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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own)
motion into the operations, rates and)
practices of ADOLPH MARKSTEIN AND)
SONS TRUCKING CO., and of MARKSTEIN)
BEVERAGE CO. OF SACRAMENTO, respondent)
shipper and twelve respondent carriers)
listed in Attachment A, and David)
Oliver, in individual respondent.)

F I L E D
PUBLIC UTILITIES COMMISSION
SEPTEMBER 25, 1991
SAN FRANCISCO OFFICE
I.91-09-036

ORIGINAL

ORDER INSTITUTING INVESTIGATION

ADOLPH MARKSTEIN AND SONS TRUCKING CO., a California corporation, (AM&S), whose mailing address is 4050 Pell Circle, Sacramento, CA 95838, having been issued a highway contract carrier permit in 1978 and a highway common carrier certificate on November 18, 1988, provides transportation for-hire over the public highways of this State and is a highway carrier.

MARKSTEIN BEVERAGE CO. OF SACRAMENTO, a California corporation, (MARKSTEIN), whose address is also 4050 Pell Circle, Sacramento, CA 95838, has received services from AM&S in the form of for-hire transportation of property over the public highways and as such is a shipper of property.

It appears that AM&S and MARKSTEIN may be under common ownership, management and control. AM&S may be the alter-ego of MARKSTEIN and may have employed underlying carriers to transport its property at less than 100% of the applicable rates, in contravention of an alter-ego restriction that had been placed on its highway contract carrier permit in 1981 and of Rule 1.4 of General Order No. 147-A.

It also appears that David Oliver, (OLIVER), of 1408 Lake Hills Drive, Folsom, California 95630, an officer of AM&S, to wit, its vice president and general manager, may have demanded and/or accepted from the carriers used to transport this

property, a partial remission of the freight charges paid them, and he will therefore be named as a respondent in this Order Instituting Investigation (OII). The underlying carriers, named in attachment A, who may actually be prime carriers, are also named as respondents in this investigation.

It further appears, after Commission staff review that AM&S/MARKSTEIN may have violated Sections 458, 491, 494, 702, 3737, 3667, 3668, and/or 3669 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, rates, charges, and practices of AM&S for the purpose of determining:

1. Whether respondent AM&S and/or OLIVER has violated Section 458 of the Public Utilities Code by assisting or permitting MARKSTEIN to obtain transportation of property between points within this State at less than the rates established by the tariffs filed with the Commission.
2. Whether respondent AM&S has violated Section 491 of the Public Utilities Code by failing to give 30 days notice to the Commission and the public of changes to its tariffs, rates or practices.
3. Whether respondent AM&S violated Section 494 of the Public Utilities Code by charging rates and charges different than those in its common carrier tariff on file with the Commission.
4. Whether respondent AM&S is the alter-ego of MARKSTEIN, and if so, did AM&S violate Sections 702 and/or 3737 of the Public Utilities Code by failing to pay carriers engaged to transport the property of its alter-ego, MARKSTEIN, 100% of the applicable rates as required by Rule 1.4 of General Order No. 147-A.
5. Whether respondent AM&S' certificate should be suspended and/or revoked or in the alternative a fine imposed pursuant to Sections 1070 and 2108 of the Public Utilities Code of up to \$5,000 per violation.

6. Whether respondent MARKSTEIN has knowingly aided AM&S in violating Section 458 of the Public Utilities Code and should be fined pursuant to Section 2107.5 of the Public Utilities Code up to \$5,000 per violation.

7. Whether respondent AM&S violated Section 3737 of the Public Utilities Code by failing to have a transportation contract on file and in effect with the Commission, for the transportation services provided MARKSTEIN, in violation of General Order No. 147-A.

8. Whether respondent AM&S violated Section 3667 of the Public Utilities Code by demanding and collecting less than the applicable rates established or approved by the Commission of the involved transportation.

9. Whether respondent AM&S violated Section 3668 of the Public Utilities Code by assisting and permitting MARKSTEIN to obtain transportation at less than the rates established or approved by the Commission.

10. Whether respondent MARKSTEIN violated Section 3669 of the Public Utilities Code by seeking and obtaining transportation at less than the rates established or approved by the Commission, with or without the assistance of AM&S or the sub-haulers named in attachment A.

11. Whether in the event that sums less than the applicable rates are found to have been charged, collected or received, from respondent MARKSTEIN, a fine in the amount of the undercharges should be imposed upon respondent AM&S pursuant to Sections 2100 and/or 3800 of the Public Utilities Code.

12. Whether respondent AM&S should be ordered to review its transportation records for a further period to determine if any additional undercharges exist.

13. Whether respondent AM&S should be ordered to collect from respondent MARKSTEIN the difference between the payments actually received and the applicable rates and charges pursuant to Sections 2100 and/or 3800 of the Public Utilities Code.

14. Whether, in the event that sums less than the applicable rates and charges are found to have been charged, collected or received respondent sub-haulers, named in Attachment A, should be ordered to collect the difference from respondents MARKSTEIN/AM&S pursuant to Sections 2100 and/or 3800 of the Public Utilities Code and General Order No. 147-A.

15. Whether respondent MARKSTEIN has knowingly and willfully violated the Highway Carriers' Act and whether a penalty of up to \$5,000 per violation should be imposed for each, in accordance with Sections 3804.1 and 3805 of the Public Utilities Code.

16. Whether the carriers named in Attachment A, individually or collectively, are guilty of assistance in the alleged scheme and have violated Section 3667 of the Public Utilities Code, and should, therefore, have their operating authority cancelled, revoked or suspended, or in the alternative, fined up to \$20,000 for each offense pursuant to Sections 3774 and 3805 of the Public Utilities Code.

17. Whether David Oliver, formerly Vice President and General Manager of AM&S, has violated Sections 3668 of the Public Utilities Code by allowing or assisting MARKSTEIN to obtain transportation of property at less than the rates established or approved by the Commission.

18. Whether any or all of respondent AM&S' operating authority should be cancelled, revoked, or suspended, or in the alternative fined up to \$20,000 for each offense pursuant to Sections 3774 and 3805 of the Public Utilities Code.

19. Whether respondents AM&S, MARKSTEIN, OLIVER and/or the carriers named in Attachment A should be ordered to cease and desist from any and all unlawful operations and practices.

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

21. The scope of this investigation includes but is not limited to the transportation represented by the freight bills in Attachments B and C.

A public hearing in this matter shall be held before an Administrative Law Judge at a time and place to be determined, at which time 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 respondents AM&S, MARKSTEIN, OLIVER and the carriers listed in attachment A. The executive Director is also directed to cause a certified copy of this order to be served personally forthwith on respondents AM&S, OLIVER and the carriers named in Attachment A.

This order is effective today.

Dated September 25, 1991, at San Francisco, California.

PATRICIA M. ECKERT
President
JOHN B. OHANIAN
DANIEL Wm. FESSLER
NORMAN D. SHUMWAY
Commissioners

Commissioner G. Mitchell Wilk,
being necessarily absent, did
not participate.

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


NEAL J. SHULMAN, Executive Director
PS

ADOLPH MARKSTEIN & SONS TRUCKING, CO.

T-121,268

LIST OF UNDERLYING CARRIERS

William V. Scott, Co-Partner
SCOTTS TRUCKING
P. O. Box 396
French Camp, Ca. 95231

T-109,465
HWY-HCC-AGR-DMP-HSC

Nicholas J. Calleja
NICK CALLEJA TRUCKING
1261 Scenic Pines Drive
Auburn, Ca. 95603

T-139,693
HWY

Robert E. Ludlow, Co-Partner
CALIFORNIA TRAFFIC CONSULTANTS
3050 Beacon Blvd
West Sacramento, Ca. 95391

T-151,333
HWY-HCC

Charanjit S. Sihota, Co-Partner
SIHOTA BROS. TRUCKING
2744 S. Orange Ave.
Fresno, Ca. 93725

T-134,657

Don Beck, President
CENTRAL C TRUCKING, INC.
P. O. Box 186
Riverbank, Ca. 95367

T-150,707
HWY-HCC

NEW HIGHWAY CARRIERS, INC.
P. O. Box 751
Ripon, Ca. 95366

T-130,098
HWY-HCC-AG

Donald Lee Hays
HAYS TRANSPORTATION
737 Daniels
Woodland, Ca. 95695

T-144,117
HWY-HCC

James Brisco, Co-Partner
BRISCO TRUCKING
532 Beard Ave.
Modesto, Ca. 95307

T-145,174
HWY-HCC

ADOLPH MARKSTEIN AND SONS TRUCKING, CO.

List of Subhaulers

Alvin A. Chesnut, President
C R S REFRIGERATED SERVICE
545 Jefferson Blvd.
W. Sacramento, Ca. 95691

T-159,458
HCC

James E. May
MAY TRUCKING COMPANY
2075 Monticello Street
Napa, Ca. 94538

T-125,399
HWY

Joseph L. Noss, CEO
NOSS BROS. TRUCKING
Rt. Box 57
Clarksburg, Ca. 95612

T-136,684
TTC-HWY-HCC-AG-DMP

Thomas M. Somoza, President
SOMOZA TRUCKING, INC.
3347 San Fernando Road
Los Angeles, Ca. 90065

T-160,184
HCC

Attachment B

ADOLPH MARKSTEIN & SONS TRUCKING CO.

T-121,268

DEBTOR: MARKSTEIN BEVERAGE CO. OF SACRAMENTO

Part	S/H Carrier	F/B#	Date	B/L#	Date
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1	Scott's	4065	06/29/88	70994	06/22/88
2	Trucking	4074	07/06/88	77026	06/27/88
3	T-109465	4072	07/06/88	77002	06/28/88
4		4073	07/06/88	76994	06/28/88
5		4075	07/06/88	76996	06/28/88
6		4076	07/06/88	77015	06/30/88
7		4080	07/06/88	77014	06/30/88
8		4134	07/14/88	77017	07/05/88
9		4135	07/14/88	55178	07/08/88
10		4171	07/29/88	82058	07/13/88
11		4172	07/29/88	38103	07/21/88
12		4173	07/29/88	38110	07/21/88
13		4174	07/29/88	21983	07/25/88
14		4175	07/29/88	21998	07/25/88
15		4176	07/29/88	21981	07/25/88
16		4188	08/02/88	21984	07/28/88
17		4255	08/19/88	45677	08/10/88
18		4257	08/19/88	45818	08/10/88
19		4295	08/26/88	53865	08/22/88
20		4318	09/01/88	53890	08/23/88
21		4370	09/12/88	14576	09/02/88
22		4372	09/12/88	14573	09/02/88
23	Nick	4029	06/22/88	25518	06/10/88
24	Calleja	4031	06/22/88	25517	06/10/88
25	Trucking	4057	06/29/88	70997	06/21/88
26	T-139693	4105	07/07/88	65405	06/23/88
27		4104	07/07/88	31235	06/24/88
28		4100	07/07/88	77021	06/30/88
29		4099	07/07/88	65413	06/22/88
30		4165	07/29/88	87763	07/16/88
31		4189	08/02/88	22000	07/27/88
32		4191	08/02/88	38105	07/21/88
33		4192	08/02/88	82054	07/19/88
34		4286	08/26/88	13541	08/18/88
35		4288	08/26/88	71437	08/12/88
36		4289	08/26/88	98071	08/15/88
37		4290	08/26/88	45801	08/08/88
38		4291	08/26/88	43032	08/10/88
39		4292	08/26/88	78933	08/04/88
40		4322	09/01/88	53897	08/26/88
41		4323	09/06/88	12347	08/24/88
42		4357	09/06/88	53896	08/26/88
43		4358	09/06/88	53885	08/31/88

ADOLPH MARKSTEIN & SONS TRUCKING CO.

T-121,268

DEBTOR: MARKSTEIN BEVERAGE CO. OF SACRAMENTO

Part	S/H Carrier	F/B#	Date	B/L#	Date
44	California	4094	07/06/88	77011	06/27/88
45	Traffic	4095	07/06/88	77025	06/28/88
46	Consultants	4115	07/08/88	31233	06/24/88
47	T-151333	4118	07/08/88	77018	06/27/88
48		4119	07/08/88	77004	06/28/88
49		4122	07/08/88	77000	06/29/88
50		4127	07/08/88	77016	06/30/88
51		4153	07/28/88	77010	07/01/88
52		4279	08/29/88	98070	08/18/88
53		4280	08/26/88	67196	08/02/88
54		4281	08/26/88	45815	08/09/88
55		4282	08/26/88	67206	08/03/88
56		4283	08/26/88	45810	08/17/88
57		4330	09/06/88	98063	08/17/88
58		4331	09/06/88	53893	08/23/88
59		4349	09/06/88	53883	08/26/88
60		4350	09/06/88	14565	08/30/88
61		4352	09/06/88	14570	08/30/88
62	Sihota	4259	08/22/88	67200	08/10/88
63	Brothers	4258	08/22/88	67205	08/11/88
64	Trucking	4298	08/26/88	45809	08/12/88
65	T-134657	4300	08/26/88	49018	08/18/88
66		4324	09/06/88	53888	08/27/88
67		4325	09/06/88	53894	08/26/88
68		4326	09/06/88	98069	08/20/88
69		4327	09/06/88	14564	08/30/88
70		4329	09/06/88	98068	08/20/88
71		4362	09/06/88	53889	08/26/88
72		4363	09/06/88	14578	08/29/88
73	Central C	4003	06/13/88	07885	06/03/88
74	Trucking,	4024	06/17/88	19825	06/08/88
75	Inc.	4066	06/29/88	65410	06/22/88
76	T-150707	4126	07/08/88	77005	07/01/88
77		4152	07/28/88	76995	07/16/88
78		4204	08/05/88	38107	07/28/88
79		4247	08/19/88	45817	08/10/88
80		4284	08/26/88	98062	08/20/88
81		4332	09/06/88	45803	08/10/88
82		4373	09/12/88	14575	09/03/88

ADOLPH MARKSTEIN & SONS TRUCKING CO.

T-121,268

DEBTOR: MARKSTEIN BEVERAGE CO. OF SACRAMENTO

Part	S/H Carrier	F/B#	Date	B/L#	Date
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83	New	4091	07/06/88	31234	06/24/88
84	Highway	4112	07/08/88	65415	06/24/88
85	Carrier,	4113	07/08/88	65416	06/24/88
86	Inc.	4123	07/08/88	42863	06/29/88
87	T-130098	4200	08/02/88	30427	07/19/88
88		4201	08/02/88	30424	07/22/88
89		4202	08/02/88	38109	07/22/88
90		4208	08/05/88	21985	07/29/88
91		4262	08/22/88	67202	08/03/88
92	Hays	4132	07/13/88	42860	07/01/88
93	Transp.	4245	08/19/88	45808	08/09/88
94	T-144117	4320	09/01/88	53866	08/22/88
95		4313	09/01/88	53881	08/22/88
96	Brisco	4304	08/26/88	98067	08/17/88
97	Trucking	4305	08/26/88	71411	08/18/88
98	T-145174	4337	09/06/88	98064	08/19/88
99		4339	09/06/88	53892	08/25/88
100	CRS	4303	08/26/88	98059	08/18/88
101	Refrig.	4344	09/06/88	53876	08/27/88
102	Service T-159458	4345	09/06/88	53884	08/27/88
103	Noss	4047	06/24/88	25520	06/08/88
104	Brothers	4049	06/24/88	19823	06/10/88
105	Trucking	4124	07/08/88	42865	06/29/88
106	T-136684	4128	07/08/88	76999	06/30/88
107		4177	07/29/88	82057	07/12/88
108		4216	08/05/88	21997	07/27/88
109		4218	08/05/88	21975	07/25/88
110		4215	08/05/88	21979	07/29/88
111		4217	08/05/88	21976	07/26/88
112		4314	09/01/88	71416	08/18/88
113		4316	09/01/88	53867	08/23/88
114		4315	09/01/88	64277	08/24/88
115	May	4009	06/13/88	07887	06/03/88
116	Trucking	4012	06/13/88	25516	06/08/88
117	Co.	4014	06/13/88	07886	06/10/88
118	T-125399	4054	06/24/88	65411	06/23/88
119		4062	06/29/88	31229	06/15/88
120		4084	07/06/88	77008	06/29/88

ADOLPH MARKSTEIN & SONS TRUCKING CO.

T-121,268

DEBTOR: MARKSTEIN BEVERAGE CO. OF SACRAMENTO

Part	S/H Carrier	F/B#	Date	B/L#	Date
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121	May	4085	07/06/88	77007	06/30/88
122	Trucking	4138	07/14/88	77013	07/05/88
123	Co.	4142	07/15/88	55176	07/08/88
124	T-125399	4271	08/26/88	62799	08/24/88
125	(cont.)	4272	08/26/88	53898	08/22/88
126		4277	08/26/88	98061	08/16/88
127		4369	09/12/88	26181	09/07/88
128	Somoza	4019	06/16/88	53162	06/03/88
129	Trucking,	4067	06/29/88	31231	06/14/88
130	Inc.	4110	07/07/88	65414	06/21/88
131	T-160184	4111	07/08/88	65406	06/23/88
132		4117	07/08/88	77022	06/27/88
133		4120	07/08/88	46558	06/29/88
134		4121	07/08/88	77020	06/29/88
135		4163	07/29/88	77006	07/01/88
136		4161	07/29/88	76997	07/06/88
137		4195	08/02/88	30412	07/23/88
138		4196	08/02/88	21980	07/25/88
139		4253	08/19/88	67210	08/03/88
140		4254	08/19/88	21988	08/06/88
141		4294	08/26/88	45664	08/11/88
142		4333	09/06/88	53864	08/22/88
143		4335	09/06/88	98065	08/25/88

ADOLPH MARKSTEIN & SONS TRUCKING CO.

T-121,268

DEBTOR: MARKSTEIN BEVERAGE CO. OF SACRAMENTO

Part	S/H Carrier	F/B#	Date	B/L#	Date
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1	CMS	01349	04/13/89	30913	04/14/89
2	Services	00824	04/18/89	20564	04/18/89
3	T-144739	01164	05/05/89	39815	05/05/89
4		01478	05/08/89	53424	05/09/89
5		01365	05/09/89	88885	05/09/89
6		01354	04/20/89	25614	04/21/89
7		01483	05/09/89	52754	05/09/89
8		01484	05/09/89	88879	05/09/88
9		01534	06/03/89	34265	06/03/89
10		01618	06/10/89	36543	06/12/89
11		01511	06/13/89	78118	06/13/89
12		1780	06/24/89	43356	06/24/89
13		1873	06/26/89	52006	06/26/89
14		1866	06/27/89	33453	07/05/89
15		01514	06/30/89	28579	06/30/89
16		1867	07/05/89	28604	07/05/89
17		1747	07/01/89	28217	07/01/89
18		1922	08/04/89	34946	08/05/89
19		2030	08/12/89	34957	08/12/89
20		2038	08/21/89	31507	08/21/89
21		2044	08/31/89	50797	08/31/89
22		2244	09/08/89	50764	09/07/89