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Decision 95-12-043 December 18, 1995

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

MLO Products Co., Inc.,

Complainant,

vs.

Gentry Services, Inc., d/b/a
Super Cal Express,

Defendant.

ORIGINAL

Case 95-06-063
(Filed June 26, 1995)

O P I N I O N

1. Summary

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

2. Discussion

Complainant on June 26, 1995, filed this action pursuant to Public Utilities Code (PU Code) § 737, alleging that tariff undercharges sought to be collected 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.

The Commission earlier had been 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 September 26, 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 before the Commission. Complainant was invited to respond within 30 days. Complainant has not responded.

Findings of Fact

1. This complaint was filed on June 26, 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.

O R D E R

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 December 18, 1995, at San Francisco, California.

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