

Decision No. 86693**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 Dan J. Walden; Diamond International Corporation, a Delaware corporation; Marquart-Wolfe Lumber Co., a California corporation, and DOES I through III.

Case No. 9795

Donald B. Webster, Attorney at Law, for Dan J. Walden,
and Randall M. Faccinto, Attorney at Law, for
 Diamond International Corporation, respondents.
Thomas J. MacBride, Attorney at Law, E. E. Cahoon,
and Edgar D. Phillips, for the Commission staff.

OPINION ON REOPENING FOR FURTHER HEARING

Decision No. 85401 dated February 3, 1976 directed Dan J. Walden (Walden) to collect \$3,303.92 in undercharges from Diamond International Corporation (Diamond) and \$4,885.37 in undercharges from Marquart-Wolfe Lumber Co. (M-W), a corporation, and to pay a fine in the amount of the undercharges plus a punitive fine of \$1,500. Both fines were due and payable by March 20, 1976. As of June 24, 1976, the fines had not been paid, and the proceeding was reopened on that date for further hearing to receive evidence regarding (1) the extent to which Walden or his attorney, Donald B. Webster, has complied with the order in Decision No. 85401 to collect undercharges and pay fines, (2) the request by Walden in his letter of May 3, 1976 to the Commission requesting an extension of time to comply with these directives, and (3) whether any additional sanctions should be imposed on Walden. On June 28, 1976, the punitive fine of \$1,500 was paid by Walden. The further public hearing was held before Examiner Arthur M. Mooney in Red Bluff on September 29, 1976, on which date the reopening of the matter was submitted.

Findings

The following has been established by the evidence or stipulated to by the appearances, and we find them to be facts:

1. Walden has now collected the \$4,885.37 in undercharges from M-W and has tendered his check for this amount of the undercharge fine directed to be paid by Decision No. 85401 to the Commission representative at the hearing.

2. On July 9, 1975, Walden filed Complaint No. 18032 against Diamond in the Tehama County Superior Court for in excess of \$15,000 in undercharges. The matter was settled by Walden for \$5,000, and a release therefor was executed by him on August 8, 1975. It is the contention of Walden that the complaint and release did not include the undercharges involved herein. It is Diamond's position that they did.

3. A second complaint, Complaint No. 18655, has been filed by Walden against Diamond in the Tehama County Superior Court on April 23, 1976. Walden asserts that the second complaint is for the specific undercharges of \$3,303.92 referred to in Decision No. 85401. As stated in Finding 2, it is the position of Diamond that the \$5,000 settlement in the initial complaint included these undercharges, and it is Diamond's intent to file a motion for a summary judgment in the second complaint.

4. Walden has stipulated with the Commission staff to pay the \$3,303.92 fine in connection with the Diamond undercharges as follows: He shall pay a minimum of \$200 per month on the fine until it has been paid in full, with the first payment due November 1, 1976; he may pay the outstanding balance of this fine at any time; and he shall pay any balance due on the fine within 30 days of the sale of his operating equipment. The stipulation further provided that he shall file the report required by Ordering Paragraph 4 of Decision No. 85401 on the first Monday of each month, commencing with November 1976, and shall specify in the report the status of his

financial condition and his ability to pay the remainder of the Diamond undercharge fine.

Conclusion

Decision No. 85401 should be modified in accordance with the stipulation between Walden and the Commission staff referred to in Finding 4.

ORDER ON FURTHER HEARING

IT IS ORDERED that:

1. Dan J. Walden may pay the \$3,303.92 undercharge fine in connection with the transportation he performed for the Diamond International Corporation referred to in Decision No. 85401 in a minimum of sixteen monthly payments of \$200 each and a final seventeenth monthly payment of \$103.92, with the first monthly payment due December 1, 1976 and the remaining payments due on the first Monday of each successive month thereafter; he shall file the report required by Ordering Paragraph 4 of Decision No. 85401 on the first Monday of each month, commencing with November 1976, specifying his financial condition and ability to pay any balance due and owing on this fine; he may pay any outstanding balance on this fine at any time; and he shall pay the outstanding balance due on the fine within thirty days of the sale of any of his operating equipment.

2. In all other respects, Decision No. 85401 shall remain in full force and effect.

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

Dated at San Francisco, California, this 30th day of NOVEMBER, 1976.

William Agnew, Jr. President
Leonard Van
Robert Bateman Commissioners

Commissioner D. W. Holmes, being necessarily absent, did not participate in the disposition of this proceeding.