

Decision No. 87980 OCT 12 1977**ORIGINAL**

## 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  
MARK A. WOODS, a sole proprietor-  
ship; GEORGIA PACIFIC CORPORATION,  
a Georgia corporation; L & A JUICE  
CO., a California corporation;  
FORD WHOLESALE CO., INC. OF SAN  
JOSE, a California corporation; and  
FORD WHOLESALE CO., INC., a  
California corporation.

Case No. 10030  
(Filed December 30, 1975)

Robert H. Oliver, Attorney at Law,  
for Mark A. Woods, respondent.  
James S. Rood, Attorney at Law, and  
E. H. Hjelt, for the Commission  
staff.

OPINION ON REOPENING FOR FURTHER HEARING

Decision No. 86053 dated July 7, 1976 directed Mark A. Woods (Woods) to collect undercharges from Georgia Pacific Corporation (Georgia), L & A Juice Co. (L & A), a corporation, Ford Wholesale Co., Inc. of San Jose (Ford San Jose), and Ford Wholesale Co., Inc. (Ford) in the amounts of \$4,172.22, \$5,905.46, \$10,176.34, and \$17,047.23, respectively; to take such action, including legal action, that may be necessary to collect the undercharges; to pay a fine in the amount of the undercharges plus a punitive fine of \$2,000; and to file monthly status reports of the action taken to collect the undercharges. The fines were due on September 11, 1976. The punitive fine has been paid. Woods has collected the \$4,172.22 in undercharges from Georgia and has applied this amount towards the undercharge fine. The remainder of the undercharge fine in the amount of \$33,129.03 has not been paid.

The first report of the action taken to collect the unpaid undercharges was due October 4, 1976. Woods failed to file the report and his radial highway common carrier permit was automatically suspended pursuant to the provisions of Ordering Paragraph 4 of Decision No. 86053. On receipt of the report, filed by Woods' attorney on November 3, 1976, the permit was reinstated. The next report was due on December 6, 1976, and after several contacts by the Commission staff, Woods' attorney filed a report together with copies of the demand letters that had been directed to L & A, Ford San Jose, and Ford advising each that if payment of the undercharges was not received by January 10, 1977, appropriate legal action would be instituted. None of the three have paid. By his letter of December 29, 1976, Woods' attorney acknowledged that his client was aware that there could be a problem with the statute of limitations in connection with the collection of the undercharges. As of June 29, 1977, suits had not been filed against the three respondent shippers. In the circumstances, the proceeding was reopened on that date for further hearing to receive evidence on the following issues: (1) The extent to which Woods or his attorney has complied with the order in Decision No. 86053 to proceed promptly, diligently, and in good faith to pursue all reasonable measures to collect all undercharges and pay the entire fine in the amount thereof, (2) The reason why Woods or his attorney has not filed monthly status reports as ordered by Decision No. 86053, and (3) whether additional sanctions should be imposed on Woods.

The further public hearing was held before Administrative Law Judge Arthur M. Mooney in Fresno on July 20, 1977. The matter was submitted on July 22, 1977 upon the receipt of late-filed Exhibit R-1 which included copies of the following complaints filed by Woods' attorney on July 19, 1977 on behalf of his client in the Superior Court of Fresno County: Case No. 217951-3 against Ford, Case No. 217952-1 against Ford San Jose, and Case No. 217953-9 against L & A.

According to the record, the attorney for Woods was engaged by his client in November 1976. The attorney pointed out that demand letters had been sent to the three shipper respondents from whom the undercharges had not been collected and that formal legal actions have now been filed against each of them. He asserted that he is now and will continue to actively prosecute the three complaints. He stated that in his opinion the Statute of Limitations should not pose a serious, if any, problem in collecting the undercharges from the defendants in the civil actions and requested that this issue be held in abeyance pending decisions by the court. As to reports, he pointed out that although there may have been some deficiency on the part of himself and his client in filing written monthly status reports as required by Decision No. 86053, he has been in communication on a reasonably regular basis by telephone with the staff regarding the uncollected undercharges and will file the required reports in the future.

Staff counsel asserted that it had been the intent of the staff to recommend that substantial additional sanctions be imposed on Woods but that in light of the diligent approach Woods and his attorney are now apparently taking to comply with the directives in Decision No. 86053, the recommendations have been considerably revised. He recommended that an additional punitive fine of \$2,000 be imposed on Woods with \$1,500 of the fine suspended upon the condition that Woods and his attorney continue to diligently comply with the directives in Decision No. 86053. Woods' attorney stated that his client had no objection to this recommendation. Staff counsel agreed with the recommendation by Woods' attorney that since any questions regarding the application of the Statute of Limitations would be at issue in the three court cases, they should not be considered in this proceeding at this time.

We will adopt the recommendations that have been agreed upon by Woods and the staff.

Findings

1. Decision No. 86053 directed Woods, among other things, to collect undercharges from L & A, Ford San Jose, and Ford in the amounts of \$5,905.46, \$10,176.34, and \$17,047.23, respectively; to proceed promptly, diligently, and in good faith to collect the undercharges; to take legal action, if necessary, to collect the undercharges; to pay a fine in the amount of the undercharges by September 11, 1976; and to file monthly status reports of the action taken to collect the undercharges. As of June 29, 1977, Woods had not complied with these directives.

2. On July 19, 1977, Woods' attorney filed complaints in the Superior Court of Fresno County against the aforementioned three respondent shippers for the undercharges in issue and is now actively prosecuting the civil actions.

3. Woods and his attorney are now complying with the directives in Decision No. 86053 and have advised that they will continue to do so, including the filing of monthly status reports.

4. Since any questions regarding the application of the Statute of Limitations in connection with the undercharges Woods has been directed to collect from the aforementioned three shipper respondents will be at issue in the civil actions he has filed against them, these questions should not be considered in this proceeding at this time. This proceeding can again be reopened if the Statute of Limitations should, in the future, prove to be a problem.

5. Because of the time that will be required to complete the civil actions against the three respondent shippers, Woods should be authorized an extension of time to March 31, 1978 to collect the undercharges from L & A, Ford San Jose, and Ford, and either he or his attorney should file written monthly reports of the status of the actions taken to collect the remaining undercharges, with the first monthly report due on the first Monday of November 1977.

6. As the undercharges are collected by Woods, they should immediately be applied towards the balance of the undercharge fine imposed on him by Ordering Paragraph 2 of Decision No. 86053.

Conclusions

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

2. \$1,500 of the additional fine referred to in Conclusion 1 should be suspended, and if Mark A. Woods complies with all of the conditions set forth in the following order, the suspended portion of the fine will be remitted without further order of the Commission.

O R D E R

IT IS ORDERED that:

1. Mark A. Woods shall pay an additional fine of \$2,000 to this Commission pursuant to Public Utilities Code Section 3774 on or before the fortieth day after the effective date of this order. Mark A. Woods shall pay interest at the rate of seven percent per annum on the fine; such interest is to commence upon the day the payment of the fine is delinquent.

2. \$1,500 of the additional fine referred to in Ordering Paragraph 1 shall be suspended, and if Mark A. Woods complies with all of the following conditions, the suspended portion of the fine shall be remitted without further order of the Commission. ✓

- a. Mark A. Woods and his attorney shall proceed promptly, diligently, and in good faith to pursue and conclude the law suits for undercharges he has filed against L & A Juice Co., a corporation, Ford Wholesale Co., Inc. of San Jose, and Ford Wholesale Co., Inc.; Mark A. Woods shall immediately upon the collection of any or all of the undercharges referred to in Decision No. 86053 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. 86053; and in no event, shall any of this fine remain unpaid by March 31, 1978.
- b. Mark A. Woods shall file the reports required by Ordering Paragraph 4 of Decision No. 86053 each month with the first report due on the first Monday of November 1977 and succeeding reports due on the first Monday of each month thereafter.

3. In the event Mark A. Woods or his attorney does not comply with any one of the conditions set forth in Ordering Paragraph 2, the suspended portion of the fine referred to in Ordering Paragraph 1 shall immediately become due and payable.

4. In all other respects, Decision No. 86053 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 12th day of OCTOBER, 1977.

Robert Bateman  
President  
William S. Groun-Jr  
Vernon L. Sturgeon  
Robert S. Gwalt  
Clair L. DeBailly  
Commissioners