

JUL 22 1992

Decision 92-07-055 July 22, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA'

Investigation on the Commission's
 own motion into the operations,
 rates, and practices of Pellandini
 Transportation Inc., a California
 corporation, and United Beverage,
 Inc., a California corporation, as
 Shipper Respondents,
 Respondents.

ORIGINAL

I.91-02-006
(Filed February 6, 1991)

O P I N I O N

On February 6, 1991, the Commission, on its own motion, issued an Order Instituting Investigation (OII) into the operations, rates, charges, and practices of the respondent, Pellandini Transportation, Inc. (Pellandini), with regard to possible undercharges for transportation services furnished United Beverage, Inc. (United). The OII indicated that on February 9, 1989, an undercharge citation and a citation forfeiture, with fines of \$18,010.21 and \$2,000, respectively, were served on Pellandini, and that Pellandini failed to respond and the citations were deemed denied.

The OII directed an investigation to be undertaken and a public hearing into the allegations of undercharge be held before an administrative law judge.

Following an investigation by Commission staff, but prior to the scheduled hearing of this matter by the assigned administrative law judge, it was announced that on May 29, 1992, a Stipulation For Settlement had been entered into between the Enforcement Section of the Commission's Compliance and Enforcement Branch, Pellandini, and United, and that said parties desired to submit the Stipulation to the Commission for approval and adoption

as its final disposition of the matters herein. A copy of the Stipulation is annexed to this decision as Attachment A.

Upon review of the Stipulation For Settlement, we are of the opinion that the settlement of this matter in accordance with the Stipulation is in the public interest and should be approved in its entirety.

Findings of Fact

1. Pellandini is engaged in the business of transporting property over the highways of this state for compensation.

2. Pellandini operates pursuant to a highway contract carrier permit, a dump truck carrier permit, and an agricultural carrier permit, each of which was issued by this Commission on October 20, 1983, as well as pursuant to a highway common carrier certificate issued by this Commission on November 22, 1983.

3. United has received services from Pellandini in the form of transportation of property over the public highways of this state for compensation.

4. On February 2, 1989, an undercharge citation and a citation forfeiture, with fines of \$18,010.21 and \$2,000, respectively, were served on Pellandini.

5. Pellandini failed to respond to the citations and the citations were deemed denied.

6. Prior to hearing, the parties entered into a Stipulation For Settlement, a copy of which is annexed hereto as Attachment A, and have submitted the same to this Commission for approval and adoption as the Commission's final disposition of the matters herein.

7. Adoption of the Stipulation would avoid the expense, inconvenience, and uncertainty attendant to litigation, and upon review, the proposed settlement terms appear fair and reasonable under the circumstances of this case.

Conclusions of Law

1. Pellandini is engaged in the business of transporting property over the public highways of this state for compensation.
2. Pellandini operates pursuant to a highway contract carrier permit, a dump truck carrier permit, and an agricultural permit, each of which was issued by this Commission on October 20, 1983, as well as pursuant to a highway common carrier certificate issued by this Commission on November 22, 1983.
3. United is a shipper of property.
4. The adoption and approval of the Stipulation For Settlement are in the public interest.

O R D E R

IT IS ORDERED that:

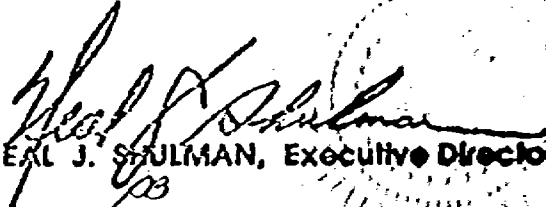
1. The Stipulation For Settlement, annexed hereto as Attachment A, is incorporated herein in its entirety.
2. The Stipulation For Settlement (Attachment A) is hereby adopted and approved in its entirety.
3. Investigation 91-02-006 is terminated.

This order is effective today.

Dated July 22, 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. STULMAN, Executive Director

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own
motion into the operations, rates and
practices of Pellandini Transportation
Inc., a California corporation, and
United Beverage, Inc., a California
corporation as Shipper Respondent,

I. 91-02-006

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.

ATTACHMENT A

I. 91-02-006 /ALJ/RLR/

NOW, THEREFORE, THE PARTIES DO STIPULATE AS FOLLOWS:

1. Respondent Pellandini Transportation, Inc. (Pellandini) agrees to pay an amount to be deposited with the Public Utilities Commission ("Commission") in the sum of \$ 1,800 pursuant to Section 1070 of the Public Utilities Code. This amount is to be paid in ten (10) consecutive monthly installments of \$ 180, 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 United Beverage, Inc. (United) agrees to pay \$ 8,500.00 directly to the Commission to settle issues relating to Section 2100 of the Public Utilities Code in lieu of payment through respondent Pellandini. This amount may be paid in ten (10) consecutive monthly installments in the amount of \$ 800.00, with a final installment in the amount of \$ 500.00. The first installment is 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.

ATTACHMENT A


I. 91-02-006 /ALJ/RLR/


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. 91-02-006 be terminated, that the respondents in I. 91-02-006 shall henceforth not be subject to any future sanctions or fines arising from transportation performed by Pellandini 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.

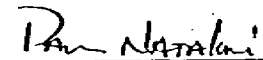
4. The parties enter into this agreement freely and voluntarily.

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

Dated: *MAY 29, 1992*


John C. Roveda, Attorney at Law
Counsel for UNITED BEVERAGE, INC.
105 Jackson St.
Oakland, CA 94607


Donald Pellandini, President
PELLANDINI TRANSPORTATION, INC.
P.O. Box 1749
Sonoma, CA 95476


Pamela Nataloni
Attorney at Law
Counsel for Compliance
and Enforcement Branch
of Transportation Division