

Decision No. 89677

NOV 28 1978

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application of )  
WILLIAM A. SEEVER, ROBERT L. SEEVER & )  
GERALD E. SEEVER (SEEVERS TRUCKING), )  
transfer of dump truck carrier permit )  
to Chris A. Wheeler; S. Diego. )  
(File No. T-105,427, T-121,914.) )

Application No. 58102  
(Filed May 26, 1978)

Chris A. Wheeler and William A. Seever, for themselves, applicants.  
E. O. Blackman, for the California Dump Truck Owners Association, interested party.  
Frank A. Marx, for the Commission staff.

O P I N I O N

Chris A. Wheeler (Wheeler) requests approval by this Commission of an application to transfer a dump truck carrier permit to him from William A. Seever (Seever), Robert L. Seever, and Gerald E. Seever, dba Seevers Trucking (Seever Bros.). Upon recommendation of the Commission staff, a public hearing in this matter was held before Administrative Law Judge William A. Turkish in San Jose on September 6, 1978 and the matter was submitted upon the filing of the transcript.

Testimony setting forth his background and circumstances under which he purchased the permit was presented by Wheeler. Testimony setting forth the circumstances under which he sold the permit was presented by Seever. Testimony setting forth his role in the transaction between Seever and Wheeler was presented by Rick Perry (Perry) a subpoenaed witness. Testifying as an interested party was E. O. Blackman, consultant for the California Dump Truck Owners Association (Association). Frank A. Marx, an associate transportation representative of the Commission staff, testified

with respect to the staff's concern relating to trafficking of permits and presented Exhibit 1 which includes: (1) a bill of sale between the sellers Seever Bros. and buyer Perry in the amount of \$1,000 for dump truck carrier permit under File No. T-105,427; (2) a bill of sale between seller Perry and buyer Wheeler for a permit in the amount of \$3,500; (3) a dump truck carrier transfer application filed by Wheeler to transfer permit under File No. T-105,427 from Seever Bros. to Wheeler; (4) copy of Public Utilities Code Section 3614; and (5) copy of permit under File No. T-121,914 issued to Richard James Perry and Rickie James Perry, a partnership, dba Rick Perry & Son Trucking. Exhibit 2 was also placed into evidence by the staff representative and includes examples of purchase prices paid by transferees of dump truck carrier permits from May 1, 1978 through August 30, 1978.

#### Findings

The following undisputed facts are established by the evidence and we find them to be such:

1. An application to transfer the dump truck carrier permit from Seever Bros. to Wheeler was filed with the Commission on May 26, 1978 and was signed by Seever Bros. as transferors and Wheeler as transferee. The \$150 fee for the transfer was paid to the Commission. The required statement of residence and request for tariffs by Wheeler were filed along with the application.
2. The sale and purchase of dump truck carrier permit under File No. T-105,427 was not actually between Seever Bros. and Wheeler but actually between Seever Bros. and Perry, who in turn, sold it to Wheeler. Perry does not appear on any Commission transfer application as a transferee or transferor of dump truck carrier permit under File No. T-105,427. At the time of the sale of permit under File No. T-105,427, Perry claims to have had a current dump truck carrier permit under File No. T-100,393.

3. A bill of sale dated May 15, 1978 shows that Perry purchased permit under File No. T-105,427 from Seever Bros. for the sum of \$1,000. A bill of sale dated May 4, 1978 shows that Perry sold a Public Utilities Commission permit to Wheeler for the sum of \$3,500.

4. Perry's purchase of the permit under File No. T-105,427 from Seever Bros. without filing a written application to transfer or receiving Commission authority is a violation of Public Utilities Code Section 3614.

5. Wheeler purchased a dump truck in March 1978 along with a permit. Upon investigation by a Commission representative, it was discovered that the permit purchased by Wheeler was a radial permit, not a dump truck carrier permit. He was granted three days in which to obtain a dump truck carrier permit. Shortly thereafter, Wheeler heard from some source that Perry had two permits and was willing to sell one dump truck carrier permit for \$3,500. He contacted Perry and the sale was consummated in Oakland.

6. At approximately the same time that Wheeler was searching for a permit to purchase, Seever had a dump truck for sale and was willing to sell it for \$6,000. Perry contacted Seever and after some discussion, indicated he was willing to purchase only the permit which Seever declined to sell. Finally, he agreed to sell the truck and permit for \$7,000. He received one check for \$6,000 for the truck and then another check in the amount of \$1,000 for the permit from Perry.

7. At the time Wheeler was seeking to purchase a dump truck carrier permit, Perry claims he was trying to help his brother and a friend locate a truck and permit for sale because they wanted to get into the dump truck business. He located one permit offered for sale for \$1,800 but his brother and the friend declined to purchase it because, according to Commission rules, an individual

holding a permit alone cannot put the permit in suspense while the individual searches for a truck to purchase. While the search continued, Perry located Seever but when Perry's brother saw the truck for sale, he declined to purchase it. In the meantime, Perry's uncle became interested in buying a truck, and a friend of Perry's became interested in purchasing the permit. Perry then purchased both the truck and permit from Seever; the truck being earmarked for his uncle and the permit being earmarked for his friend. In the meantime, according to Perry, the friend found and purchased a truck along with a permit. Thus, Perry was left with a permit on his hands. He made inquiries through his trucking Association as to any potential buyers and they informed him that permits were selling for approximately \$3,500 at the time. Thereafter, he received phone calls from prospective buyers which ultimately resulted in the sale to Wheeler for \$3,500. Perry then had Seever obtain the signatures of his brothers on the application to transfer the dump truck carrier permit and after having Wheeler sign same, accompanied Wheeler to the Commission's office in Oakland where it was filed.

8. According to the staff's and the Association consultant's testimony, there is no desire to impede the transfer of the permit to Wheeler since he is a good faith purchaser. Their concern is that the lack of stringent Commission standards regulating the transfer of existing permits may encourage the growth of permit trafficking by "brokers," not regularly engaged in the dump truck business, who can control the price of permits through their buying and selling. At the present time, the current prices being paid for permits range anywhere from \$1,000 to as much as \$5,000, with the exact amounts being determined by supply and demand at any given time. This supply and demand fluctuates considerably. The present general method of obtaining or disposing of a carrier permit is by newspaper, trade periodical, or truck association

advertisement. There have been relatively few applications for new dump truck carrier permits and few new permit approvals by the Commission since enactment of the Dump Truck Carriers Act in 1969 because of stringent requirements contained in the Act. (Article 4.3, Ch. 1004.) On the other hand, there have been a considerable number of applications to transfer carrier permits filed with the Commission. During the period May-August 1978, 349 dump truck carrier transfer applications were issued by this Commission, an average of 88 per month. A permit transfer is easily obtained by completing a transfer application and financial statement, payment of a filing fee of \$150, and a showing of proof of residence and required insurance. Thus, it appears that individuals seeking to obtain a dump truck carrier permit choose to pay the prevailing market price at any given time for an existing permit rather than face the expense of a hearing and the possibility that their filing fee of \$500 will be lost if their application for a new permit was denied.

9. Based on the foregoing findings, it is found that Perry is a member of the dump truck carrier business and holds a valid permit. It is, likewise, found that he is not ordinarily engaged in the purchase and resale of carrier permits.

10. Since the application for the permit transfer indicates a transfer between Secver Bros. and Wheeler when in fact a permit sale actually occurred between Secver Bros. and Perry and the sale of the same permit occurred between Perry and Wheeler without Commission approval, a violation of Public Utilities Code Section 3614 took place.

11. Since Wheeler purchased the permit in good faith, paying a price he was evidently agreeable to paying, and since he has complied with the requirements for said transfer, we see no reason to deny the transfer, and the application should be approved.

Discussion

Findings have been made above on all issues pertinent to this proceeding. However, we feel compelled to discuss the concern of the staff regarding possible trafficking of dump truck carrier permits at exorbitant prices and the concern of the Association consultant regarding a lack of standards for dump truck carrier permit transfers contained in the Public Utilities Code. The Association consultant recommends that some method be established to determine and set up standards governing the transfer of dump truck carrier permits. He recommends that the method be established either by way of this decision, by a Commission order instituting an investigation, by Commission resolution upon the recommendation of staff, or by the issuance of a staff "white paper". The evidence developed during the course of this hearing was narrow in scope and limited primarily to the facts surrounding the transfer of the dump truck carrier permit between the parties involved. That evidence is insufficient to draw any conclusion with respect to the existence of or extent of any wholesale trafficking in dump truck carrier permits by third party brokers either in or outside of the dump truck business in the buying and selling of carrier permits and possibly controlling the market price. We recognize the stringent requirements set forth in Public Utilities Code Section 3613,<sup>1/</sup> and the fact that few new dump truck carrier permits have been authorized by this Commission since the enactment of that section in 1969, as compared to the relative lack of similar requirements expressed in the Public Utilities Code relative to the transfer of existing dump truck carrier permits and the ease in which such transfers receive Commission authorization. However, with respect to the price one pays for a carrier permit, we believe as a general proposition that the free market place should be the proper determinant of such prices as dictated by the process of supply and demand, rather than being established by this

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<sup>1/</sup> It may be that Section 3613 is unconstitutional in that it poses an insurmountable evidentiary test on a new applicant for entry into the field, but that issue is not before us in this proceeding.

Commission. We would deplore a situation whereby the sale price of permits were controlled by traffickers and would not hesitate to take action should there be a showing that this is occurring. In the meantime, if the sale price of permits became prohibitive, there is always available to the buyer the alternative of submitting an application for a new permit at less cost. This in itself should act as a damper to keep the cost from skyrocketing. If there is any widespread trafficking in permits existing today by individuals outside of the dump truck business who buy and sell permits without revealing themselves on such applications to transfer, it is clearly a violation of Public Utilities Code Section 3614 and the Commission would be desirous of eliminating such practice. The Association consultant recommends that similar requirements be imposed on the transfer of permits as exist for new permit applications. Consideration might also be given to control permit transfers by having the Commission act as an escrow in connection with such transfers to insure that only proper parties are engaged in such transfers. Before any definitive steps are taken, however, further information is necessary on these transfers to determine the existence and extent of trafficking in permits and an examination to determine if additional requirements should be imposed before permit transfer applications receive Commission authorization.

In its Decision No. 89575, dated October 31, 1978, in Case No. 5432 et al., we authorized highway contract carriers to subhaul for dump truck carriers. Moreover, the Commission presently has before it Application No. 58197 for issuance of a new dump truck carrier permit and the staff's recommendation in Case No. 10278, Phase II, that all licensed carriers be authorized to provide subhauling services for all other licensed carriers without restriction as to the type of operating authorities held by the carriers.

The Commission is cognizant that an increase in the supply of carriers who may engage in dump truck operations may have the salutary effect of placing downward pressure on the sale prices of permits and should significantly reduce the incentive for trafficking in such permits.

In view of this possibility, the staff is directed to monitor the sale prices and other circumstances involved in the transfer of dump truck carrier permits and to report to the Commission its findings and recommendation after the orders of the Commission in the proceedings referred to above have been fully implemented.

Conclusions

1. The transfer to Wheeler of the dump truck carrier permit heretofore filed by Seever should be approved.
2. Perry should be advised that he is in violation of Public Utilities Code Section 3614, in that he never submitted an application to this Commission for authority to transfer Dump Truck Carrier Permit File T-105,427 from Seever Bros. to himself or from himself to Wheeler. He is to be admonished that any future transactions of this nature may cause the Commission to consider the imposition of a fine or the revocation of his authorized dump truck carrier permit.
3. The Transportation Division staff should be directed to make an investigation of the facts and circumstances surrounding the filing of applications to transfer dump truck carrier permits in order to determine the existence of and extent of any trafficking of permits by persons in or out of the dump truck business and to determine whether or not the requirements or standards affecting such transfers of permits should be increased, submitting such findings along with any recommendations to the Commission for further action.
4. Because Wheeler's request is not contested and he requires the permit for livelihood, this order will be made effective the date signed.



O R D E R

IT IS ORDERED that:

1. The transfer to Chris A. Wheeler of the Dump Truck Carrier Permit (File T-105,427), heretofore issued to William A. Seever, Robert L. Seever, and Gerald E. Seever, is approved.

2. The Commission's Transportation Division is directed to monitor the sales prices and circumstances attendant to the filing of applications to transfer dump truck carrier permits until the Commission's orders in Application No. 58197, Case No. 5432 et al., and Case No. 10278, Phase II, have been fully implemented. Thereafter, the staff will report its findings and recommendations for remedial action to be taken by the Commission.

3. The Transportation Division shall notify Rick Perry that he was in violation of Public Utilities Code Section 3614 with respect to his purchase and resale of the permit under File No. T-105,427 and that any such future transactions without Commission approval will result in a fine or revocation of his existing dump truck carrier permit.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 28<sup>th</sup> day of NOVEMBER, 19  .

Commissioner Vernon E. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.

Robert Bateman  
President

William Sproul, Jr.

Richard W. Smith

Clare J. DeLoach  
Commissioners