

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



June 28, 2000

TO: PARTIES OF RECORD IN INVESTIGATION 99-10-004
DECISION 00-06-090, Issued 6/28/2000

On May 26, 2000, a Presiding Officer's Decision in this proceeding was mailed to all parties. Public Utilities Code Section 1701.2 and Rule 8.2 of the Commission's Rules of Practice and Procedure provide that the Presiding Officer's Decision becomes the decision of the Commission 30 days after its mailing unless an appeal to the Commission or a request for review has been filed.

No timely appeals to the Commission or requests for review have been filed. Therefore, the Presiding Officer's Decision is now the decision of the Commission.

The decision number is shown above.

Lynn T. Carew for

Lynn T. Carew, Chief
Administrative Law Judge

LTC:mae

Attachment

Decision 00-06-090

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the Order Instituting Investigation on the Commission's own motion into the operations and practices of Edwards Moving and Storage, Inc., a California corporation, and its President, Daniel Francis Feeney,

Investigation 99-10-004
(Filed October 7, 1999)

Respondents.

Cleveland Lee and Carol A. Dumond,
Attorneys at Law, for Consumer Services Division.

O P I N I O N

I. Summary

This decision revokes household goods carrier permit T-182,303 held by Edwards Moving and Storage (Edwards). The permit is revoked on the basis of respondent Edwards having violated various provisions of the Public Utilities Code, Commission General Orders (GO) and transportation tariffs.¹

II. Background

This Order Instituting Investigation (OII) and Order to Show Cause (OSC) was instituted by the Commission on October 7, 1999, in order to provide respondent Edwards and its President Daniel Francis Feeney (collectively the respondents) an opportunity to respond to the declarations and other evidence to

¹ Statutory citations are to sections of the Public Utilities Code unless otherwise noted.

be presented by the Commission's Consumer Services Division (Staff) alleging that the respondents had violated various provisions of the Public Utilities Code, as well as Commission rules and regulations.

Edwards holds household goods carrier permit T-182,303, first issued in October 1994. Since issuance of the permit in 1994, Edwards' permit has been suspended six times and revoked once, from September 11, 1997 until the permit was reissued on March 25, 1999. Three of these suspensions were the result of the cancellation of Edwards' public liability and cargo insurance certificates. Edwards had no liability or cargo insurance on file during the period its permit was revoked. The investigation that led to the issuance of the OII and OSC was the second opened by the Staff into the operation of Edwards.

III. The Present Investigation

Staff opened its second investigation primarily in response to continued serious customer complaints and allegations received by the Staff. The complaints alleged: an unauthorized conversion and sale of valuable property; failure to comply with a lawful order of the Superior Court in San Francisco; loss or damage to shippers' goods; a lack of responsiveness to shippers' complaints; and unprofessional or delayed service from Edwards' employees. In addition, Staff noted Edwards' pattern of insurance coverage cancellations and operating authority lapses. Edwards failed to maintain evidence of adequate insurance coverage on file with the Commission, and continued to conduct operations for about 17 months after the revocation of its permit. The OII and OSC contained a detailed discussion of the Staff's allegations.

In summary the allegations appeared to show that Edwards may have:

1. Violated § 5314.5 by advertising and holding out to the public in the metropolitan San Francisco area it is in operation as a household goods carrier without a valid permit issued under Chapter 7 of the Public Utilities Code.

2. Violated § 5139 and GO 100-M by failing to procure and continue in effect, so long as it conducted operations as a household goods carrier, adequate protection against public liability.
3. Violated § 5139 and GO 136-C by failing to procure and continue in effect, so long as it conducted operations as a household goods carrier, adequate cargo insurance.
4. Violated § 5286 by conducting operations as a household goods carrier after the revocation of its permit.
5. Violated § 5139 and Item 92 of Maximum Rate Tariff 4 (MAX 4) by failing to acknowledge and process loss and damage claims in a timely manner.
6. Violated § 5139 and Item 128(2)(q) of MAX 4 by using the device of an unreasonably high preprinted "Not To Exceed" price of \$1,000,000, which had no relevance to services actually performed.
7. Violated § 5135.5 by failing to procure, and continue on file and in effect with the Commission, evidence of adequate workers' compensation insurance coverage for its employees or a certificate of consent to self-insure issued by the Director of Industrial Relations.
8. Violated § 5139 and Items 128 and 132 of MAX 4 by failing to show required information on shipping documents.
9. Violated § 5135 by unlawfully and fraudulently converting property entrusted to it as warehouseman bailee, or the proceeds thereof, to its own use.

The OII and OSC were issued to allow Edwards and Feeney the opportunity to show cause why their permit should not be revoked for cause and lack of fitness, in view of the allegations by Staff, assuming the allegations are proved at the hearing, and/or whether other sanctions should be imposed.

IV. The Record Before Us

As directed by the OII and OSC, respondents Edwards and Feeney were served with copies of the OII and OSC and the supporting Staff declaration. A properly noticed prehearing conference (PHC) was held on December 14, 1999. Staff was in attendance and entered an appearance. The respondents did not appear and no appearance was entered on behalf of either respondent. On December 29, 1999, a Scoping Memo was issued by Assigned Commissioner Carl Wood which, among other things, adopted a proposed schedule.

Pursuant to that schedule the Staff served its testimony and additional materials on December 31, 1999. Although a date was set for respondents to serve prepared testimony, none was served by respondents. A properly noticed hearing was held on February 24, 2000, at which time respondents again failed to appear. The Staff witness sponsored a number of exhibits supportive of its allegations and their receipt into evidence was unopposed. Three exhibits were entered into the record. The first was an initial declaration and prepared testimony of Commission special agent supervisor William Waldorf, including attachments. This was the declaration which provided the allegations on which the OII and OSC issuance were premised. The second was a supplemental declaration and prepared testimony of Waldorf, including additional attachments. The final exhibit consisted of certificates of service of the order on respondents Edwards and Feeney.

We have carefully reviewed the declarations and supporting materials which have been received into evidence. The materials consist of records of the respondents, statements of victims, the analyses of the Staff investigators and other relevant materials. They constitute substantial and unrefuted evidence to support each of the allegations of unlawful conduct of respondents. Since respondents presented no evidence to defend or mitigate their actions and

provided no challenge to the Staff's showing, the evidence received is clearly adequate to demonstrate the unlawful conduct alleged.

The evidence offered and received at the hearing showed respondents had violated the following statutes, general orders and tariffs:

Pub. Util. Code § 5139 - violating rules adopted to regulated the carriers of household goods

Pub. Util. Code § 5135.5 - lack of a workers compensation coverage certificate

Pub. Util. Code § 5314.5 - advertising or holding out to the public without having a valid permit

Pub. Util. Code § 5286 - operating after revocation of its permit

GO 100-M - lack of adequate liability insurance

GO 136-C - lack of adequate cargo insurance

MAX 4, Item 92 - failure to acknowledge and process claims in timely manner

MAX 4, Item 128(2)(q) - used the device of an unreasonably high "not to exceed" price (\$1,000,000) bearing no relationship to services performed.

Most of the violations represent multiple counts, involving several customers.

Some of the violations alleged, and seemingly demonstrated, relate to violations of the California Penal Code including those sections concerning contempt of court (San Francisco Superior Court) and fraudulent appropriation of property by a carrier. We will not make findings regarding these latter violations but direct the Executive Director to advise the San Francisco District Attorney's office of the issuance of our decision and to make available to the

District Attorney our record in this proceeding, if the District Attorney requests it.

Based on this demonstration and the recommendation of the Staff, the household goods carrier permit issued to Edwards should be revoked.

Findings of Fact

1. Respondent Edwards was issued household goods carrier permit T-182,303.
2. An OII and OSC were issued by the Commission on October 7, 1999, premised on allegations of unlawful conduct by respondents, which were supported by a Staff declaration and supporting materials.
3. Respondents failed to appear at a properly noticed PHC regarding this matter with no explanation or excuse for their absence.
4. Respondents failed to appear at a properly noticed hearing set for the purpose of allowing them the opportunity to challenge the Staff allegations underlying the OII and OSC, and failed to present any testimony or other evidence in their defense. No explanation or excuse was provided for their absence.
5. A certificate of service of the OII and OSC on respondent Edwards was received as an exhibit.
6. The Staff sponsored two exhibits which were received into evidence which contained declarations of victims and investigators, business records of respondents and other materials which demonstrated the occurrence of the unlawful activities alleged. This evidence is substantial and unrefuted.

Conclusions of Law

1. Respondents Edwards and Feeney were provided adequate notice and an opportunity to respond to the allegations contained in the OII and OSC.

2. Respondents Edwards and Feeney failed to either challenge the showing made by the Staff or present any direct showing in defense or mitigation of the allegations against them.

3. The evidence presented by the Staff and received into record is substantial and unrefuted and demonstrates the occurrence of the unlawful activity alleged in the OII and OSC.

4. Respondents Edwards and Feeney have violated the following sections of the Public Utilities Code, Commission GOs and tariffs: Pub. Util. Code §§ 5139, 5135.5, 5314.5 and 5286, GOs 100-M and 136-C, MAX 4, Items 92 and 128(2)(q).

5. Respondents are unfit to serve as a household goods carrier.

6. Respondents' permit should be revoked and the revocation should be made effective immediately.

O R D E R

IT IS ORDERED that:

1. Household goods carrier permit T-182,303 issued to respondent Edwards Moving and Storage, Inc. (Edwards) is revoked.

2. The Executive Director shall endeavor to cause personal service of this order to be made upon respondents. If personal service cannot be made within 30 days of the signing of this order, service shall be deemed made by mailing a copy of the order to the last provided address of respondent Edwards.

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3. The Executive Director shall provide a copy of this order to the San Francisco District Attorney and inform the District Attorney of the availability of our record in this proceeding.

4. This proceeding is closed.

This order is effective today.

Dated June 28, 2000, at San Francisco, California.