

ORIGINAL

Decision No. 89013 JUN 27 1978

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 CHARLES A.
 VANDER HEYDEN, an individual, VALK
 ENTERPRISES, INC., a California
 corporation, and VALK WHOLESALE
 LUMBER COMPANY.

Case No. 9762

ORDER MODIFYING DECISION NO. 83903, AS AMENDED

Decision No. 83903 dated December 30, 1974 ordered Charles A. Vander Heyden (Heyden) to collect \$6,615.91 in undercharges from Valk Enterprises, Inc. and its wholly owned subsidiary, Valk Wholesale Lumber Company (respondents Valk) and to pay a fine in the amount of the undercharges plus a punitive fine by March 7, 1975. The punitive fine has been paid. Heyden filed suit against respondents Valk for the undercharges. Decision No. 84397 dated May 6, 1975 amended Ordering Paragraph 2 of Decision No. 83903 to provide that the undercharge fine should be paid within 30 days after the court had issued a final determination in the suit. Heyden was awarded a default judgement on April 1, 1977. Because attempts by Heyden and his attorney to locate assets and officers of respondents Valk had not been successful and he did not have the funds to pay the fine until the undercharges were collected, Decision No. 87648 dated July 26, 1977 extended the time within which the undercharge fine should be paid to June 1, 1978.

Heyden's attorney has filed a report and petition dated April 11, 1978 requesting that the Commission consider forgiveness of the undercharge fine. In support of this request, the report and petition states that abstracts of the default judgement have been recorded in Los Angeles, San Bernardino, Riverside, and Orange County; that the present occupants of the premises previously occupied by respondents Valk advised that they had purchased respondents Valk's fixed assets but did not know where they may have moved or whether they were still in business; that substantial additional efforts have been made to locate the assets and officer of respondents Valk, including numerous contacts with the Secretary of State and the Franchise Tax Board and exhaustive review of telephone directories and other possible sources of information; that all of these efforts have been futile; that based on this extensive investigation, it appears that respondents Valk are insolvent and have ceased to operate and have completely gone out of business; that Heyden is no longer in the trucking business because of his inability to earn a suitable living therefrom; that the litigation and investigation has been very costly for him; and that his income and financial condition are poor, and he does not have the resources or the ability to raise the money to pay the undercharge fine himself.

The Commission staff has advised that it has thoroughly reviewed its file in this matter and the information and request in the correspondence from Heyden's attorney and that it recommends that Heyden be excused from paying the undercharge fine.

We find that, for the reasons stated by Heyden's attorney in his report and petition, the request to excuse Heyden from complying with the directive in Ordering Paragraph 2 of Decision No. 83903, as amended, to pay the \$6,615.91 fine in issue is reasonable and conclude

that the fine should be rescinded. Having so determined, Heyden will also be excused from further complying with the directives in Ordering Paragraphs 3 and 4 of Decision No. 83903, as amended, which, respectively, direct him to take such action as may be necessary to collect the undercharges from respondents Valk and to file reports in connection therewith.

IT IS ORDERED that:

1. The \$6,615.91 fine imposed on Charles A. Vander Heyden by Ordering Paragraph 2 of Decision No. 83903, as amended by Decisions Nos. 84397 and 87648, is rescinded.

2. Charles A. Vander Heyden is excused from any further compliance with the collection of undercharges and reporting directives in Ordering Paragraphs 3 and 4 of Decision No. 83903, as amended by Decisions Nos. 84397 and 87648.

3. In all other respects, Decision No. 83903, as amended by Decisions Nos. 84397 and 87648, shall remain in full force and effect. The effective date of this order is the date hereof.

Dated at San Francisco, California, this 27th day of JUNE, 1978.

William Ignace J. President
Vernon L. Stanger
Robert W. Swoboda
Clair T. Schick Commissioners

Commissioner Robert Batinovich, being necessarily absent, did not participate in the disposition of this proceeding.