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Decision No. 86714

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Complaint of:

SUNLAND REFINING CORPORATION, a corporation,

Complainant,

vs.

SOUTHERN TANK LINES, a corporation,

Defendant.

Case No. 10087
(Filed April 20, 1976)

Russell & Schureman, by R. Y. Schureman and Benjamin J. Goodman, Attorneys at Law, for complainant.
Milton W. Flack, Attorney at Law, for defendant.

O P I N I O N

Sunland Refining Corporation (Sunland) is a corporation organized and existing under and by virtue of the laws of Nevada and is authorized to transact intrastate business within California. Southern Tank Lines (Southern) is a corporation organized and existing under and by virtue of the laws of California, and is a petroleum irregular route carrier, as defined in Section 214 of the California Public Utilities Code.

On or about January 15, 1975 Sunland and Southern executed a written agreement (agreement), a copy of which is attached to the complaint as Exhibit A. Sunland contends that the agreement was, at the time of its execution, and is now void and that it was entered into by Sunland without knowledge that it was contrary to law and void. Sunland seeks an order of the Commission that the agreement was not authorized by any statute, general order, regulation, or tariff governing the service, rates, or charges of Southern as a petroleum irregular route carrier and that the provisions of the agreement were and are to the prejudice and disadvantage of Sunland. It further seeks an order requiring Southern to cease and desist from asserting any further demands upon it for performance of any of the provisions set forth in the agreement and an order requiring Southern to cease and desist from maintaining or continuing to maintain any action at law or in equity arising out of the agreement.

Southern contends that the agreement is valid and not unlawful by any statute, general order, regulation, or tariff of Southern as a petroleum irregular route carrier, and that the agreement is not to the prejudice or disadvantage of Sunland. Southern further contends that the complaint does not state facts sufficient to constitute a cause of action; that there is another action pending between the parties hereto in connection with the same agreement; that the complaint is uncertain in that it cannot be determined therefrom in what way or particular the agreement referred to is in violation of the law or of any tariff, general order, or regulation governing the service, rates, or charges of Southern as a petroleum irregular route carrier, or in what way the agreement is to the prejudice and disadvantage of Sunland; and that the complaint is defective in that the effect thereof is to

seek declaratory relief from the Commission with respect to a determination of the validity of the agreement and that the Commission has no authority to grant declaratory relief. Southern requests that the complaint be dismissed.

Sunland has alleged that the agreement entered into between it and Southern is not authorized by Southern's tariffs and is, therefore, void and that the provisions of the agreement are to the prejudice and disadvantage of Sunland and as such are in violation of Sections 453 and 494 of the Public Utilities Code and should not be enforced against Sunland. The pleadings must be liberally construed with a view to substantial justice between the parties. (Packard v Pacific Tel. & Tel. (1970) 71 CPUC 469.) Where the complaint alleges that the defendant has committed acts in violation of the law and seeks an order restraining the defendant from continuing such operation, a motion to dismiss will be denied. (Motor Serv. Express v Baker (1928) 31 CRC 231.) Tariffs duly published and filed with the Commission, including rules published therein, have the force and effect of a statute and any deviation therefrom is unlawful and void, unless authorized by the Commission. (Dyke Water Co. v Public Utilities Commission (1961) 56 C 2d 105, 123; Dollar-A-Day Rent-A-Car Systems, Inc. v Pacific Tel & Tel. (1972) 26 CA 3d 454, 457.) The complaint states a cause of action and is not uncertain.

The complaint does not merely seek declaratory relief but alleges that the agreement is not permitted by Southern's tariffs on file with the Commission and as such is in violation of Southern's tariffs and is in violation of Sections 453 and 494 of the Public Utilities Code, and seeks an order requiring Southern to cease and desist from asserting any further demand upon Sunland for performance of any or all of the provisions set forth in the

agreement and to cease and desist from maintaining or continuing to maintain any action at law or in equity arising out of the agreement.

The issues raised by the complaint are within the statutory jurisdiction of the Commission in that they pertain to the subject of the regulation and control of a public utility. (Section 1702 of the Public Utilities Code; Motor Transit Co. v Railroad Commission (1922) 189 C 573, 580.) The complaint is not required to set forth a theory for relief; it is only necessary to allege facts upon which the Commission may act. (Packard v Pacific Tel. & Tel. (1970) 71 CPUC 469, 471.) The Commission has concurrent jurisdiction in this matter and has power to hear the matter, notwithstanding the pending court proceeding. (Truck Owners and Shippers, Inc., et al, v The Superior Court (1924) 194 Cal 146, 156; Joe Vila v Tahoe Southside Water Utility (1965) 233 CA 2d 469, 477.)

Southern's motion to dismiss the complaint based upon its allegations in its four affirmative defenses is denied.

A hearing was held before Examiner James D. Tante in Los Angeles on August 2, 1976 and the matter was submitted upon the filing of briefs by letters to the examiner on August 12, 1976.

A letter dated August 18, 1976 from Sunland and received by the Commission on August 19, 1976, after the hearing and submission of the case, requested that Sunland be authorized to withdraw the complaint and that the case be dismissed without prejudice. A letter from Southern to the Commission dated August 30, 1976 stated objection to the request. A letter dated September 8, 1976 from Sunland stated that if its motion is granted it would not file another complaint concerning this matter, but if the motion is denied it would not wish to dismiss with prejudice but would request a decision based on the merits of the case.

Section 1705 of the Public Utilities Code provides in part:

> "...After the conclusion of the hearing, the commission shall make and file its order, containing its decision...."

It is not inappropriate for the Commission to draw upon the experience and precedent of the courts. (Regulated Carriers, Inc., v L. A. Farnham, et al (1935) 39 CRC 323, 326.)

In the absence of express statute, the power of an administrative agency to dismiss or refuse to dismiss a proceeding is analagous to the power exercised by judicial tribunals under similar circumstances, and an agency's refusal to dismiss will not be disturbed unless there is an abuse of discretion. (Mauer v State Bar (1933) 219 Cal 271; Steen v Los Angeles (1948) 31 C 2d 542.)

In the dissenting opinion of Casner v Daily News Co. (1940) 16 C 2d 410, 421, it was stated: "If the proposition were baldly stated that a plaintiff may bring a cause to trial, and go through the entire presentation of the case for both sides, and then, suspecting or learning of a probably adverse decision, may with impunity dismiss the suit and commence all over again, it would cause the greatest astonishment among the bench and the bar. The gross injustice to the defendant in such a situation is obvious: he is amenable to an adverse judgment, but a judgment in his favor may be snatched away from him by alert counsel for his opponent after all the effort and expense of a trial. But the injustice to the defendant is not the greatest evil of such a practice; the wasting of the time and money of the people in a fruitless proceeding in the courts is something far more serious."

Section 581(2) of the Code of Civil Procedure authorizes dismissal of a court action "by either party, upon the written consent of the other." Dismissal under this subdivision may take place at any time before final judgment. Such a dismissal should not be res judicata unless the stipulation is expressly with prejudice, or the intention that it operate as a retraxit clearly appears. (See 13 So. Cal. L Rev. 93.)

After commencement of the trial the dismissal can only be made with prejudice except by consent or order of court or just cause shown, and in the absence of a showing of just cause the dismissal on motion at the trial must be with prejudice. (Carvel v Arents (1954) 126 CA 2d 776, 778.)

Southern has objected to the dismissal of the case and has also objected to any dismissal being without prejudice. Sunland has not shown good cause or any cause for dismissing the case without prejudice. The motion to dismiss is denied.

The president and the vice president of Sunland were the only witnesses to testify.

Exhibit 1, a multi-page document of volume tender during April 1 to July 31, 1976; and Exhibit 2, a TWX dated February 27, 1976 to Sunland from UCO Oil Company, were received in evidence. Exhibit 3, a promissory note; Exhibit 4, a consulting and loan agreement; Exhibit 5, a deed of trust; and Exhibit 6, a TWX dated March 1, 1976 to UCO Oil Company from Sunland, were marked for identification but were not received in evidence. Exhibit 7, a TWX dated March 1, 1976 to Urich Oil Company from Sunland, was received in evidence for the limited purpose of the issue of the credibility of a witness.

Sunland is engaged in business in the operation of an oil refinery at Bakersfield, California, from which point it ships its products in tank truck and tank trailers in intrastate commerce to various points and places in California. Southern is a statewide petroleum irregular route carrier. On January 15, 1975 Sunland and Southern executed the agreement, whereby Sunland agreed to execute a series of 30-day volume tenders[1/] commencing with three on February 1, 1975, three additional tenders on February 15, 1975, four additional tenders on June 1, 1975, five additional tenders on July 1, 1975, with a total of not less than 15 tenders, and the utilization of not less than 15 of Southern's trucks to continue from that date for a period of 30 months. Sunland also agreed that Southern should have first right to all California intrastate transportation in excess of the agreed number of tenders.

On March 12, 1976 Southern filed a complaint in the Superior Court of the State of California (attached as Exhibit A to the answer of Southern) in which, inter alia, Southern seeks damages arising out of the alleged failure of Sunland to use more than seven trucks in February 1976 and seven trucks in March 1976; and that on March 2, 1976 Sunland gave notice to Southern of its intention not to proceed with the agreement. A total of $484,500 is alleged to have been lost from past and prospective profits. The action is still pending.

1/ A volume tender is a tariff provision whereby a unit of a carrier's equipment is used exclusively by a consignor to transport shipments of petroleum products during a specified period of time at a rate which is usually lower than that required for single shipments on an individual basis at class or commodity rates.

Southern is a participating carrier in Scope of Operations and Participating Carrier Tariff No. 4, Cal. P.U.C. No. 6, Western Motor Tariff Bureau, Inc., Agent; and Local and Joint Freight and Express Tariff No. 18, Cal. P.U.C. No. 24, Western Motor Tariff Bureau, Inc., Agent. In performing services for Sunland, Southern was doing so as a petroleum irregular route carrier, and is governed by the provisions, rates, rules, and regulations of such tariffs. Items 710 and 730 of Tariff No. 18 are pertinent to this proceeding and to the agreement.

Southern participates in Item 25 of said Tariff No. 4, which describes the scope of operations of Southern in the transportation of petroleum and petroleum products in tank vehicles between all points and places in California, and is not a petroleum contract carrier as defined by Section 3518 of the Public Utilities Code.

Southern is a public utility as defined by Section 216(a) of the Public Utilities Code. The rates, charges, facilities, and services of Southern are governed by the provisions of Sections 453 and 494 and all other applicable provisions of the Public Utilities Code and the general orders of the Commission applicable to public utilities, common carriers, or both, engaged in business as petroleum irregular route carriers.

The monthly volume tender service contemplated in the agreement is governed by the provisions of Tariff No. 18. The transportation contemplated to be performed by Southern for Sunland is traffic moving in California intrastate commerce to be moved by Southern as a petroleum irregular route carrier under the jurisdiction of the applicable provisions of the Public Utilities Code.

Sunland has given written notice to Southern that it considers the agreement to be in violation of law, but Southern insists and demands that Sunland comply with all provisions of the agreement.

The agreement provided for the execution of volume tender service agreements, the form of which was attached to the agreement attached to the complaint as Exhibit A. Sunland contends that the agreement is not in compliance with Items 710 and 730 of Tariff No. 18, and therefore the agreement is proscribed by inference by the Commission and is void.

The president of Sunland testified: that Sunland was able to use only seven units of equipment in February 1976 and seven units of equipment in March 1976 despite the demand of the defendant that it utilize fifteen units; Tariff No. 18 of Western Motor Tariff Bureau, Inc., to which Southern is a party, requires that a separate volume tender agreement be executed for each unit of equipment; the term "volume" has nothing to do with the number of trucks contracted for, but rather the volume of the product moved in each truck; Exhibit 1 shows that for each of the months April to July 1976 the complainant was unable to use any units of equipment under a monthly tender agreement and that outside for-hire carriers were utilized only under daily volume tender agreements; there were 218 unit days for the aggregate of the four months for an average of less than two unit days during that period.

Sunland's president testified further that under its agreement for the refining of crude oil from the Elk Hills Reservation, to commence in September 1976, all of the crude oil will move by pipeline and, accordingly, it will have no requirement for for-hire trucking equipment.

Sunland argues that:

(1) If the agreement in issue in this proceeding is not void from its inception, it has since become to the prejudice and disadvantage of the shipper (a public utility user) to be required to utilize trucking equipment under monthly volume tender agreements for which it has absolutely no use.

(2) Southern is not able to point out in Tariff No. 18 any rule, regulation or other provision which authorizes it to enter into a contract with a shipper requiring that shipper to commit itself in advance to the execution of a series of volume tender agreements. Such requirement is equivalent to a public utility telephone company requiring a prospective user to agree in writing to the installation of 15 telephone lines and to commit itself to renew the use of those lines every month for a period of two and one-half years, regardless of its future requirements and regardless of the lack of any tariff conditions authorizing such arrangement. This is the very type of arrangement which is subject to regulation and control by this Commission and no shipper should be required to commit itself to a public utility carrier for a series of services extending over two and one-half years.

(3) This proceeding involves two basic contentions so far as the complainant is concerned. The first of these contentions is that unless and until the shipper shall have executed a monthly volume tender agreement in the form prescribed in the tariff of a petroleum irregular route carrier, there is no obligation on the part of the carrier to provide the service and there is no obligation on the part of the shipper to pay for the service; and, accordingly, any executory contract calling for the same is void on the grounds that it is not specifically authorized by a tariff, rule, regulation or other provision of the public utility. In this respect failure

of the shipper to execute any volume tender agreement simply leaves it with the obligation to pay rates for individual shipments since the purpose of a monthly volume tender agreement is to offer the shipper the availability of lower rate levels as an incentive to undertake maximum utilization of the equipment of the carrier and no such result can possibly result if the shipper has no use for the equipment.

(4) The second basic contention of Sunland is that if it were required to meet the demands of Southern and execute a series of 15 volume tender agreements each month for the use of equipment for which it has no use, such action clearly would be to its prejudice and disadvantage. During the course of the hearing, Sunland cited Note 18 on Sixth Revised Page 84-E of Tariff No. 18 for the purpose of showing that under a yearly vehicle unit volume tender agreement a shipper may elect to terminate such agreement prior to completion upon condition that the charges may be alternatively determined at the basis provided for monthly tenders, plus a termination charge equal to the basic charge for one month. While it is true that this proceeding does not involve a yearly volume tender agreement, it is equally true that the tariff of Southern, as accepted by the Commission and so far as this provision is concerned, is identical to a similar provision in Minimum Rate Tariff 6 of the Commission, and contemplates that a shipper utilizing the services of either a public utility petroleum carrier or a petroleum contract carrier nonetheless shall have the right to terminate such agreement by being subjected to certain reasonable penalty charges.

(5) If a shipper has the right and privilege to terminate an annual volume tender agreement, the instant agreement contemplating services over two and one-half years is clearly contrary to the provisions of Tariff No. 18, not only on the grounds that it is void but also that it is to the prejudice and disadvantage of Sunland.

Sunland attacks the validity of the agreement on the basis that the form of the agreement is not in compliance with Items 710 and 730 of Tariff No. 18.

Paragraph 2 of Item 710 provides:

"The provisions of this item apply only when prior to the transportation of the property the consignor has requested verbally or in writing that transportation be performed under the provisions of this item and has elected a monthly tender. In the event request is made verbally, the consignor shall place a confirming written request in the United States mail the same day that the verbal request is made. (For form of agreement, see Item 730.) Total charges are the aggregate totals of charges determined pursuant to the charges in this item."

The intention of the tariff contemplates that prior to the transportation of the property the consignor may request verbally or in writing that the transportation be performed under a monthly tender agreement. Such a request is made as set forth in the agreement. The parties agreed in advance to a series of monthly tenders, all of which were to be confirmed in writing by a written document in conformance to the form set forth in Item 730 of Tariff No. 18.

The clear meaning of the tariff provides for such an understanding in advance of the tenders. To read into the tariff a prohibition from engaging in such an agreement would produce an unreasonable or unfair construction of the tariff. Tariffs should be given a fair and reasonable construction and not a strained or unnatural one. (Consolidated Vultee Aircraft v AT&SF (1945) 46 CRC 147.)

The language of Item 710 does not prohibit such an agreement as was entered into between the parties, and does not prohibit the parties from agreeing in advance to monthly tenders. No strained construction of the tariff results and the literal meaning of the tariff should be applied. (Chas. Brown & Son v Valley Express Co. (1941) 43 CRC 724.) In Consolidated Vultee v AT&SF, supra, the Commission ruled that all of the pertinent provisions of a tariff should be considered together.

Item 710 provides that the form of the written agreement conform to that set forth in Item 730. Item 730 provides in part:

> "The agreement shall contain the following information which shall be pertinent to the requirements of the item under which the transportation is performed:
>
> (1) Name and address of carrier;
> (2) Name and address of shipper;
> (3) Date of engagement;
> (4) Calender period of agreement;
> (5) Rates and other charges agreed upon;
> (6) Size and type of equipment to be used;
> (7) The agreement shall be in substantially the following form:"

Item 730 sets forth the form of the agreement and there is no provision that the exact form must be duplicated, as long as there is substantial conformance to the form and the informational requirements in paragraphs 1 through 6 are included.

The agreement and its exhibit complies in all respects with Items 710 and 730. The agreement contemplates the use of a series of monthly volume tenders and provides that "All tenders hereunder shall be initiated by execution of volume tender service agreements, Exhibit A, by Sunland."

The fact that the parties agree in advance to a series of monthly tenders is not invalid as long as all the essential elements are contained in the agreement. This is not an agreement to agree since the agreement is definite and certain with respect to the obligations of all parties. (See Ablett v Clauson (1954) 43 C 2d 280.)

There is nothing in the tariff that prohibits a shipper and carrier from entering into such an agreement. Attempts to enact rules and regulations which provide that unless specifically provided in the tariff, any contract or agreement between a shipper and carrier is presumptively unlawful, have been denied by the Commission. (In re Proposed Single General Rule (1967) 67 CPUC 469.)

A public utility may enter into a contract with its customer provided that it is not in contravention of the tariffs of the utility. (Int'l Cable TV Corp. v All Metal Fabricators, Inc. (1966) 66 CPUC 366, 383.) Contracts between a utility and its patrons for a valuable consideration, and entered into in good faith, should be approved by the Commission insofar as such approval will not result in discrimination. (Calif. Western RR & Nav. Co. (1913) 2 CRC 584, 587.) Ordinarily the Commission will

not pass upon contracts or arrangements between public utilities, except in cases in which the Public Utilities Act requires the Commission's approval. (Pomona Valley Tel. & Tel. Union (1912) 1 CRC 362.) The interpretation of the contract and the enforcement of the remedies thereunder is properly a function of the civil court. The Commission is not charged with the enforcement of private contracts. (Cortez v Pacific Tel. & Tel. (1966) 66 CPUC 197.)

Sunland alleges in paragraph VII of its complaint that "At no time mentioned was Southern, nor is it now, a petroleum contract carrier, as defined by Section 3518 of the P.U.C. Code." This allegation is admitted by Southern in its answer. Although not specifically set forth there is an implication by Sunland that since Southern is not a contract permit carrier and is a public utility, Southern is precluded from entering into an agreement such as that which is the subject of this proceeding.

The courts and the Commission have held that a common carrier is not precluded from acting under a contract with a shipper. (AT&SF v Flintkote Co. (1967) 256 CA 2d 764, 772; Revel v Hubbard (1952) 112 CA 2d 255, 260; Hill v Progress Co. (1947) 79 CA 2d 771, 777, 779.)

A carrier may be a common carrier although a portion of its business is done under contract. (Talsky v Public Utilities Commission (1961) 56 C 2d 151; Overnight Motor Express v Steele (1963) 60 CPUC 533; Nolan v Public Utilities Commission (1953) 41 C 2d 392, 396.)

Sunland has failed to establish prejudice or disadvantage in relationship to any comparable situation, or in comparison to any other shipper or with the services to be provided by any other carrier. The rates to be charged and the service to be

provided under a monthly volume tender agreement are set forth in Item 710 and no contention has been made that these rates or services would be any different than that provided to any other shipper by Southern, or to Sunland by any other carrier also applying the provisions of Item 710.

The Commission in Navarro Lumber Co. v So. Pacific RR, et al. (1918) 15 CRC 317, 319, stated: "In our opinion a 'prejudice', 'disadvantage', 'unreasonable difference' as contemplated in Section 19 of the Public Utilities Act can only be established when comparison is made between situations which are comparable." (Section 19 is the predecessor to Section 453 of the present Public Utilities Code.)

In California Portland Cement Co. v Union Pacific RR (1955) 54 CPUC 539, 542, the Commission stated:

> "It is well established that for preference or prejudice to be unlawful the preference or prejudice must be unjust or undue."

There was no evidence that the prejudice, if any, was unjust or undue, or that Southern granted or withheld a privilege from Sunland that would otherwise be granted or withheld from any other shipper. (Coast R&G Co. v So. Pacific RR (1926) 28 CRC 549.)

The California Supreme Court considered Public Utilities Code Section 453 in California Portland Cement Co. v Public Utilities Commission (1957) 49 C 2d 171, 174, 176. Section 453 in 1957 was similar to the present section in wording, except that subdivisions (a) and (b) were part of the same paragraph. The court stated at page 175:

> "We are, of course, concerned here with the statutory and constitutional prohibitions against any 'unreasonable difference' or 'discrimination' with respect to localities and places, and

> we are not confronted with a determination of the proper construction to be given to the language in section 453 of the code which prohibits a utility from granting any 'preference or advantage' to any corporation or person and from subjecting any corporation or person to any 'prejudice or disadvantage'. Whether or not the language relating to corporations and persons may be construed as referring to competitive relations, clearly such is not the case with the language pertaining to localities. Similarly, federal decisions under the Interstate Commerce Act which require a competitive relation as a basis for finding undue 'preference or advantage' or undue 'prejudice or disadvantage' are inapplicable here."

Although the court was only called upon to consider discrimination with respect to differences in service between "localities", and therefore stated that "competitive relations" would not pertain to localities, by dicta the court implied that subjecting any corporation or person to any "prejudice or disadvantage" may be construed as referring to competitive relations.

A research of the cases does not disclose any further consideration by either the courts or the Commission in connection with Section 453(a). It would seem, however, that the Commission and the Supreme Court, by dicta, have concluded that "prejudice or disadvantage" can only be found in a comparative situation.

Sunland entered into a contract which it does not now desire to perform. The agreement was arrived at between the parties. Whatever may be the inequities of the transaction the dispute should be resolved between the parties in a civil court of law. The contract is legal and valid and not inconsistent with or contrary to the Commission's rules, regulations, tariffs, or the Public Utilities Code.

Findings

1. Sunland is engaged in business in the operation of an oil refinery at Bakersfield, California, from which point it ships its products in tank trucks and tank trailers in intrastate commerce to various points and places in California.

2. Southern is a statewide petroleum irregular route carrier and is a participating carrier in Scope of Operations and Participating Carrier Tariff No. 4, Cal. P.U.C. No. 6, Western Motor Tariff Bureau, Inc., Agent; and Local and Joint Freight and Express Tariff No. 18, Cal. P.U.C. No. 24, Western Motor Tariff Bureau, Inc., Agent, and participates in Item 25 of Tariff No. 4 and is a public utility as defined by Section 216(a) of the Public Utilities Code. The rates, charges, facilities, and services of Southern are governed by the provisions of Sections 453 and 494 of the Public Utilities Code and the general orders of the Commission applicable to public utilities, common carriers, or both, engaged in business as petroleum irregular route carriers.

3. On January 15, 1975 Sunland and Southern executed the agreement, whereby Sunland agreed to execute a series of 30-day volume tenders commencing with three on February 1, 1975, three

additional tenders on February 15, 1975, four additional tenders on June 1, 1975, five additional tenders on July 1, 1975, with a total of not less than 15 tenders and the utilization of not less than 15 of Southern's trucks to continue from that date for a period of 30 months.

4. The agreement complies with the provisions of the tariffs pertaining to volume tenders and applicable to Southern as a statewide petroleum irregular route carrier. The entering into the agreement and the provisions of the agreement are not inconsistent with or contrary to the provisions of any tariffs applicable to Southern, or to any statute, or general order, or regulation of the Commission.

5. The provisions of the agreement were not and are not unjustly or unduly prejudicial to or disadvantageous to Sunland.

The Commission concludes that the agreement entered into between Sunland and Southern was in compliance with the tariffs applicable to Southern; was not preempted by any statute, general order, regulation, or tariff governing the service, rates, or charges of Southern as a petroleum irregular route carrier; that the provisions of the agreement were and are not improperly, unduly, or unjustly prejudicial or disadvantageous to Sunland; and that the agreement is not and was not, at the time of its execution, void or contrary to law, and the relief sought by Sunland should be denied.

O R D E R

IT IS ORDERED that the relief requested by complainant is denied.

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

Dated at San Francisco, California, this 7th day of DECEMBER, 1976.

President

Commissioners