

Decision No. 88021 OCT 18 1977

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Lee G. Gale, an individual,)
 Complainant,)
 vs.)
 Kenneth Teel, Martha Anne)
 Teel, David L. Ray and)
 Bruce J. Lurie, individuals,)
 Defendants.)

Case No. 10227
 Petition for Order to Show Cause
 (Filed September 14, 1977)

ORDER TO SHOW CAUSE

TO: Kenneth Teel and Martha Anne Teel, as individuals, and
 David L. Ray, as an individual, and Court Appointed Receiver

YOU ARE HEREBY ORDERED to appear before this Commission on November 3, 1977 at 10:00 a.m. in the Commission Courtroom, State Office Building, 107 South Broadway, Los Angeles, California, then and there to show cause, if any you have, why you, and each of you, should not be found guilty of contempt of this Commission and punished accordingly for willfully disobeying the order of this Commission found in Decision No. 87478 dated June 21, 1977 in Case No. 10227 and Application No. 57121, rehearing denied, Decision No. 87917 dated September 27, 1977, which order and your disobedience thereof are more fully described in the Petition of Lee G. Gale for an Order to Show Cause Directing Defendants to Appear Before This Commission at a Time and Place to Be Set and Show Cause, If Any They Have, Why They Should Not Be Punished for Contempt.

C.10227 ap

This Order shall be served personally on you and each of you by delivering a copy thereof, attached to a copy of the Petition for an Order to Show Cause of Lee G. Gale, at least five (5) days prior to the date of hearing.

The effective date of this order is the date hereof.

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

Paul Bateman

President

William J. Gannon

Yuzon L. Sturgeon

Richard D. Howell

Carle T. Debril

Commissioners

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Lee G. Gale, an individual
Complainant,

vs.

Kenneth Teel, Martha Anne
Teel, David L. Ray and Bruce J.
Lurie, individuals,
Defendants.

FILED
1977
SAN FRANCISCO OFFICE
CASE NO. 10227

PETITION OF LEE G. GALE FOR AN ORDER TO SHOW
CAUSE DIRECTING DEFENDANTS TO APPEAR BEFORE
THIS COMMISSION AT A TIME AND PLACE TO BE SET
AND SHOW CAUSE, IF ANY THEY HAVE, WHY THEY
SHOULD NOT BE PUNISHED FOR CONTEMPT.

Petitioner alleges:

I

Notices, pleadings and orders relating to the within petition should be directed to the attorney for Complainant as follows:

Karl K. Roos, Esq.
5862 Hillview Park Avenue
Van Nuys, California 91401
(213) 781-3597

II

Petitioner, Lee G. Gale, is the complainant in the above-referenced complaint to which reference is hereby made and the same incorporated herein. His mailing address for the purpose of this petition is as follows:

Lee G. Gale
P.O. Box 916
Whittier, California 90670

III

The within petition is filed pursuant to the provisions of Article XII, Section 6 of the Constitution and Sections 312 and 2113 of the Public Utilities Code of this State for defendants' contempt of the Commission's Decision and Orders entered June 21, 1977 in Decision No. 87478, Case No. 10227, and for an Order To Show Cause directing defendants and each of them to appear before the Commission at a time and place to be set and Show Cause, if any they have, why they should not be punished accordingly.

IV

Defendants Kenneth Teel and Martha Anne Teel are individuals, husband and wife. They are the same Kenneth Teel and Martha Anne Teel, defendants in Case No 10227, Gale vs. Teel, et al., filed before this Commission on December 30, 1976. Their last known address is:

Kenneth Teel and
Martha Anne Teel
35541 Camino Capistrano
Capistrano Beach, California 92674

V

Defendant, Bruce J. Lurie, is an individual, an Attorney at Law and is one of the attorneys for Teels in said Case No. 10227 and in a certain action now pending before the Superior Court of the State of California for the County of Los Angeles entitled

Kenneth Teel, et al., vs. Lee G. Gale, Pyramid Commodities,
et al., being Case No. C 166724. Therein, the Teels are seeking
an order or orders of the said court, declaring among other things,
that Pyramid Commodities and other corporations be wound up and
dissolved. A true copy of said Case No. C166724 is attached to
the complaint in Case No. 10227 before this Commission to which
reference is hereby made. Lurie's business address is as follows:

Bruce J. Lurie, Esq.
Fulop, Ralston, Burns & McKittrick
9665 Wilshire Blvd., 7th floor
Beverly Hills, California 90212

VI

Defendant David L. Ray is an individual, an Attorney at Law,
and one of the defendants in said Case No. 10227 before this
Commission. He was and now is acting as the purported receiver
of the assets of Pyramid Commodities under appointment of the
Superior Court for the purpose of supervising the winding up and
dissolution of Pyramid's corporate existence and distribution of
its assets. His business address is as follows:

David L. Ray, Receiver
8920 Wilshire Blvd., Suite 500
Beverly Hills, California 90211

VII

By its Decision No. 87478, entered June 21, 1977, and by its
terms made effective on the date thereof, the Commission found and
determined, among other things, that a purported transfer of 50
percent of the issued and outstanding shares of capital stock of

Pyramid from Gale to Teels required its prior consent and approval under Section 854 of the Public Utilities Code and as no such prior consent or approval was obtained the purported transfer was invalid and void. The Commission further found that David L. Ray's assumption of possession of the assets and management of the business affairs of Pyramid as receiver pursuant to order of the Superior Court in said action C166724 is void. Accordingly, the Commission ordered in ordering paragraphs 3 and 4 of Decision No. 87478 that defendants Teel and Ray shall "cease and desist from any act of control or management over the business and affairs of Pyramid." Said Decision is now and at all times since its issuance has been in effect. It has never been modified or suspended except that the Commission by Decision No. 87604, dated July 19, 1977 corrected a stenographic error in ordering paragraph No. 4 to show the true name of defendant Martha Anne Teel. True copies of Decision No. 87478 were personally served upon defendants Teels and Ray on June 22, 1977 in Los Angeles County. Petitioner is informed and believes that the Commission subsequently served true copies of said Decision by mail upon all parties of record in Case No. 10227 and their attorneys, including defendant Bruce J. Lurie.

VIII

Petitioner has demanded of defendants Teel and Bruce J. Lurie that they forthwith cease and desist from exercising any act of

control over the management and business affairs of Pyramid Commodities and in particular to dismiss their complaint in action No. C166724 before the Superior Court for the winding up and dissolution of Pyramid Commodity's corporate existence and to return forthwith all assets of Pyramid and to give Complainant a full and true accounting of all assets of Pyramid which have come into their possession and to surrender and deliver all purported stock certificates of Pyramid in their possession for cancellation on the books and records of the corporation.

IX

Defendants Teel and Lurie have refused, neglected and declined to comply with any of Complainant's demands and continue to refuse, decline and neglect to comply with such demands or any of them. Instead, defendants Teel and Lurie have urged the Superior Court in action C166724, by written pleadings and oral argument, to proceed with the winding up and dissolution of Pyramid Commodities, still claim they have an absolute right to wind up and dissolve Pyramid, and still claim the Superior Court has jurisdiction to proceed with the winding up and dissolution of Pyramid. They further still claim that the Superior Court is not bound by the Commission's action in its Decision No. 87478 and should ignore the legal effect of that Decision because (they say) such Decision is erroneous and void, being in violation and derogation of their constitutional rights to due process of law.

X ~~Section~~ ~~Teel's~~ ~~requirements~~

Petitioner has demanded of defendant ^{Public} David L. Ray that he forthwith cease and desist from any act or control or management over the business and affairs of Pyramid, as state court receiver or otherwise, and in particular to forthwith return all assets of Pyramid now in his possession or control and to give Complainant a full, true and complete accounting of all assets of Pyramid that came into his possession or control. Petitioner has further urged the said David L. Ray to petition the said Superior Court for an Order rescinding its prior order appointing him receiver of Pyramid Commodities if he has any anxiety over a "conflict" between the Court's order appointing him receiver and the Commission's orders in Decision No. 87478.

XI

The said David L. Ray has refused, declined and neglected and still refuses, declines and neglects to comply with any of Petitioner's demands, as aforesaid. Instead the said David L. Ray has petitioned the court for "instructions" in light of the Commission's Decision No. 87478 and has urged the court by written pleadings and oral argument that it should still consider him to be the "duly appointed, qualified and acting State Court receiver" of Pyramid Commodities and that defendants Teel are 50 percent shareholders of Pyramid Commodities notwithstanding the Commis-

sion's conclusions of law Nos. 3 and 4 in Decision No. 87478 that the purported transfer of 50 percent of the stock of Pyramid from Gale to Teel was invalid and not effective and that Ray's assumption of control, possession and management of the business affairs of Pyramid as receiver pursuant to order of the Superior Court in action No. C166724 is void.

XII

By reason of the premises aforesaid and upon the urging of defendants and each of them, the said Superior Court, on or about August 16, 1977 orally refused and declined to dismiss the pending proceedings for the winding up and dissolution of Pyramid, refused and declined to rescind its prior order appointing David L. Ray the receiver of Pyramid Commodities and has refused and declined to order David L. Ray to return any or all assets of Pyramid which have come into his possession or control and has permitted David L. Ray to continue to hold such assets pending "final dissolution."

XIII

The court further directed the said Bruce J. Lurie to prepare a formal written order in conformance with the court's oral declarations for signature. A true copy of said order prepared by Bruce J. Lurie is attached hereto as Appendix A. Petitioner is informed that said proposed order has not been signed yet as it was not

presented to the court prior to assigned judge's leaving on vacation.

XIV.

In failing to dismiss the complaint in C 166724 for the winding up and dissolution of Pyramid Commodities, in failing to rescind its prior order appointing David L. Ray receiver for Pyramid, and in failing to order David L. Ray to return forthwith all assets of Pyramid in his possession it is apparent that the Superior Court has been misled and deceived by the urgings and arguments of defendants and each of them as aforesaid, all done in contempt of this Commission's orders. It is further apparent that Bruce J. Lurie's proposed order is in violation of Section 1759 of the Public Utilities Code in that it purports to "review, reverse, correct, or annul" the orders entered in the Commission's Decision No. 87478 and to "suspend or delay the execution or operation thereof, or to enjoin, restrain, or interfere with the Commission in the performance of its official duties." It is further apparent that said proposed order is in violation of Section 1709 of the Public Utilities Code in that it fails to consider Decision No. 87478 and the orders entered therein to be conclusive in the collateral action before the court.

XV

By reason of the defendants' contemptuous acts as aforesaid and the Superior Court's erroneous and wrongful oral orders as

aforesaid, caused thereby, Petitioner and Pyramid Commodities have suffered and are suffering great and grievous harm, injury and monetary damages in that Petitioner must now continue to litigate to "final dissolution" the cause of action filed by Teels in the Superior Court for Pyramid's winding up and dissolution, which cause of action the Commission has determined to be premature and for which no basis exists, either for its filing or the appointment of a receiver (First full paragraph, page 9, D87478). Petitioner and Pyramid are further being deprived of the use and benefit of Pyramid's assets, including monies unlawfully seized and withheld by defendant Ray. Petitioner must also incur the further expense and delay in recovering Pyramid's assets by obtaining a Writ of Mandate and for Prohibition from the Court of Appeals of this State correcting the erroneous orders of the Superior Court and prohibiting it from proceeding without jurisdiction with the winding up and dissolution of Pyramid Commodities.


WHEREFORE, Petitioner prays:

1. That the Commission forthwith enter an Order To Show Cause directed to defendants and each of them, requiring each of them to appear before this Commission and show cause, if any they have, why they and each of them should not be punished for contempt of the Commission's Orders entered in Decision No. 87478.


2. That a time and place for hearing on the Order To Show Cause be set on the earliest possible date.
3. That following a hearing on the Order To Show Cause the Commission find and determine that the defendants, and each of them, are in contempt of the Commission's orders entered in Decision No. 87478.
4. That defendants and each of them be punished for their past contempt of the Commission by a fine in such amount as the Commission determines and/or by imprisonment for such period of time as the Commission determines.
5. That defendants and each of them be punished by further fine and/or imprisonment for each day they continue in contempt of the Commission after entry of the decision and orders following hearing on the Order To Show Cause.
6. That the Commission make its decision and orders entered after hearing on the Order To Show Cause effective on the date thereof.
7. That the Commission grant petitioner such further and other relief as is just and proper.

Respectfully submitted,

Dated: Sept. 4, 1977


Lee G. Gale, Petitioner

Attest


Karl K. Roos
Attorney for Petitioner

VERIFICATION

I, Lee G. Gale, declare:

I am the petitioner in the above-referenced matter. I have read the foregoing petition and know the contents thereof and the same are true of my own knowledge except as to the matters stated therein on information or belief and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true.

Dated: September 14, 1977 at Los Angeles, California.



Lee G. Gale

CERTIFICATE OF SERVICE

I, Karl K. Roos, declare:

I am a citizen of the United States, over the age of 18, and not a party to the foregoing action.

On September , 1977 I served a true copy of the foregoing petition upon all defendants by depositing a true copy thereof in the United States mail, first class postage prepaid, addressed to said defendants and their attorneys as follows:

Kenneth Teel
35541 Camino Capistrano
Capistrano Beach, California 92674

Martha Anne Teel
35541 Camino Capistrano
Capistrano Beach, California 92674

Bruce J. Lurie, Esq.
Fulop, Ralston, Burns & McKittrick
9665 Wilshire Blvd., 7th Floor
Beverly Hills, California 90212

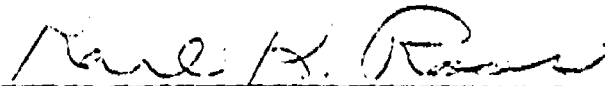
Robert W. Hancock, Esq.
Russell, Schureman, Fritze & Hancock
1545 Wilshire Blvd.
Los Angeles, California 90017

David L. Ray, Receiver
8920 Wilshire Blvd., Suite 500
Beverly Hills, California 90211

Ronald G. Ress, Esq.
8920 Wilshire Blvd., Suite 500
Beverly Hills, California 90211

I declare under penalty of perjury that the foregoing is
true.

Dated: September 14, 1977 at Los Angeles, California.


Karl K. Roos

KKR:bw

1 BRUCE J. LURIE for
2 FULOP, ROLSTON, BURNS & MCKITTRICK
3 A LAW CORPORATION
4 THE SEVENTH FLOOR 9655 WILSHIRE BOULEVARD
5 BEVERLY HILLS, CALIF. 90212
6 878-2654 278-6500

7 C.10227

8 ATTACHMENT
9 Page 13 of 17

10 ATTORNEYS FOR Plaintiffs

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF LOS ANGELES

13 KENNETH TEEL, et al.,)
14 Plaintiffs,)
15 v.)
16 LEE G. GALE, et al.,)
17 Defendants.)

18 NO. C 166724

19 ORDER ON RECEIVER'S PETITION
20 FOR INSTRUCTIONS

21 The Petition of David L. Ray, State Court Receiver, for
22 Instructions and Application for Order to Show Cause Why Corpor-
23 ations Should Not Be Dissolved came on for hearing in Department 59
24 of the above-entitled court, the Honorable Campbell M. Lucas, Judge
25 presiding on August 16, 1977. Bruce J. Lurie for Fulop, Rolston,
26 Burns & McKittrick appeared for plaintiffs. Terry Kinigstein of
27 Jonas, Fern & Simpson and Karl Roos appeared for defendants. David
28 L. Ray appeared as the State Court Receiver. Fredric J. Freed ap-
peared as counsel for Apex Bulk Commodities, a creditor. Elyane
Berg-Wilion appeared as counsel for Lloyds Bank, a creditor. Coun-
sel for the State of California Franchise Tax Board also appeared.
The court, having considered the papers filed by the parties hereto,
the arguments of counsel and applicable law, now rules as follows:

Appendix A
page 1 of 5

1 IT IS HEREBY ORDERED:

2 1. David L. Ray is hereby reaffirmed by the court as
3 the Receiver for Cal-Pacific Industries, Pyramid Commodities and
4 Cal-Pac Industries based on the court's general equitable powers.

5 2. Defendant Cal-Pacific Industries is hereby declared
6 to be in a state of dissolution and pursuant to the Petition of
7 David L. Ray, State Court Receiver, the Receiver is authorized and
8 instructed to do as follows:

9 a. The Receiver is authorized and instructed to do
10 all things and perform such actions as may be necessary in his
11 discretion to finalize such dissolution.

12 b. The Receiver is authorized and instructed to
13 sell any remaining assets of Cal-Pacific Industries.

14 c. The Receiver is authorized and instructed to
15 perform all acts necessary in his discretion to collect any remain-
16 ing accounts receivable of Cal-Pacific Industries.

17 d. The Receiver is authorized and instructed to do
18 all acts required by Corporations Code §1907 and other applicable
19 laws in order to enable this court to enter its order declaring
20 Cal-Pacific Industries wound up and dissolved.

21 e. The Receiver is authorized and instructed to
22 pay those unpaid creditors of Cal-Pacific Industries, of which he
23 has knowledge and whose claims all parties hereto agree are valid
24 claims of Cal-Pacific Industries, out of the money collected by the
25 Receiver on behalf of Cal-Pacific Industries, after withholding in
26 reserve the funds necessary for administrative costs and fees of
27 this receivership estate.

28 f. After the expiration of thirty (30) days from

1 the completion of publication of notice to persons claiming to be
2 interested in Cal-Pacific Industries as shareholders, creditors or
3 otherwise, as provided in Corporations Code §1907, the Receiver is
4 authorized and instructed to bring to the attention of this court
5 any unpaid creditors of Cal-Pacific Industries which the parties
6 do not agree have valid claims which may be paid by the Receiver and
7 to seek an order of the court declaring Cal-Pacific Industries
8 wound up and dissolved pursuant to the provisions of Corporations
9 Code §1907(d) and to seek an order distributing any monies of Cal-
10 Pacific Industries held by the Receiver to the extent the parties
11 are unable to agree on said distribution.

12 3. The Receiver is authorized and instructed to keep in
13 his possession any assets of defendant Pyramid Commodities and Cal-
14 Pac Industries that are now in his possession. The Receiver is not
15 authorized to operate Cal-Pac Industries or Pyramid Commodities.

16 4. In the event defendants Lee Gale or Donna Gale oper-
17 ate or attempt to operate Pyramid Commodities or Cal-Pac Industries
18 then:

19 a. Defendants Lee Gale and Donna Gale are enjoined
20 from selling, hypothecating or transferring the operating permits
21 of either Pyramid Commodities or Cal-Pac Industries.

22 b. Defendants Lee Gale and Donna Gale are further
23 enjoined from any transfer of the assets of Pyramid Commodities
24 or Cal-Pac Industries other than in the ordinary course of busi-
25 ness. Said defendants are further enjoined from directly or
26 indirectly paying dividends, making extraordinary payments to share
27 holders, paying shareholders unreasonably high salaries or charges
28 for services or goods or otherwise engaging in questionable

1 transactions not in the ordinary course of business.

2 c. Defendants Lee Gale and Donna Gale are
3 required to account to the court with respect to any operations of
4 Pyramid Commodities and Cal-Pac Industries and to pay over to the
5 court or the Receiver such sums as the court may direct following
6 a hearing by the court on the merits of the parties' claims.

7 5. In addition to the regular duties of the Receiver
8 as required by this and prior orders of this court, the Receiver
9 is authorized and directed to conduct an audit of the amount, if
10 any, owing by Crestlite Aggregates, Inc., to defendant Cal-Pac
11 Industries. Such audit shall only occur after prior notification
12 to the parties by the Receiver as to the cost of said audit.

13 6. The Receiver is authorized and directed to make payment
14 from the assets of Cal-Pacific Industries to Lloyds Bank to
15 pay off the claims of Lloyds Bank and Apex Bulk Commodities
16 against Cal-Pacific Industries. Pursuant to the agreement
17 reached by the parties and Apex Bulk Commodities in open court
18 at the hearing on August 16, 1977, the Receiver will obtain
19 the signatures of the parties and representatives of Apex Bulk
20 Commodities on mutual releases and on such other documents
21 as are necessary to effectuate said payment to Apex Bulk
22 Commodities.

23 Dated: _____, 1977

24
25 _____
26 Judge, Superior Court

27 APPROVED AS TO FORM AND CONTENT:

28 ...

ATTACHMENT
Page 17 of 17

DATED: _____, 1977.

FULOP, ROLSTON, BURNS & MCKITTRICK
A Law Corporation

By _____
Bruce J. Lurie

DATED: _____, 1977.

JONAS, FERN & SIMPSON
Karl Roos

By _____
Terry Kinigstein

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