

Decision 84 11 032

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 Fred J.
Biagi, Jr. dba Biagi Transportation
and James P. Keating Co., Market
Wholesale Grocery Co., Sante'
Mineral Waters, Inc., Larrabee
Brothers Distributing Co., and
Wine World, Inc.

I. 84-06-017
(Filed June 6, 1984)

Matthew F. Hunziker, for Fred J. Biagi,
Jr., respondent.
Evelyn C. Lee, Attorney at Law, and Will
Anderline for the Commission staff.

O P I N I O N

This proceeding was instituted to investigate the operations, rates, and practices of Fred J. Biagi, Jr., dba Biagi Transportation (Biagi) and James P. Keating Co.; Market Wholesale Grocery Co.; Sante' Mineral Water, Inc.; Larrabee Brothers Distributing Co., and Wine World, Inc. for the purpose of determining:

1. Whether respondent Biagi has violated Public Utilities (PU) Code § 494 by failing to assess and collect the applicable rates for transportation of property by a highway common carrier.

2. Whether respondent Biagi has violated PU Code § 702 by failing to maintain documents as required by Item 256 of Transition Tariff No. 2, which it had adopted.

3. Whether debtor respondents James P. Keating Co., Market Wholesale Grocery Co., Sante' Mineral Waters, Inc., Larrabee Brothers Distributing Co., and Wine World, Inc. have paid less than the applicable rates and charges for the transportation performed by Biagi Transportation.

4. Whether, in the event amounts less than the applicable rates and charges are found to have been charged, collected, or received, a fine in the amount of the undercharges should be imposed on respondent Biagi pursuant to PU Code §2100.

5. Whether respondent Biagi should be ordered to collect from Respondent Debtors the difference between the payments actually received and the applicable rates and charges.

6. Whether any or all of respondent Biagi's operating authority should be cancelled or revoked or suspended, or in the alternative, a fine imposed pursuant to PU Code § 1070.

7. Whether Fred Biagi, Jr., and Greg Biagi are partners in the business known variously as Biagi Transportation or Biagi Brothers Transportation, and should be held jointly and severally liable for the acts of the authorized business entity, Fred Biagi, Jr., dba Biagi Transportation, a sole proprietorship.

8. Whether respondent Biagi should be ordered to cease and desist from any unlawful operations or practices.

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

Public hearing was held before Administrative Law Judge O'Leary at San Francisco, California, on July 24, 1984 at which time the matter was submitted.

The Commission staff and respondent Biagi entered into the following stipulation (Exhibit 9):

- "1. That on various dates in 1983 the staff of the Public Utilities Commission conducted an investigation into the operations, rates and practices of Biagi for the time period August 3, 1982 through March 18, 1983.
- "2. During the period August 3, 1982 through March 18, 1983, Biagi transported shipments of glass bottles, beverages and fibre cartons for James Keating Co., Market Wholesale Grocery Co., Sante' Mineral Waters, Inc., Larrabee Brothers Distributing Co., and Wine World, Inc. at rates less than the applicable rates on file with the Commission, in violation of Section 494 of the Public Utilities Code.
- "3. That said investigation resulted in the issuance of OII 84-06-017 by the Public Utilities Commission on June 6, 1984.
- "4. That the document described as a Carrier Profile of Biagi, attached hereto as Exhibit 1 and incorporated herein by this reference, is true and correct.
- "5. That the photocopies of Biagi's documents prepared by the staff relative to the transportation enumerated in OII 84-06-017, attached hereto as Exhibit 2 (Volume I and II) and incorporated herein by this reference, are true and correct.
- "6. That the staff's rate statements attached hereto as Exhibits 3 through 7, inclusive, contain a compilation of the rates that should have been assessed by Biagi on the shipments set forth in Exhibit 2 and that said compilation, which shows total rate violations of \$10,422.09 is true and correct.

- "7. That Exhibits 1 through 7 may constitute the basis for a decision and order in OII 84-06-017.
- "8. That numbered Paragraphs 1, 2, 3, 7, and 8 of OII 84-06-017 should be answered in the affirmative.
- "9. That in accordance with numbered Paragraphs 4 and 5 of OII 84-06-017, respondent Biagi should be ordered to collect the undercharges shown in Exhibits 3 through 7 from respondent debtors and be ordered to pay a fine equal to the amount of such undercharges pursuant to PU Code § 2100.
- "10. That in response to numbered Paragraphs 6 of OII 84-06-017, staff and Biagi agree that none of Biagi's operating authority should be cancelled, revoked, or suspended but, as an alternative, the staff and Biagi agree that because of the rate violations and the disposing of records, Biagi should be ordered to pay a punitive fine of \$5,000 pursuant to PU Code § 1070. This fine may be paid in one lump sum within thirty (30) days of date of issuance of the Public Utilities Commission decision in OII 84-06-017 or in four equal installments, the first installment due within thirty (30) days of date of issuance of the Public Utilities Commission decision in OII 84-06-017 and subsequent installments due each 30 days thereafter.
- "11. That this stipulation and the violations and fines agreed upon herein are applicable only to the transportation shown in Exhibits 2 through 7, inclusive, and to no other transportation.
- "12. That staff and Biagi agree that this stipulation may be used by the Public Utilities Commission as the factual and legal basis of its decision.

Exhibit 9 refers to Exhibits 1 through 7. Based on the description set forth in Exhibit 9 no further explanation of the exhibits is necessary except for a summary of Exhibits 3 through 7 which is set forth in the following table:

Table 1

<u>Exhibit</u>	<u>Shipper</u>	<u>No. of Shipments</u>	<u>Total Charges Billed</u>	<u>Total Tariff Charges</u>	<u>Total Under-Charges</u>
3	James P. Keating Co.	19	\$ 4,914.14	\$ 7,499.68	\$ 2,585.54
4	Market Wholesale Grocery Co.	4	2,416.40	3,187.47	771.07
5	Sante' Mineral Waters, Inc.	11	2,919.30	3,790.10	870.80
6	Larabee Bros.	1	\$01.85	1,230.98	729.13
7	Wine World, Inc.	9	26,087.10	31,552.65	<u>\$ 5,465.55</u>
			Total Undercharges		<u>\$10,422.09</u>

Exhibit 8 which is not referred to in Exhibit 9 is a declaration signed by Fred Biagi, Jr. authorizing his representative, Matthew F. Hunziker, to appear on his behalf and sign a stipulation agreement.

Findings of Fact

1. Biagi holds operating authority as follows:
 - a. Highway Common Carrier Certificate.
 - b. Highway Contract Carrier Permit.
 - c. Heavy Specialized Carrier Permit.
2. Biagi's highway common carrier operations are conducted under the following Public Utilities Commission tariffs:
 - a. Transition Tariff 2.
 - b. Transition Tariff 15.
 - c. Exception Ratings Tariff 1.
 - d. Distance Table 8.
3. Biagi failed to maintain records as required by Item 256 of Transition Tariff 2.
4. During the period August 3, 1982 through March 15, 1983, Biagi transported shipments at rates less than the applicable tariff rates as follows:

<u>Debtor</u>	<u>No. of Shipments</u>	<u>Total Undercharges</u>
James P. Keating Co.	19	\$ 2,585.54
Market Wholesale Grocery Co.	4	771.07
Sante' Mineral Waters, Inc.	11	870.80
Larabee Bros.	1	729.13
Wine World, Inc.	99	<u>\$ 5,465.55</u>
		Total Undercharges \$10,422.09

Conclusions of Law

1. Biagi has violated PU Code §§ 494 and 702.
2. A fine of \$5,000 pursuant to PU Code § 1070 is reasonable and should be imposed on Biagi.

3. Biagi should be ordered to take all reasonable actions to collect the undercharges and should be ordered to pay a fine in the amount of \$10,422.09 (the total amount of undercharges) pursuant to PU Code § 2100.

Respondent should promptly take all reasonable actions to collect the undercharges. If necessary, he should file timely complaints according to PU Code § 736. The Commission staff will investigate respondent's compliance. If it believes that Fred J. Biagi, Jr. or his attorney has 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 Fred J. Biagi, Jr. shall:

1. Pay a fine of \$5,000 to this Commission under PU Code § 1070, in four equal installments due on the 30th, 60th, 90th, and 120th day after the effective date of this order.
2. Pay 7% annual interest on the fine, beginning when any installment is delinquent. Should any installment become delinquent the entire unpaid amount shall be immediately due and payable.
3. Pay a fine to this Commission under PU Code § 2100 of \$10,422.09, on or before the 40th day after the effective date of this order.
4. Take such action, as may be necessary to collect the undercharges set forth in Finding 4, including timely legal action under PU Code § 736.
5. Notify the Commission in writing upon collection.
6. Promptly take all reasonable steps to collect the undercharges.

7. 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.

8. Not charge or collect less than his common carrier tariff rates.

9. The investigation is closed.

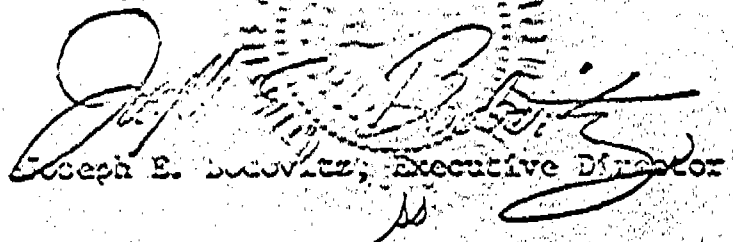
The Executive Director shall have this order personally served upon respondent Fred J. Biagi, Jr. and served by mail upon all other respondents.

The order shall become effective for each respondent 30 days after 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 TODAY.


Joseph E. Bucovitz, Executive Director