

Decision No. 92764 MAR 3 1981

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 Kenneth C. Butin and Michael K. Butin, dba M-K Trucking and Capital Lumber Company, a corporation, Charleys Fence Company, a corporation, Marquart-Wolfe Lumber Co., a corporation, Products Sales Inc., aka Fleetwood Western Inc., a corporation, Ransom Lumber Sales, a corporation, Shaw Lumber Company, a corporation, South Bay Redwood Co., a corporation, T & R Lumber Co., a corporation, respondents.

OII No. 3  
(Filed November 8, 1977)

ORDER REOPENING OII No. 3

Decision No. 90384 dated June 5, 1979 directed Kenneth C. Butin and Michael K. Butin (Butins), doing business as M-K Trucking to:

1. Collect \$72,834.46 in undercharges from eight respondent shippers;
2. Pay an undercharge fine in the amount of \$81,154.62;
3. Pay a punitive fine of \$5,000;
4. Pursue all reasonable measures to collect the undercharges; and
5. File monthly status reports of the action taken to collect any uncollected undercharges.

The undercharge fine, in addition to the undercharges the Butins were directed to collect, included \$6,185.55 in undercharges they collected from one of the respondent shippers while the investigation was in progress and also \$2,134.61 in undercharges which they had collected but had not paid as a fine as required by an undercharge citation

served on them on July 16, 1976. The fines were due and payable on or before July 15, 1979. The punitive fine has been paid. The undercharge fine was not paid.

Counsels for the Butins pointed out in a Petition for Modification of Decision No. 90384, an amendment thereto and various correspondence and reports, that:

1. Informal attempts to collect the undercharges have been unsuccessful;
2. Civil actions have been filed against the individual respondent shippers for collection of the undercharges;
3. The Butins do not have the financial resources to pay the fine until the undercharges are collected; and
4. It will take time to conclude the civil actions.

They requested that the time period within which the undercharge fine is to be paid be amended to provide that as undercharges are collected from the individual shipper respondents, the amount so collected shall be paid toward the fine within 30 days of collection.

Decision No. 92151 dated August 19, 1980 granted the requested installment basis extension of time for the payment of the amount of the undercharge fine which is based on the \$72,834.46 in undercharges the Butins were directed to collect from the respondent shippers. The decision also extended to September 28, 1980, the time within which the remaining amount of the undercharge fine based on the \$8,320.16 in undercharges already collected by the Butins shall be paid. It further provided that in all other respects Decision No. 90384 shall remain in full force and effect.

All of the undercharge fine continues to remain unpaid, and monthly status reports of the uncollected undercharges as required by Decision No. 90384 have not been filed since the issuance of Decision No. 92151. The Commission staff has advised that it has made several calls to the Butins' present attorney and on October 6, 1980 sent a letter to the Butins and their attorney regarding payment

of the \$8,320.16 and the filing of monthly status reports. No response was received from either. The staff requests that the matter be reopened to determine:

1. The status of the undercharge collections;
2. The reasons for the Butins' failure to pay the \$8,320.16 portion of the undercharge fine; and
3. Whether further sanctions should be imposed.

We agree, and good cause appearing,

IT IS ORDERED that Order Instituting Investigation No. 3 is reopened for further hearing before Administrative Law Judge Arthur M. Mooney on Friday, April 10, 1981 at 9:30 a.m. in the Commission Courtroom, State Building, 350 McAllister Street, San Francisco, California for the purpose of determining:

1. The reason for the failure by Kenneth C. Butin and Michael K. Butin (Butins), doing business as M-K Trucking, to pay the \$8,320.16 portion of the undercharge fine by September 28, 1980 as required by Ordering Paragraph 1.a. of Decision No. 92151.
2. The reason for the failure by the Butins to file monthly reports of the current status of the action taken to recover all uncollected undercharges as required by Ordering Paragraph 4 of Decision No. 90384.
3. Whether the Butins and their attorney are diligently, and in good faith, prosecuting the law suits that have been filed against shipper respondents for collections of the undercharges specified in Ordering Paragraph 3 of Decision No. 90384 as specifically required by Ordering Paragraph 2 of Decision No. 92151.
4. Whether the Butins' operating authority should be canceled, revoked, or suspended.
5. Whether the Butins should be ordered to pay additional penalties.
6. Whether the Commission should issue an order to show cause why the Butins should not be held in contempt for failure to comply with Decision No. 90384, as modified by Decision No. 92151.

7. Whether any other order or orders that may be appropriate should be entered in the lawful exercise of the Commission's jurisdiction.

The Executive Director shall cause personal service of this order to be made on each of the respondents Butins.

The effective date of this order as to each respondent shall be the date the order is personally served on him.

Dated MAR 3 1981, at San Francisco, California.

John S. Gurn  
President  
Richard W. Stovall  
Arnold W. Smith  
Robert P. ...  
Commissioners