

ORIGINAL

Decision 83 03 050 MAR 16 1983

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Nathaniel Davis,)
)
 Complainant,)
)
 vs.)
)
 Trosie E. Davis, T-111,167,)
)
 Defendant.)

Case 82-09-02
(Filed September 1, 1982)

Nathaniel Davis, for himself, complainant.
Trosie E. Davis, for himself, defendant.
Catherine Johnson, Attorney at Law,
James D. Westfall, and Nancy Kilmurray,
 for the Commission staff.

O P I N I O N

By this complaint Nathaniel Davis (complainant) alleges that Dump Truck Carrier Permit T-111,167 issued to him in 1975 was transferred without his knowledge to Trosie E. Davis (defendant) and requests that the permit be reinstated in his name. By his answer filed October 4, 1982, defendant asserts that he purchased the permit in issue from a person who claimed to be a representative of complainant for the sum of \$2,000.

Public hearing was held before Administrative Law Judge Arthur M. Mooney in Los Angeles on December 8, 1982 on which date the matter was submitted. Evidence was presented by complainant, defendant, and two representatives of the Commission staff. There was no controversy regarding any of the testimony or exhibits presented.

Summary of Evidence

Dump Truck Carrier Permit T-111,167 was issued to complainant in July 1975. He has been continually in the dump truck business since then, and he had experience in the dump truck field prior to that time. His terminal is in Los Angeles. He has three end-dump trucks, one employee, and all required insurance on file with the Commission. He drives one of the trucks.

Defendant had operated under a highway contract carrier permit during the past several years. In late 1981 he decided to go into the dump truck carrier business. He had thought that it would not be possible to obtain a new permit from the Commission and that he would have to buy one from an existing carrier.

It was common knowledge in the local dump truck carrier industry that defendant was shopping for a dump truck carrier permit. He was informed by an acquaintance that a Terry Robinson might have a dump truck carrier permit for sale and was given this individual's telephone number. Defendant called the number and a recording stated that Terry Robinson was not in and requested the caller to leave a message. Defendant left his telephone number. Terry Robinson returned the call and informed defendant that he did not have a dump truck carrier permit for sale but that he had a friend who did. Defendant asked Terry Robinson to have the friend call him. Within a week or so defendant received a call from a person who identified himself as complainant and stated he wanted to sell his dump truck carrier permit. He also informed defendant that he had a job driving a truck in another area and would be leaving town but would sign all necessary papers before doing so and that he had authorized Terry Robinson to represent him in the sale. Defendant

confirmed with the Commission's San Francisco Office that the permit in issue was active. He also checked with the Commission's Los Angeles Office to find out if it was permissible for a person to sell a permit and not be present, and he was informed that this would be all right as long as the transferor had signed the transfer application. A short time later defendant telephoned Terry Robinson and asked if he had the necessary signed papers for the transfer, and upon being informed that he did, defendant made arrangements to meet him at World Savings and Loan in Lynwood, defendant's bank.

When defendant arrived at the bank the only person in front of the bank at the time identified himself to defendant as being Terry Robinson. Both entered the bank, and Terry Robinson showed defendant a packet of papers which included an Application to Transfer Public Utilities Commission Permit which included a signature purported to be complainant's but was otherwise blank, a Commission dump truck permit purported to have been issued to complainant, and several other papers purported to be applications and permits with complainant's name on them but which had no relationship to the transaction. It was defendant's intention to give Terry Robinson a cashier's check; however, Terry Robinson told him that the seller wanted cash because he was leaving the area and might have difficulty cashing a check where he was not known. Since payment was to be in cash, defendant asked Terry Robinson for identification. The identification shown had the name Michael Waters on it. The purported seller's representative told defendant that this was his correct name but that everyone called him Terry Robinson. Defendant does not recall what kind of an identification card was shown to him. However, since the transfer application form appeared to be signed by complainant and the other

documents in the possession of the purported seller's representative appeared to be in order, defendant's suspicion was not aroused. Defendant wrote out a receipt for \$2,000 for the sale of the permit which was signed Michael Waters by the alleged seller's representative. A copy of this document is included in Exhibit 3. Defendant then gave the \$2,000 cash to Robinson/Waters and was given the signed-in-blank transfer application, the other documents, and the receipt for the money.

Defendant then took the signed-in-blank transfer application to the Commission's Downey Office and was assisted in completing the necessary information on the form, filed the application, and paid the required \$150 transfer fee. The completed transfer application, a copy of which is included in Exhibit 1, was forwarded to the Commission's San Francisco Office. Since the application appeared to be in order, the transfer was authorized on November 16, 1981, in accordance with Resolution 18030. A dump truck carrier permit in File T-130,415 was issued to defendant and complainant's dump truck carrier permit was canceled.

Defendant has continually operated in the dump truck business since receiving the permit. He has one 10-wheel dump truck and hires a driver. The equipment is kept at the Industrial Asphalt Company's Wilmington plant and is operated primarily out of this plant and other Southern California plants of this shipper. Defendant is now engaged in other employment which he intends to leave in the near future. He will then drive the truck. Defendant has all required insurance on file with the Commission.

Subsequent to the business transaction with Robinson/Waters, defendant has not seen or otherwise had contact with him. He has tried to locate this individual, but all attempts have been unsuccessful.

Complainant sold a truck to Terry Robinson in July 1975. He would occasionally see him on the highway for a year or so after that, but has not seen or had any other contact with him since then. Complainant has never at any time authorized Terry Robinson or anyone else to transfer his permit.

By letter dated November 18, 1981, the Commission informed complainant that his dump truck carrier permit had been transferred. This was the first knowledge he had of this. The transferor's signature shown on the transfer application in Exhibit 1 is not complainant's signature. This is evidenced by the affidavit containing complainant's true signature in Exhibit 2.

A dump truck carrier permit had been held by Terry Robinson. This permit was transferred to another individual not involved in this proceeding in July 1981. Subsequent to this, Terry Robinson called the Commission's Downey Office and asserted that the permit had been stolen from his truck and that he had never authorized the transfer. Investigation of the matter disclosed that the transferee paid \$1,700 to Terry Robinson for the permit and had a receipt for this.

Terry Robinson has been placed on two years' probation commencing August 11, 1981 for forgery by the Los Angeles County Municipal Court. A copy of the notice of hearing in this proceeding was delivered to his last known address and was returned by the post office with the notation, "Moved left no address."

Defendant at all times acted in good faith and without knowledge of any irregularities in the telephone conversations and transactions referred to above.

Staff Recommendations

According to the staff, its investigation of the matter disclosed that complainant had no knowledge of the transfer until notified by the Commission after it had been authorized and that defendant had acted in good faith and without knowledge of any lack of authority by Robinson/Waters to represent complainant. Based on these determinations, the staff recommended that:

1. The transfer of complainant's dump truck carrier permit to defendant should be declared null and void, and the permit should be reinstated in complainant's name.
2. Upon the filing of an application and the payment of the required statutory fee, a new dump truck carrier permit should be issued to defendant for the Counties of Los Angeles, Orange, San Bernardino, Riverside, and Ventura.
3. Since defendant has already paid a \$150 filing fee with the transfer application, this amount should be credited toward the \$500 statutory filing fee accompanying his new application. This would leave a balance of \$350 for him to pay.
4. The Commission should direct the staff to cooperate with the Los Angeles District Attorney's Office or any other law enforcement agency that may have jurisdiction in bringing Robinson/Waters to justice and make its records regarding this proceeding available to any such agency.

Both complainant and defendant concurred in the staff's recommendations. We believe that they should be adopted.

Findings of Fact

1. Complainant was issued Dump Truck Carrier Permit T-111,167 in July 1975 and has been continually in the dump truck business since then. He has all required insurance on file with the Commission.

2. Complainant has not at any time prior to the hearing in this matter met or had any contact with defendant.

3. Complainant has not at any time offered to sell or authorized Robinson/Waters or anyone else to sell his dump truck carrier permit.

4. In late 1981 defendant became interested in going into the dump truck business, and it was common knowledge in the local dump truck industry that he would like to buy a permit.

5. An unknown third party telephoned defendant and identified himself as complainant. This party informed defendant that he would sell his dump truck carrier permit to him and that Robinson/Waters would represent him in the sale.

6. At a meeting at defendant's bank a person identifying himself as Robinson/Waters purported to sell complainant's dump truck carrier permit to defendant. Upon payment of \$2,000 cash by defendant, Robinson/Waters gave defendant a transfer application with a transferor signature purported to be complainant's on it but otherwise blank, an altered dump truck carrier permit purported to be complainant's, several other documents purported to be complainant's, and a receipt for the payment.

7. With assistance by the Commission's Downey office staff, defendant completed the transfer application, filed it, and paid the \$150 filing fee. Since the transfer application appeared to be in order, complainant's dump truck carrier permit was canceled and a new one was issued to defendant on November 16, 1981.

8. The Commission informed complainant by letter dated November 18, 1981 that his dump truck authority had been transferred to defendant. This was complainant's first knowledge of the transfer.

9. The transferor signature shown on the transfer application referred to in Finding 6 is not complainant's as evidenced by the affidavit containing complainant's true signature in Exhibit 2. Also, the other documents referred to in Finding 6 that were purported to be complainant's were false.

10. Since receiving the dump truck carrier permit referred to in Finding 7, defendant has continually operated in the dump truck business and has had all required insurance on file with the Commission. His scope of operations is the Counties of Los Angeles, Orange, San Bernardino, Riverside, and Ventura.

11. Defendant's only contact with the person representing himself to be complainant was the telephone conversation referred to in Finding 5. His only contact with Robinson/Waters was at the meeting referred to in Finding 6. His subsequent attempts to locate Robinson/Waters have been unsuccessful.

12. Defendant at all times acted in good faith and without any knowledge of any irregularities in the telephone conversation and transaction referred to in Findings 5 and 6.

Conclusions of Law

1. The transfer of complainant's dump truck carrier permit to defendant on November 16, 1981 under Resolution 18030 should be rescinded and declared null and void, and this permit should be reinstated and reissued to him in File T-111,167.

2. The dump truck carrier permit issued to defendant in File T-130,415 as a result of the transfer referred to in Conclusion of Law 1 should be canceled.

3. Upon the filing of an appropriate application and the payment of the required statutory filing fee, a new dump truck carrier permit in File T-130,415 should be issued to defendant for the Counties of Los Angeles, Orange, San Bernardino, Riverside, and Ventura.

4. Since defendant has already paid a \$150 filing fee to the Commission in connection with the transfer referred to in Conclusion of Law 1, this amount should be credited toward the \$500 statutory filing fee for a new dump truck carrier permit, which would leave him with a balance of \$350 to pay toward the filing fee.

5. The staff should make its records regarding this proceeding available to the Los Angeles District Attorney's Office or any other law enforcement agency that may become involved in any actions regarding the subject matter of this proceeding and should cooperate with any such agency in bringing the individual identified as Robinson/Waters to justice.

6. Because there is an urgent need for the relief granted, the following order should be made effective on the date it is signed.

O R D E R

IT IS ORDERED that:

1. The transfer of complainant's dump truck carrier permit to defendant on November 16, 1981 under Resolution 18030 is rescinded and is null and void, and this permit shall be reinstated and reissued to complainant in File T-111,167.

2. The dump truck carrier permit issued to defendant in File T-130,415 as a result of the transfer referred to in Conclusion of Law 1 shall be canceled.

3. Upon the filing of an appropriate application and the payment of the required statutory filing fee, a new dump truck carrier permit in File T-130,415 shall be issued to defendant for the Counties of Los Angeles, Orange, San Bernardino, Riverside, and Ventura.

4. Since defendant has already paid a \$150 filing fee to the Commission in connection with the transfer referred to in Conclusion of Law 1, this amount shall be credited toward the \$500 statutory filing fee for a new dump truck carrier permit, which would leave him with a balance of \$350 to pay toward the filing fee.

5. The staff shall make its records regarding this proceeding available to the Los Angeles District Attorney's Office or any other law enforcement agency that may become involved in any actions regarding the subject matter of this proceeding and shall cooperate with any such agency in bringing the individual identified as Robinson/Waters to justice.

This order is effective today.

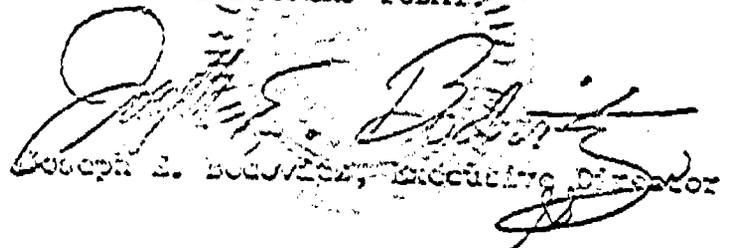
Dated MAR 16 1983, at San Francisco, California.

LEONARD M. GRIMES, JR.
President

VICTOR CALVO
PRISCILLA C. GREW
DONALD VIAL

Commissioners

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


Joseph A. Bouvier, Executive Director