

OCT 23 1991

Decision 91-10-033 October 23, 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 Leonard A. Wollin, an)
 individual dba Wollin Transport, A)
 Motor Transportation Broker, eight)
 respondent carriers listed in Attach-)
 ment A, Oxnard Frozen Foods, a)
 California corporation, Proficient)
 Foods, a California corporation and)
 Ralph's Grocery Co., a Delaware)
 corporation as Shipper Respondents,)
 Respondents.)

ORIGINAL

I.89-09-022
(Filed September 27, 1989)

David Nissenberg, Attorney at Law, for)
 Leonard A. Wollin, Emil Torp, and)
 James E. Caselman, respondents.)
Albert C. Guerrero, Attorney at Law, and)
William Waldorf, for the Public Utilities)
 Commission's Transportation Division.)

OPINION

Background

Leonard A. Wollin (T-152,081), doing business as (dba) Wollin Transport (Wollin), operates as a broker for the transportation of property over the public highways pursuant to a motor transportation broker's license issued on June 2, 1986 and a highway common carrier certificate issued on June 28, 1988.

The respondent motor carriers Victor Medina (T-129,950), dba Britania Trucking; Christopher C. Embree and Virginia L. Embree (T-148,487), dba Camelot Carriers; Gary W. Porter and Margaret B. Porter (T-140,825), dba G.W. Porter Trucking; James W. Caselman (T-136,634), dba J. & G. Trucking; Louis A. Margolies (T-142,161), dba Jan-Al Express; Mammoth of California, Inc. (T-92,374); Emil Torp (T-108,310); and Eddie Gomez (an unauthorized carrier), dba

Gomez Trucking, transport property over the public highways of this state for compensation pursuant to highway contract carrier permits and/or highway common carrier certificates.

We began this investigation on September 27, 1989 as a result of a Transportation Division staff investigation which revealed that Wollin may have acted as a broker for shipments of property at rates less than the motor carrier's rates by publishing its own tariff, executing subhaul agreements and representing its operations to be those of a carrier. If so, Wollin may have violated Public Utilities (PU) Code §§ 4824, 4853, and 4855, and Rule 3 of Resolution No. 18228.

The staff investigation also revealed that respondent carriers may have provided respondent shippers with transportation services over the public highways for compensation at rates less than the applicable rates. Further, respondent carriers may have violated PU Code §§ 494, 3664, 3667, and 3737.

Procedural Background

Copies of the Order Instituting Investigation were duly served upon the respondents. A prehearing conference was held on February 2, 1990 before Administrative Law Judge (ALJ) Baer to discuss settlement of the case between respondents and the Commission's Transportation Division.

A settlement agreement was not reached, and the matter was transferred to ALJ Galvin for evidentiary hearing. At a December 13, 1990 prehearing conference, issues and witnesses were tentatively identified and an evidentiary hearing was set for March 4, 1990 in Los Angeles. However, as a result of continued settlement discussions between respondents and the Commission's Transportation Division staff, the evidentiary hearing was not held.

Subsequently, respondent carriers and staff settled all issues, the result of which was embodied in a document entitled "Stipulation for Settlement" which is annexed to this order as

Appendix A. The stipulation was signed by Wollin's counsel, Oxnard Frozen Foods' counsel, and the Commission's Transportation Division's counsel.

In Appendix A, the parties recommend that the terms of the agreement be accepted by the Commission as its final disposition of the issues identified in the investigation. The agreement dated May 2, 1991 was received and accepted by ALJ Galvin on September 11, 1991.

As part of the agreement, the Commission's Transportation Division recommends that that this proceeding be terminated, that all respondents to the investigation not be subject to any future undercharges, sanctions, or fines arising from transportation performed by respondent carriers as arranged by respondent motor transportation broker Wollin for the shipper respondents to and including the date of this stipulation and be relieved of liability for the payment of any amounts other than those specifically agreed to be paid by this stipulation.

We have reviewed the agreement and believe that it is a reasonable resolution of this investigation. Therefore, we will accept the stipulated agreement attached to this order as

Appendix A.

Findings of Fact

1. The stipulation in this proceeding is reasonable, consistent with law, and in the public interest.
2. The stipulation is recommended by the Commission's Transportation Division.
3. The stipulation is not contested.

Conclusions of Law

1. The stipulation should be adopted.
2. The adoption of this stipulation should not be construed as a precedent or policy statement for or against any of the parties in any current or future proceeding.

3. Since this matter is resolved by stipulation, the following order should be effective immediately.

ORDER

IT IS ORDERED that:

- 1. Leonard A. Wollin shall pay as settlement of the alleged Public Utilities (PU) Code violations subject to this investigation the sum of \$10,000 to the Commission in ten monthly installments of \$1,000 each; and the first installment shall be due 30 days after the effective date of this order.
- 2. Oxnard Frozen Foods shall pay as settlement of the alleged PU Code violations subject to this investigation a sum of \$400 to the Commission.
- 3. This investigation is terminated.

This order is effective today.
Dated October 23, 1991, at San Francisco, California.

PATRICIA M. ECKERT
President
JOHN B. OHANIAN
DANIEL Wm. FESSLER
NORMAN D. SHUMWAY
Commissioners

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

Neal J. Saulman
NEAL J. SAULMAN, Executive Director
PB

APPENDIX A

SEP 20 1989

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, rates, and practices of Leonard A. Wollin, an individual dba Wollin Transport, a Motor Transportation Broker, eight respondent carriers listed in the OII, Oxnard Frozen Foods, a California corporation, Proficient Foods, a California corporation and Ralph's Grocery Co., a Delaware corporation as Shipper Respondents.

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STIPULATION FOR SETTLEMENT

THE PARTIES TO THIS PROCEEDING now pending before the Public Utilities Commission desiring to avoid the expense, inconvenience and uncertainty attendant to litigation of the issues in dispute between them have agreed upon a settlement of the said issues and desire to submit to the Public Utilities Commission this stipulation for approval and adoption as its final disposition of the matters herein.

NOW, THEREFORE, THE PARTIES DO STIPULATE AS FOLLOWS:

1. Respondent Leonard A. Wollin dba Wollin Transport (Wollin) agrees to pay an amount to be deposited with the Public Utilities Commission ("Commission") in the sum of \$ 10,000 pursuant to Section 4870 of the Public Utilities Code. This amount is to be paid in

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ten (10) consecutive monthly installments of \$1,000, the first installment due 30 days after issuance of the Commission's final order approving and adopting the terms of this Stipulation. For Settlement as its final disposition of the matters subject to this investigation.

2. Respondent Oxnard Frozen Foods (Oxnard) agrees to pay \$ 400.00 directly to the Commission to settle issues relating to Sections 2100 and 3800 of the Public Utilities Code in lieu of payment through Respondent Carriers Emil Torp and J. & G. Trucking.

3. The staff of the Public Utilities Commission, specifically the Compliance and Enforcement Branch of the Transportation Division, agrees with the terms of this stipulation and recommends to the Commission that these terms be accepted, that this proceeding known as I. 89-09-022 be terminated, that all respondents in I. 89-09-022 shall henceforth not be subject to any future undercharges, sanctions, or fines arising from transportation performed by respondent carriers as arranged by Respondent Motor Transportation Broker Wollin for the shipper respondents to and including the date of this Stipulation, and be relieved of liability for the payment of any amounts other than those specifically agreed to be paid in this stipulation.

APPENDIX A

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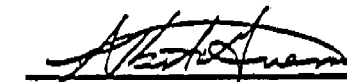
4. The parties enter into this agreement freely and voluntarily.

5. It is understood and agreed that the terms herein are binding when approved by the Commission.

Dated:



Anthony H. Trembley, Attorney at Law
Counsel for Oxnard Frozen Foods
NORDMAN, CORMANY, HAIR & COMPTON
P.O. Box 9100
Oxnard, CA 93031-9100



Alberto C. Guerrero
Attorney at Law
Counsel for Compliance
and Enforcement Branch
of Transportation Division



David N. Nissenberg, Attorney at Law
Counsel for Wollin Transport
NISSENBERG & NISSENBERG
7855 Ivanhoe Avenue, Suite 224
La Jolla, CA 92037

Dated: May 2, 1991

(END OF APPENDIX A)