

Decision 90 05 056 MAY 22 1990

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)

Noel Andrew De Gaetano, for Sonship
Enterprises, Inc., respondent.
Alberto Guerrero, Attorney at Law, and
Paul Wuerstle, for the Transportation
Division.

OPINION ON FURTHER HEARING

By Decision (D.) 88-09-035 issued September 15, 1988 in this investigation, the Commission determined that respondent Sonship Enterprises, Inc. (Sonship) had violated Public Utilities (PU) Code § 5139 by engaging subhaulers without having a subhaul bond on file and by engaging unauthorized carriers as subhaulers. The Commission further determined that Sonship had violated PU Code § 5133 by operating as a household goods carrier without there being in force a permit authorizing such operations. The Commission ordered Sonship to pay a fine of \$2,000 on or before the 30th day after the effective date of that order. The order became effective 30 days after personal service, which occurred on September 22, 1988. Thus, the fine was due on November 21, 1988.

Respondent Noel Andrew De Gaetano, doing business as Sonship Enterprises, is also the president and designated responsible managing officer of respondent Sonship. Because of the close relationship of the two respondents, D.88-09-035 ordered both respondents to cease and desist from any and all unlawful

operations and practices in violation of the PU code or Commission rules and regulations.

Sonship did not appeal or request modification of D.88-09-035, and did not pay the \$2,000 fine by November 21, 1988 as required. By D.89-09-054 issued September 7, 1989, the Commission reopened this investigation to determine whether an additional fine should be imposed and/or whether the operating authorities of respondents De Gaetano and Sonship should be revoked due to the failure of Sonship to pay the fine imposed by D.88-09-035. De Gaetano had informed a Commission staff representative on January 31, 1989 that he did not intend to pay the fine. Based on the relationship of respondents De Gaetano and Sonship, the Commission ordered suspension of the household goods carrier permits of both respondents unless the \$2,000 fine was paid before the effective date of D.89-09-054. That decision became effective November 3, 1989. The Commission ordered that a public hearing be held for the purpose of allowing respondents to appear and show cause why their permits should not be cancelled or revoked for failure to comply with the terms and provisions of D.88-09-035.

A duly-noticed public hearing was held at Los Angeles on January 25, 1990. De Gaetano appeared for himself and for Sonship. De Gaetano stated that he had not paid the fine as of the date of the hearing but would abide by an order to do so as a result of the reopened proceeding. De Gaetano stated he has been in the moving business for 32 years and is dependent on his operating authority as a livelihood.

De Gaetano and Transportation Division agreed that in lieu of revocation of the operating authorities of both respondents, Sonship should be authorized to pay the \$2,000 fine in installments of a minimum of \$500 per month, with the first payment due on the first day of the first month following issuance of a decision in this matter. The agreement of the parties further

provides that the payments may be made directly by U.S. Mail to the Formal Unit of the Commission's Transportation Division.

Transportation Division recommends that an additional fine of \$1,000 be imposed, also in installments of at least \$500 per month, and that if De Gaetano fails to pay the \$500 each month, the household goods carrier permits of both respondents be automatically revoked and cancelled without further hearings. De Gaetano opposes only the additional \$1,000 fine, on the grounds that payment of the \$2,000 fine is already a hardship.

Discussion

With one exception, De Gaetano has agreed to abide by all of Transportation Division's recommendations, including automatic revocation of both permits if Sonship fails to pay fines as directed. He takes issue with the imposition of an additional fine. The only substantial reason offered by De Gaetano for not imposing an additional fine is that the original \$2,000 fine is already a hardship.

We believe the Transportation Division's recommendation for an additional fine of \$1,000 is fully justified. Throughout this proceeding respondents have shown an unwillingness to recognize their obligations as regulated businesses. Respondents took no action to appeal or modify D.88-09-035 after the order was issued and personally served on them. Instead, after the deadline for paying the fine had passed, De Gaetano informed a Transportation Division representative that he did not intend to comply the Commission's order to pay a fine. We can only conclude that respondents chose to ignore our order. As to De Gaetano's claim of hardship, we believe the agreed-upon installment arrangement removes this concern.

This proceeding was reopened to determine whether an additional fine should be imposed and/or respondents' permits should be revoked. In view of De Gaetano's claim that his livelihood depends on the permits, as well as Transportation

Division's recommendation, we will provide for revocation only if the fines are not paid in the manner provided in this order.

As agreed to by the parties, we will make revocation of operating authority applicable to both respondents in the event of Sonship's failure to pay the fine. The record of this proceeding shows that respondents are virtually one and the same carrier, sharing the same address and the same names. Respondent De Gaetano is the president and designated responsible managing officer (PU Code § 5135) of respondent Sonship. We cannot allow one respondent to nullify the consequences of its actions by allowing virtually the same respondent to continue operations without consequence as a separate legal entity.

The proposed decision of the administrative law judge was filed and served on the parties on April 17, 1990. No comments have been received. The findings, opinion, and order in the proposed decision are approved and confirmed by today's order.

Findings of Fact

1. By D.88-09-035 the Commission ordered respondent Sonship to pay a fine of \$2,000 on or before November 21, 1988, which was the 30th day after the effective date of that order.
2. Sonship did not appeal or request modification of D.88-09-035.
3. De Gaetano informed a Commission staff representative on January 31, 1989 that he did not intend to comply with D.88-09-035 by paying the fine imposed by that decision.
4. Respondent Sonship has not paid the \$2,000 fine imposed by D.88-09-035.
5. At the hearing in the reopened investigation held January 25, 1990, De Gaetano appeared and agreed to pay the \$2,000 fine in installments of at least \$500 per month, and, further, that the household goods carrier permits of both respondents shall be automatically revoked without further hearing for failure to pay the fine as agreed.
6. An additional fine of \$1,000, payable in installments of at least \$500 per month due immediately after the \$2,000 fine imposed by D.88-09-035 is paid, is fully justified by Sonship's failure to pay the \$2,000 fine by November 21, 1988.

7. Because respondents De Gaetano and Sonship are closely related entities, our regulation would be thwarted if respondent De Gaetano were allowed to continue operations without sanction in the event sanctions are imposed on respondent Sonship for failure to comply with D.88-09-035 and this order.

Conclusions of Law

1. An additional fine of \$1,000 should be imposed due to failure of respondent Sonship to pay the \$2,000 fine by November 21, 1988 as ordered by D.88-09-035.

2. Due to the hardship imposed by the fines ordered by D.88-09-035 and by this decision, Sonship should be allowed to pay the fines in installments of at least \$500 per month in each of not more than six consecutive months.

3. The household goods carrier permits of both respondents should be revoked by the Executive Director without further hearing if respondent Sonship does not pay the fines as provided by this order.

O R D E R

IT IS ORDERED that:

1. Sonship Enterprises, Inc. (Sonship) is authorized to pay the \$2,000 fine imposed by D.88-09-035 in installments of at least \$500 per month, with the first installment due on the first day of the first month following the effective date of this order, and additional installments due on the first day of each succeeding month.

2. Sonship shall pay an additional fine of \$1,000 in installments of at least \$500 per month for two consecutive months, with the first such installment due on the first day of the first month following completion of payment of the \$2,000 fine imposed by D.88-09-035 in accordance with Ordering Paragraph 1.

3. In the event that Sonship fails to pay the fines in accordance with Ordering Paragraphs 1 and 2, the Executive Director shall cause the household goods carrier permits of both respondent Noel Andrew De Gaetano and respondent Sonship to be revoked 30 days after the date of such failure without further hearing.

4. The fines shall be paid to the Formal Unit of the Compliance and Enforcement Branch of the Transportation Division at the Commission's San Francisco office. The fines may be paid by U.S. Mail in lieu of personal appearance.

5. The Executive Director shall cause this order to be personally served upon respondents.

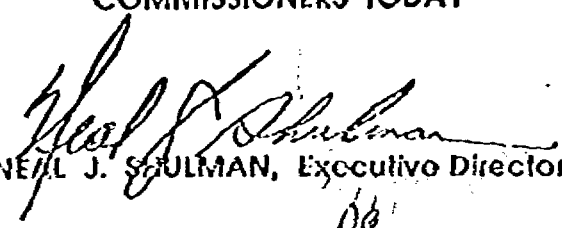
This order shall become effective for each respondent 30 days after service.

Dated MAY 22 1990, at San Francisco, California.

G. MITCHELL WILK
President
STANLEY W. HULETT
JOHN B. OHANIAN
PATRICIA M. ECKERT
Commissioners

Commissioner Frederick R. Duda,
being necessarily absent, did
not participate.

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


NEIL J. SULMAN, Executive Director