

ORIGINAL

Decision No. 46656

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
 LOUIS A. WELTER for a certificate of )  
 public convenience and necessity to )  
 operate with limousine rights a ) Application No. 32631  
 ground air line passenger service )  
 between San Francisco, California, )  
 and Oakland, California, airport. )

Joseph L. Alioto and Walter F. Calcagno, for applicant.  
Roland J. Henning, for Fialer's Limousines, Inc.,  
 protestant.  
Edward A. Goggin, Assistant Port Attorney, for Board of  
 Port Commissioners of the City of Oakland,  
 protestant.

O P I N I O N

Louis E. Welter, by his application filed August 2, 1951, requests a certificate of public convenience and necessity authorizing the ground transportation of air line passengers between San Francisco and the Oakland Municipal Airport (hereinafter referred to as the airport). The granting of the application was protested by Fialer's Limousines, Inc.

Public hearings were held at San Francisco before Examiner Silverhart.

Applicant proposes a single fare of \$1.50, exclusive of Federal Transportation Tax. Service will not be performed pursuant to a time table but will be offered 24 hours per day. Applicant proposes the use of two limousines each having a seating capacity of seven passengers. The applicant testified that he has been engaged in the taxi-cab business for over 12 years; that he operates from a gasoline service station located at Oak and Gough Streets, in San Francisco; that his telephone is an unlisted one

and calls for service are received at his home; that the only equipment he presently possesses is two 1949 five-passenger Plymouth sedans, each furnished with a taxi meter, both of which are employed as taxi-cabs and will be utilized for the proposed service. The witness stated that he has transported non-scheduled air line passengers from San Francisco to the airport for a year and a half last past; that ten ticket agencies which sell passage on non-scheduled airlines call upon him to furnish ground transportation to the airport for their passengers; that he picks up passengers at private homes, hospitals, army bases or any place requested and will continue so to do if the authority herein sought is granted.

Attached to the application as a financial statement is the following:

Home - 274 Mallorca Way, S. F.	\$ 25,000.00
Taxi-cabs - 2 permits - business valuation	26,000.00
Payroll checking account	<u>1,000.00</u>
	\$ 52,000.00
Less: Mortgage on home	\$ <u>7,024.41</u>
	\$ 44,975.59

Representatives of several ticket agencies, located in San Francisco and dealing in the sale of transportation on non-scheduled air lines departing from the airport testified upon behalf of applicant. The tenor of their testimony was substantially similar: that their type of business required pickup of passengers at irregular intervals and upon occasion late in the evening; that applicant had furnished them such service prior to May, 1951; that they need the proposed service and will use it if authorized; that in order to utilize protestant's service it is necessary to notify it between 3:30 p.m. and 4:30 p.m. of the number of passengers to be transported to the airport. Some of the witnesses stated

that the proposed service is essential in order to transport tardy or last minute passengers to the airport.

Cross examination disclosed that most of these witnesses presently use protestant's service from San Francisco to the airport and have been doing so since May or June, 1951; that protestant telephones them daily in order to arrange for pickup of passengers, if any, requiring transportation to the airport; that protestant has provided pickup service at the time specified by them; that several of such witnesses conceded that protestant's service was satisfactory; that another witness knew she could obtain service from protestant.

Protestant, Fialer's Limousines, Inc. possesses a certificate of public convenience and necessity to transport air line passengers (in addition to other points) between San Francisco and the Oakland Municipal Airport (Decision No. 32071, dated June 6, 1939).

Fialer's owns ten Cadillac limousines of ten and fourteen passenger capacity, and seventeen 23-passenger Flexible coaches. Fifteen units of such equipment are devoted to the airport service. The Gray Line, Inc. and Airport Limousine Company each of which is affiliated with Fialer's possess 119 pieces of equipment which are available for use by protestant in its airport service.

Protestant's general manager and president testified that it charges \$1.50, including tax, per air line passenger for transportation from San Francisco to the airport; that the airport is used by five scheduled air lines daily, and 20 to 25 non-scheduled air lines, each one of which does not operate every day; that it carries all the scheduled air line passengers (other than those travelling by taxi-cabs or their own vehicles) moving between San

Francisco and the airport; that it has been carrying non-scheduled air line passengers from San Francisco to the airport since 1946; that the majority of the non-scheduled lines arrive at the airport between 10 a.m. and 3 p.m. and usually depart at 7 p.m. According to his testimony, Fialer's dispatcher communicates each day with the various ticket agencies which sell space on the non-scheduled air lines in order to ascertain whether there are passengers requiring transportation to the airport; if so, equipment is sent off to the points at which such agencies are located. Pickups are made between 4 p.m. and 5 p.m., at the time appointed by such agencies.

The assistant manager of the North American Air Lines, a non-scheduled air line operating between Oakland, Los Angeles, Chicago, New York and Miami was called as a witness by protestant. He testified that his company has utilized Fialer's service from San Francisco to the airport since January, 1950; that such service is satisfactory and adequate; that it will continue to use such service.

Reservation clerks in the employ of an agency which sells space on non-scheduled air lines testified that their company had used Fialer's service from San Francisco to the airport since March or April, 1951; that such service was sufficient, satisfactory and as required; that they will continue to use such service.

Two travel agents testified that Fialer's has been supplying ground transportation from San Francisco to the airport for their non-scheduled air line passengers since February, 1951, and March, 1951, respectively; that such service has been satisfactory and adequate and that they will continue to use it.

This application falls within the purview of Section 1032 of the Public Utilities Code, which deals with the issuance of certificates to passenger stage corporations, and provides in part as follows:

".... The commission may, after hearing, issue a certificate to operate in a territory already served by a certificate holder under this part only when the existing passenger stage corporation or corporations serving such territory will not provide such service to the satisfaction of the commission."

Such provision has been construed by this Commission in the matter of Fialer's, Incorporation, 38 C.R.C. 880, wherein at page 884, among other things, it was stated,

"....., and when called upon to determine the ability of the existing utility to satisfactorily serve the public in the future, may judge it as of the day the newcomer knocks at the door."

The evidence amply demonstrates that protestant has for a substantial period of time prior to the filing of the application herein, offered, furnished and performed an adequate and satisfactory service for the transportation of non-scheduled air line passengers from San Francisco to the airport and further such evidence fails to indicate that it will not continue to so render such service. We conclude that application of Section 1032, Public Utilities Code, *supra*, and of the construction thereof set forth in the Fialer's case, *supra*, to the facts herein requires that the application be denied. The ensuing order will so provide.

Further, an examination of this record compels the conclusion that a grave doubt exists as to whether applicant possesses the financial resources and ability to inaugurate and maintain the service he here proposes.

O R D E R

Public hearings having been had and based upon the evidence therein adduced,

IT IS ORDERED that Application No. 32631 is denied.

The effective date of this order shall be twenty (20) days after the date hereof.

Dated at San Francisco, California, this 22<sup>nd</sup> day of January, 1952.

R. T. Morrison  
President  
Justice F. Calver  
Harold F. Kula  
John E. Mitchell  
Commissioners

Commissioner Kenneth Potter, being necessarily absent, did not participate in the disposition of this proceeding.