

smc

Decision No. 86878

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of GARIBALDI LENI, dba)
SUNDAY'S MOVING & STORAGE CO. To) Application No. 56479
Reinstate P.U.C. PERMIT T-65,722.) (Filed May 14, 1976)

ORDER DENYING REHEARING AND
MODIFYING DECISION NO. 86606

The Commission has considered each and every allegation of the application for rehearing of Decision No. 86606 filed by Garibaldi Leni and is of the opinion that good cause for rehearing has not been shown, that rehearing should be denied, and that Decision No. 86606 should be modified to restate the bases for the Commission's denial therein of the application for reinstatement of Garibaldi Leni's household goods carriers permit. Therefore,

IT IS ORDERED THAT rehearing of Decision No. 86606 is denied.

IT IS FURTHER ORDERED that Decision No. 86606 is modified to substitute the following findings and conclusions for those that appear on mimeo p. 3 of Decision No. 86606:

"FINDINGS

1. Applicant is a household goods carrier as defined by Section 5109 of the Public Utilities Code. Prior to October 1, 1973, applicant held a household goods carrier permit, No. T-65,722 HG, issued by the Commission.

2. On March 9, 1973, the Commission mailed a distribution of revenue report to applicant, which he was to complete and return by April 6, 1973. The report specified that failure to return the completed form on time would result in a \$25 fine and possible suspension or revocation of applicant's permit. Applicant failed to return the form by April 6, 1973.

3. On April 18, 1973, the Commission mailed a similar form to applicant. By this document the Commission imposed a \$25 fine^{*/} for failure to file the distribution of revenue report. In addition, the document advised applicant that: "Failure to respond to our request for this report and to remit the \$25 within 20 days will result in formal action to suspend your operating authority."

4. The Commission received the requested report on May 1, 1973, but the \$25 fine was not included.

5. By letter dated May 5, 1973, the Commission again advised applicant that a \$25 fine was due "within 20 days or formal action will be taken to suspend your operating authority."

6. By Resolution No. 17168, dated and effective July 31, 1973, the Commission ordered that for failure to pay his fine, applicant's operating authority would be suspended on August 31, 1973, and revoked on October 1, 1973, unless applicant requested a hearing or paid the fine.

7. Applicant was served with three copies of Resolution No. 17168: (1) a certified copy was mailed July 31, 1973, (2) a copy was personally served upon applicant on September 19, 1973, and (3) a copy stamped "revoked" was mailed to applicant within a few days after October 1, 1973.

8. Applicant received further notice of the revocation of his permit by letters dated August 13, 1974 and March 2, 1976.

9. All letters and copies of Resolution No. 17168 served by mail were sent to applicant at his address of record by first class mail and were not returned by the United States Postal Service.

^{*/} Pursuant to Section 5285 of the Public Utilities Code, the Commission enacted Resolution No. 16529, dated April 14, 1970, and effective July 1, 1970. Resolution No. 16529 established a \$25 fine for failure to submit reports required by the Commission.

smc A. 56479

10. Applicant did not accept the Commission's offer of a public hearing contained in Resolution No. 17168 and did not file a petition for rehearing of Resolution No. 17168, pursuant to Public Utilities Code, Section 1731, et seq.

11. In his testimony applicant did not offer any reason for his failure to submit the report in a timely manner or to pay the \$25 fine within the intervals allowed by the Commission. Applicant paid the fine on April 29, 1975.

12. There are no mitigating factors which would excuse applicant's failure to comply with the reasonable requirements of this Commission.

13. At all times since October 1, 1973, applicant has continued his operations as a household goods carrier with knowledge that his permit has been revoked by the Commission and that he has no operating authority as a household goods carrier.

14. The examiner offered and the staff stipulated that Application No. 56479 could be considered an application for a new permit, that the requirements of Public Utilities Code, Section 5135, could be waived, that a new permit could be issued, and that the examiner would make these recommendations to the Commission, if the applicant so elected. By letter dated July 1, 1976, applicant elected to stand on his application for reinstatement.

CONCLUSIONS

1. Service of documents by mail is presumed completed upon the expiration of four days after deposit of the notice in the mail. (Public Utilities Code, Section 5254.)

2. Applicant has waived his right to a hearing under Section 5285 of the Public Utilities Code (Civil Code, Sections 3513 and 3516).

smc A. 56479

3. Applicant's attack upon Resolution No. 17168 is not timely. Resolution No. 17168 has become final^{*/} and is not subject to attack in these collateral proceedings. (Public Utilities Code, Section 1709.)

4. The application should be denied."

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 18th day of JANUARY, 1977.

Robert Belmont
President
William G. ...
Vernon L. ...
...
Commissioners

^{*/} "But by failing to ask the commission for a rehearing ... it [the District] permitted the Commission's decision to become final, so far as the law could make it so. ... The failure to apply for such rehearing ... must necessarily, therefore, operate as a waiver of any objection, except, perhaps, the one that the order of the Commission is absolutely void on its face."

Marin M. W. Dist. v. North Coast W. Co., 178 Cal. 324, 328-329 (1918).