

MAR 22 1991

Decision 91-03-038 March 22, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, rates, and practices of Leopard Trading Co., Inc. and twenty six shippers listed in Appendix A, as Shipper Respondents,

ORIGINAL

1-89-05-015 (Filed May 10, 1989)

Respondents.

Tom Casazza, Attorney at Law, for Leopard Trading Co., Inc., respondent.
Lawrence O. Garcia, Attorney at Law, and William G. Waldorf, for the Transportation Division.

OPINION

Leopard Trading Co., Inc. (Leopard) transports property over the highways of California for compensation and operates pursuant to a highway contract carrier permit. Leopard is a California corporation with a mailing address in Emeryville, California. The 26 shipper respondents are Acacia Winery, Areti/Clos Du Val Wines (Napa), Boeger Winery, Caymus Vineyards, Clos Du Bois Wines (Healdsburg), Dehlinger Winery, Diamond Wine Merchants, Far Niente Winery, Freemark Abbey Winery, Hayward Winery, Husch Vineyards, Iron Horse Vineyards, Karly Winery, Lyeth Vineyards, Lytton Springs Winery, Martin Bros. Winery, Joseph Phelps Vineyards, Preston Winery, Raymond Winery, Saintsbury Winery, Sierra Vista Winery, St. Francis Winery, Stag's Leap Wine Cellars, Stratford Vineyards, William Wheeler Winery, and Woltner & Co., which operate out of various offices in California and obtained transportation services from Leopard.

A staff investigation revealed that Leopard may have violated Public Utilities (PU) Codes §§ 3664 and 3667 by failing to

charge the respondent shippers the applicable rates and that Leopard may have violated PU Code § 3737 by performing transportation services for the respondent shippers without having a contract on file and in effect with the Commission, as required by General Order (GO) 147 and 147-A.

Accordingly, the Commission issued, on May 10, 1989, its Order Instituting Investigation (OII) to determine:

1. Whether Leopard violated PU Code § 3737 by performing transportation services for the respondent shippers without having a contract on file and in effect as required by GO 147 and 147-A.
2. Whether Leopard violated PU Code §§ 3664 and 3667 by charging less than the applicable rates for transportation of property by a highway contract carrier.
3. Whether a fine in the amount of any undercharges should be imposed upon Leopard under PU Code § 3800.
4. Whether Leopard should be ordered to collect from the 26 shipper respondents the difference between the payments actually received and the applicable rates and charges pursuant to PU Code § 3800.
5. Whether any or all of the operating authority of Leopard should be canceled, revoked, or suspended, or in the alternative, a fine of up to \$20,000 should be imposed under PU Code § 3774.
6. Whether Leopard should be ordered to cease and desist from any unlawful operations or practices.
7. Whether any other order should be entered in the lawful exercise of the Commission's jurisdiction.

This investigation encompasses transportation charges paid by the respondent shippers to Leopard, as evidenced by shipping documents identified in Attachment B to the OII and all supporting documents.

Procedural Background

Copies of the OII were duly served upon the respondents and they appeared by counsel or representative at a prehearing conference on November 16, 1989. After the prehearing conference, the administrative law judge (ALJ), by ruling filed November 16, 1989, directed the parties to report in writing to the ALJ, on or before January 31, 1990, on their progress toward settlement or narrowing of the issues. The report was not made because counsel for Leopard and staff indicated that the financial status and corporate existence of Leopard were in question. On May 25, 1990, by ALJ ruling, counsel for respondent was directed to report in writing to the ALJ, and serve on all parties, on or before June 11, 1990, specific information on the financial status of respondent. Counsel did not make the report as directed. On July 25, 1990, the ALJ issued a ruling mandating the detailed report be filed no later than August 1, 1990. Interested parties were given until August 15, 1990 to file comments thereon.

On August 1, 1990, counsel for respondent filed and served a declaration in which he stated that he was familiar with the financial and operating condition of Leopard and was informed, and believed, that Leopard is totally insolvent and has preexisting liens against it of substantial proportions. He declared that, as of August 1, 1990, the company had completely ceased operations, with the exception of minor administrative matters required to wind up operations. He also reported that Leopard no longer had an office, but only a post office box, and is not conducting, nor does it intend to conduct, further business. Field staff investigated these representations and on August 15, 1990, staff filed its comments to the declaration, noting the investigation disclosed

Leopard was no longer conducting business at its former premises. Staff observed that Leopard's insurance was current and on file, but if it is insolvent and not doing business, would have no reason to keep the insurance current, at which time the operating authority would be suspended, and 30 days thereafter, revoked. Staff noted that it would discuss the matter informally with Leopard, but that no future reactivation of the business should be allowed until the undercharges and fines in this OII were resolved. No other parties commented upon the declaration.

On September 11, 1990, the ALJ issued a ruling requiring informal meetings between Leopard and staff to be followed by a report by staff thereon, upon which interested parties would have 15 days to comment.

On January 4, 1991, staff filed its report and stated that the operating authority of Leopard had been revoked effective August 25, 1990 for failure to pay quarterly fees. A copy of the August 27, 1990 order of revocation was annexed to the report. Staff recommended that the OII be concluded with the condition that Leopard's operating authority not be reinstated nor Leopard be allowed to operate unless Leopard resolves the undercharges and potential fines at issue under the OII. No comments were filed on the report.

We find that the OII should be dismissed with the condition that, should Leopard seek operating authority from this Commission, the issues surrounding the undercharges and potential fine, as set forth in the OII dated May 10, 1989, must first be resolved.

Findings of Fact

1. Leopard transports property over the highways of California for compensation and operates pursuant to a highway contract carrier permit.

2. A staff investigation revealed that Leopard may have violated PU Codes §§ 3664 and 3667 by failing to charge the respondent shippers the applicable rates and that Leopard may have violated PU Code § 3737 by performing transportation services for the respondent shippers without having a contract on file and in effect with the Commission, as required by GO 147 and 147-A.

3. After the prehearing conference, the ALJ, by ruling filed November 16, 1989, directed the parties to report in writing to the ALJ, on or before January 31, 1990, on their progress toward settlement or narrowing of the issues. The report was not made because counsel for Leopard and staff indicated that the financial status and corporate existence of Leopard were in question.

4. On August 1, 1990, counsel for respondent filed and served a declaration in which he stated that he was familiar with the financial and operating condition of Leopard and was informed, and believed, that Leopard is totally insolvent and has preexisting liens against it of substantial proportions. He declared that, as of August 1, 1990, the company had completely ceased operations, with the exception of minor administrative matters required to wind up operations. He also reported that Leopard no longer had an office, but only a post office box, and is not conducting, nor does it intend to conduct, further business.

5. Field staff investigated these representations and on August 15, 1990, staff filed its comments to the declaration, noting the investigation disclosed Leopard was no longer conducting business at its former premises.

6. On September 11, 1990, the ALJ issued a ruling requiring informal meetings between Leopard and staff to be followed by a report by staff thereon, upon which interested parties would have 15 days to comment.

7. On January 4, 1991, staff filed its report and stated that the operating authority of Leopard had been revoked effective August 25, 1990 for failure to pay quarterly fees. A copy of the

August 27, 1990 order of revocation was annexed to the report. Staff recommended that the OII be concluded with the condition that Leopard's operating authority not be reinstated nor Leopard be allowed to operate unless Leopard resolves the undercharges and potential fines at issue under the OII. No comments were filed on the report.

Conclusion of Law

I.89-05-015 should be dismissed on the condition that should Leopard seek to be reinstated or seek operating authority from this Commission, the issues surrounding the undercharges and potential fines, as set forth in the OII dated May 10, 1989, must first be resolved.

ORDER

IT IS ORDERED that:

1. Order Instituting Investigation (I. or OII) 89-05-015 is dismissed on the condition that should Leopard Trading Co., Inc. seek to be reinstated or seek operating authority from this Commission, the issues surrounding the undercharges and potential fines, as set forth in the OII dated May 10, 1989, must first be resolved.
 2. The investigation is terminated, as so conditioned.
- This order becomes effective 30 days from today.
Dated March 22, 1991, at San Francisco, California.

PATRICIA M. ECKERT
President
G. MITCHELL WILK
JOHN B. OHANIAN
DANIEL W. FESSLER
NORMAN D. SHUMWAY
Commissioners

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

Neil J. Sulman
Neil J. Sulman, Executive Director