

Decision 84 11 031 NOV 7 1984

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, rates, and practices of Robert J. Cerini, doing business as CERINI FARMS, and the Carl Limata Co., Inc. and Langworthy Paving Co., Inc.

I. 84-05-047
(Filed May 16, 1984)

O P I N I O N

This is an investigation on the Commission's own motion to determine whether Robert J. Cerini (respondent), dba Cerini Farms, has violated Public Utilities (PU) Code §§ 3664, 3667, 3668, and 3737 in transporting asphaltic concrete in his dump truck equipment over the public highways of this state for compensation at rates less than the lawful minimum rates for The Carl J. Limata Co., Inc. and Langworthy Paving Co., Inc. (collectively debtor respondents) and whether the debtor respondents paid less than the applicable rates and charges for such transportation. Respondent holds a highway common carrier certificate, a highway contract carrier permit, agricultural carrier permit, a livestock carrier permit, and a dump truck carrier permit.

No hearing was held on the matter as the case was submitted by signed written stipulation, duly filed in the case, between the Commission staff and the three parties.

Specifically, the Ordering Paragraphs of I.84-05-047 require the determination of the following:

- "1. Whether Respondent, in performing transportation for the Debtor Respondents, has violated Sections 3664, 3667, and 3737 of the Public Utilities Code, or any of these Sections, by failing to comply with the

- requirements for a highway permit carrier, specifically, to charge and collect the applicable rates and charges set forth in Minimum Rate Tariff 7-A.
- "2. Whether Cerini Trucking is the alter ego of Robert J. Cerini dba Cerini Farms.
 - "3. Whether the Debtor Respondents, or either of them, have paid less than the applicable rates and charges for the transportation performed by Respondent.
 - "4. Whether Respondent has violated Section 3668 of the Public Utilities Code by employing a device to permit Debtor Respondents to obtain transportation at less than the minimum rates.
 - "5. Whether the Debtor Respondents, or either of them, have violated Section 3669 by employing a device to obtain transportation for property at less than the minimum rates.
 - "6. Whether, in the event amounts less than the minimum lawful rates and charges are found to have been charged, collected or received, a fine in the amount of those undercharges should be imposed on Respondent pursuant to Section 3800 of the Public Utilities Code.
 - "7. Whether Respondent should be ordered to collect from the Debtor Respondents the difference between the payments actually received and the lawful rates and charges pursuant to Section 3800 of the Public Utilities Code.
 - "8. Whether any or all of Respondent's operating authority should be cancelled, revoked, or suspended, or in the alternative, a fine imposed pursuant to Section 3774 of the Public Utilities Code.
 - "9. Whether the Respondent and the Debtor Respondents, or any of them, should be ordered to cease and desist from any unlawful operations and practices.
 - "10. Whether any other order or orders that may be appropriate should be entered into in the lawful exercise of the Commission's jurisdiction."

The scope of the investigation included, but was not limited to shipments specifically identified in the Order Instituting Investigation.

The stipulation between the parties and the staff reads as follows (minus exhibits):

"STIPULATION OF FACTS, ISSUES, AND
RECOMMENDED FINES

"Respondents Robert J. Cerini, dba Cerini Farms, hereinafter referred to as Cerini; The Carl Limata Co., Inc. hereinafter referred to as Limata; Langworthy Paving Co., Inc., hereinafter referred to as Langworthy, and the staff of the Public Utilities Commission, hereinafter referred to as the Staff, hereby stipulate as follows:

- "1. That on various dates in 1983 the Staff conducted an investigation into the operations, rates and practices of Cerini for the time period May 1982 through August 1982.
- "2. During the period May through August 1982, Cerini transported shipments of asphaltic concrete for The Carl Limata Co., Inc. and Langworthy Paving Co., Inc. at rates less than the applicable minimum rates established by the Commission in violation of Section 3664 of the Public Utilities Code.
- "3. That said investigation resulted in the issuance of OII 84-05-047 by the Public Utilities Commission on May 16, 1984.
- "4. That the Staff rate statements attached hereto as Exhibits 1 and 2 and incorporated herein contain a compilation of the rates that should have been assessed by Cerini on the shipments for debtors Limata and Langworthy, respectively; the compilation shows rate violations in the amount of \$2,029.85 for shipper Limata and \$799.82 for shipper Langworthy; and that the compilation is true and correct.

- "5. That the carrier has violated Section 3705 of the Public Utilities Code in that he refused to disclose the existence of and produce for inspection certain documents which would have assisted the staff in determining the true nature of his operations, rates, and practices, and that such failure to cooperate unnecessarily protracted the Staff's investigation and the instant proceedings to the detriment of the public.
- "6. That Exhibits 1 and 2 and Cerini's failure to cooperate with Staff's investigation may constitute the basis for a decision and order in OII 84-05-047.
- "7. That numbered Paragraphs 1, 2, 3, 6 and 7 of OII 84-05-047 should be answered in the affirmative.
- "8. That numbered Paragraphs 4 and 5 of OII 84-05-047 should be answered in the negative.
- "9. That in accordance with numbered Paragraph 7 of the OII respondent Cerini should be ordered to collect the undercharges shown in Exhibits 1 and 2 from respondent debtors and be ordered to pay a fine equal to the amount of such undercharges pursuant to Section 3800 of the Public Utilities Code.
- "10. That debtors Limata and Langworthy are liable for the payment of undercharges in the amounts set forth in Exhibits 1 and 2, respectively.
- "11. That in accordance with Paragraph 8 of the OII and because of Cerini's violating Pub. Util. Code Section 3705, a fine in the amount of \$2,250 should be imposed pursuant to Pub. Util. Code Section 3774, and that none of Cerini's operating authorities should be cancelled, revoked, or suspended. This fine may be paid in one lump sum within thirty (30) days of the effective date of the Commission's decision in this proceeding.
- "12. That this stipulation and the violations and fines agreed upon herein are applicable only to the transportation shown in Exhibits 1 and 2 and to no other transportation.

"13. That Staff, Cerini, Limata and Langworthy agree that this stipulation may be used by the Public Utilities Commission as the factual and legal basis of its decision in OII 84-05-047.

"Staff, Cerini, Limata and Langworthy agree to the foregoing Stipulations numbered 1 through 13.

"Dated this 24 day of August, 1984.

"Cerini Transportation

By: /s/ Robert J. Cerini

"The Carl Limata Paving Co., Inc.

By: /s/ Carl J. Limata

"Langworthy Paving Co., Inc.

By: /s/ Bill D. Watkins

"California Public Utilities Commission

By: /s/ Paul Wuerstle
Staff Representative

/s/ Evelyn Lee "
Staff Counsel

Exhibits 1 and 2 attached to the stipulation list the specifics of the individual shipments in question and computations which show that respondent undercharged Carl J. Limata Co., Inc., in the amount of \$2,029.85 and Langworthy Paving Co., Inc. in the amount of \$799.82.

Findings of Fact

1. The Commission finds that the facts of the case are as set out in the Stipulation of Facts, Issues, and Recommended Fines.
2. A public hearing is not necessary.

Conclusions of Law

1. The question posed in Ordering Paragraphs 1, 2, 3, 6, and 7 of I.84-05-047 should be decided in the affirmative.
2. The question posed in Ordering Paragraphs 4 and 5 of I.84-05-047 should be answered in the negative.
3. A fine of \$2,250, imposed pursuant to PU Code § 3774, is reasonable and should be levied on respondent Cerini.
4. A fine equal to the total amount of the undercharges, \$2,829.67, imposed pursuant to PU Code § 3800, should be levied against respondent Cerini.
5. Respondent should be ordered to collect the undercharges as set out in Paragraph 4 of the Stipulation of Facts, Issues, and Recommended Fines.

Respondent should promptly take all reasonable actions to collect the undercharges; if necessary, respondent should file timely complaints according to PU Code § 3671. The Commission staff will investigate respondent's compliance. If it appears that respondent or its attorneys have not acted in good faith, the Commission will reopen this proceeding to determine whether to impose sanctions.

O R D E R

IT IS ORDERED that:

1. Robert J. Cerini shall:
 - a. Pay a fine of \$2,250 to this Commission under Public Utilities (PU) Code § 3774 on or before the 40th day after the effective date of this order.
 - b. Pay 7% annual interest on the fine, beginning when the payment is delinquent.
 - c. Pay a fine to this Commission under PU Code § 3800 of \$2,829.67 on or before the 40th day after the effective date of this order.
 - d. Take such action as may be necessary to collect the undercharges set forth in Paragraph 4 of Stipulation of Facts, Issues, and Recommended Fines including timely legal action under PU Code § 3671.
 - e. Promptly take all reasonable steps to collect the undercharges.
 - f. Notify the Commission in writing upon collection.
 - g. File with the Commission on the first Monday of each month a report of any undercharges remaining uncollected 60 days after the effective date of this order, specifying the action taken to collect them and the result of such action, until they have been collected in full, or until further order of the Commission. Failure to file any such monthly report within 15 days after the due date shall result in the automatic suspension of the operating authority until the report is filed.

h. Not charge or collect less than the minimum rates set by the Commission.

2. The investigation is closed.

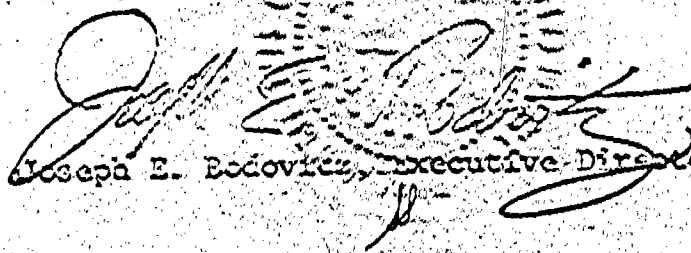
The Executive Director shall have this order personally served upon respondent Robert J. Cerini and served by mail on all other respondents.

The order shall become effective for each respondent 30 days after the order is served.

Dated NOV 7 1984, at San Francisco, California.

VICTOR CALVO
PRISCILLA C. GREW
DONALD VIAL
WILLIAM T. BAGLEY
Commissioners

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


Joseph E. Bodovick, Executive Director