

SEP:1:5 1988

Decision 88 09 035 SEP 14 1988

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the operations, rates,
charges and practices of Noel Andrew
De Gaetano dba SONSHIP ENTERPRISES;
and SONSHIP ENTERPRISES, INC., a
Corporation.

I.88-03-043
(Filed March 23, 1988)

Alberto Guerrero, Attorney at Law, and
Paul Wuerstle, for the Transportation
Division.

OPINION

This proceeding was instituted on the Commission's own motion to investigate the operations and practices of Noel Andrew De Gaetano (De Gaetano), doing business as Sonship Enterprises, and of Sonship Enterprises, Inc. (Sonship). The order instituting investigation (OII) names both De Gaetano and Sonship as respondents. It further identifies John Robert Garcia, Juan Paraon, John Payton, and David Stevenson as carriers who may have been engaged as subhaulers by respondents, but does not name these carriers as respondents. The purpose of the OII is to determine:

- "1. Whether respondent De Gaetano and/or respondent Sonship violated Section 5139 of the Public Utilities Code by engaging the above-mentioned subhaulers without having a subhaul bond on file with the Commission as required by General Order 102-H.
- "2. Whether respondent De Gaetano and/or respondent Sonship violated Section 5139 of the Public Utilities Code by engaging subhaulers John Robert Garcia and David Wayne Stevenson, mentioned above, who were not licensed by the Commission in violation of General Order 102-H.

- "3. Whether respondent Sonship violated Section 5133 of the Public Utilities Code by commencing operations before being issued a household goods carrier permit.
- "4. Whether any or all of respondent De Gaetano's and respondent Sonship's operating authority should be cancelled, revoked, or suspended, or in the alternative, a fine imposed pursuant to Section 5285 of the Public Utilities Code.
- "5. Whether respondents De Gaetano and Sonship should be ordered to cease and desist from any unlawful operations or practices.
- "6. Whether any other orders that may be appropriate should be entered in the lawful exercise of the Commission's jurisdiction."

Hearing

The OII ordered the matter set for hearing commencing at 10 a.m. on May 10, 1988, in the Commission's conference rooms at 107 South Broadway, Los Angeles, California. The Commission's Executive Director was ordered to cause a certified copy of the OII to be personally served upon respondent.

The Commission's formal file for this proceeding includes a Certificate of Service, filed with the Docket Office on April 1, 1988, showing that on March 30, 1988 Henry Ochoa, Jr., personally delivered a certified copy of the OII to De Gaetano and left the same with him. Service was made at 14930 Calvert Street, Van Nuys, California, which is shown in the OII and by the evidence in this case to be the mailing address of both respondents. The evidence also shows that De Gaetano is the president of respondent Sonship, and that he is the "responsible managing officer" who, by examination conducted pursuant to Public Utilities (PU) Code Section 5135, qualified Sonship to be issued a household goods carrier permit.

The hearing was called before Administrative Law Judge (ALJ) Wetzell at the time, date, and place specified in the OII.

When the hearing opened, neither De Gaetano nor anyone representing him or Sonship had filed a written appearance form. No one responded to the ALJ's call for respondents or their representatives to identify themselves. A recess was then called for the purpose of awaiting the arrival of respondents and/or their representative(s).

When the hearing resumed the staff attorney reported that he had telephoned De Gaetano during the recess. According to the staff attorney, De Gaetano stated he was unaware of the hearing and would not appear, but he also acknowledged receipt by mail of copies of the staff exhibits, which were accompanied by a transmittal letter stating the date, time, and place of the hearing. The ALJ then directed the staff to proceed with its case, and the matter was submitted on May 10, 1988.

Staff Evidence

Staff presented its case through the testimony of Transportation Analyst Deborah Zundel and six exhibits sponsored by her. Zundel testified that she conducted a review of respondents' operations and obtained documentation pertaining to transportation that respondents performed by engaging the four named subhaulers during January, 1987. During her review, she found evidence that the subhaulers were engaged without there being a subhaul bond filed with the Commission by either respondent, that two of the four subhaulers were not authorized to conduct carrier operations at the time of their engagement, and that Sonship conducted operations as a household goods carrier prior to being issued a permit to do so.

Exhibit 1 is a profile of respondent De Gaetano. It shows that under file number T-113,665 he holds a household goods carrier permit, an agricultural carrier permit and a highway contract carrier permit. He has 20 employees, including office and warehouse workers and drivers, and 4 household goods vans. His gross operating revenue in 1986 was \$991,071.

Exhibit 2 includes documentation for six shipments of used household goods transported by De Gaetano and/or Sonship during January of 1987, as listed below:

<u>Part No.</u>	<u>Subhauler</u>	<u>Freight Bill No.</u>	<u>Date</u>
1	John Garcia	9764	1-26-87
2	Juan Paraon	9780	1-30-87
3	John Payton	9739	1-17-87
4	John Payton	9748	1-21-87
5	John Payton	9757	1-23-87
6	David Stevenson	9738	1-16-87

Included for each part is a copy of the freight bill and a "contractor's job receipt" showing the services provided by the subhauler and the amount to be paid to the subhauler. Zundel explained that the name of the subhauler which performed the transportation is entered on each freight bill, in a space designated for entering the carrier's van number. In each case the subhauler is the same as the one shown on the accompanying job receipt. The job receipt is cross-referenced to the "B/L" (freight bill) number. The customer charges (other than charges for packing materials) as shown on the freight bill and the commission to be paid to the subhauler are also entered on the job receipt.

Exhibit 2 also includes a copy of an "Official Notice" showing that on May 7, 1985, De Gaetano, dba Sunland Moving & Storage, etc., was admonished by a staff representative for violating General Order (GO) 102-H, Section 7.a by "[f]ailure to have a good and sufficient bond on file with the Commission prior to engagement of a subhauler." De Gaetano was placed on notice that similar violations in the future could result in the imposition of penalties as provided in the PU Code. The official

notice was signed and dated May 7, 1985 by De Gaetano, acknowledging that he had read the document and received a copy of it.

Respondents did not pay the subhaulers directly. Instead, each subhauler was paid by C.A.S.H., a bookkeeping service whose mailing address is in Aptos. C.A.S.H. receives all mail and handles all accounting records for the subhaulers. Based on the contractor's job receipts submitted by the subhaulers to C.A.S.H., it computes the commissions due each subhauler, deducts the subhauler's insurance, employer taxes, helpers' wages, and "chargebacks", then issues checks for the balance to the subhaulers. During the review period, two subhaulers, Paraon and Payton, earned sufficient commissions to receive checks from C.A.S.H. Deductions exceeded commissions in the cases of Garcia and Stevenson. Copies of C.A.S.H. checks made payable to Paraon and Payton are included in Parts 2 and 3, respectively. Both checks are dated February 13, 1987 and are shown to be endorsed by the payee. The check issued to Payton applies to Parts 4 and 5 as well as Part 3.

Included with the documentation for Part 1 is an invoice issued by California Association of Subhaulers, Inc. (C.A.S.H.) to Andrews Mayflower. It is dated February 10, 1987. Each freight bill in Parts 1-6 of Exhibit 2 shows that the issuing carrier is De Gaetano, dba Andrews Moving & Storage and Santa Clarita Moving & Storage. The C.A.S.H. invoice covers all transportation in Parts 1-6, and shows that the total due C.A.S.H. is \$5,523.56. A copy of Sonship Enterprises, Inc.'s cancelled check number 6313, signed by De Gaetano and dated February 13, 1987, in the amount of \$5,523.56 is also included in Part 1. It is made payable to and is endorsed by C.A.S.H.

Copies of independent contractor (subhaul) agreements between respondent Sonship and the four named subhaulers are included in Parts 1, 2, 3, and 6. The agreement with Payton,

included in Part 3, also applies to Parts 4 and 5. Each agreement is a standardized 10-page form with equipment schedules and payment schedules attached. Page 1 of each provides space for entering the parties' names, addresses, and PUC permit numbers. Page 10 provides blank space for entering the agreement date and the parties' signatures. Immediately following the signature lines and a reference to the attached schedules is this statement:

"THE SUBHAUL BOND REQUIRED TO BE ON FILE WITH THE PUBLIC UTILITIES COMMISSION IN ACCORDANCE WITH GENERAL ORDER 102G IS PROVIDED BY THE FOLLOWING SURETY:"

(GO 102-G was superseded by GO 102-H effective August 31, 1981, pursuant to Decision (D.)93146 and D.93188). Space is provided for entering the name and address of the surety as well as the expiration date of the bond. The agreements with Garcia and Stevenson show Ohio Casualty as the surety, but show no address or expiration date. No subhaul bond information is entered in the Paraon and Payton agreements.

The following table shows the parties, dates, and other identifying information as entered in the blank spaces in the subhaul agreements:

<u>Part</u>	<u>Company (Respondent)</u>	<u>Contractor (Subhauler)</u>	<u>Date</u>
1	Sonship Enterprises, Inc. A California corporation T-113,665	John R. Garcia T-154,284	9/1/86
2	Andrews (Sonship Enterprises, Inc.) A California corporation T-144,512	Juan P. Paraon T-144,512	7/21/86
3	Andrews (Sonship Enterprises, Inc.) A California corporation T-113,665	John B. Payton T-124,748	12/10/85
6	Sonship Enterprises, Inc. A California corporation T-113,665	David Stevenson T-154,275	Left Blank (Attached schedules are dated 9/1/88.)

Exhibit 3 consists of a household goods carrier permit issued to Garcia (T-154,284) and other documents pertaining to his permit application. Exhibit 4 consists of similar licensing information from the application file for Stevenson (T-154,275). Both permits limit the carriers to conducting operations as subhaulers only.

The timing of both application processes was nearly identical. Both applications were filed and stamped received by the Commission's Cashier on October 20, 1986 and by the Transportation Division's License Section on October 23, 1986. Both required additional information and/or action by applicant and repeated notification from the License Section of the need to fulfill such requirements. Certificates of public liability and property damage liability insurance and cargo insurance for both carriers were filed with the License Section on February 2, 1987. Both carriers successfully completed the required examination of ability to operate as a household goods carrier (PU Code Section 5135) on February 3, 1987. Garcia's permit was ultimately issued on April 21, 1987 and Stevenson's on April 14, 1987.

Exhibit 5 contains a copy of the household goods carrier permit issued on April 3, 1987 to Sonship Enterprises, Inc. (T-154,414), dba Andrews Mayflower, Santa Clarita Mayflower, Canyon Country Moving and Storage, Andrews Moving and Storage, Santa Clarita Moving and Storage, and Sunland Moving and Storage. The exhibit also includes a copy of a subhaul bond issued to Sonship Enterprises, Inc., received in the License Section on March 30, 1987. The bond agreement between Sonship and American Motorists Insurance Company was executed on March 17, 1987, and made effective February 3, 1987. The bond premium is shown to be \$750 annually. Exhibit 5 also includes a letter from the carrier, dated March 20, 1987 and received in the License Section on March 24, 1987, transmitting a copy of the subhaul bond. That copy is not

signed by Sonship. Zundel noted that the effective date, the execution date, and the filing date of Sonship's subhaul bond all occurred after the audit period involved in this investigation. She testified further that she had determined from the License Section's records that respondent De Gaetano had never had a subhaul bond on file.

Exhibit 6 is a copy of Citation Forfeiture No. F-3366, dated July 23, 1987. Respondents were cited by the staff for violating PU Code Section 5139 by engaging subhaulers without having a bond on file with the Commission and engaging subhaulers who are not licensed by the Commission in violation of General Order 102-H. The citation imposed a fine of \$1,500 pursuant to PU Code Section 5285. De Gaetano answered the citation for both respondents on August 7, 1987 by denying it. The citation form informs carriers who deny a citation forfeiture that a formal hearing may be held which might involve violations in addition to those listed therein.

Recommendations

Staff recommends that De Gaetano and/or Sonship be ordered to pay a fine of \$1,500 pursuant to PU Code Section 5285 for violating GO 102-H and PU Code Sections 5133 and 5139 as set forth in the OII. Staff further recommends that respondents be ordered to cease and desist from further unlawful operations and practices.

In explaining the amount of the recommended fine, staff argues that the evidence shows that respondents had knowledge of the Commission's subhaul bond requirements. De Gaetano was admonished by the staff in 1985 for failure to have a bond on file. Also, the signed subhaul agreements specifically refer to the Commission's bonding requirements, and on two of the four agreements involved entries stating a surety's name were made. Staff notes that respondents apparently saved an annual bond premium of \$750 for at least two years by not having a bond on

file. Finally, staff states the amount of the fine is consistent with the amount imposed against other carriers for similar violations.

Discussion

Failure to Appear

We dispose first of the question of whether respondents received adequate notice of the hearing. It is clear that De Gaetano is the appropriate person to receive notice for both respondents. When he was served with the citation forfeiture on August 7, 1987, De Gaetano was informed that a hearing may be held with respect to the violations found by the staff as well as other possible violations. As a practical matter, when a carrier denies a citation forfeiture it is asking that the matter be converted to a formal Commission investigation and set for public hearing. De Gaetano had in effect approximately nine months notice before the eventual hearing that a Commission investigation with a public hearing was a likely outcome of his denial of the citation.

The record shows that De Gaetano was personally served with a certified copy of the OII more than 40 days prior to the scheduled hearing date. He acknowledged to the staff attorney on the date of the hearing that he had received advance copies of the staff exhibits and additional notice of the hearing. It is evident that De Gaetano had adequate notice of the charges against him and of the time, date, and place of the hearing on the OII at which he could have appeared and been heard if he had so desired.

Subhaul Bond

Section 7.a of GO 102-H provides:

"No carrier shall engage any subhauler or sub-subhauler or lease any equipment as a lessee from a lessor-employee unless and until it has on file with the Commission a good and sufficient bond in such form as the Commission may deem proper, in a sum of not less than \$15,000 which bond shall secure the payment of claims of subhauler, sub-subhauler, and lessor-

employees of highway carriers in accordance with the terms of paragraphs c, d, e, and f, hereof."

The evidence shows that through the intermediary bookkeeping firm of C.A.S.H., respondent De Gaetano and/or Sonship engaged subhaulers to perform household goods transportation. The evidence also shows that there was no subhaul bond on file with the Commission for either respondent prior to or during January, 1987, when the transportation in question was performed.

Clearly, De Gaetano and/or Sonship performed transportation as a household goods carrier through the use of subhaulers without there being a bond on file. Somewhat less clear is which respondent actually performed the transportation in question. The distinction between the two entities is blurred by their sharing of mailing addresses and names. In addition to Sonship Enterprises and Sonship Enterprises, Inc., the evidence shows that both entities share or have used the names Sunland Moving and Storage, Andrews Moving and Storage, and Santa Clarita Moving and Storage. Further, the owner of one is the president and designated responsible managing officer of the other. Practically speaking they appear to be one and the same carrier, yet they are separate legal entities, and each (now) has a household goods carrier permit.

With respect to the six shipments described in Exhibit 2, there is conflicting evidence. In each part the freight bill shows that the carrier is De Gaetano and refers to his file number (T-113,665), yet the accompanying documentation shows that the subhauling arrangements were made with Sonship. Each agreement shows by hand-written entry that the subhauler contracted with Sonship Enterprises, Inc., a California corporation. C.A.S.H. was paid by the corporation's check.

Upon review of all the evidence before us, we find that respondent Sonship performed the transportation involved in this

investigation, and that Sonship is the carrier which engaged the subhaulers without a bond in violation of GO 102-H. We attach more weight to the handwritten entries in the subhaul agreements, and to the cancelled check issued by Sonship to pay C.A.S.H. for the subhaulers' services, than to the pre-printed designation on the freight bills. We cannot discount the possibility that Sonship simply made inappropriate use of business forms that were conveniently available to it. We admonish respondents to avoid such confusion in the future by complying with our rules governing the identification of all real and fictitious business names on shipping documents, advertisements, etc. (Minimum Rate Tariff 4-C, Item 88).

Unlicensed Subhaulers

Section 3 of GO 102-H provides that unauthorized (unlicensed) carriers shall not be engaged as subhaulers. It further provides that overlying carriers have the responsibility of complying with this prohibition. Subhaulers Garcia and Stevenson were not licensed at the time of the shipments in Exhibit 2, despite the fact that both had applied for permits several weeks prior to performing the transportation as subhaulers.

It is not permissible for a carrier, whether an overlying carrier or a subhauler, to merely file an application and obtain a file number from the License Section, and then commence operations; the issuance of a permit by the Commission must be awaited. We note in this case that there was no evidence of liability or cargo insurance for either subhauler on file with the Commission at the time of the transportation. Under GO 102-H, it was respondents' responsibility to ensure that the permits were issued, not merely that file numbers were assigned to the applications, before engaging these subhaulers. Their failure to do so constitutes a violation of the GO.

Sonship's Operations Before Issuance of Permit

As discussed above, the evidence shows that respondent Sonship performed transportation as a household goods carrier through the use of subhaulers on at least six occasions in January, 1987. A permit was not issued to Sonship until April 3, 1987. One of the necessary conditions for issuance of a permit to a carrier planning to use subhaulers, the filing of a subhaul bond, was not met until March 30.

Amount of Fine

The serious nature of the several violations involved herein is offset by respondents' subsequent compliance following the audit period involved in this investigation, and the \$1,500 penalty recommended by the staff would normally be appropriate. However, we cannot consider lightly respondents' denial of the citation (Exhibit 6) and subsequent failure to appear at a duly noticed hearing on the matter. As we have stated, by denying the citation, respondents were asking for a hearing on the matter. This "day in court" is a right to which they were fully entitled, but exercise of the right created an obligation on their part to abide by our established formal procedures. Part of that obligation was to appear at the hearing. If for some reason it was not feasible to appear on the scheduled hearing date, they were obligated to inform the Commission of that fact and arrange a new date. No such communication was received. We will not countenance such disrespect for orderly process by ignoring it in this case. A larger fine is warranted.

We also note that \$1,500 was the original amount which the staff would have levied by citation forfeiture for engaging subhaulers without a bond and for engaging unlicensed subhaulers. In addition to confirming these violations, we have found that Sonship committed a third category of violation by performing transportation as a household goods carrier without a permit.

We give careful consideration to the amount of fines recommended by staff and respondents in formal enforcement investigations, but we are not bound by such recommendations. We can and will impose appropriate fines in each case that comes before us, up to the maximum amounts prescribed by law. In this case we impose a fine of \$2,000 pursuant to PU Code Section 5285. The fine will be imposed against respondent Sonship as the carrier which performed the subject transportation.

Findings of Fact

1. De Gaetano was personally served with a copy of the OII, which established the date, time, and place for a public hearing on the matter.

2. De Gaetano is an appropriate person to receive notice of hearings on behalf of both respondents.

3. Sonship operated as a household goods carrier during January of 1987.

4. Sonship performed this transportation by engaging Garcia, Paraon, Payton, and Stevenson as subhaulers.

5. Sonship did not file a subhaul bond with this Commission until March 30, 1987.

6. Sonship was not issued a permit authorizing it to conduct operations as a household goods carrier until April 3, 1987.

7. Garcia did not file evidence of public liability and property damage and cargo insurance with the Commission until February 2, 1987.

8. Stevenson did not file evidence of public liability and property damage and cargo insurance with the Commission until February 2, 1987.

9. Garcia was not issued a permit authorizing him to conduct subhaul operations as a household goods carrier until April 21, 1987.

10. Stevenson was not issued a permit authorizing him to conduct subhaul operations as a household goods carrier until April 14, 1987.

11. De Gaetano was admonished by the staff on May 7, 1985 for failure to have a subhaul bond on file prior to engaging subhaulers.

12. Citation Forfeiture No. F-3366, dated July 23, 1987, imposed a fine of \$1,500 against respondents for engaging subhaulers without having a bond on file and for engaging unlicensed subhaulers.

13. The citation form included information that denial of the citation could result in a formal hearing which might involve violations in addition to those listed in the citation.

14. On August 7, 1987 De Gaetano answered the citation for himself and for Sonship by denying it.

15. Respondents failed to appear at a duly noticed public hearing.

16. Sonship has been found to have committed violations in addition to those which are the subject of Citation Forfeiture No. F-3366.

Conclusions of Law

1. Respondents were served with adequate notice of the public hearing held in this matter.

2. Sonship violated PU Code Section 5139 by engaging subhaulers without having a subhaul bond on file with the Commission as required by GO 102-H.

3. Sonship violated PU Code Section 5139 by engaging unauthorized carriers as subhaulers in violation of GO 102-H.

4. Sonship violated PU Code Section 5133 by operating as a household goods carrier without there being in force a permit issued by the Commission authorizing such operations.

5. Sonship should be ordered to pay a fine of \$2,000.

6. Respondents should be ordered to cease and desist from any and all unlawful operations and practices in violation of the PU Code or Commission rules and regulations.

ORDER

IS ORDERED that:

1. Sonship Enterprises, Inc. shall pay a fine of \$2,000 to this Commission under Public Utilities Code Section 5285 on or before the 30th day after the effective date of this order.

2. Respondents shall cease and desist from any and all unlawful operations and practices in violation of the PU Code or Commission rules and regulations.

3. The Executive Director shall have this order personally served upon respondents.

This order shall become effective for each respondent 30 days after service.

Dated SEP 14 1988, at San Francisco, California.

STANLEY W. HULETT
President

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

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

Victor Weiss
Victor Weiss, Executive Director

10. Stevenson was not issued a permit authorizing him to conduct subhaul operations as a household goods carrier until April 14, 1987.

11. De Gaetano was admonished by the staff on May 7, 1985 for failure to have a subhaul bond on file prior to engaging subhaulers.

Conclusions of Law

1. Respondents were served with adequate notice of the public hearing held in this matter.

2. Sonship violated PU Code Section 5139 by engaging subhaulers without having a subhaul bond on file with the Commission as required by GO 102-H.

3. Sonship violated PU Code Section 5139 by engaging unauthorized carriers as subhaulers in violation of GO 102-H.

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Dated _____, at San Francisco, California.