

Decision 87 12 044

ORIGINAL DEC 17 1987

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the License to)
Operate as a Motor Transportation)
Broker issued to Oakland Property)
Brokerage, Inc., a Delaware)
Corporation.)
_____)

Application 87-11-032
(Filed November 23, 1987)

INTERIM OPINION

On May 8, 1986 Oakland Property Brokerage, Inc. (OPB) was issued a motor transportation broker's license. Since the issuance of the license OPB has functioned as a motor transportation broker arranging for transportation between shipper and carrier accounts.

One of OPB's shipper accounts is Safeway Stores, Inc. (Safeway). Safeway owns all of the issued and outstanding stock of OPB. This fact was set forth in the application which led to the issuance of the license which was issued on May 8, 1986. The license that was issued contained no restriction concerning the assessment and collection of broker commissions.

On November 4, 1987 an amended License was issued to OPB, the amended license contains the following provision:

"(7) Licensee shall not impose any commission upon any carrier engaged by licensee for the transportation of property of Safeway Stores, Incorporated, or subsidiaries or affiliates thereof, or customers or suppliers of said Corporation, subsidiaries or affiliates."

On November 23, 1987 OPB filed the instant application.

The application alleges that:

- "1. For nearly 18 months, OPB has provided broker services under the license attached hereto as Exhibit A. As a producer-owned broker, OPB is dedicated to improving trucking efficiency for both shippers and carriers utilizing its services. At no time during that period did the Commission and its staff formally contend that OPB could not charge and accept broker commissions on traffic moving for Safeway. Like any other broker, OPB receives commissions on the transportation arranged by it for accounts, including Safeway. There is no present statutory prohibition against such commission practices. While the provisions of AB 678 will become effective January 1, 1988, for now the payment of commissions on affiliated shipper traffic is not precluded by any statute or regulation of this Commission.
- "2. Without notice, an opportunity to be heard, formal decision, order or Resolution, the Commission's License Section gratuitously and unilaterally undertook to amend OPB's license by attaching a paragraph 7 thereto. A copy of the amended license is attached hereto as Exhibit B. While the amended authority is dated November 3, 1987, it was not received by OPB until November 9, 1987. Despite its significance to OPB's operations, petitioner received the revised license by mere regular mail.
- "3. While persons within the Commission's staff have informally questioned the affiliation between OPB and Safeway, no formal proceeding has been commenced in order to determine on the record whether in fact any 'alter ego' condition should be imposed on the OPB license. Rather than observe proper procedural and constitutionally protected administrative rights, the staff arbitrarily concluded that such a restriction was required. Someone in the License Section was then instructed to redraft and reissue OPB's broker license. The new license is a nullity.

"4. Administrative action based on speculation and inference is an inappropriate substitute for administrative due process. Section 1708 of the PUC Code is very specific on this point. The following language compels the relief OPB seeks by this petition:

'The commission may at any time, upon notice to the public utility affected, and after opportunity to be heard as provided in the case of complainants, rescind, alter, or amend any order or decision made by it. Any order rescinding, altering, or amending a prior order or decision shall, when served upon the public utility affected, have the same effect as an original order or decision.'

OPB requests that this matter be set for hearing and that the amended license be rescinded or alternatively, an order staying enforcement of same should issue without delay.

Findings of Fact

1. On May 8, 1986 OPB was issued a Motor Transportation Broker's License.
2. The application filed by OPB disclosed that Safeway owns all of the issued and outstanding stock of OPB.
3. The license which was issued on May 8, 1986 did not contain any restriction regarding the assessment or collection of broker commissions.
4. On November 9, 1987 OPB's license was amended to provide the following:
"(7) Licensee shall not impose any commission upon any carrier engaged by licensee for the transportation of property of Safeway Stores, Incorporated, or subsidiaries or affiliates thereof, or customers or suppliers of said Corporation, subsidiaries or affiliates."
5. OPB was not given notice or an opportunity to be heard prior to the amendment of its license.

Conclusions of Law

1. The amendment issued on November 4, 1987 should be rescinded.
2. Hearing should be held so that the Transportation Division staff may present evidence concerning an amendment to OPB's Motor Transportation Broker's License.
3. Since OPB has not been given notice or an opportunity to be heard concerning the amendment this order should become effective on the date of signature.

INTERIM ORDER

IT IS ORDERED that:

1. The amended Motor Transportation Broker's License issued to Oakland Property Brokerage, Inc. is rescinded.
2. Public Hearing shall be held at such a time and place and before such Commissioner and/or Administrative Law Judge as shall hereafter be determined for the purpose of affording the Transportation Division staff an opportunity to present evidence concerning an amendment to OPB's Motor Transportation Broker's License.

This order is effective today.

Dated DEC 17 1987, at San Francisco, California.

STANLEY W. HULETT
President

DONALD VIAL
FREDERICK R. DUDA
G. MITCHELL WILK
JOHN B. OHANIAN
Commissioners

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


Victor Weiss, Executive Director

soo