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Decision 92-04-005 April 8, 1992

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's )  
own motion into the operations, )  
rates and practices of Marino )  
Bros. Trucking Co., a California )  
corporation. )  
Respondent. )

I.91-01-010  
(Filed January 15, 1991)

Milton A. Walker and John M. Zonneveld,  
for Superior California Trucking  
Company, interested party.  
Alberto Guerrero, Attorney at Law, and  
William G. Waldorf, for Transportation  
Division.

O P I N I O N

Summary

This decision finds Marino Bros. Trucking Co. (Marino) to have failed to pay subhaulers for work performed during 1988 and 1989, to have undercharged a shipper on shipments of sheet steel during 1987, and to have failed to pay the Commission fines for subhauler payment violations and undercharge violations. We order Marino to make \$22,946.58 in past due subhauler payments, with interest, and to pay \$3,628.36 in Commission fines within 20 days of the effective date of this order. If Marino is not in full compliance within the 20 days, all operating certificates and permits will be suspended and, following another 30 days, will be revoked.

I. Background

Marino, whose mailing address is 3516 Newton Road, Stockton, California 95205, is engaged in the business of transporting property over the public highways of this state for

compensation. Marino operates pursuant to a highway common carrier certificate issued June 12, 1956, a highway contract carrier permit issued November 11, 1956, a dump truck carrier permit issued April 23, 1970, an agricultural carrier permit issued July 25, 1978, and a heavy specialized carrier permit issued July 27, 1981.

An investigation by the Commission Transportation Division staff indicated that Marino may have violated §§ 494, 702, and 3737 of the Public Utilities (PU) Code. On June 29, 1989, an undercharge citation with a fine of \$5,201.51 and later, on March 27, 1990, a citation forfeiture with a fine of \$1,500 were served on the carrier. The carrier failed to comply with the undercharge citation and failed to respond to the citation forfeiture. The citations were then deemed denied.

## II. Issues to be Decided

The Commission issued an Investigation (I.) for the purpose of determining:

1. Whether respondent Marino has violated §§ 702 and 3737 of the PU Code and General Order (GO) 102-H by failing to timely pay subhaulers.
2. Whether respondent Marino should be ordered to review its records and remit past due balances to subhaulers, including amounts set forth in the transportation records listed in Attachment B.
3. Whether respondent Marino has violated § 494 of the PU Code by failing to charge shipper USS-POSCO Industries the applicable rates.
4. Whether in the event that sums less than the applicable rates are found to have been charged, collected, or received, during the period June 1, 1987 to and including September 30, 1987, a fine in the amount of the undercharges should be imposed upon

respondent Marino pursuant to § 2100 of the PU Code.

5. Whether any or all of respondent Marino's operating authority should be cancelled, revoked, or suspended, or in the alternative, a fine imposed pursuant to §§ 1070, 3774, 2108, and 3805 of the PU Code.
6. Whether respondent Marino should be ordered to cease and desist from any and all unlawful operations and practices.
7. Whether any other orders that may be appropriate should be entered in the lawful exercise of the Commission's jurisdiction.

A prehearing conference (PHC) was noticed and held on April 12, 1991. No representative appeared for respondent and the PHC was continued to May 10, 1991. At the second PHC an unofficial representative appeared but no settlement was reached. An evidentiary hearing was then scheduled and noticed for August 30, 1991 in the Commission Courtroom in San Francisco. Prefiled testimony was ordered to be served on all parties by August 20, 1991.

Hearing was held on August 30. Respondent did not appear. Staff witnesses Sylvia Shorter, Arma Meloche, and William Waldorf testified, sponsoring Exhibits 1-6. Staff recommended respondent be ordered to pay the \$2,128.36 balance from Undercharge Citation F-3731, pay the additional punitive fine of \$1,500 from Citation Forfeiture F-4031, and make \$22,946.58 in restitution to unpaid subhaulers listed in Attachment B to the I.

Milton Walker entered an appearance for Superior California Trucking Company (Superior). Walker stated he is a consultant with over 40 years' experience before the Commission. He testified that Superior remains unpaid for subhauling work performed in October 1989. Superior filed a claim with the bonding company for payment but the filing was beyond the 60-day limitation

provided in GO 102-H; no action has yet been initiated in small claims court, even though Superior believes respondent has assets valued at \$3,000,000. (Transcript, p. 42.) Walker requested that interest be ordered paid on the overdue subhauler balances.

The Administrative Law Judge (ALJ) questioned staff counsel at hearing as to whether undercharge violations from the summer of 1987 could be considered, based on the three-year statute of limitations found in PU Code § 736. Staff's position is that, based on the three-year statute of limitations, Marino (respondent) is precluded from collecting undercharges from the shipper but the Commission is not precluded from initiating action against Marino for failure to respond to the undercharge citation or to collect the undercharges. On September 23, 1991, staff served a letter on all parties of record citing Decision 88-08-006 (28 CPUC 2d 580) as consistent with its position.

No party filed a response to staff's position. On November 5, 1991, Ernest Marino sent a letter to the ALJ stating he had retired from respondent company on December 31, 1988 and enclosing a current Statement of Domestic Stock Corporation for respondent. Marino has been personally served in this proceeding by staff at the company offices and at 3650 Overhiser Road, Stockton, California. He states he is not in a position to assist in the investigation and recommends the Commission directly serve corporate officer Richard Marino at 2145 Stewart Street, Stockton, California 95205, his address listed in the current corporate statement.

Findings of Fact

1. Respondent failed to timely pay subhaulers for work performed during August 1988, March 1989, and August 1989. The commodity in all cases but one was pears. In the one case the commodity was steel. Unpaid subhauler balances of \$22,946.58 remain outstanding. There is a time value of money attached to late payments.

2. Marino signed Citation Forfeiture F-4031, a \$1,500 fine for subhauler payment violations, on March 27, 1990. The fine has not been paid.

3. Marino failed to charge shipper USS-POSCO Industries the applicable rates on 71 shipments of sheet steel during the period of June 1, 1987 to and including September 30, 1987. Tariff rates apply as the shipments were made during a period of time Marino's contract with the shipper had been cancelled. The total amount of undercharges is \$2,128.36, as detailed in Exhibit 5 and included in Undercharge Citation F-3731, dated June 29, 1989.

4. Marino did not pay the Commission a fine or deny Citation F-3731.

5. An official representative of Marino has failed to appear at noticed hearings. The 1991 Secretary of State filing lists corporate officer Richard Marino's address in addition to the company's address.

Conclusions of Law

1. Marino has violated §§ 702 and 3737 of the PU Code and GO 102-H by failing to timely pay subhaulers.

2. Marino should be ordered to review its records and remit past due balances to subhaulers. Interest should be paid on all past due amounts to reflect the time value of money.

3. Marino has violated PU Code § 494 by failing to charge shipper USS-POSCO Industries the applicable rates.

4. Pursuant to PU Code § 2100, Marino should be assessed a fine in the amount of the undercharges.

5. Marino should be ordered to cease and desist from all unlawful operations and practices.

6. If the named subhaulers are not paid, together with the Commission fines, within 20 days after the effective date of the following order, Marino's highway common carrier certificate, highway contract carrier permit, dump truck carrier permit,

agricultural carrier permit, and heavy specialized carrier permit should be suspended.

7. If the subhauler balances and Commission fines are not paid within 30 days of the date of suspension, Marino's operating certificate and permits named above should be revoked.

8. The service list should be revised to include the corporate officer Richard Marino's address, as reflected in the 1991 Secretary of State filing.

ORDER

IT IS ORDERED that:

1. Within 20 days after the effective date of this order, Marino Bros. Trucking Co. (Marino) shall review its records and remit past due balances to subhaulers, including \$22,946.58 to the 7 subhaulers identified in Attachment B of the Order Instituting Investigation. Marino shall pay interest, calculated at the 3-month commercial paper rate in effect on the date of this order, from the date balances were due until the date paid.

2. Within 20 days after the effective date of this order, Marino shall pay the fine of \$1,500 for Citation Forfeiture F-4031 and, pursuant to PU Code § 2100, a fine of \$2,128.36.

3. If the subhauler balances with interest and \$3,628.36 in fines are not paid within 20 days after the effective date of this order, Marino's highway common carrier certificate, highway contract carrier permit, dump truck carrier permit, agricultural carrier permit, and heavy specialized carrier permit shall be suspended pending payment.

4. If the fines and subhauler balances are not paid within 30 days of the date of suspension, all of Marino's certificates and permits shall be revoked.

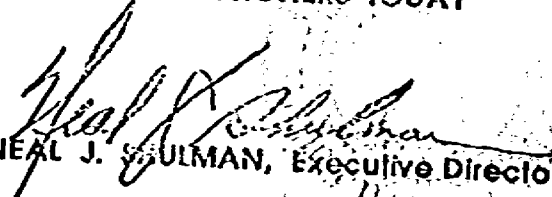
5. Marino shall cease and desist from any and all unlawful operations and practices.

This order is effective today.

Dated April 8, 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. SULMAN, Executive Director