

JUN 3 1992

Decision 92-06-018 June 3, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the operations and
practices of Milton W. Henke, an
individual, doing business as
Milt's Livery Service,

Respondent.

ORIGINAL

I.92-01-005
(Filed January 10, 1992)

OPINION

Milton W. Henke, doing business as Milt's Livery Service, transports passengers over the public highways of this state for compensation. Henke operates pursuant to a charter-party certificate issued August 6, 1987, in File TCP-875-B.

The California Highway Patrol (CHP) assigned Henke an unsatisfactory terminal safety rating as a result of a vehicle and records inspection conducted on December 17 and 18, 1990. This inspection covered three vehicles and resulted in two vehicles being placed out of service for imminently hazardous wheel and suspension defects. Henke's charter-party carrier operating authority was suspended on January 14, 1991, pursuant to Public Utilities ((PU) Code § 5378 and Resolution TL-18336.

Henke filed an application for reinstatement with the Commission and caused the CHP to conduct another terminal inspection on February 25, 1991. The second inspection included five vehicles and revealed 19 mechanical safety violations. Four vehicles were placed out of service for imminently hazardous mechanical safety violations. A second unsatisfactory terminal rating was assigned and the CHP recommended that the suspension be continued.

Henke requested reinspection of its terminal on March 13, 1991. A reinspection of Henke's terminal was conducted March 21,

1991, and the result indicated that Henke's terminal was then satisfactory and that the suspension should be lifted.

Due to the certificate of insurance being canceled, reinstatement of Henke's operating authority was held in abeyance until proof of adequate liability insurance was again on file with the Commission. Henke's authority was reinstated April 23, 1991.

A staff investigation disclosed that Henke allegedly continued to conduct operations as a charter-party carrier during the period January 14, 1991, through March 27, 1991, when its operating authority was under suspension for failure to meet CHP safety requirements. Henke may have conducted operations as a charter-party carrier over the public highways of this state during a period of operating authority suspension and therefore may have violated PU Code § 5379.

The Commission issued its order instituting investigation to inquire into the matters raised by the staff investigation.

A prehearing conference was held on March 20, 1992, at which Henke entered into settlement negotiations with the Transportation Division. Further negotiations were conducted by telephone and letter, which resulted in the execution of a stipulation for settlement on April 2, 1992.

The settlement provides that Henke agrees to pay \$3,500 pursuant to PU Code §§ 5378 and 5415. This amount is to be paid in ten consecutive monthly installments of \$350, the first of which is due 30 days after the issuance of the order approving the settlement.

The Transportation Division agrees with the terms of the stipulation and recommends to the Commission that they be accepted, that this proceeding be terminated, that Henke henceforth not be subject to any further sanctions or fines arising from transportation performed by him to and including the date of the stipulation, and that he be relieved of liability for payment of

any amount other than that specifically agreed to be paid in this stipulation.

A copy of the stipulation is appended.

Findings of Fact

1. The stipulation is reasonable, consistent with law, and in the public interest.

2. The stipulation is recommended by the Transportation Division.

3. The stipulation is uncontested.

Conclusions of Law

1. The stipulation should be adopted.

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

O R D E R

IT IS ORDERED that:

1. Milton W. Henke, an individual, doing business as Milt's Livery Service, shall pay to the Commission the sum of \$3,500, pursuant to Public Utilities Code §§ 5378 and 5415. This amount shall be paid in 10 consecutive monthly installments of \$350, the first of which is due 30 days after the issuance of this order.

2. Upon payment in full of the amount ordered above, Henke shall thenceforth not be subject to any future sanctions or fines arising from transportation performed by him to and including the date of the stipulation, and he shall be relieved of liability for the payment of any amount other than that specifically agreed to be paid in the stipulation.

3. This investigation is terminated and the docket is closed.

This order is effective today.

Dated June 3, 1992, at San Francisco, California.

DANIEL Wm. FESSLER
President

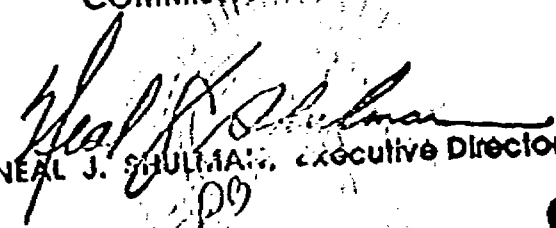
JOHN B. OHANIAN

PATRICIA M. ECKERT

NORMAN D. SHUMWAY

Commissioners

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


NEAL J. SHULMAN, Executive Director

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own
motion into the operations and
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Livery Service,

Respondent,

I. 92-01-005

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.

In addition, since this STIPULATION represents a compromise by the Parties, the Parties have entered into it on the basis that the Commission's adoption of said STIPULATION not be construed as an admission or concession by any party regarding the facts or law in dispute in this proceeding. Furthermore, it is the intent and understanding of the parties that Commission adoption of this STIPULATION will not be construed as a precedent or policy statement of any kind for or against the Parties in any current or future proceeding.

I. 92-01-005 /ALJ/RTB/

NOW, THEREFORE, THE PARTIES DO STIPULATE AS FOLLOWS:

1. Respondent Milton W. Henke dba Milt's Livery Service (Milt's) agrees to pay an amount to be deposited with the Public Utilities Commission ("Commission") in the sum of \$ 3,500 pursuant to Sections 5378 and 5415 of the Public Utilities Code. This amount is to be paid in ten (10) consecutive monthly installments of \$ 350, 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. 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. 92-01-005 be terminated, that the respondent in I. 92-01-005 shall henceforth not be subject to any future sanctions or fines arising from transportation performed by Milt's to and including the date of this Stipulation, and be relieved of liability for the payment of any amount other than that specifically agreed to be paid in this stipulation.

I. 92-01-005 /ALJ/RTB/

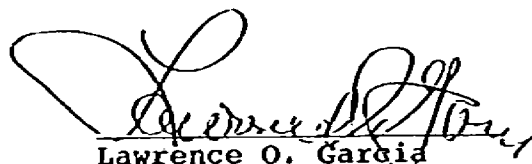
3. The parties enter into this agreement freely and voluntarily.

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

Dated: April 2, 1992



Milton W. Henke dba
Milt's Livery Service
375 Arroyo Dr.
South San Francisco, CA 94080



Lawrence Q. Garcia
Attorney at Law
Counsel for Compliance
and Enforcement Branch
of Transportation Division