

AUG 11 1988

ORIGINAL

Decision 88 08 006 AUG 10 1988

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's)
 own motion into the operations,)
 rates and practices of Michael G.)
 Cardoza, dba Michael Cardoza)
 Trucking Co., and Hokanson Building)
 Block Co., a California corporation.)

I.88-04-067
 (Filed April 27, 1988)

Hallie Yacknin, Attorney at Law, and
Paul Wuerstle, for the Transportation
 Division.

OPINION

Michael G. Cardoza, (Cardoza), doing business as Michael Cardoza Trucking Co., is engaged in the business of transporting property over the public highways of this state for compensation. Cardoza holds a highway common carrier certificate and highway contract, agricultural, and dump truck carrier permits. His principal place of business is Stockton.

Hokanson Building Block Co. (Hokanson), a corporation, has received services from Cardoza in the form of transportation of property over the public highways of this state for compensation, and as such is a shipper of property. Its principal place of business is Sacramento.

An investigation by the Commission Transportation Division staff indicates that Cardoza may have violated Public Utilities (PU) Code §§ 702, 3664, 3667, and 3737 in failing to properly document shipments of goods, and in providing Hokanson with transportation services at less than the minimum rates

established by this Commission. Cardoza was issued an undercharge citation and a citation forfeiture by the staff. The staff investigation indicates that Cardoza may have collected the undercharges from Hokanson, but has not otherwise complied with the citations.

On April 27, 1988, the Commission issued OII 88-04-067 to determine:

1. Whether Cardoza has violated PU Code § 702 and § 3737 by failing to keep for inspection copies of all shipping documents issued in connection with transportation performed as required by Transition Tariff 2, West Coast Freight Tariff Bureau, Inc., Local Freight Tariff No. 100, and Minimum Rate Tariff (MRT) 7-A; and by failing to obtain a weighmaster's certificate for shipments of lumber in accordance with Transition Tariff 2 and West Coast Freight Tariff Bureau, Inc., Local Freight Tariff No. 100.
2. Whether Cardoza has violated PU Code §§ 3664, 3667, and 3737 by assessing rates and charges less than the applicable minimum rates and charges in MRT 7-A.
3. Whether Cardoza should be ordered to collect from Hokanson the difference between the rates and charges assessed and the applicable minimum rates and charges, or whether such undercharges have already been collected by Cardoza as a result of Undercharge Citation No. F-3301A.
4. Whether a fine in the amount of any proven undercharges should be assessed against Cardoza under PU Code § 3800.
5. Whether any or all of Cardoza's operating authority should be cancelled, revoked, or suspended, or whether in the alternative a fine should be imposed pursuant to PU Code §§ 1070 and 3774, or either of these sections.

6. Whether Cardoza should be ordered to cease and desist from any and all unlawful operations and practices.
7. Whether any other orders that may be appropriate should be entered in the lawful exercise of the Commission's jurisdiction.

The OII also identified the transportation performed by Cardoza that was the subject of the investigation. Documents representing the various transportation services performed by Cardoza were listed in the OII.

Notice of Evidentiary Hearing was sent to respondents by a written notice dated May 13, 1988. Between that date and the date set for hearing, June 21, 1988, Cardoza and the Commission staff entered into a written stipulation settling all outstanding issues raised by the Order Instituting Investigation.

On June 21, 1988, a hearing was held before Administrative Law Judge (ALJ) Baer wherein the staff introduced into evidence the written stipulation of facts, issues, and recommended penalties, signed by Michael G. Cardoza and by the staff attorney. (Exhibit 1.) The staff also introduced into evidence as Exhibit 2 a document entitled "Michael Cardoza Trucking Co.", Volume 1, which is the staff's investigation report, including documents evidencing the transportation identified in the OII.

The stipulation contains the following terms that are relevant to the following order:

1. That the Commission staff has conducted an investigation of the operations, rates, charges, and practices of Cardoza.
2. That the Commission staff served Cardoza with Undercharge Citation No. F-3301A in the amount of \$19,373.61 and Citation Forfeiture No. F-3301B in the amount of \$2,000 on July 21, 1987.

3. That Cardoza collected from Hokanson the undercharges cited in Undercharge Citation No. F-3301A on August 21, 1987.
4. That Cardoza has not paid either Undercharge Citation No. F-3301A or the Citation Forfeiture No. F-3301B to the Commission.

* * *

8. That Cardoza agrees that, in performing transportation for Hokanson, it violated PU Code §§ 3664, 3667, and 3737 by failing to charge and collect the applicable rates and charges set forth in MRT 7-A. Cardoza further agrees that Hokanson has paid less than the applicable rates and charges for transportation services performed by Cardoza.
9. That Cardoza agrees that it has violated PU Code §§ 702 and 3737 by failing to keep for Commission inspection copies of all shipping documents issued in connection with transportation performed as required by Transition Tariff 2, West Coast Freight Tariff Bureau, Inc., Local Freight Tariff No. 100, and MRT 7-A; and by failing to obtain a weighmaster's certificate for shipments of lumber in accordance with Transition Tariff 2 and West Coast Freight Tariff Bureau, Inc., Local Freight Tariff No. 100.
10. That Cardoza agrees, within 20 days after the effective date of the order approving this stipulation, to pay a fine in the total amount of the undercharges reflected in Exhibit 2, pursuant to PU Code § 3800, and a \$3,000 penalty pursuant to PU Code §§ 1070 and 3774.
11. That Cardoza agrees that, if the fine and penalty are not paid within 20 days after the effective date of the order approving the stipulation, Cardoza's highway common carrier certificate and highway contract,

agricultural, and dump truck carrier permits shall be suspended pending payment.

12. That Cardoza agrees that, if the fine and penalty are not paid within 30 days of the date of suspension, Cardoza's highway common carrier certificate and highway contract, agricultural, and dump truck carrier permits shall be revoked.
13. That Cardoza agrees to cease and desist from any and all unlawful operations and practices.
14. That this stipulation shall, along with the Exhibit 2, serve as staff's and Cardoza's proposed basis for a decision and order by the Commission.

The stipulation was signed June 13, 1988 by Michael G. Cardoza and by the staff attorney on June 17, 1988.

Findings of Fact

1. Cardoza collected from Hokanson the undercharges stated in Undercharge Citation No. F-3301A on August 21, 1987, but has not paid those undercharges to the Commission.

2. In performing transportation for Hokanson, Cardoza failed to charge and collect the applicable rates and charges in MRT 7-A. Hokanson paid less than the applicable rates and charges for transportation service performed by Cardoza.

3. Cardoza failed to keep for Commission inspection copies of all shipping documents issued in connection with transportation performed for Hokanson and other shippers.

4. Cardoza failed to obtain a weighmaster's certificate for shipments of lumber.

5. Cardoza has stipulated that he will pay a fine in the total amount of undercharges reflected in Exhibit 2 and, in addition thereto, a penalty of \$3,000.

Conclusions of Law

1. In performing transportation for Hokanson, Cardoza has violated PU Code §§ 3664, 3667, and 3737 by failing to charge and collect the applicable rates and charges set forth in MRT 7-A.

2. By failing to keep for Commission inspection copies of all shipping documents issued in connection with the transportation performed as required by Transition Tariff 2, West Coast Freight Tariff Bureau, Inc., Local Freight Tariff No. 100, and MRT 7-A. Cardoza has violated PU Code §§ 702 and 3737. Cardoza has also violated those sections by failing to obtain a weighmaster's certificate for shipments of lumber in accordance with Transition Tariff No. 2 and West Coast Freight Tariff Bureau, Inc., Local Freight Tariff No. 100. Cardoza should be ordered to pay a fine in the total amount of the undercharges reflected in Exhibit 2, pursuant to PU Code § 3800, and a \$3,000 penalty pursuant to PU Code §§ 1070 and 3774, within 20 days after the effective date of the order approving the stipulation.

3. If the fine and penalty are not paid within 20 days after the effective date of the following order, Cardoza's highway common carrier certificate and highway contract, agricultural, and dump truck carrier permits should be suspended pending payment.

4. If the fine and penalty are not paid within 30 days of the date of suspension, Cardoza's highway common carrier certificate and highway contract, agricultural, and dump truck carrier permits should be revoked.

5. Cardoza should be ordered to cease and desist from any and all unlawful operations and practices.

6. The stipulation (Exhibit 1) and the staff report of its investigation (Exhibit 2) provide a reasonable factual basis for the following order.

7. Since the following order is not controversial, it should be effective immediately.

ORDER

IT IS ORDERED that:

1. Within 20 days after the effective date of this order Michael G. Cardoza (Cardoza), shall pay a fine of \$19,373.61, pursuant to PU Code § 3800, and a \$3,000 penalty pursuant to PU Code §§ 1070 and 3774.
2. If the fine and penalty are not paid within 20 days after the effective date of this order, Cardoza's highway common carrier certificate and highway contract, agricultural, and dump truck carrier permits shall be suspended pending payment.
3. If the fine and penalty are not paid within 30 days of the date of suspension, Cardoza's highway common carrier certificate and highway contract, agricultural, and dump truck carrier permits shall be revoked.
4. Cardoza shall cease and desist from any and all unlawful operations and practices.
5. The written stipulation between Cardoza and the staff (Exhibit 1) is approved and this proceeding is terminated.

This order is effective today.

Dated AUG 10 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 Weissor, Executive Director