

Decision 90 07 014 JUL 6 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Dennis S. Kahane, )  
 )  
 Complainant, )  
 )  
 vs. )  
 )  
 Valley Relocation and Storage, )  
 )  
 Defendant. )

**ORIGINAL**

Case 90-02-049  
(Filed February 20, 1990)

O P I N I O N

Summary of Decision

The complaint of Dennis S. Kahane against Valley Relocation and Storage (Valley) is denied. Dennis S. Kahane (complainant) requests that the Commission begin a formal investigation of Valley for the purpose of revoking the carrier's certificate. Complainant has presented detailed allegations concerning a \$428.52 billing dispute with Valley. This single customer dispute, even if all the factual allegations were true, does not justify opening such an investigation. Complainant has not requested specific relief concerning his own dispute with Valley.

Procedural Background

On February 20, 1990, complainant filed this complaint against Valley. The complaint lists many allegations, but only a single request for relief. Complainant did not try to resolve the matter informally with Commission staff.

Valley filed timely answer to the complaint on March 28, 1990.

On April 2, 1990, complainant file a "Motion for Leave to File Reply and Reply to Opposition to Complaint."

Allegations in the Complaint

Complainant's central allegation is that Valley "has engaged in a conscious, purposeful and continuing effort to collect unlawful payments, in complete disregard of contract, tariffs and the rules of this Commission. Specifically, Valley has persisted in efforts to exact payments in excess of ten percent above estimate on Complainant's household move, wholly disregarding Complainant's assertion of this Commission's limitations on its charges."

Complainant also alleges that Valley has failed to honor insurance obligations in a damage claim for broken or damaged household items.

The complaint includes ten exhibits which document a billing dispute with Valley over complainant's household move from San Francisco to Danville, California, in August 1989. The exhibits include a written estimate for \$2,756.75 in charges; an invoice for \$3,523.96; further invoices for \$428.53, the amount now in dispute; an insurance claim for broken or damaged goods; and correspondence between complainant and Valley.

Complainant argues that Commission rules prevent Valley from charging more than 10% above the amount of the estimate. Complainant has paid Valley \$3,095.43, which includes the estimated amount of \$2,756.75, plus 10%, and \$63.00 in insurance charges.

The correspondence alleges that the dispute arose over access to the residence at the destination of the move. According to complainant, the moving van driver refused to drive onto the driveway unless the complainant signed a waiver of liability. Complainant did not believe that he was required to sign waivers of liability in order for Valley to perform under its contract, so he refused to sign. The driver completed the move by unloading from the street curb, and Valley billed complainant for its full cost of the move. Complainant paid what he believes is due, and the disputed \$428.53 remains.

The exact relief requested by complainant is that "this Commission issue an order instituting investigation to determine whether Valley Relocation has routinely failed to observe this Commission's rules and its tariffs, and if so, to order Valley Relocation to show cause at a hearing why its Certificate of Convenience and Necessity should not be revoked."

Defendant's Answer

Valley denies all allegations that it has not followed the terms of its contract, tariffs, or Commission rules. Valley admits that the documents in the complaint are true copies, but denies complainant's allegations therein.

As an affirmative defense, Valley argues that the original estimate was based on Valley's access to complainant's driveway. The van driver refused to drive onto the driveway because he noticed small surface cracks which led him to conclude that the van might damage the driveway. The driver so informed complainant, requesting that complainant make a note to that effect on the bill of lading, thereby indemnifying Valley from damage to the driveway. Complainant refused.

Valley argues that the driver's only option was to unload from the street, incurring extra time for the unloading process. The driver unloaded the van with the understanding that complainant was obligated for additional charges incurred.

Valley claims that the insurance dispute is unresolved because complainant has not provided specific cost estimates of the damage.

Finally, Valley asks that the complaint be referred to Commission staff for informal resolution pursuant to Rule 10 of the Commission's Rules of Practice and Procedure.

Reply by Complainant

In his reply, complainant reasserts that Valley cannot legally bill for more than the estimate plus ten percent.

Complainant further argues that there was no understanding between the van driver and complainant regarding additional charges.

Complainant agrees with Valley that he told the van driver of both his and his contractor's belief that the driveway was safe for passage by the van. The driveway concrete had been poured one month previously.

Complainant disputes Valley's measurement of the extra distances required by unloading from the curb rather than the driveway. A sketch of the site is attached to complainant's reply.

Concerning the insurance claim, Complainant further alleges that Valley promised to send an appraiser, who never appeared, and that Valley refuses to return telephone calls regarding the claim.

Complainant closes by reasserting his request for an Order Instituting Investigation (OII), adding that the investigation should now consider Commission orders "to refund to California consumers any and all amounts which an audit of its books may reveal it has overcharged in flagrant and purposeful violations."

#### Discussion

This complaint appears to rely on Rule 108 of Minimum Rate Tariff 4-C, which applies to all intrastate carriers of used household goods. Term 1.(a) of the Rule states that carriers may offer written estimates to shippers. The estimates are not required, but Valley did provide one.

If an estimate is offered, Term 2.(a) of Rule 108 states that the maximum charges by the carrier shall be the lesser of tariff rates and the "amount of the estimated cost of services plus ten (10) percent (plus the charges for all services and articles listed on a Change Order for Service, if applicable)."

At this point we must look carefully at the relief complainant requests. If complainant was seeking to end any obligation to pay the disputed charges of \$428.53, or assistance

concerning his insurance claim, then the pleadings might show cause for referral to staff under Rule 10 of the Commission's Rules of Practice and Procedure, or for a hearing on the merits of the case.

However, complainant is not seeking such relief. Rule 10 states, in part, that complaints "shall be so drawn as to completely advise the defendant and the Commission of the facts constituting the grounds of the complaint, the injury complained of, and the exact relief which is desired" (emphasis added). Complainant has complied with this rule, but has not sought specific relief from Valley's additional charges or alleged insurance failings. Instead, he seeks an OII to determine whether Valley has "routinely failed to observe this Commission's rules and tariffs, and if so, to order Valley Relocation to show cause at a hearing why its [certificate] should not be revoked."

We are not persuaded of the need to open a general investigation.

The complaint should be denied without hearing.

#### Findings of Fact

1. Complainant received transportation services from Valley in connection with a movement of household goods from San Francisco to Danville, California, in August 1989.
2. Complainant and Valley dispute an insurance claim and \$428.53 in additional charges for the move.
3. Complainant has alleged facts and argued in support of his request that the Commission issue an OII into Valley's routine failure to observe Commission rules and tariffs.
4. Complainant's facts and arguments consider only complainant's individual disputes with Valley, not any practices which are routine or regularly found.
5. Complainant has not requested specific relief concerning the additional charges for the move or his insurance claim.
6. Referral of the complaint to Commission staff for informal resolution is not necessary.

Conclusions of Law

1. Rule 10 of the Commission's Rules of Practice and Procedure requires complainant to set forth the exact relief desired.
2. The allegations presented by complainant, even if they were found to be true, would not justify an OII into Valley's practices. The complaint should be denied.
3. A hearing is not necessary.

ORDER

Therefore, IT IS ORDERED that:

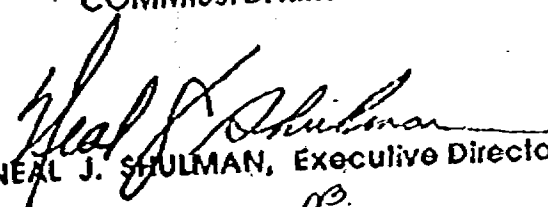
1. Valley Relocation and Storage's request for referral of the complaint to Commission staff is denied.
2. Complainant's motion for leave to reply is granted.
3. The complaint of Dennis S. Kahane against Valley Relocation and Storage is denied.
4. Case 90-02-049 is closed.

This order is effective 30 days from today.

Dated JUL 6 1990, at San Francisco, California.

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

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

  
NEAL J. SHULMAN, Executive Director