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MAIL DATE
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Decision 99-01-035 January 20, 1999

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the Regulation of Used Household Goods Transportation by Truck	Investigation 89-11-003 (Filed November 3, 1989)

ORDER DENYING REHEARING OF DECISION 98-04-064

I. SUMMARY

Paula Karrison ("Karrison") seeks suspension and rehearing of Decision ("D.") 98-04-064. Karrison first maintains that D.98-04-064 is unlawful because it failed to address her particular dispute, which is the subject of C.95-03-057 and which she contends was among the issues that we, by D.97-10-034, ordered reheard in Phase IV of this proceeding. Karrison also challenges the lawfulness of our reversal in D.98-04-064 of our earlier prohibition against the selling of a shipper's property by a household goods carrier during the pendency of a complaint. Karrison, however, has failed to persuade us that D.98-04-064 contains legal error that would justify suspending or rehearing that decision.

II. DISCUSSION

Paula Karrison filed an application for rehearing of D.98-04-064 on May 26, 1998. That decision decided the last two phases of Order Instituting Investigation ("I.") 89-11-003, Phases III and IV. We initiated I.89-11-003 to undertake a comprehensive review of Commission objectives, and program implementation, in the regulation of used household goods transportation over the

public highways by truck.[1] As a result, D.90-12-091 (December 19, 1990; 38 CPUC2d 559) significantly revised the program. By that decision, we replaced minimum with maximum rate regulation. That program became known as Maximum Rate Tariff 4 (MAX 4). We also enhanced and expanded consumer protections.

Phase III of I.89-11-003 became active in May, 1992 and considered all aspects of our regulation of used household goods transportation by truck for the purpose of establishing the final program for such transportation. Karrison was not a party to Phase III. Therefore, she lacks standing to seek rehearing of Phase III.[2]

Karrison's rehearing application can only be considered in connection with Phase IV of the proceeding, in which she was an interested party. Phase IV has been active since October, 1997. That phase considered limited issues ordered to be reheard from D.96-12-060 in Case (C.)95-03-057, and transferred to this proceeding by D.97-10-034. One of the issues we ordered to be reheard was our previous ruling in which we held:

> "A household goods carrier is prohibited from selling the property of a shipper who has filed a complaint against said household goods carrier during the pendency of the complaint." (D.96-12-060; Ordering Paragraph 4.)

In D.97-10-034 we granted limited rehearing of that prohibition on carriers and transferred the rehearing to this fourth phase of the investigation. Parties were subsequently invited to file comments and reply comments on that prohibition. Having considered all of the comments, we, in D.98-04-064, reversed

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[1] I.89-11-003 was initiated pursuant to the authority granted in the Household Goods Carriers Act, Public Utilities Code Section 5101, et. Seq.

[2] Qualification to file for rehearing of Commission decisions related to household goods carriers is established in Section 5256 of the Household Goods Carriers Act portion of the Public Utilities Code.

our rule that a household goods carrier is prohibited from selling a shipper's property during the pendency of a complaint.

In her rehearing application, Karrison first maintains that D.98-04-064 is unlawful because it failed to address her particular dispute, which is the subject of C.95-03-057. She contends that her dispute was among the issues that we, by D.97-10-034, ordered reheard in Phase IV.

C.95-03-057 is a result of Karrison's claim that the defendant moving company damaged Karrison's bedroom dressing table when placing it in storage. The subject movement of Karrison's household goods in storage occurred in June, 1994. However, it is uncontested that by July, 1995, none of the charges of the original transportation, the storage, or the valuation coverage had been paid. The charges had accrued to $1903.66. The warehouseman sent the required notices and scheduled a public sale of the property for July 22, 1995. During the pendency of C.95-03-057, on July 22, 1995, the warehouseman sold Karrison's household goods for failure to pay the accumulated charges. Karrison has argued throughout the proceedings that we should have asserted jurisdiction over her property rights and should have prevented the sale of her goods held under the warehouseman's lien.

The underlying claim dispute involved in C.95-03-057 filed by Karrison and now the primary argument presented in her rehearing application was the subject of a final order of the Superior Court of Marin County. That court refused to proceed with Karrison's 65-page complaint because of her failure to clearly and concisely state a cause or causes of action.

Karrison also generally argues in her rehearing application that D.98-04-064 is in error because of its reversal of the restriction against the selling of a shipper's property by the carrier.

On June 10, 1998, the California Moving and Storage Association filed a response in opposition to Karrison's application for rehearing of D.98-04-064.

A. Resolution Of Karrison's Loss And Damage Claims Will Be By Decision In C.95-03-057, Not Pursuant To Phase IV of I.89-11-003.

Karrison's primary challenge to D.98-04-064 is her claim that we failed to resolve the matters raised in her complaint, C.95-03-057. She therefore presents claims that are in dispute in C.95-03-057, and contends that a hearing is required.

As D.98-04-064 points out, Phase IV was not intended to address the specifics of C.95-03-057. Rather, that phase reconsidered our previous industry-wide prohibition of a household goods carrier selling the property of a shipper who had filed a complaint against that household goods carrier during the pendency of the complaint. For that reason D.98-04-064 did not address C.95-03-057, nor any relief we may eventually provide Karrison. We noted in D.98-04-064 that the resolution of C.95-03-057 will be by decision in that proceeding, not pursuant to Phase IV. Whether or not hearings are necessary in C.95-03-057 will also be decided based on the state of the record in that proceeding.

As noted, Karrison previously filed a complaint against the defendant moving company in Marin County's Superior Court based on the same dispute that is the subject of C.95-03-057. By having previously filed the superior court action, Karrison acknowledged that the superior court holds jurisdiction over the fate of her property. Nonetheless, Karrison now erroneously argues that under the laws of California, it is the Commission, and only the Commission that can settle loss and damages disputes. Karrison clearly seeks to have it both ways. Her application cites numerous authorities that she contends are supportive of her

claim. However, none of those authorities are applicable to household goods carriers or support her arguments.

Karrison's argument that we are required to adjudicate her loss or damage claims against the defendant household goods carrier is legally incorrect and inconsistent with the Household Goods Carrier Act ("Act") portion of the Public Utilities ("PU") Code. (PU Code Section 5101, et seq.) PU Code Section 5112 states that the regulation of the transportation of used household goods transportation by motor vehicle over a public highway shall be exclusively as provided by the Act.

In D.98-04-064, we concluded that nothing in the Act expressly provides us with authority to adjudicate loss and damage claims. (D.98-04-064, mimeo, at p. 26.) While we might assert that role under PU Code section 5139, we have previously declined and continue to decline to do so. We have determined that the Civil and Commercial Codes adequately provide the type of relief Karrison seeks. We have stated that allowing the courts to handle such claims produces reasonable, efficient regulation without duplication and confusion. (D.98-04-064, mimeo, at p.16.)

While MAX 4, Item 92 imposes certain specified obligations on household goods carriers in connection with loss or damage claim processing procedures;

> "The PUC has no authority to compel carriers to settle claims for loss or damage and will not undertake to determine whether the basis for, or the amount of, such claims is proper, nor will it attempt to determine the carrier's liability for such loss or damage. If both parties consent, the claim may be submitted to an impartial arbitrator for resolution ... You may also commence a suit in small claims court or other court of law." (MAX 4, Item 470, P. 10)

In addition, our General Order 136-C (8) provides that:

> "8. Liability of carrier and insurance company for loss or damage shall be subject to compliance by the shipper with the applicable provisions of Item 92 of the Maximum Rate Tariff 4 (Claims for Loss or Damage)"

One of the important provisions of Item 92 is the supporting documents provision which requires that each claim must be supported by: "…. the original paid bill for transportation or a copy thereof." (Item 92, (7).) D.96-12-060, on page 3, establishes that Karrison did not pay the transportation, storage and valuation protection charges. By not doing so, her allegation of loss and damage to her transported property was never perfected into a "claim" for the purpose of a Commission complaint or investigation, for settlement by the carrier, or for other MAX 4, Item 92 procedures required of household goods carriers charged with alleged loss or damage to a shipper's property.

Additionally, the time period for Karrison to perfect her claim has transpired since Item 92 (14) sets a time period of nine months for the filing of a claim as a condition precedent to any recovery. In Karrison's case, a period in excess of one year had transpired from the date of shipment and there had been no payment of transportation charges.

Karrison also incorrectly contends that we hold jurisdiction over her goods in long-term storage as a result of her initial transportation contract. The property in question was in storage for a period in excess of one year. Max 4, Item 160 (Note 1) provides, as pertinent, that :

> "NOTE 1: In the event a shipment remains in storage in excess of 90 days, the point of storage shall be considered the point of destination and thereafter, the shipment shall be subject to the rules, regulations and charges of the individual warehouseman."

According to Item 160 (Note 1), once Karrison's property had been in storage for a period in excess of 90 days, the rules, regulations and charges of the individual warehouseman applied and our jurisdiction over the property in

storage ended. Consequently, the sale of Karrison's property after 90 days in storage and pursuant to applicable Civil Code and Commercial Code statutory provisions is a matter which is outside of our jurisdiction.

B. The Decision to Reverse The Prohibition Against The Selling Of A Shipper's Property By The Carrier is Lawful.

Karrison has also challenged the lawfulness of our reversal of the restriction against the selling of a shipper's property by a household goods carrier during the pendency of a complaint. However, she has failed to persuade us that our action is unlawful.

By D.98-04-064 we determined that existing law and procedures resolve the two concerns that previously led us to restrict a carrier's execution of lien sales. First, we found that the shipper's due process rights which we had sought to protect are already fully protected by provisions of the Civil and Commercial Codes. (See, e.g., Civil Code Section 3052; Commercial Code Section 7308; Code of Civil Procedure, Section 525 et.seq.; and Melara v. Kennedy, 541 F.2d 802 (1976).)

Second, we had sought to protect our ability to grant relief to complainants, and forestall action by defendant moving companies which could materially impact a pending complaint. However, complainants can protect their rights and ability to obtain relief by following an existing procedure which allows complainants to first pay all disputed charges, and then seek relief. Furthermore, we can always seek mandamus or injunction in superior court to protect our ability to grant relief, or forestall action by a defendant moving company which may materially impact a pending complaint, when necessary or appropriate. (Public Utilities Code Section 5259.)

We have found no reason, and no specific directive in the Act, to negate, disregard or overrule the lien provisions in the Civil and Commercial

Codes, and no such provisions are contained in MAX 4. We hold that where the Civil and Commercial Codes do not conflict with the Act, as in the instant case, those codes control. (D.98-04-064, mimeo, at p. 16.)

The authority for a carrier or warehouseman to place a lien and execute a lien sale on household goods for a shipper's failure to pay charges is primarily found in Civil Code Sections 2144, 3051, 3051.5, 3052, and in Commercial Code Sections 7209, 7210, 7307, 7308. These provisions are for a possessory lien. That is, upon following the procedures established in the law, such as providing proper notice, the person in possession of the goods and entitled to the lien on those goods may enforce the lien by sale of the property.

Karrison incorrectly argues that lien rights provided to warehousemen under provisions in the California Commercial Code cannot be enforced unless the person holding those rights first obtains a prior judgment from a court. In making those arguments, she erroneously relies on Jewett v. City Transfer & Storage Co. (1933) 18 P.2d 351, 128 C.A. 556. That case is no longer pertinent since it was decided in 1933, some 30 years prior to the enactment of the currently applicable sections of the Commercial Code. Contrary to Karrison's contentions, there is no existing requirement that the lienholder first obtain a judgment from a court, or the Commission, before a lien may be enforced.

Karrison further claims that the findings in D.98-04-064 violate her rights under the United States Constitution. She argues that since the presiding officer and some Commissioners are not all members of the California State Bar, they are therefore incapable of understanding this proceeding or of making a decision supported by the record. Her argument lacks merit. Membership in the State Bar is not a requirement to act as a hearing officer or a Commissioner of the Commission. Even advocates appearing before us need not be members of the State Bar.

Finally, Karrison requests that D.98-04-064 be suspended pursuant to PU Code Section 1733. She has not, however, presented a valid basis for her suspension request. We therefore deny that request.

In sum, Karrison has filed before us a lengthy pleading which fails to clearly and concisely state meritorious causes of action. Furthermore, none of the numerous authorities cited by Karrison in her application for rehearing are applicable to household goods carriers or are supportive of her arguments. The application for rehearing fails to provide a basis for a finding that D.98-04-064 contains legal error or for suspending that decision. Applicant simply restates the same arguments that she presented in her previous comments, replies and other pleadings filed in this proceeding.

III. CONCLUSION

Karrison's application for rehearing of D.98-04-064 is rejected based on her failure to demonstrate legal error in that decision. Karrison's request for suspension of D.98-04-064 is also denied since a proper basis for such action has not been demonstrated.

THEREFORE, IT IS ORDERED that,

1. The application for rehearing of D.98-04-064 filed by Paula Karrison is denied.
2. The request for suspension of D.98-04-064 is a denied.
3. Investigation 89-11-003 is closed

This order is effective today.

Dated January 20, 1999, at San Francisco, California.

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners