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Decision No. 91093 NOV 30 1979

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's)
own motion into the operations,)
rates and practices of Vincent)
Marlow Hodge, an individual, dba)
Keshun's Freight System.)
_____)

OII No. 54
(Filed July 17, 1979)

Elmer J. Sjoström, Attorney at Law, and
Paul Wuerstle, for the Commission staff.

O P I N I O N

This is an investigation on the Commission's own motion into the operations, rates, and practices of Vincent Marlow Hodge, an individual, dba Keshun's Freight System (respondent), for the purpose of determining whether respondent violated Section 3775 of the Public Utilities Code^{1/} by transporting property by motor vehicle over the public highways of this State during a period when respondent's radial highway common carrier permit was suspended for failure to maintain on deposit adequate liability insurance, whether respondent should be ordered to cease and desist from any and all illegal operation, or whether respondent's operating authority should be canceled, revoked, suspended, or in the alternative, whether a fine should be imposed pursuant to Section 3774.

^{1/} All references hereafter are to the Public Utilities Code.

Public hearing was held August 2, 1979 at San Francisco before Administrative Law Judge Banks at which time the matter was submitted. The respondent did not appear.

Respondent operates pursuant to a radial highway common carrier permit issued May 22, 1975 operating from a terminal in San Jose with approximately 14 pieces of equipment and 10 employees.

At the hearing, transportation staff testimony and evidence were presented by Mr. Ben Tom, a transportation analyst in the License Section, Mr. William Baum, a transportation analyst in the Compliance and Enforcement Branch, and Mr. Paul Wuerstle, an associate transportation representative.

Exhibit No. 1, as sponsored by Mr. Tom, shows that on August 4, 1978 the Commission received notice from respondent's insurance carrier that his liability insurance was to be canceled effective September 3, 1978. On August 7, 1978 a notice was sent to respondent that his radial highway common carrier permit would be suspended effective September 3, 1978, unless evidence of adequate liability insurance was deposited with the Commission prior to September 3, 1978. The notice also advised that if the required evidence of insurance was not filed by October 3, 1978, the suspended permit would be subject to revocation. The required evidence of liability insurance was not deposited by September 3, 1978, and the permit was suspended. A certificate of insurance effective November 18, 1978 was received by the Commission on December 6, 1978. Notwithstanding the November 18, 1978 effective date on the new certificate of insurance, Mr. Tom stated that the staff considered the permit suspended until the date the evidence of insurance was received. On December 7, 1978 a notice of reinstatement effective December 6, 1978 was sent to respondent.

Mr. Baum testified that he conducted a prior investigation of respondent's operation in 1976 at which time respondent was cited (Citation Forfeiture No. F-1255) for operating during a period of permit suspension and was fined \$200. Mr. Baum introduced Exhibit No. 2

concerning his current investigation which contained, (1) a copy of Citation Forfeiture No. F-1255, (2) a copy of Notice of Impending Suspension for Failure to Maintain on Deposit Adequate Liability Insurance dated August 7, 1978, and (3) copies of shipping documents concerning shipments transported by respondent during the months of September and October 1978. Mr. Baum stated that the copies of the shipping documents were just representative samples of between 200-300 shipments transported by respondent during the period of suspension up to the date of staff's investigation. He further testified that he personally served respondent with a copy of Citation Forfeiture No. F-1669 on November 21, 1978. Finally, Mr. Baum stated that when respondent failed to reply to the citation forfeiture by December 5, 1978 as requested, the staff advised respondent on February 7, 1979, that failure to respond could result in the Commission instituting formal proceedings which could lead to suspension or revocation of his operating authority. When the respondent failed to respond to the February 7, 1979 letter advising possible suspension or revocation, respondent was personally served with another warning letter on March 5, 1979.

Mr. Wuerstle testified that after receiving the notice on March 5, 1979, respondent visited his office in San Francisco on March 15, 1979 to discuss Citation Forfeiture No. F-1669. Mr. Wuerstle stated that respondent requested that the \$1,000 fine be reduced. Respondent was advised that although the fine would not be reduced, installment payments of \$250 increments were acceptable. While not rejecting the staff suggestion of an installment payment plan, respondent advised that he wished to consult with his attorney and would then advise Mr. Wuerstle of his decision. To the date of hearing, no further communication had been received from respondent.

At the conclusion of the hearing, staff counsel stated that based on the record, the respondent's failure to appear and respondent's disregard of the Commission, the staff recommends

that respondent be assessed a fine in the amount of \$1,500 pursuant to Section 3774 of the Public Utilities Code.

The evidence in the record is clear and uncontroverted. When respondent's liability insurance was canceled effective September 3, 1978, respondent was advised on August 7, 1978 that unless evidence of adequate liability insurance was filed prior to September 3, 1978, his operating authority would be suspended effective that date. Respondent was further advised that if the evidence of liability insurance was not filed by October 3, 1978, his operating authority would be subject to revocation. Not receiving a response to these communications, respondent's operating authority was suspended effective September 3, 1978. Not until December 6, 1978 did the Commission receive the required evidence of insurance covering respondent, at which time the operating authority was reinstated. During the three-month suspension period, respondent, with full knowledge of the suspension and liability insurance requirements, continued to operate, moving at least between 200-300 shipments. Mail, telephone, and in-person contacts by the Commission staff proved ineffective in obtaining a positive response from respondent to Citation Forfeiture No. F-1669. Respondent has demonstrated by his action a flagrant disregard of the Commission's regulation concerning operations during periods of suspension. We consider operation during suspension for failure to maintain adequate liability insurance a most serious violation. We conclude that the staff recommended fine of \$1,500 is too lenient for such a serious violation and will therefore impose the maximum fine allowable under Section 3774 of the Public Utilities Code.

Findings of Fact

1. Respondent Hodge operates pursuant to a radial highway common carrier permit issued May 22, 1975.

2. On August 4, 1978 the Commission received notice that respondent's liability insurance was canceled effective September 3, 1978.

3. On August 7, 1978 respondent was advised that unless evidence of adequate liability insurance was received before September 3, 1978, his permit would be suspended effective that date. Respondent was also notified that unless evidence of adequate liability insurance was filed with the Commission before October 3, 1978, his permit would be subject to revocation.

4. Respondent's radial highway common carrier permit was suspended effective September 3, 1978 for failure to file evidence of adequate liability insurance.

5. On December 7, 1978 the Commission received a certificate of insurance issued to respondent and to be effective November 18, 1978.

6. On December 7, 1978 respondent was notified that with the filing of evidence of adequate liability insurance his radial highway common carrier permit was reinstated effective December 6, 1978.

7. Respondent's radial highway common carrier permit was suspended from September 3, 1978 until December 6, 1978. During the period of suspension covered by the staff's investigation, respondent continued to operate, moving between 200-300 shipments.

Conclusions of Law

1. By continuing to operate while his radial highway common carrier permit was suspended, respondent violated Section 3775 of the Public Utilities Code.

2. Pursuant to Section 3774 of the Public Utilities Code, respondent should pay a fine of \$2,500. ✓

O R D E R

IT IS ORDERED that:

1. Vincent Marlow Hodge, dba Keshun's Freight System, shall pay a fine of \$2,500 to this Commission pursuant to Public Utilities Code Section 3774 on or before the fortieth day after the effective date of this order. Vincent Marlow Hodge 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 becomes delinquent.

2. Respondent shall cease and desist from conducting operations in violation of Section 3775 of the Public Utilities Code.

3. If the fine set forth in ^{order}~~order~~ Paragraph 1 is not paid ~~paid~~ by respondent within forty days after the effective date of this order, the highway carrier operative authority of respondent is revoked without further action of the Commission.

The effective date of this order shall be thirty days after the date hereof.

Dated NOV 30 1979, at San Francisco, California.

John E. Byrne
President

Lawson L. Stevenson

Michael W. Kivelle

Philip T. Schriber

James W. ...
Commissioners