

ORIGINAL

Decision No. 87313

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, rates, charges, and practices of ALTON O. HATLEY, an individual, dba Western Distributors; and B&W Distributing Company, a partnership; Ferrari Bros. Distributing Company; Hanford Bottling Company, a California corporation; H&M Distributing Company; and Rex Distributing Company.

Case No. 9621

Dale Parham, Attorney at Law, and  
Alton O. Hatley, for Alton O. Hatley,  
dba Western Distributors, and  
David G. Ferrari, for Ferrari Bros.  
Distributing Co., Inc., respondents.  
Maxine C. Dremann, Attorney at Law, and  
Edwin Hjelt, for the Commission staff.

OPINION ON REOPENING FOR FURTHER HEARING

Decision No. 83032 dated June 25, 1974 directed Alton O. Hatley (Hatley), dba Western Distributors, to collect undercharges of \$8,062.84, pay a fine in the amount of the undercharges by September 15, 1974, file monthly status reports of the action taken to collect the undercharges, and pay a punitive fine of \$1,000. The punitive fine has been paid. By Decisions Nos. 83996, 84774, and 85311 dated January 21 and August 5, 1975 and January 6, 1976, respectively, Hatley was granted extensions of time to August 31, 1976 to pay the fine in the amount of the undercharges and was authorized to file quarterly rather than monthly reports of the action taken to collect the undercharges. As of January 3, 1977, no part of the fine in the amount of the

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undercharges had been paid, no quarterly reports of the current status of the action taken by Hatley or his attorney to collect the undercharges had been received, contacts by the Commission staff with Hatley's office and his attorney regarding this had been unanswered, and no response had been received to the Commission's letter dated October 27, 1976 advising Hatley and his attorney that failure to comply promptly with the Commission's order may result in a reopening of Case No. 9621 to determine if additional sanctions should be imposed on Hatley. For these reasons, the proceeding was reopened on January 3, 1977 for further hearing to receive evidence regarding (1) the extent to which Hatley and his attorney, Dale Parham, have complied with the order in Decision No. 83032, as amended, to collect undercharges and pay the fine in the amount thereof, (2) the reason why Hatley and/or his attorney have not filed quarterly status reports as ordered by Decision No. 83032, as amended, and (3) whether any additional sanctions should be imposed on Hatley. The further public hearing was held before Examiner Arthur M. Mooney in Fresno on February 16, 1977, on which date the matter was submitted.

#### Findings

The following facts have been established by the evidence, and we find them to be such:

1. Decision No. 83032, as amended, directed Hatley to promptly collect undercharges in the amounts of \$907.44 from B&W Distributing Company (B&W), a partnership, \$6,359.62 from Ferrari Bros. Distributing Company (Ferrari), a corporation, \$125.70 from H&M Distributing Company (H&M), \$129.93 from Hanford Bottling Company (Hanford), a corporation, and \$540.10 from Rex Distributing Company (Rex), to file quarterly status reports of the action taken to collect the undercharges, and to pay a fine in the amount of the undercharges by August 31, 1976. Hatley has

collected the undercharges from Hanford and Rex. He has not collected any of the undercharges from the other three shippers. Neither Hatley nor his attorney, Dale Parham, has replied to the Commission's letter of October 27, 1976 or inquiries by the staff requesting information regarding this. None of the fine in the amount of the undercharges has been paid.

2. The counsel who originally represented Hatley in this matter is deceased. Prior to his death, he filed Complaint No. 25674 on October 3, 1974 against H&M and Complaint No. 25681 on October 4, 1974 against B&W in the Visalia Municipal Court and Complaint No. 78100 against Ferrari in the Superior Court of Tulare County. Each of the complaints was for undercharges in excess of the amount shown in Finding 1 for the defendant. The complaints have been amended. A cross-complaint has been filed by Ferrari in Complaint No. 78100. Hatley was represented by a second attorney until early 1975. He had no attorney from then until he retained his present attorney in later 1975.

3. Dale Parham is now diligently pursuing the three complaints referred to in Finding 2. He will promptly obtain trial dates for these matters; however, because of crowded court calendars and possible discovery, they may not be set for some time. Hatley was of the opinion that his attorney answered the Commission letter of October 27, 1976. Dale Parham's office had misplaced his copy of the letter, and it did not come to his attention until recently.

4. Hatley will apply the undercharges collected from Hanford and Rex towards the payment of the undercharge fine imposed on him by Ordering Paragraph 2 of Decision No. 83032, as amended. He does not have the financial resources to pay the balance of

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this fine until the undercharges have been collected from the three other shippers. As these undercharges are collected they will immediately be applied toward the payment of the balance of the fine.

5. For the reasons stated in Findings 3 and 4 Hatley should be authorized an extension of time to December 31, 1977 within which to collect the undercharges from B&W, Ferrari, and H&M, and either he or his attorney should file quarterly reports of the status of the actions taken to collect the remaining undercharges, with the first quarterly report due June 1, 1977.

Conclusions

1. Hatley should pay an additional fine of \$2,000 pursuant to Section 3774 of the Public Utilities Code.

2. The additional fine referred to in Conclusion 1 should be rescinded if Hatley complies with all of the conditions set forth in the following order.

O R D E R

IT IS ORDERED that:

1. Alton O. Hatley, an individual doing business as Western Distributors, shall pay an additional fine of \$2,000 to this Commission pursuant to Public Utilities Code Section 3774 with interest of 7 percent per annum commencing upon the day the payment of the fine is delinquent.

2. The additional fine referred to in Ordering Paragraph 1 shall be rescinded if Alton O. Hatley complies with all of the following conditions:

- a. Within twenty days after the effective date of this order, Alton O. Hatley shall pay to this Commission the \$129.98 and the \$540.10 he has collected in undercharges from the Hanford Bottling Company and the Rex Distributing Company,

respectively, as partial payment of the fine he was directed to pay by Ordering Paragraph 2 of Decision No. 83032, as amended.

- b. Alton O. Hatley and his attorney shall proceed promptly, diligently, and in good faith to pursue and conclude the law suits for undercharges filed against B&W Distributing Company, a partnership, Ferrari Bros. Distributing Company, a corporation, and H&M Distributing Company; Alton O. Hatley shall immediately upon collection of any or all of the undercharges referred to in Decision No. 83032 from any of the three defendants pay the amount so collected to this Commission in payment of the balance of the fine referred to in Ordering Paragraph 2 of Decision No. 83032, as amended; and in no event, shall any of this fine remain unpaid by December 31, 1977.
- c. Alton O. Hatley shall file the reports required by Ordering Paragraph 4 of Decision No. 83032, as amended, on a quarterly basis with the first report due June 1, 1977 and succeeding reports due every third month thereafter.

3. In the event Alton O. Hatley or his attorney does not comply with any one of the conditions set forth in Ordering Paragraph 2, the additional fine referred to in Ordering Paragraph 1 shall immediately become due and payable.

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4. In all other respects, Decision No. 83032, as amended, 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 10<sup>th</sup> day of MAY, 1977.

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President

William L. ...

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Commissioners