

L/dp/jmc *

ORIGINAL

Decision 91-11-073 November 20, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ALLIED TEMPORARIES,

Complainant,

v.

MCI,

Defendant.

Case 90-04-019
(Filed April 13, 1990)

ORDER DENYING REHEARING OF DECISION 91-07-002

On July 2, 1991, the Commission issued Decision (D.) 91-07-002, which denied the request of Allied Temporaries, Inc. (Allied) for compensation from the Advocates Trust Fund for its participation in Case 90-04-019. That case involved a complaint filed by Allied against MCI, alleging that MCI's procurement practices in the area of temporary personnel services were unfair and discriminatory toward Allied and other women and minority-owned businesses (WMBEs), and that, in consequence, MCI's procurement practices violated Public Utilities (P.U.) Code Sections 8281-8285 and the Commission's General Order (G.O.) 156.

As we stated in D.91-07-002, this case never went to hearing, but was settled by the parties. At Allied's request, the Commission dismissed the complaint without prejudice in D.90-05-096, issued May 24, 1990.

Allied had meanwhile filed a request for compensation from the Advocates Trust Fund, which was opposed by MCI. This request was denied in D.91-07-002. Allied filed an application for rehearing of D.91-07-002, in time to invoke the automatic stay provision of P.U. Code Section 1731. This filing was also opposed by MCI. On September 6, 1991 the Commission issued D.91-09-041, which extended the stay until further Commission order.

We have considered all of the allegations of error raised in that application and are of the opinion that insufficient grounds for granting rehearing have been shown. However, we take this opportunity to more fully discuss this outcome.

We confirm our finding in D.91-07-002 that the trust document does not cover the situation presented by this case, namely, where a complaint is filed which is subsequently settled before any responsive pleading is filed or any hearings have been held, and where the only action by the Commission is to dismiss the complaint at the complainant's request without any review or approval by the Commission of the settlement agreement. In our view, under these facts, while a filing has been made which is sufficient to initiate litigation before the Commission, no such litigation has occurred. Our review of the decisions underlying the creation of the Advocates Trust Fund, as well as the language of the Trust document, indicates to us that in creating the Trust Fund, the Commission contemplated compensation awards only in cases which had been litigated and in which the party requesting compensation could demonstrate a direct, primary and substantial contribution to the result the Commission reached. In this case, the Commission has reached no result other than to dismiss the complaint.

We agree with Allied that settlement of cases is often a positive outcome which can result in a substantial saving of time and resources. Moreover, we acknowledge that we have on several occasions awarded fees through our intervenor funding rules for participation in cases that have involved settlements. However, we note that those cases are rate or rate related cases, over which we retain jurisdiction even after parties have settled, and in which we are charged with reviewing and approving the settlement agreement.

IT IS ORDERED that rehearing of D.91-07-002 is hereby denied.

IT IS FURTHER ORDERED that the stay of D.91-07-002 is hereby lifted.

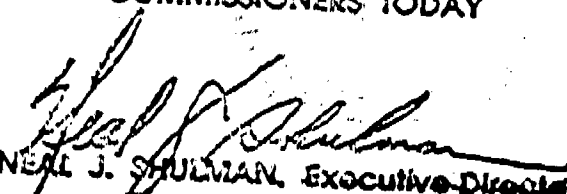
This order is effective today.

Dated November 20, 1991 at San Francisco, California.

PATRICIA M. ECKERT
President
DANIEL WM. FESSLER
NORMAN D. SHUMWAY
Commissioners

Commissioner John B. Ohanian,
being necessarily absent, did
not participate.

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


NEAL J. SHULMAN, Executive Director
09