

Decision 97-10-034

October 9, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

PAULA KARRISON,

Complainant,

vs.

A & P MOVING, INC.,

Defendant.

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

ORIGINAL

**ORDER DENYING IN PART AND GRANTING IN PART THE
APPLICATION FOR REHEARING OF DECISION 96-12-060**

Today we grant limited rehearing of Decision (D.) 96-12-060, our interim decision which establishes the scope of the instant proceeding and clarifies the Commission's policy and process for considering household goods complaints.

The application for rehearing was timely filed by defendant, A&P Moving, Inc. (A&P) as was the response to the application filed by Paula Karrison (Karrison), the complainant. In addition, a response to the application was filed by the Commission's Consumer Services Division (CSD)¹. Thereafter, A&P filed a response to Karrison's opposition to the application and Karrison filed an opposition to CSD's response to the application.

I. FACTS

The underlying complaint arises from a claim that movers damaged Karrison's bedroom dressing table which was identified as having special value. In

¹ The Consumer Services Division is the successor to the Commission's Safety and Enforcement Division (S&E), the Commission staff assigned to the household goods carrier industry at the time this complaint was filed. The S&E Division monitored these proceedings in an advisory capacity.

addition to filing a complaint with the Commission, Karrison also filed a civil suit for damages against A&P in the Marin County Superior Court.

While parties attempted to resolve disputed insurance claims and the damaged dresser was being repaired, Karrison's goods remained in storage at A&P's facility. The moving, storage and insurance bill grew to \$1903.66. Complainant refused to pay it claiming that the accumulated charges resulted largely from delays caused by defendant and its insurance carriers. Pursuant to the provisions of the California Commercial Code, A&P scheduled a public sale of the goods to compensate it for the accumulated charges. The sale was scheduled for July 22, 1995. Seeking to stay the proposed public sale, Karrison filed a Motion for Preliminary Injunction with the Commission. At the Prehearing Conference, Administrative Law Judge (ALJ) Anand Garde informed Karrison that, to prevent the sale, she would have to put the billed amount on deposit with the Commission before August 20, 1995. She said she would do so but she expressly refused to comply with A&P's request that she waive any rights that she might have under the Commercial Code related to the extension. The ALJ stated that a ruling would be issued after August 20th which would address all of the issues.

Notwithstanding the interchange at the Prehearing Conference, A&P proceeded with the sale on July 22, 1995. A&P sold the household goods before the August 20th deadline for Karrison to place the billed amount on deposit with the Commission and before the ALJ was scheduled to publish a ruling on the issues. D.96-12-060 reflects this fact in the following findings:

"3. The specific relief the complainant seeks from the then-pending sale of property then held in storage is now moot since the sale of the goods has taken place." (D.96-12-060, page 19, Finding of Fact 3.)

"4. Through inaction, we have lost the ability to provide complainant certain relief in the event we were to ultimately find in its favor." (D.96-12-060, page 19, Finding of Fact 4.)

Prompted by the unusual circumstances which had occurred in this case, in D.96-12-060, we expressed our concern that the sale of items that are the subject of a pending complaint would compromise the due process rights of complainant and affect our ability to grant relief. In Ordering Paragraph 4 of D.96-12-060, we ordered carriers to delay exercising their rights to sale until the complaint was resolved:

“A household goods carrier is prohibited from selling the property of a shipper who has filed a formal complaint against said household goods carrier during the pendency of the complaint.” (D.96-12-060, page 22, Ordering Paragraph 4)

In its application, A&P seeks rehearing of those portions of D. 96-12-060 which it claims affect “the entire household goods industry in the State of California, is contrary to Federal law, will have an adverse impact on the rate structure and will otherwise interfere with the orderly conduct of business by this regulated industry.” (Application, page 4.) A&P targets for rehearing Findings of Fact Nos. 3, 4, 5, 6 and 7; Conclusions of Law Nos. 6, 7 and 8 and Ordering Paragraphs 4 and 6.

CSD’s response to the application supports A&P’s position on the industry-wide impact of the Decision. CSD notes that the principles of due process do not permit industry-wide rules, such as those expressed in D.96-12-060, to be made in the limited context of a complaint against one carrier. Without commenting on the laws cited by A&P as a bar to our prohibition against sales during the pendency of a complaint, CSD strongly opines that Ordering Paragraph 4 of D.96-12-060 is beyond the Commission’s jurisdiction in that it appears to override sections 3051, 3051a and 3052 of the Civil Code.

Karrison’s response to the application and her opposition to CSD’s response to the application consist primarily of procedural objections, arguments advocating the primacy of the Commission’s jurisdiction and policy discussions related to the merits of the complaint.

II. DISCUSSION

We have carefully considered the application for rehearing and the responses thereto and conclude that the application has merit. Although the circumstances that occurred in this case prompted us to clarify our expectations of household carriers and the corresponding regulatory practices, we agree that fairness requires that the Commission avoid imposing policy or procedure decisions which impact an entire industry in the context of a complaint proceeding which, for the most part, is limited to the disputing parties. As ordered below, we grant rehearing of Findings of Fact Nos. 5, 6 and 7, Conclusions of Law Nos. 6, 7 and 8 and Ordering Paragraph 4 of D.96-12-060 and the related discussions of these points elsewhere in the Decision. Rehearing will take place in the context of Investigation 89-11-003, the pending industry-wide Investigation *In the Matter of the Regulation of Used Household Goods Transportation by Truck*.

Furthermore, we conclude that rehearing is not warranted with respect to Findings of Fact Nos. 3 and 4 and Ordering Paragraph 6 of D.96-12-060 as those Findings and Ordering Paragraph relate appropriately to the parties in this proceeding. Therefore, rehearing of those matters is denied.

Karrison's response to the application reargues the merits of the complaint, a matter expressly deemed beyond the scope of D.96-12-060, and asserts unmeritorious procedural claims. Karrison's response is significant in that it demonstrates the confusion that can abound when a given dispute is subject to multi-jurisdictional controls and the jurisdictional limits are unclear. For example, Karrison alleges that the application for rehearing was filed improperly by an attorney who, over six months prior to the filing, was formally substituted out by other counsel. Appended as Exhibit A to the Karrison response are a signed substitution of attorney form filed in the Marin County Superior Court and a letter to Karrison from the "new" attorney regarding the substitution of counsel. Apparently Karrison incorrectly assumed that a substitution of counsel in the Superior Court affected A&P's legal representation before this Commission. Since the underlying facts of the civil suit and the instant complaint are virtually identical,

Karrison's apparent assumption may not be unreasonable but it is, nevertheless, erroneous.

Karrison's error illustrates the need for clarity in circumstances where both the Superior Court and this Commission have jurisdiction over aspects of a dispute. Lest an already unpleasant disagreement between parties be exacerbated by a jurisdictional dilemma, it is important that we make it very clear to consumers where this Commission's jurisdiction and thus, its ability to protect consumers, begins and ends so that consumers can make appropriate choices. In that regard, according to the filings of A&P and CSD, we should first start with making sure that, during the pendency of complaints, we have jurisdiction to require the delay of sales authorized by other legislation.

We have considered the legal arguments and the questions raised by A&P and CSD regarding this Commission's jurisdiction to restrict a household goods carrier's right to sell a shippers property when the shipper neither pays the charges due the carrier nor obtains an injunction against the sale from the Superior Court. We do not decide that issue here. Industry participants should have an opportunity to comment on this legal issue and to assist the Commission in fashioning an appropriate restriction, if any is possible, that would insure a consumer's goods that are the subject of a pending complaint will not be sold until the matter is resolved.

IT IS ORDERED that:

1. The application for rehearing of D.96-12-060 is granted with respect to Findings of Fact Nos. 5, 6 and 7, Conclusions of Law Nos. 6, 7 and 8 and Ordering Paragraph 4 and discussion related thereto elsewhere in D.96-12-060.

2. Rehearing of the matters granted in paragraph 1 above shall be transferred to the open proceeding, Investigation (I.) 89-11-003, *In the Matter of the Regulation of Used Household Goods Transportation by Truck*, parties to the instant proceeding shall be added to the service list of I.89-11-003 and the Assigned Commissioner, or at his

direction, the administrative law judge presiding over that investigation shall issue a ruling inviting comment from the industry on the rehearing subject matter.

3. Except as expressly granted in paragraph 1 above, the application for rehearing is denied.

This order is effective today.

Dated October 9, 1997, at San Francisco, California.

P. GREGORY CONLON

President

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEEPER

RICHARD A. BILAS

Commissioners