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Decision 92-02-079 February 20, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

LEE GALE, individually and dba
MANAGEMENT V, and PYRAMID
COMMODITIES, INC., a California
corporation,

Complainants,

vs.

MOBILE CONCRETE, INC., A
CORPORATION; UNITED SAND &
GRAVE; CP/, a corporation; and
TTT, INC., a corporation,

Defendants.

ORIGINAL

Case 87-10-020
(Filed October 16, 1987)

ORDER DENYING REHEARING OF DECISION 91-12-029

Lee Gale, individually and dba Management V, and Pyramid Commodities, Inc., a California corporation (Complainants) has filed an Application for Rehearing of Decision No. 91-12-029. Complainants request that the Commission revise the subject decision regarding the collection of illegal overpayments for rents on trailers. The decision found that the complaint failed to state a cause of action within the jurisdiction of the Commission since the Public Utilities Code provides that the Commission has jurisdiction over complaints only when defendants have violated a provision of the PU Code, or the Highway Carriers Act, or any rule or decision of the Commission in their role as highway permit carriers, or public utilities. See PU Code Sections 1702 and 3731. The proper remedy for the parties under Public Utilities Code Section 737, in the case of public utilities, and Section 3671, in the case of highway permit carriers, is to file for collection of lawful charges in any court of competent jurisdiction.

Complainants do not renew their request to have the Commission assert jurisdiction and do not allege any other possible legal error; but instead request that the Commission reword its decision to clarify that neither Complainants' blameworthiness nor the fact that Complainants voluntarily came forward rather than being forced to come forward by the Commission, is any reason for the Superior Court to depart from the policy in favor of enforcing Commission rates and regulations and against enforcing arrangements which violate Commission rates and regulations.

The Commission has reviewed each and every allegation of the application for rehearing and believes that no grounds for rehearing are set forth since no legal error has been shown. However, the Commission repeats herein its statement set forth on page 11 of Decision No. 91-12-029 regarding this transaction and directing that an audit be undertaken by staff:

"We again voice our strong displeasure with all parties involved here - complainants, defendants, and shippers in concocting this device, a stratagem obviously designed to circumvent payment of the correct minimum rates and charges applicable to this transportation. Therefore, we will direct the Executive Director to cause the Transportation Division to undertake an audit of the transportation records of complainants as soon as practicable, and of the records of any other carriers who may be known to recently have performed transportation for the shippers and lessors on this transportation."

The Commission further notes that it is Commission policy to favor the enforcement of Commission rates and regulations and against enforcement of arrangements which violate Commission rates & regulations. Having fully considered the issues raised by Complainants the Application for Rehearing should be denied.

WHEREFORE,

IT IS ORDERED that Complainants' Application for
Rehearing of Decision No. 91-12-029 is denied.

This order is effective today.

Dated February 20, 1992 at San Francisco, California.

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

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


NEAL J. SHULMAN, Executive Director