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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own )  
motion into the operations and )  
practices of Michael G. Cardoza, an )  
individual doing business as Michael )  
Cardoza Trucking and Mike Cardoza )  
Trucking, Inc., a California )  
corporation, )

Respondents. )

**ORIGINAL**

**FILED**  
**PUBLIC UTILITIES COMMISSION**  
**SAN FRANCISCO OFFICE**  
**FEBRUARY 21, 1991**  
**I.91-02-078**

ORDER INSTITUTING INVESTIGATION

Michael G. Cardoza dba Michael Cardoza Trucking (Respondent or Cardoza) whose mailing address is 11767 E. Norman Ave. Stockton, California 95205 is engaged in the business of transporting property over the public highways of this state for compensation. Cardoza operates pursuant to a highway common carrier certificate and a highway contract carrier permit, both issued January 31, 1980, a dump truck carrier permit issued April 13, 1973 and an agricultural carrier permit issued June 8, 1978. (T-103,625)

Mike Cardoza Trucking, Inc. (Respondent Carrier or MCT) a California corporation, whose mailing address is P.O. Box 5529 (287 Cardinal Avenue) Stockton, California 95205 (Michael G. Cardoza, President), is engaged in the business of transporting property over the public highways of this state for compensation. MCT operates pursuant to a highway common carrier and a highway contract carrier permit, both issued November 3, 1989. (T-161,986)

Public Utilities Code (PU) Section 1070.5 prescribes a procedure by which the Department of the California Highway Patrol (CHP) may recommend to the Commission that the operating authority of a highway common carrier be suspended for the carrier's failure to meet safety requirements. PU Code Section 3774.5 prescribes the same procedure for highway permit carriers. These sections provide that if the CHP submits a written

recommendation of suspension, the Commission shall suspend the carrier's operating authority. Before submitting such a recommendation the CHP must notify the carrier in writing that (1) its safety record is unsatisfactory, furnishing a copy of any documentation or other evidence supporting the determination, (2) the unsatisfactory rating may result in a suspension or revocation of the carrier's operating authority, and (3) a review of the rating may be requested from the CHP within five days of its receipt.

Sections 1070.5 and 3774.5 provide that a carrier may appeal a suspension by requesting a hearing before the Commission, at which the carrier may show cause why the suspension should not be continued. The sections further provide that a suspended carrier may obtain a reinspection of its terminal by filing a written request for reinstatement with the Commission with a \$125 fee. The Commission may revoke the carrier's authority at any time 90 days or more after its suspension if the Commission has not received a written recommendation for reinstatement from the CHP and the carrier has not filed a written request for hearing with the Commission.

Under the provisions of PU Code Sections 1070.5 and 3774.5, the Commission may suspend or revoke the operating authority of highway carriers for the carrier's consistent failure to maintain its vehicles in a safe operating condition and in compliance with the Vehicle Code, and with regulations contained in Title 13 of the California Administrative Code relative to motor carrier safety.

On May 22, 1990 the Commission issued Resolution TL-18336 directing the Executive Director to deny, suspend, or revoke the operating authority of a passenger carrier or a property carrier upon the CHP finding that the carrier's safety record is unsatisfactory. The Executive Director's delegated authority to revoke operating rights under this resolution is limited to those cases where a suspended carrier has not after 90 days either been reinstated pursuant to CHP recommendation or requested a Commission hearing to appeal the suspension. Staff

alleges that it will prove the following chronology of events surrounding the respondent carriers.

The highway common carrier certificate, highway contract carrier permit, dump truck carrier permit and agricultural carrier permit authorities of Michael Cardoza Trucking were suspended on July 11, 1990 pursuant to Sections 1070.5, 3774.5, and Resolution TL-18336.

Respondents were initially assigned an unsatisfactory terminal safety rating as a result of a vehicle and records inspection conducted by the CHP on October 4 and 5, 1989. The CHP reinspected Cardoza's vehicles and records on February 4, 15 and 22, 1990. The CHP again assigned Cardoza's terminal an unsatisfactory rating. Another application for reinstatement resulted in a third inspection on May 21, 1990, at which time the CHP again assigned Respondent Cardoza an unsatisfactory rating.

As a result of this third consecutive unsatisfactory rating, on July 3, 1990, T. W. Ross, Assistant Chief of the CHP's Enforcement Services Division, wrote to the Director of the Commission's Transportation Division. Assistant Chief Ross recommended that the operating authorities of Michael Cardoza Trucking (T-103,625) be suspended. Respondent Michael Cardoza's authorities were suspended on July 11, 1990.

After the July 11, 1990 suspension, Michael Cardoza Trucking, filed an application for hearing (A. 90-07-040) and an application for reinstatement with the Commission. This caused the CHP to conduct another inspection on August 9, 10 and 16, 1990. In response to the application for hearing, the Commission set the matter for hearing August 27, 1990. At the hearing the applicant introduced exhibits which sought to show corrective actions taken by the carrier. Staff introduced evidence which consisted of CHP inspection reports of the records and equipment of the carrier. The staff exhibits indicated a consistent failure of Cardoza to correct deficiencies noted. The staff opposed the carrier's application to lift the suspension and argued that the Commission should not lift the suspension until such time as the carrier passed CHP inspection and a

reinstatement recommendation was received from the patrol. The matter was taken off calendar for 30 days. The suspension was not lifted. The carrier indicated it would seek reinspection.

After the hearing, by memo dated August 29, 1990, Chief Rengstorff advised that Respondents' terminal (Michael Cardoza Trucking and Mike Cardoza Trucking, Inc.) was still rated unsatisfactory, that the suspension of Cardoza (T-103,625) should continue and the operating authority of MCT, Inc. (T-161,986) should be suspended. This was the carrier's fourth consecutive unsatisfactory rating. Respondent MCT's authorities were suspended September 4, 1990.

After the September 4, 1990 suspension, Respondents filed an application for hearing (A. 90-09-008). This caused the CHP to conduct another terminal inspection on September 24, 25 and 27, 1990. In response to the application the Commission consolidated it with the earlier A. 90-07-040 and set the matters for hearing September 28, 1990. A full day of hearing was held and the matters submitted. After this hearing, by memorandum dated October 23, 1990, Chief Rengstorff advised that as a result of a fifth consecutive unsatisfactory rating, the CHP recommended that the suspension of both Cardoza (T-103,625) and MCT (T-161,986) should continue.

On September 17, 1990, during the course of these proceedings, Cardoza and MCT, Inc. filed a "Petition For Immediate Stay of Suspensions; Petition For Writ of Mandate" with the Supreme Court of the State of California. On September 19, 1990 the Court ruled that the Application For Stay was denied. The case was filed under No. S017480.

Subsequent to the September 28, 1990 hearing, Respondents filed another application for reinstatement with the Commission. This caused the CHP to conduct another terminal inspection on October 22, 23, 24 and November 1, 1990. By memorandum dated December 4, 1990, Chief Rengstorff advised that as a result of a sixth consecutive unsatisfactory terminal rating, the CHP recommended that the suspension of both Cardoza

and MCT should continue. The memorandum further recommended that all of the authorities of both Cardoza and MCT be revoked.

After the CHP assigned an unsatisfactory rating on November 1, 1990, Respondents filed another request for reinstatement. On January 9 and 10, 1991 the CHP performed a seventh inspection in response to this application. The terminal was upgraded to a "Conditional" status. As a result of the CHP's most recent recommendation, the Commission's License Section reinstated the operating authority of Cardoza and MCT on January 14, 1991.

An investigation by Transportation Division staff disclosed that Respondents Cardoza and MCT have engaged in the business of transporting property over the public highways of this state for compensation during a period of operating authority suspension imposed by Resolution No. TL-18336, dated May 22, 1990 for consistent failure to ensure that drivers comply with hours of service and record of duty status requirements, and to maintain their vehicles in a safe operating condition and in compliance with the Vehicle Code and Title 13 of the California Administrative Code.

It appears that respondents Cardoza and MCT may have conducted operations as a highway carrier over the public highways of this state during a period of operating authority suspension.

It further appears, after Commission staff review of relevant documents and records, that the above named carriers may have violated Sections 1063, 1070.5, 3737, 3774.5 and 3775 of the Public Utilities Code.

Good cause appearing; therefore,

IT IS ORDERED that an investigation on the Commission's own motion is instituted into the operations and rates of Respondents Cardoza and MCT for the purpose of determining:

1. Whether respondent Michael Cardoza Trucking has violated Sections 1063, 1070.5, 3774.5 and 3775 of the Public Utilities Code by conducting operations after his operating

authority was suspended for failure to meet California Highway Patrol Safety Requirements.

2. Whether respondent Mike Cardoza Trucking, Inc. has violated Sections 1063, 1070.5, 3774.5 and 3775 of the Public Utilities Code by conducting operations after its operating authority was suspended for failure to meet California Highway Patrol Safety Requirements.

3. Whether any or all or respondent carriers' operating authority should be cancelled, revoked, or suspended, or in the alternative, a fine of up to \$ 20,000 for each offense be imposed pursuant to Sections 1070, 3774, 2108 and 3805 of the Public Utilities Code.

4. Whether respondents Cardoza and MCT should be ordered to cease and desist from any and all unlawful operations and practices.

5. The scope of the investigation includes, but is not limited to transportation represented by the invoices and freight bills listed in Attachments A, B and C, appended hereto.

6. Whether any other orders that may be appropriate should be entered in the lawful exercise of the Commission's jurisdiction.

A public hearing in this matter shall be held before an Administrative Law Judge of the Commission at a time and place to be determined, at which time and place all interested parties may appear and be heard.

The Executive Director is directed to cause a certified copy of this order to be served by mail on all respondents, Michael Cardoza Trucking and Mike Cardoza Trucking, Inc. The

Executive Director is also directed to cause a certified copy of this order to be served personally forthwith on respondents Michael G. Cardoza, doing business as Michael Cardoza Trucking and Mike Cardoza Trucking, Inc.

This order is effective today.

Dated February 21, 1991 at San Francisco, California.

PATRICIA M. ECKERT  
President  
G. MITCHELL WILK  
JOHN B. OHANIAN  
Commissioners

I abstain.  
DANIEL WM. FESSLER  
Commissioner

I abstain.  
NORMAN D. SHUMWAY  
Commissioner

I CERTIFY THAT THIS DECISION  
WAS APPROVED BY THE ABOVE  
COMMISSIONERS TODAY

  
NEAL J. SULLIVAN, Executive Director  
ps

Attachment A

MIKE CARDOZA TRUCKING, INC. (Subhauler)  
Stockton

T-161,986

PRIME CARRRIER: TERESI TRUCKING, INC. Lodi

COMMODITIES: Steel Coils, Wire Rolls, Iron or Steel

Teresi Trucking, Inc. "Continuing Subhaul Agreement" with  
MCT dated June 30, 1989

Check No. 9988 10-4-90 \$ 1,946.41

Subhaul Statement dated 10-5-90

<u>Part No.</u>	<u>Freight Bill No.</u>	<u>Date</u>
1	123748	9-12-90
2	123750	9-12-90
3	123907	9-14-90
4	123980	9-14-90
5	25273	9-14-90

END OF ATTACHMENT A



## Attachment B

Michael G. Cardoza dba (Subhauler)  
MICHAEL CARDOZA TRUCKING  
Stockton

T-103,625

PRIME CARRIER: D. H. WINN TRUCKING, INC. Lockeford

COMMODITIES: Bulk Sand and gravel in dump truck equipment

Check No. 21824 9-20-90 \$ 2,865.73

D. H. Winn Trucking, Inc. Subhaul Statement for the period  
August 1, 1990 thru August 31, 1990

<u>Part No.</u>	<u>Freight Bill No.</u>	<u>Date</u>
1	89156	8-23-90
2	89157	8-24-90
3	89158	8-27-90
4	89159	8-27-90
5	89160	8-28-90
6	89161	8-29-90
7	89162	8-29-90
8	89163	8-29-90
9	89164	8-31-90
10	89166	8-31-90

END OF ATTACHMENT B

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Attachment C

MIKE CARDOZA TRUCKING, INC.  
Stockton

T-161,986

DEBTOR: GEORGIA PACIFIC  
Martell, California

<u>Part No.</u>	<u>Invoice/Freight</u>	<u>Bill No.</u>	<u>Date</u>
1	4803	23502	12-12-90
2	4804	24946	12-10-90
3	19798		12-11-90
4	23461		12-11-90
5	23504		12-14-90
6	4801	23881	12-10-90
7	4679		10-29-90
8	4680		10-30-90
9	4681		10-26-90
10	4682		10-29-90
11	4683		10-22-90
12	4684		10-23-90
13	4685		10-26-90
14	4686		10-30-90
15	4687		10-29-90
16	4667		10-18-90
17	4668		10-23-90
18	4669		10-25-90
19	4670		10-25-90

END OF ATTACHMENT C