

Decision No. 86606**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of GARIBALDI LENI, dba )  
 SUNDAY'S MOVING & STORAGE CO. To )  
 Reinstate P.U.C. PERMIT T-65,722. }

Application No. 56479  
 (Filed May 14, 1976)

William Rehwald, Attorney at Law, for Garibaldi  
 Leni, applicant.  
T. C. Peceiner, for the Commission staff.

O P I N I O N

The facts are not in dispute: Resolution No. 16529 dated April 14, 1970 and effective July 1, 1970 provides that permitted carriers will file certain required reports with the Commission within certain specified time limits. It further provides that if reports are not received within the time limit, an automatic fine of \$25 will be imposed for each violation; and if fines are not paid within 30 days from the date that such...reports...are due, there will be a suspension and subsequent revocation. A distribution of revenue form for the calendar year 1972 was mailed to applicant on March 9, 1973. The report noted it was due on April 6, 1973, and if not received by this date that a \$25 fine would be assessed. A second report was mailed on April 18, 1973, which stated that a \$25 fine was due and to submit the required report and the fine within 20 days, or suffer a possible suspension of operating authority. The report was received on May 1, 1973 but the \$25 fine was not included. Leni was notified separately on May 5, 1973 that the fine had not been received and was still due. Since no payment was received on or about July 31, 1973 applicant was mailed a copy of Commission Resolution No. 17168 dated July 31, 1973 which provided that applicant's permit would be automatically suspended on August 31, 1973 and revoked on October 1,

1973 unless the fine was paid. Applicant filed a facsimile quarterly report of gross operating revenue for the second quarter, 1974 with the Commission on August 5, 1974. He was advised by return mail on August 13, 1974 that his permit as a household goods carrier had been revoked on October 1, 1973 for failure to pay the \$25 fine assessed for late filing of the required revenue distribution report. Finally on May 12, 1975 the Commission received a check for \$25 dated April 29, 1975 to pay the fine.

Applicant testified he has been operating under his permit since 1959 and his operating authority has been suspended on several occasions when his insurance broker failed to mail in his policy renewal. The permit was always reinstated when the Commission received notice of his continuing insurance coverage. He testified that he does not recall receiving the notice that his permit had been revoked, nor does he recall personal service of Resolution 17168 by a Commission representative. He further testified that he was not aware his permit had been revoked until he contacted the Commission to ask for certain forms and was advised they had not been mailed because he no longer held any operating authority. He then tried to have the permit reinstated but was told a hearing was necessary and a new permit might have to be issued. He could not anticipate this reaction of the Commission staff since his permit was automatically reinstated in the past and he did not receive the original notice of revocation; he thus continued to operate as a household goods carrier.

The staff rebutted the applicant's presentation by testimony given by two staff witnesses. The first staff witness testified that he personally presented the applicant with a copy of Resolution 17168 on September 19, 1973, which was prior to the revocation date provided in the resolution, and explained its

effect. The second staff witness testified that the first class mail containing the resolution was mailed on July 31, 1973 to the applicant at his verified address of record and that the letter was not returned by the post office undelivered. He further testified that a second copy of Resolution 17168, stamped "Revoked", was mailed to the applicant shortly after the permit was revoked and that these letters and five others concerning this matter sent prior to and subsequent to the revocation were not returned by the post office undelivered.

Findings

1. Applicant is a household goods carrier. He failed to file a required report in the prescribed manner and at the specific time.
  2. Applicant was served with a certified copy of Resolution 17168 by mail on August 4, 1973, which is four days after the date of deposit of the mail (Section 5254, Public Utilities Code) and personally on September 19, 1973.
  3. Resolution 17168 conforms to the requirements of Section 5285 of the Public Utilities Code which provides that the Commission may, after notice and hearing, suspend or revoke a household goods carrier permit. The resolution states that the suspension and revocation are deferred until further order of the Commission if the carrier requests a hearing.
  4. After failing to pay a fine assessed for the delinquent filing of the report, applicant's permit was properly revoked for just cause effective October 1, 1973.
  5. Applicant received further notification by Commission letter dated August 13, 1974, that his permit had been revoked on October 1, 1973 by Resolution 17168.
  6. Applicant was required to pay a \$25 fine by May 25, 1973, Exhibit 1, Part 4, but did not do so until April 29, 1975.
- We conclude that the application should be denied.


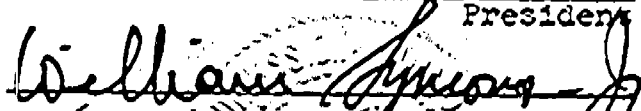
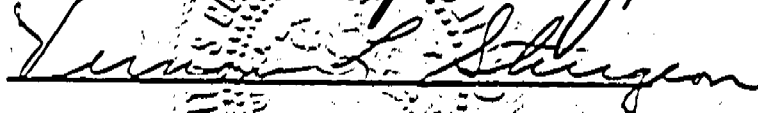

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O R D E R

IT IS ORDERED that Application 56479 is hereby denied.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 9th day of NOVEMBER 1976.

  
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President  
  
  
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Commissioners

Commissioner Leonard Ross, being necessarily absent, did not participate in the disposition of this proceeding.