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CASE NO. 5212

Decision No. 44804

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

U. W. MEETER, individually, and)
U. W. METTER, doing business under)
the fictitious name and style of)
Delano Bus Lines,)

Complainant,)

vs.)

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M. S. SILVA, individually, and)
doing business under the fictitious)
name and style of City Taxi, PASTOR)
TERRO, individually, and doing business)
under the fictitious name and style of)
West Side Taxi; MARIE MOORE, individually,)
and doing business under the fictitious)
name and style of Owl Taxi; ERVIN K. SILVA,)
individually, and doing business under the)
fictitious name and style of Dime Cab;)
JOHN DOE ONE, JOHN DOE TWO, JOHN DOE THREE.)
-----)

Werdel & Di Giorgio, by V. P. Di Giorgio for complainant.
Burum, Young & Wooldridge,
by Joseph Wooldridge, for defend-
ant Pastor Terro
M. S. Silva, defendant, in
propria persona, and for defendant
Ervin K. Silva

O P I N I O N

The complaint herein alleges that complainant has a certi-
ficated right to operate as a passenger stage corporation between
Delano, Kern County, and the Sierra Vista Ranch, Tulare County; that
each of the defendants is operating taxi-cabs between those two
points and charging passengers upon an individual fare basis; that
none of the defendants has a certificate of public convenience and
necessity to operate as a passenger stage corporation.

Defendants Pastor Terro, M. S. Silva and Erwin K. Silva admit they possess no certificated rights from this Commission but deny the remaining allegations of the complaint.

A public hearing was held before Examiner Gillard in Delano on August 31, 1950 and the matter submitted for decision.

M. S. Silva operates and drives one taxi-cab under the name of City Taxi. He formerly operated five cabs, but business has fallen off to such an extent that he has discharged all employees and disposed of the excess taxi-cabs. In November 1948, he was contacted by a representative of the Commission's Transportation Department. Silva told him he was charging one dollar for his cab when passengers were picked up at Sierra Vista Ranch destined for Delano, and that if he picked up another passenger enroute he would charge that person an additional twenty-five cents. He was advised that the twenty-five cent individual fare was illegal. Thereafter, and to the present time, Silva testified, his charge for such a trip is one dollar for the cab, for any number of passengers up to four; that he goes to Sierra Vista Ranch whenever he receives a call for service, and will not pick up anyone except the party placing the call. The Sierra Vista Ranch lies 5 miles northeast of Delano, in Tulare County.

Pastor Terro operates two taxi-cabs, one of which he drives himself, under the name of West Side Taxi. He formerly owned and operated four, but reduction of business caused him to dispose of two. He testified that on all trips to Sierra Vista Ranch he charges a flat rate of one dollar for the cab, for any number of passengers from one to four, and that he will go to Sierra Vista Ranch whenever he receives a call for service. In 1947 one of his employees, driving his own car on an emergency call when his cab was being repaired, charged two passengers twenty-five cents each

for a ride outside Delano. Terro was advised by a Commission representative that his drivers should not charge on an individual fare basis, and Terro said he would see they did not.

In an investigation conducted by complainant in February 1950, private investigators were carried between Delano and Sierra Vista Ranch by both City and West Side taxis, and in each instance were charged individual fares by the drivers. Under cross-examination by counsel for complainant, two former employees of Terro admitted that when they picked up persons while enroute from Sierra Vista Ranch to Delano with passengers already in the cab, they would collect a separate fare from the former. A taxi-cab rate schedule, placed in evidence by defendant Terro as his current schedule of charges, discloses in two instances varying charges depending upon the number of passengers carried.

Section 50 1/4 of the Public Utilities Act provides in part: "Any act of transporting or attempting to transport any person or persons by stage, auto stage, or other motor vehicle upon a public highway of this State between two or more points not both within the limits of a single incorporated city, town or city and county, where the rate, charge or fare for such transportation is computed, collected or demanded on an individual fare basis, shall be presumed to be an act of operating as a passenger stage corporation within the meaning of this act."

This statutory presumption is evidence in this case, and defendants M. S. Silva and Pastor Terro have failed to overcome the same with evidence that they were not acting as passenger stage corporations. On the record, therefore, we find that defendants M. S. Silva and Pastor Terro are performing the service of passenger stage corporations as defined in Section 2 1/4 of the Public

Utilities Act, without first having secured a certificate of public convenience and necessity from this Commission. A cease and desist order will therefore be entered as to these two defendants.

No evidence was presented by complainant as to defendant Ervin K. Silva, and the complaint will be dismissed as to him. Defendant Marie Moore was not served nor did she appear at the hearing. In accordance with the motion made by counsel for complainant, the complaint will be ordered dismissed as to her, and also as to the three fictitious defendants, who likewise were not served nor connected with the case by their true names.

O R D E R

A public hearing having been held, and based upon the findings and conclusions set forth in the foregoing opinion,

IT IS ORDERED:

(1) That M. S. Silva and Pastor Terro be and each of them is hereby directed and required to cease and desist from operating directly or indirectly, or by any subterfuge or device, any passenger stage as a passenger stage corporation, as defined by Section 2 1/4 of the Public Utilities Act, for compensation over the public highways in this state between fixed termini, to wit: between the City of Delano and the Sierra Vista Ranch in Tulare County, unless and until they and each of them, shall have obtained from this Commission a certificate of public convenience and necessity therefor.

(2) That the complaint be and it is hereby dismissed as to Ervin K. Silva, Marie Moore, John Doe One, John Doe Two and John Doe Three.

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(3) (3) The Secretary is hereby directed to cause personal service of a certified copy of this decision to be made upon M. S. Silva and Pastor Terro, and this decision shall become effective upon the twentieth (20th) day after the date of such service.

Dated at San Francisco, California this th 19 day of September, 1950.

R. F. [Signature]
Justus F. [Signature]
[Signature]

Commissioners