

Decision 88 03 027 MAR 09 1988

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 Ovell)
White, respondent.)

I.87-08-020
(Filed August 12, 1987)

Ingo Brauer, Attorney at Law, for Ovell White,
respondent,
Catherine A. Johnson, Attorney at Law, for the
Transportation Division.

O P I N I O N

This proceeding was instituted to investigate the operations, rates, and practices of Ovell White (White) for the purpose of determining:

1. Whether Respondent White, in performing transportation for overlying carriers, without having adequate liability insurance on file with the Commission has violated Sections 3631 and 3737 of the Public Utilities (PU) Code and/or General Order 100-K.

2. Whether Respondent White by conducting operations as a highway permit carrier after his authority has been suspended and revoked, has violated Section 3775 of the PU Code.

3. Whether Respondent White should be ordered to cease and desist from any further violation of the PU Code.

4. Whether any other order(s) that may be appropriate should be issued in the lawful exercise of the Commission's jurisdiction.

5. Whether any or all of Respondent White's operating authority should be canceled, revoked, or suspended, or in the alternative, whether a fine should be imposed pursuant to section 3774 of the PU Code.

Public hearing was held before Administrative Law Judge O'Leary at San Francisco on November 12, 1987. The matter was submitted on December 9, 1987, with the filing of the transcript.
Staff Evidence

The evidence presented by the Commission's Transportation Staff discloses that White holds permits authorizing operations as a dump truck carrier, highway contract carrier and heavy specialized carrier.

On May 14, 1985 the Commission received a Notice of Cancellation of White's Liability and Property Damage Liability Insurance effective as of June 17, 1985. On June 19, 1985 White was sent an "ORDER OF SUSPENSION AND REVOCATION OF PERMIT(S) AND/OR CERTIFICATE(S) FOR FAILURE TO MAINTAIN ON DEPOSIT CONTINUOUS ADEQUATE LIABILITY INSURANCE." On October 1, 1985 the Commission received a Certificate of Insurance from the Industrial Indemnity Company advising that liability protection as required by General Order 100-Series was issued to White effective September 12, 1985. White's permits which had been suspended on June 17, 1985 and revoked on August 2, 1985 were reinstated effective October 28, 1985.

The Staff and White stipulated that White conducted operations as a highway carrier between June 17, 1985 and October 28, 1985.

The staff recommends White be ordered to pay a fine in the amount of \$1,000, pursuant to Section 3774 of the PU Code for operating during the period that his permits were suspended and/or revoked.

Respondent's Evidence

Respondent's insurance broker testified that insurance had been placed with Fremont Indemnity Co. effective November 28, 1984. This was a direct bill policy in which MGA Insurance Marketing (MGA) billed White direct and White made installment payments to MGA. Exhibit 5 sets forth a recap of the billings by

MGA. It discloses that for the period November 28, 1984 through June 28, 1985 MGA billed White a total of \$23,432.00. A cancellation credit for the period June 17, 1985 to June 28, 1985 totaling \$1,350.00 was credited to White's account resulting in a total billing for the period of \$22,082.00. Exhibits 6 and 8 are copies of cancelled checks showing payment of the premiums by White on an installment basis. The exhibits disclose that White paid a deposit to his broker totaling \$7,238.40 on December 11, 1984. He also made 5 installment payments of \$3,668.00 direct to MGA in 1985 as follows: March 1, April 1, June 7, July 5, and August 9. White's payments totaled \$25,578.40. On October 16, 1985 MGA issued a check to White in the amount of \$3,946.40 which amount represented the difference between the billings by MGA and the payments by White.

Upon the cancellation of the policy an attempt was made to place the insurance with the Insurance Company of the State of Pennsylvania. Sometime later respondent's insurance broker was notified that the Insurance Company of Pennsylvania would not consider the account and therefore would not make the required filing with this Commission. As soon as the broker was notified that the insurance would not be considered by the Insurance Company of the State of Pennsylvania, the coverage was placed with Industrial Indemnity Company effective September 12, 1985.

White contends that since he paid MGA and MGA accepted premium payments subsequent to the date that the insurance was canceled (June 17, 1985) he must have been insured.

Discussion

The evidence is clear that White did not have insurance coverage from June 17, 1985 to September 11, 1985 and his operating authorities were suspended and/or revoked from June 17, 1985 to and including October 27, 1985. It is also clear that between June 17, 1985 and October 27, 1985 respondent conducted operations as a highway carrier. The evidence also shows that although White was

sent an "ORDER OF SUSPENSION AND REVOCATION OF PERMIT(S) AND/OR CERTIFICATE(S) FOR FAILURE TO MAINTAIN ON DEPOSIT CONTINUOUS ADEQUATE LIABILITY INSURANCE." dated June 19, 1985 no contact with this Commission concerning the matter was made until October 9, 1985.

The penalty recommended by the staff is appropriate.

Findings of Fact

1. White holds permits authorizing operations as a Dump Truck Carrier, Heavy Specialized Carrier and Highway Contract Carrier.
2. White's liability insurance was cancelled effective June 17, 1985.
3. White's operating authorities were suspended effective June 17, 1985.
4. White's operating authorities were revoked effective August 2, 1985.
5. White obtained new liability insurance effective September 12, 1985.
6. White's operating authorities were reinstated effective October 28, 1985.
7. During the period White's operating authorities were suspended and/or revoked White conducted highway carrier operations including the period when he did not have liability insurance.

Conclusions of Law

1. White has violated PU Code Sections 3631 and 3775 of the Public Utilities Code.
2. A fine of \$1,000 pursuant to PU Code Section 3774 is reasonable and should be imposed on White.

ORDER

IT IS ORDERED that Ovell White shall pay a fine of \$1,000 to this Commission under PU Code Section 3774 on or before the 40th day after the effective date of this order.


The Executive Director shall have this order personally served upon respondent.

This order becomes effective 30 days after service.

Dated MAR 09 1988, 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