencourt stated (Exhibit 5) that the move took place about 15 miles from any scale; that to have traveled to and from the scale would have increased his expenses greatly; and that he believed the shipment actually weighed about 4,720 pounds.

Discussion

Although the practices engaged in by Bettencourt were admittedly wrong, in some instances they were due to exigencies arising from circumstances beyond his control. In those situations where shipments were delivered without having been weighed, Bettencourt stated that he sometimes estimated the cubic footage of the shipment and multiplied that estimate by a factor of 7 to arrive at an approximate weight. This method of estimating weights is

recognized by and used in the moving industry in preparing probable costs of services and for computing storage-in-transit costs on shipments which are subject to hourly rates both into and out of storage; it is even authorized in our Minimum Rate Tariff 4-B (see Items 31, 33 and 180). However, as applicant is now aware, the falsification of a public weighmaster's certificate is a crime and will not be tolerated.

Bettencourt was convicted of two misdemeanors. He was prosecuted and pled guilty as an individual at the time he was engaging in the improper activities. In the matter before us, Bettencourt is a 25% shareholder in the corporate applicant. His wife is holder of another 25% of the shares. Two other individuals, Oldmiro de Matos and Maria de Matos, who were not involved in Cota, are the remaining 50% shareholders. In the circumstances, the sought permit should be granted. But because of Bettencourt's recent history and because he is applicant's president, applicant is hereby placed on notice that if violations of Commission orders, rules, and regulations are committed by its officers or employees, its permit is subject to revocation under the provisions of PU Code § 5285. The Commission's Transportation Division should be directed to diligently oversee the operations of Sand City to ensure that it is in compliance with the statutes and this Commission's rules and regulations governing its operations.

We commend the staff for bringing the facts surrounding this application to our attention. Staff's doubts regarding applicant's request are not without foundation and its opposition to the request not improvidently taken. However, in the circumstances we will grant the application based upon Bettencourt's minority shareholder status, subject to the warning stated above.

Applicant intends to operate five units of equipment in its proposed service. It has furnished evidence of required insurance coverage. A balance sheet attached to the application shows, as of August 31, 1983, assets of \$33,237 and a net worth of \$17,461.

Findings of Fact

1. Applicant, a corporation, requests a permit authorizing operations as a household goods carrier.
2. Eliseu Bettencourt is a 25% shareholder in applicant and is applicant's president.
3. On April 1, 1983 Eliseu Bettencourt pled guilty in Monterey Municipal Court to one count of violating CBPC Section 12720 (issuing a false weight certificate, a misdemeanor) and one count of violating CBPC Section 12726 (certifying the tare weight of a vehicle without weighing it, a misdemeanor).
4. Bettencourt was sentenced to three years summary probation and ordered to pay a fine of \$1,500.
5. Applicant possesses the ability and financial responsibility necessary to initiate the proposed operations.
6. Applicant should not be denied the sought permit because of the above-described unlawful practices of Eliseu Bettencourt.

Conclusions of Law

1. The application should be granted.
2. The Commission's Transportation Division should be directed to prepare for issuance a household goods carrier permit in the name of applicant. The Division should also be directed to diligently oversee the operations of Sand City to ensure that its operations are in compliance with the governing statutes and this Commission's rules and regulations.
3. Since applicant has furnished evidence of required insurance coverages, and one of its employees has passed the written examination required by PU Code § 5135, this order should be effective today.

O R D E R

IT IS ORDERED that:

1. The Commission's Transportation Division shall prepare a household goods carrier permit for issuance to Sand City Movers, Inc. authorizing the transportation of used household goods between all points and places within California.

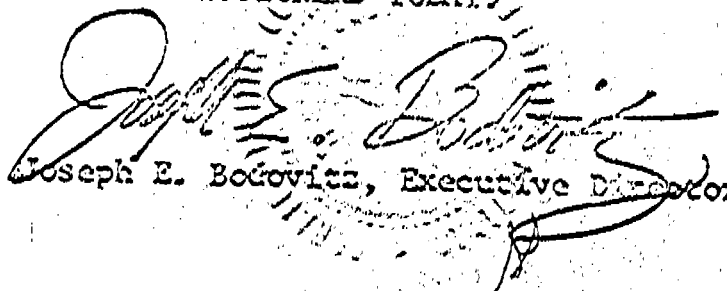
2. The Transportation Division shall diligently oversee the operations of Sand City Movers, Inc. to ensure that it is in compliance with the governing statutes and this Commission's rules and regulations. In the event the Transportation Division staff believes that violations of the law have occurred, it will forthwith pursue appropriate remedial action.

This order is effective today.

Dated MAY 2 1984 , at San Francisco,
California.

LEONARD M. GRIMES, JR.
President
VICTOR CALVO
PRISCILLA C. GREW
DONALD VIAL
WILLIAM T. BAGLEY
Commissioners

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY.


Joseph E. Bogovitz, Executive Director