

ORIGINAL

Decision No. 91770 MAY 6 1980

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion in the operations, rates and practices of Donald E. Martin, dba Don Martin Moving and Storage, a sole proprietorship.

OII No. 59  
(Filed October 10, 1979)

Donald E. Martin and Grover A. Perrigue, III,  
Attorney at Law, for respondent.  
Ellen LeVine, Attorney at Law, and Ed Hjelt,  
for the Commission staff.

O P I N I O N

By its order dated October 10, 1979 the Commission instituted an investigation into the operations, rates, and practices of Donald E. Martin, dba Don Martin Moving and Storage, a sole proprietorship, for the purpose of determining:

1. Whether respondent has violated Sections 5139, 5193, 5196, and 5245 of the Public Utilities Code by failing to comply with the estimating and documentation rules set forth in Items 31, 31.1, 32, 33.5, 33.7, and 145 of Minimum Rate Tariff 4-B (MRT 4-B).
2. Whether respondent has charged and collected more than the maximum charges applicable.
3. Whether respondent should be ordered to pay to shippers the difference between the charges collected and the maximum charges applicable under the aforementioned tariff provisions.
4. Whether respondent has violated Section 5286 of the Public Utilities Code by operating during a time when respondent's authority was suspended by the Commission for failure to maintain liability insurance.

5. Whether respondent should be ordered to cease and desist from any and all unlawful operations and practices.
6. Whether the operating authority of respondent as a household goods carrier should be canceled, revoked, or suspended, or, as an alternative, whether a fine should be imposed pursuant to Section 5285 of the Public Utilities Code.
7. Whether any other order or orders that may be appropriate should be entered in the lawful exercise of the Commission's jurisdiction.

Public hearing was held before Administrative Law Judge O'Leary at Los Angeles on December 4, 1979 and February 5, 1980. The matter was submitted subject to the filing of late-filed Exhibit 3 which was filed on February 14, 1980.

Respondent conducts operations pursuant to a household goods carrier permit issued July 1, 1965. He operates four tractors and six trailers and employs eight persons, three of whom are part time. He maintains a single terminal at Fountain Valley. During 1978 his gross operating revenue totaled \$110,359 of which \$67,379 was earned in intrastate commerce.

Evidence presented by the Commission staff discloses that on June 15, 1978 members of the Commission staff conducted an advisory conference wherein respondent was advised of various violations of MRT 4-B and was directed to refund overcharges to various shippers in the amount of \$423.70 and to pay an underestimating penalty to the Commission in the amount of \$15.59. To date the instructions issued to respondent at the advisory conference have not been complied with. Evidence was also presented with respect to four additional instances wherein respondent overcharged shippers in the amount of \$193.75. On one of the shipments respondent underestimated the probable cost of services and is subject to an underestimating penalty pursuant to Item 33.7 of MRT 4-B. A summary of the overcharges and overestimating penalties is set forth in Appendix A, attached hereto.

Evidence was also presented disclosing that respondent performed operations during periods his permit was in suspension for failure to maintain, on deposit, adequate liability insurance as follows:

<u>Period of Suspension</u>	<u>No. of Shipments Transported During Period</u>
August 6, 1978 to September 23, 1978	37
February 14, 1979 to March 19, 1979	16
May 30, 1979 to October 6, 1979	47

Evidence was also presented that discloses on two occasions respondent failed to obtain the shipper's signature on the "Basis for probable cost of service document" as required by Item 32 of MRT 4-B.

At the hearing held on December 4, 1979 respondent appeared for himself. Pursuant to respondent's request for a continuance, in order to obtain counsel, the Administrative Law Judge ruled that the staff would be permitted to present its evidence; however, cross-examination of staff witnesses and presentation of respondent's evidence would be deferred until February 5, 1980, at which time respondent was expected to appear with counsel.

At the hearing held February 5, 1980 respondent appeared with his counsel and entered into the following stipulation with the Commission staff:

"On December 4, 1979, the Public Utilities Commission held a hearing pursuant to a Commission investigation into the operations and practices of Donald E. Martin, dba Don Martin Moving and Storage. Said proceeding is known as OII 59.

"At the above-mentioned hearing, the Commission staff presented evidence to indicate that Martin had violated Sections 5139, 5193, 5196 and 5245 of the Public Utilities Code for failure to comply with the estimating and

documentation rules set forth in Items 31, 31.1, 32, 33.5, 33.7, and 145 of Minimum Rate Tariff 4-B during the period from November 29, 1977, through January 27, 1979.

"The staff further presented evidence to indicate that Martin had failed to maintain adequate liability insurance in violation of Section 5286 of the Public Utilities Code during the periods set forth in the record in this proceeding.

"In view of the above, the Commission staff and Martin hereby stipulate to the following:

"One, Martin agrees to pay the amount of \$617.46 in overcharges and \$99.24 in overcharge penalties assessed between the period of November 29, 1977, and January 27, 1979;

"Two, Martin agrees to a \$4,000 punitive fine for failure to maintain insurance on file with the Commission and operating during the suspension of his permit, of which \$2,000 shall be suspended with the condition that Martin shall not appear before this Commission in a formal proceeding in connection with any violation of the Household Goods Carrier Act within three years from the effective date of a Commission decision herein;

"Three, that this stipulation shall be subject to the approval of the Commission."

Respondent requests that the overcharge refunds, overestimating penalties, and the punitive fine be paid over a period of five quarterly installments. The first quarterly payment to be the overcharge refunds and the overestimating penalties.

With respect to the overcharges set forth in Parts 12A and 12B of Exhibit 2, evidence was presented by respondent (late-filed Exhibit 3) that the shipper, Robert J. Sefing filed a small claims action in South Orange County Municipal Court. As a result of such action, a judgment was entered in the amount of \$125, plus costs and interest, a total of \$145.77. The judgment was satisfied on August 28, 1979.

With respect to the operations, while his permit was suspended for failure to maintain on deposit adequate liability insurance, respondent testified he was faced with health problems which affected his ability to maintain almost all phases of the business. He also testified that the health problems also caused a decrease in the number of jobs and a resultant cash-flow problem. He further testified that during said period his net worth was approximately \$200,000 and was aware that in the event of an accident he was risking said net worth. He also attempted to obtain a loan to finance the insurance but was refused because of his cash-flow problem.

Operations during periods of suspension, especially for failure to maintain proper insurance coverage, is a very serious violation and normally we would impose the maximum penalty permitted by law; however, because of the mitigating circumstances set forth by respondent and the fact that this is the first formal proceeding involving violations by this respondent, we are persuaded that the fine recommended by the staff is appropriate.

Findings of Fact

1. Respondent operates pursuant to a household goods carrier permit.
2. On June 15, 1978 members of the Commission staff held an advisory conference with respondent, wherein he was advised of overcharges totaling \$423.70 on 11 shipments and was directed to refund such overcharges. He was also advised of an underestimating penalty in the amount of \$15.59 and directed to remit said penalty to the Commission.
3. To date the directives given at the advisory conference of June 15, 1978 have not been complied with.
4. Subsequent to June 15, 1978 respondent overcharged on four additional shipments in the amount of \$193.75 and is subject to underestimating penalty in the amount of \$83.65 in connection with one of the shipments.

5. As a result of a small claims action filed by the shipper of the shipments covered in Parts 12A and 12B of Exhibit 2, respondent paid a judgment in the amount of \$145.77.

6. During the certain periods from August 6, 1978 to October 7, 1979 respondent performed transportation while his permit was suspended for failure to maintain adequate liability insurance on file with the Commission as follows:

<u>Period of Suspension</u>	<u>No. of Shipments Transported During Period</u>
August 6, 1978 to September 23, 1978	37
February 14, 1979 to March 19, 1979	16
May 30, 1979 to October 6, 1979	47

Conclusions of Law

1. Respondent has violated Sections 5139, 5193, 5196, and 5245 of the Public Utilities Code by failing to comply with the estimating and documentation rules set forth in Items 31, 31.1, 32, 33.5, 33.7, and 145 of MRT 4-B.

2. Respondent violated Section 5286 of the Public Utilities Code by performing operations during periods his permit was in suspension.

3. Respondent should be ordered to refund the overcharges set forth in Parts 1 to 11, inclusive, and Parts 13 and 14 of Appendix A, attached hereto, by mailing such refunds to the shipper's last known address. ✓

4. Respondent should not be ordered to refund the amounts set forth in Parts 12A and 12B because of the small claims judgment described in Finding of Fact 5.

5. Respondent should be ordered to pay the underestimating penalties set forth in Appendix A.

6. Respondent should be ordered to pay a fine of \$4,000 as set forth in the ensuing order.

O R D E R

IT IS ORDERED that:

1. Respondent, Donald E. Martin, dba Don Martin Moving and Storage, shall pay a fine to this Commission pursuant to Public Utilities Code Section 5285 of \$4,000, of which \$2,000 is suspended on the condition that respondent shall not appear before this Commission in a formal proceeding in which he is found to have violated any provision of the Household Goods Carriers Act (Public Utilities Code Sections 5101 to 5319, inclusive) within three years after the effective date of this order.

2. The fine set forth in Ordering Paragraph 1 shall be paid on or before the fortieth day after the effective date of this order.

3. Respondent, at his election, may pay the fine ordered by Ordering Paragraph 1 in four quarterly installments of \$500 each plus interest at 7 percent per annum on the amount outstanding, computed from the fortieth day after the effective date of this order. The quarterly payments shall be due as follows: July 1, 1980, October 1, 1980, January 1, 1981, and April 1, 1981. If respondent elects to pay the fine in installments as set out above and respondent fails to pay any of the installments when due, the full amount of the fine, plus interest, will become immediately due and payable.

4. On or before the fortieth day after the effective date of this order respondent shall refund the overcharges set forth in Parts 1 to 11, inclusive, and Parts 13 and 14 of Appendix A, attached hereto, to the last known address of the shippers.

5. Upon completion of refunding the overcharges, respondent shall so advise the Commission.

6. On or before the fortieth day after the effective date of this order respondent shall remit to the Commission the underestimating penalties of \$99.24 set forth in Appendix A, attached hereto.

The Executive Director of the Commission shall cause personal service of this order to be made upon respondent. The effective date of this order shall be thirty days after the completion of such service.

Dated MAY 6 1980, at San Francisco, California.

John E. Bryan  
President  
Henry P. Sherman  
Richard W. Stovall  
Clifford J. ...  
James M. ...  
Commissioners



## APPENDIX A

<u>Exhibit 2</u> <u>Part</u>	<u>Frt. Bill</u> <u>No(s).</u>	<u>Shipper</u>	<u>Penalty</u>	<u>Overcharge</u>
1	7465, 7357	John A. Pouk		\$ 98.93
2	7428	S. L. Hocking		50.15
3	7445	Kathy Springer		15.79
4	7452	L. Schweickert		33.92
5	7458	Dorothy D. Helsing		30.97
6	7462	O. D. Martin		28.02
7	7468	Donald Payan		25.07
8	7481	L. J. Stawasz		39.82
9	7413	Charles F. Aughttry		42.72
10	7437	L. J. Stawasz		10.27
11	7457	Isadore Mays	\$15.59	48.04
12A	7703	Robert J. Sefing		112.35
12B	7704	Robert J. Sefing		21.87
13	7723	William Grasso		49.74
14	7880	Robert Ferguson	83.65	9.80

Total Overcharges - \$617.46

Total Penalty - \$99.24