

SEP 8 1995

Decision 95-09-012 September 7, 1995

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Emulsions Control, Inc.,)

Complainant,)

vs.)

Super Cal Express,)

Defendant.)

Case 95-04-015
(Filed April 17, 1995)

ORIGINAL

O P I N I O N

1. Summary

This complaint is dismissed without prejudice to refiling at a later date.

2. Discussion

Complainant on April 17, 1995, filed this action pursuant to Public Utilities Code (PU Code) § 737, alleging that tariff undercharges that Trans-Allied Audit Company, Inc., seeks to collect on behalf of defendant are unreasonable and discriminatory, thus violating PU Code §§ 451 and 453. The complaint seeks dismissal of any undercharge claim that defendant or its agents may seek to collect.

On or about May 17, 1995, the Commission was informed by counsel that defendant had filed a petition for reorganization in the United States Bankruptcy Court for the Central District of California, and that an order for relief was entered by that court on December 16, 1993. (Case No. LA 93-54051-ER.)

Under § 362 of the Bankruptcy Code, the filing of a petition for relief by defendant operates as a stay of judicial and administrative proceedings against the debtor and bars claims actions against the debtor that arose before the commencement of

the bankruptcy filing. (11 U.S.C.A. § 362.) Accordingly, it appears that complainant's claim before the Commission cannot go forward at this time and should be dismissed, without prejudice to any right complainant may have to refile at a later date.

On July 12, 1995, the assigned administrative law judge wrote to complainant stating his intention to recommend dismissal of this complaint because of the bankruptcy stay. Complainant was invited to seek an order from the Bankruptcy Court lifting the stay, or otherwise to show a basis upon which this complaint might go forward. Complainant in a response dated July 18, 1995, failed to make such a showing.

Findings of Fact

1. This complaint was filed on April 17, 1995.
2. Defendant is the subject of a petition for relief in the United States Bankruptcy Court for the Central District of California.
3. An order for relief in defendant's bankruptcy case was entered on December 16, 1993.

Conclusions of Law

1. Under § 362 of the Bankruptcy Code, the filing of a petition for relief operates as a stay of judicial and administrative proceedings against the debtor and bars action on claims against the debtor that arose before the commencement of the bankruptcy filing.
2. This complaint should be dismissed without prejudice to any right of complainant to refile at a later date.

ORDER

IT IS ORDERED that this complaint is dismissed without prejudice to any right of complainant to refile at a later date. This order is effective today.
Dated September 7, 1995, at Los Angeles, California.

DANIEL Wm. FESSLER
President
P. GREGORY CONLON
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
Commissioners

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY

Wesley Franklin
Acting Executive Director