

Decision 97-09-093 September 24, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Paula Karrison,

Complainant,

vs.

A & P Moving, Inc.,

Defendant.

ORIGINAL

Case 95-03-057
(Filed March 23, 1995)

SECOND INTERIM OPINION ON SCOPE

In this decision, we define the scope of the proceeding for the second time, at the request of Complainant.

We first addressed the issue of scope in Decision (D.) 96-12-060, which clarified the scope of the proceeding and identified certain steps to be taken by the parties prior to the Commission considering further the issues laid before it by the Complainant.¹ The Complainant was made responsible for advising the Commission of the final disposition of Complainant's case before the Superior Court, County of Marin (Court), in Karrison vs. A&P Moving, Inc. and other defendants (No. 166001). Complainant was instructed to file a copy of the court's final disposition along with a motion. In the motion, Complainant was instructed to provide argument on the issues the Commission should address in resuming this proceeding or, in the alternative, advise



¹ An application for rehearing of D.96-12-060 was filed. The application is limited to the Commission's adoption in that decision of a prohibition on household goods carriers from selling the property of a shipper who has filed a formal complaint against a carrier during the pendency of the complaint. The application does not address the scope of the proceeding or instructions to Complainant.

the Commission of its desire to withdraw the complaint. (D.96-12-060, Ordering Paragraph 5.)

Since D.96-12-060, a number of pleadings have been filed by Complainant and Defendant including those required by the decision. In the Ruling on Various Pleadings, issued June 2, 1997 (June Ruling), the assigned Administrative Law Judge (ALJ) stated her intent to resume consideration, through evidentiary hearing, of the issues and relief contained in the original complaint, as limited by D.96-12-060 and the June Ruling.

In the June Ruling, the ALJ ruled on a number of the pleadings, and addressed the scope of the proceeding including the related limitation on the defendants against whom complaint may be brought at the Commission.

Concurrent with the June Ruling, a prehearing conference (PHC) was noticed. The PHC was "called to determine whether discovery will be renewed and, if so, establish a discovery schedule and protocol, discuss a schedule for evidentiary hearing, and other procedural matters."

On June 26, 1997, the prehearing conference was held. At the PHC, Complainant took exception to the June Ruling. Specifically, she took exception to the scope of the proceeding defined by the ALJ and the related limitation laid out by the ALJ on the defendants against whom complaint may be brought at the Commission. Complainant also argued that the Commission should exercise authority she asserts it holds pursuant to Public Utilities Code § 1759 to "preempt" the rulings of the Court.² Complainant stated at the PHC that she did not wish to go forward with evidentiary hearing until these rulings of the ALJ had been reviewed. Complainant stated she intends to pursue review to the California Supreme Court.

Rule 65 of our Rules of Practice and Procedure provides that the presiding officer may refer a matter to the Commission for determination in extraordinary circumstances, where prompt decision by the Commission is necessary to promote substantial justice. Substantial justice would not be promoted were evidentiary

² Unless otherwise noted, citations are to the Public Utilities Code.

hearings held while complainant disputes the jurisdiction and responsibility of this Commission. Complainant's actions are hampering the efficient and just processing of those aspects of the complaint the ALJ deemed properly adjudicable before this Commission for a prompt decision. This presents an extraordinary circumstance. Therefore, the ALJ has referred the matter to the Commission. We therefore will review the ALJ's ruling on these two issues.

Comment on the Proposed Order

At the June 26 PHC, Defendant asked that if a proposed order were prepared it be circulated to the parties for comment before being placed before the Commission for consideration. Complainant did not object, and the ALJ and Assigned Commissioner agreed to publish the proposed order for comment. Comments were timely filed by both Defendant and Complainant. As a result of the comments, a number of changes were made to the proposed order. These changes clarify, but do not change, the ultimate findings, conclusions, and orders.

We do make a significant change to the order, however, to ensure that our intent to provide Complainant and this Commission a vehicle for addressing the alleged violations is preserved. We understand Complainant may pursue its appeal rights, which may take some time. We are concerned that were we to dismiss the complaint without prejudice to Complainant refiling in conformance with this decision, as proposed, the statute of limitations may preclude further action. We will, therefore, not dismiss the complaint at this time. We will not, however, hold the complaint open indefinitely. We expect the ALJ to query the parties on a periodic basis to determine the status of any pending appeals, and to take up evidentiary hearings, consistent with the scope defined in this decision and any decisions on appeal, at the earliest opportunity.

Throughout Complainant's comments runs an apparent concern that this Commission is not interested in holding evidentiary hearings to determine whether the alleged violations are in fact violations, and warrant remedy. To the contrary, and as we think stated clearly in the ALJ proposed order, we intend to hold evidentiary hearings. However, we will confine those hearings to matters within our jurisdiction.

We note that in the filed comments, Complainant continues to misapply our Rules of Practice and Procedure. Once again, we urge Complainant to consult with our Public Advisor's Office so that off point and frivolous arguments like those made in its comments regarding Rule 77, et. seq., are not presented in the future.

Complainant's Motion for Judicial Notice

Similar arguments are presented in Complainant's Motion for Judicial Notice. Its Motion for Judicial Notice that it has not waived a right to hearing under Rule 77, that it never received notice of an official service list, that "termination" of its complaints are involuntary, and that it will appeal the Commission's decision is denied. Rule 77 does not confer a right to hearing, nor does it preclude the issuance of opinions. Rule 5a lays out the process for serving a document and obligates the filer to serve "the official service list." The responsibility is on the party to obtain the official service list. No changes to the official service list occurred pursuant to Rules 5e, f, or g.³ Rule 8.11 does not preclude the Commission from acting on a motion to strike a filed pleading, nor from acting on its own motion. In the context of this decision, we acknowledge Complainant's dissatisfaction with our decisions and its intent to seek review by the Supreme Court.

Scope of the Proceeding

We have reviewed the June Ruling, the underlying pleadings, the June 26 PHC transcript and comments on the proposed order. We affirm the ALJ's rulings regarding the appropriate scope of the proceeding and Complainant's requests for judgment from this Commission against nonjurisdictional entities.

³ Though not explicitly stated, it appears Complainant believes that by having mailed a copy of the original complaint to a number of individuals and companies, it somehow obligated those individuals and companies. The fact that a party may choose to serve individuals or companies with a pleading does not confer upon that individual or company the obligations of a party. From the commencement of this proceeding, A&P Moving has been the only defendant, and as such, was the entity served with Instructions to Answer the original complaint. A copy of that Instructions to Answer was copied to Complainant.

In D.96-12-060 on scope of the proceeding, we delineated the relief requested by Complainant, which numbered 20. We concluded that some of that relief was outside our jurisdiction to grant, and some was mooted by the passage of time. The following relief remains before the Commission:⁴

1. For an order of statutory sanctions in favor of the Commission for violations of GO 136-C; GO 139-C [sic], Rule 6; and the PU Code.
2. Monetary sanctions against defendants for violations under GO 139-C [sic], Rule 6.
3. For release, with prejudice, of all parties from the Warehouse Contract, forthwith, with release to Complainant at Defendant's expense.
4. For statutory fines in favor of the Commission pursuant to remedies available under the PU Code.
5. For an order revoking the PUC license of Defendant, for violations of the PU Code.
6. For attorneys' fees or costs of bringing this hearing incurred by Complainant.
7. For interest at the maximum legal rate as to any amount of settlement awarded hereunder.
8. For such additional and further relief as the Commission may deem proper.

In the June Ruling, the ALJ recounted this relief and made a further limitation with respect to items 1 and 2. The ALJ ruled that the regulations contained in GO 139-B

⁴ We note, however, that Defendant has appealed D.96-12-060, arguing, among other things, that matters relating to the warehouse contract are not properly before the Commission. In restating the conclusions of D.96-12-060, we are not ruling on the Application for Rehearing. Defendant's arguments contained in the Application for Rehearing will be considered at a later time.

do not govern the handling of claims associated with the loss or damage of household goods.⁵ General Order 139-B contains "regulations governing the handling of claims for loss or damage of property filed with express corporations, freight forwarders, highway carriers, and passenger stage corporations." (GO 139-B, p. 1.) The regulations which govern the handling of claims associated with the loss or damage of household goods may be found in GO 136-C and Item 92 of Maximum Rate Tariff-4, both of which are cited in Complainant's pleadings. We agree with the ALJ that GO 139-B is not applicable to this case. Therefore, any pleadings, discovery, or testimony supporting pursuit of this relief should not be allowed.

The ALJ also defined the scope when she struck portions of the Amendment to Complaint, filed January 29, 1997. In the Amendment, Complainant seeks certain judgments from this Commission "against Firemans Fund Insurance Company, J. Richard Macon, Macon Insurance Services, and DOE Defendants 1 through 20, inclusive." (Amendment, p. 43.)

The ALJ ruled that the "defendants" against whom Complainant seeks judgment in the Amendment are not public utilities. Since they are nonjurisdictional entities, complaint can not be brought before this Commission. It is in § 1702 that the Commission is instructed on against whom complaint may be made:

"Complaint may be made by the Commission of its own motion or by any corporation or person..., by written petition or complaint, setting forth any act or thing done or omitted to be done *by any public utility*, including any rule or charge...." (Emphasis added.)

The court has characterized § 1702 as "prescrib[ing] the power of the commission to hear and determine complaints *against public utilities*." (Motor Transit Co. v. Railroad Commission, 189 Cal. Rep. 573, 578 (1922) (emphasis added) referring to § 60, which was renumbered to § 1702 without change to content.) The plain language of § 1702

⁵ In a number of pleadings, Complainant actually cites to GO 139-C. No such general order exists. The context of Complainant's arguments, however, make it clear that the intended reference is to GO 139-B.

limits the subject of a complaint to acts or things done or omitted to be done by *public utilities*. We affirm the ALJ's ruling.

During the discussion of the June Ruling at the PHC, a number of other concerns were also raised. Though we considered them all in affirming the ruling, we will briefly address two. First, in D.96-12-060, we stated that this proceeding is a quasi-judicial complaint case. It remains such, regardless of Complainant's requests (which Complainant now denies having made) that we undertake certain issues in a quasi-legislative proceeding (Complainant's Motion to Proceed in a *Non-Quasi-Judicial* Proceeding (emphasis added) and her Report of Civil Litigation, p. 12.) Second, Defendant objects to being characterized as a public utility, asserting instead that it is a licensed mover of household goods. We do so in the context of describing the limitations on the entities against whom complaint may be brought under § 1702. We concur that Defendant is a licensed mover of household goods, but we apply § 1702 pursuant to the requirements of § 5251 that "complaints may be made and filed [against household goods movers]... in the same manner, under the same conditions and subject to the same limitations... specified in the Public Utilities Act, so far as applicable."

Request for Preemption Under Public Utilities Code § 1759

On March 22, 1996, the Court ruled on Defendant's demurrers to Complainant's First Amended Complaint. Defendant demurred on three grounds. First, that the Court lacked jurisdiction. The Court overruled this demurrer, stating that the authorities are clear that the Commission does not have jurisdiction to award compensatory damages (citing Public Utilities Code § 2106); and that defendant failed to show how a grant of relief to Complainant would frustrate or interfere with Commission decisions, rules or policies.

Second, Defendant demurred on the ground that another action was pending. The Court overruled this demurrer, stating that if the complaint filed at the Commission qualifies as an action, it does not seek the same relief as the action filed before the Court.

Third, Defendant demurred on the grounds of failure to state a cause of action. For each cause of action, the Court sustained the demurrer with 30 days to amend, and

instructed Complainant. The Court noted that it gave Complainant a second opportunity to amend because Complainant prepared the initial amendment prior to any hearing on the demurrers. The Court advised Complainant that should she choose to amend, she should do so in a clear and concise manner, and should seek professional legal advice.

On June 20, 1996, the Court issued a tentative ruling sustaining Defendant's demurrers to seven causes of action contained in the Second Amended Complaint, without leave to amend. No party having requested oral argument, this tentative ruling became the order of the Court on August 15, 1996.

On July 23, 1996, the Court dismissed the action in its entirety, without prejudice, at Complainant's request. Upon sustaining all demurrers to the Second Amended Complaint, the Court ordered that final judgment was entered against Complainant, and in favor of defendants.

Finally, on December 5, 1996, the Court, having sustained the demurrer of Defendant without leave to amend, dismissed, with prejudice, Complainant's Second Amended Complaint. Defendant summarized this order as being a judgment against Complainant by reason of Complainant's failure to state a cause of action.⁴

Complainant now argues to us that these judgments somehow reverse, annul, frustrate or otherwise undermine public policy establishing adequacy of claims brought under § 2106.⁷ Having invoked the jurisdiction of the Court, Complainant now seeks to evade it. In its March 22 ruling against Defendant, the Court made it clear that Complainant's § 2106 claims were appropriately brought before it, and that in

⁴ Nowhere in the many documents attached to pleadings filed in this docket is a copy of Defendant's Demurrer to the Second Amended Complaint. We rely, therefore, on Defendant's characterization of the grounds underlying its demurrer that the Court sustained (Defendant's Motion to Strike, filed March 7, 1997, p. 5.).

⁷ Section 2106 states that a public utility that does something unlawful or fails to do something required to be done shall be liable to the persons or corporations affected by the act for all loss, damages or injury caused by the act. It states that the court may award exemplary damages in addition to actual damages.

addressing those claims, it did not foresee that it would overstep the boundaries established by § 1759. We read the Court's ultimate judgment for A&P Moving and against Karrison as dismissing the claims brought under § 2106 with prejudice for failure to state a cause of action. Contrary to Complainant's arguments, we are not aware of anything the Court has done that threatens the public interests entrusted to our jurisdiction.

The ALJ denied Complainant's request for "preemption" in the June Ruling, but did so without discussion. We affirm the ALJ's ruling, although it is not entirely clear what Complainant asked us to do. First, we do not see anyway in which the Court has "review[ed], reverse[ed], correct[ed], or annul[ed] any order or decision of the commission or... suspend[ed] or delay[ed] the execution or operation thereof, or... enjoined, restrained, or interfere[d] with the commission in the performance of its official duties, as provided by law and the rules of court." (§ 1759.) Second, we do not have any supervisory authority over the Court; if Complainant believes that the Court had acted in violation of § 1759, her remedy was to seek a writ of mandamus or prohibition in the Court of Appeal just as the parties did in the case she cited in *San Diego Gas & Electric Co. v. Superior Court* (55 Cal. Rptr.2d 724 (1966)). Finally, we have not relied on the Court's ruling to in any way limit the relief that Complainant may seek here.

Next Steps

Anticipating that the Commission may affirm the ALJ ruling on scope, the Complainant told us that "it is a waste of the Commission's time and actually a party's time to go any further based on the scope of proceedings as this Commission perceives them to be." (Tr. PHC-3, 169-170.) Though we were prepared to schedule evidentiary hearings on the original complaint, as limited by D.96-12-060 and the June Ruling, we understand Complainant does not want to pursue this course, but rather wishes to exhaust her appeal rights. The ALJ will query the parties on a periodic basis to determine the status of any appeals. We will take up evidentiary hearings, consistent

with the scope defined in this decision and any decisions on appeal, at the earliest opportunity.⁴

Appeal of Commission decisions is governed by Part 1, Chapter 9, Article 3 of the Public Utilities Code. The appropriate avenue for appeal is dependent on the category of the proceeding and the effective date of the decision. This is a complaint case not challenging the reasonableness of rates or charges, and so this decision is issued in an "adjudicatory proceeding" as defined in § 1757.1. Therefore, it will be subject to judicial review in the court of appeal if the effective date of either this decision, or any subsequent decision disposing of a timely application for rehearing of this decision, is on or after January 1, 1998.

Findings of Fact

1. The ALJ has referred this matter to the Commission pursuant to Rule 65.
2. At the June 26, 1997, prehearing conference, Complainant stated that it is not prepared to proceed with evidentiary hearings under the scope of the proceeding laid out in the June 2, 1997, Ruling on Various Pleadings.
3. At the request of Complainant, and with the concurrence of Defendant, evidentiary hearings will not be scheduled.
4. Rather than going forward with its complaint as limited by Decision 96-12-060 and the June 2 Ruling on Various Pleadings, Complainant intends to appeal this decision.
5. Contrary to Complainant's arguments, we are not aware of anything the Court has done that threatens the public interests entrusted to our jurisdiction. It did not rule

⁴We note that this is the second time during the course of this proceeding that we were prepared to schedule evidentiary hearings but, at the request of Complainant, pursued other actions. The first time was on December 7, 1995, when rather than schedule evidentiary hearings and establish a discovery protocol, Complainant asked that it be afforded an opportunity to argue the issue of the Commission's authority to award compensatory damages before going forward with the case. (Tr. PHC-2, 57.)

on the substantive assertions Complainant brought, but rather ruled against Complainant due to Complainant's failure to state a cause of action.

Conclusions of Law

1. We do not see anyway in which the Court has "review[ed], reverse[ed], correct[ed], or annul[ed] any order or decision of the commission or... suspend[ed] or delay[ed] the execution or operation thereof, or... enjoin[ed], restrain[ed], or interfere[ed] with the commission in the performance of its official duties, as provided by law and the rules of court." (§ 1759.)

2. This is a complaint case not challenging the reasonableness of rates or charges, and so this decision is issued in an "adjudicatory proceeding" as defined in § 1757.1. Therefore, it will be subject to judicial review in the court of appeal if the effective date of either this decision, or any subsequent decision disposing of a timely application for rehearing of this decision, is on or after January 1, 1998.

3. Complainant's Motion for Judicial Notice should be denied.

SECOND INTERIM ORDER

IT IS ORDERED that:

1. We affirm the Administrative Law Judge's Ruling on Various Pleadings which define the scope of the proceeding.

2. We affirm the Administrative Law Judge's Ruling on Various Pleadings which denies the Complainant's request that we undertake to have the judgments of the

C.95-03-057 ALJ/BAR/jac

Superior Court, County of Marin, in *Karrison v. A&P Moving, Co., et. al.* (No. 166001)
preempted.

3. Complainant's Motion for Judicial Notice is denied.

This order is effective today.

Dated September 24, 1997, at San Francisco, California.

JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
RICHARD A. BILAS
Commissioners

President P. Gregory Conlon, being necessarily
absent, did not participate.