

Decision No. 62918

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
RUSSELL G. LEWIS, an individual, to  
transfer assets and certificate of  
public convenience and necessity,  
and of BAY & OCEAN CRUISES, INC.,  
to issue common stock.

Application No. 43890

Graham James & Rolph, by Boris H. Lakusta  
and E. Myron Bull, for applicants;  
Sidney J. Webb, for the Commission staff.

O P I N I O N

In this application, the Commission has been asked to enter an order authorizing Russell G. Lewis to transfer a certificate of public convenience and necessity and certain assets to Bay & Ocean Cruises, Inc., and authorizing Bay & Ocean Cruises, Inc., to issue 20,000 shares of its common stock of the par value of \$10 each and of the aggregate par value of \$200,000.00.

The application was filed on October 31, 1961. A public hearing was held before Examiner Coleman in San Francisco on November 27, 1961, at which time the application was amended to include a request by the corporation to issue notes and mortgages in an amount not to exceed \$20,000.00 to refinance outstanding liabilities. No protests were received at the hearing and the matter was taken under submission.

The record shows that on February 24, 1959, by Decision No. 58056, the Commission granted Russell G. Lewis a certificate of public convenience and necessity to operate vessels for the transportation of persons in an excursion and sight-seeing service on San Francisco Bay; that said Russell G. Lewis was compelled to enter upon extended negotiations to obtain suitable pier facilities in San Francisco, Sausalito and Angel Island; and that, as a consequence, he did not commence operations out of San Francisco under his certificate until on or about June 24, 1961. In Exhibit 2, he has reported revenues for the period from June 24 to October 23, 1961, of \$31,670.00, expenses of \$22,255.00 and net income of \$9,415.00.

In acquiring the operative rights, permits and facilities, Russell G. Lewis obtained some capital from Charles W. Partridge, Jr., and concluded to incorporate the business and to transfer the assets to a new corporation in exchange for \$200,000.00 par value of stock of which \$160,000.00 would be issued to said Russell G. Lewis and \$40,000.00 to said Charles W. Partridge, Jr. In Exhibit A, the assets, liabilities and capital of the enterprise are reported as of February 15, 1961, as follows:

| <u>Assets</u>                                     |                     |
|---|---------------------|
| Cash  | \$ 30,717.18        |
| Equipment, less depreciation                      | 27,935.16           |
| Good will, docking privileges,<br>franchise, etc. | 161,000.00          |
| Prepaid expenses                                  | <u>2,507.91</u>     |
| Total   | <u>\$222,160.25</u> |
| <u>Liabilities and Capital</u>                    |                     |
| Notes and accounts payable                        | \$ 21,298.00        |
| Capital   | <u>200,862.25</u>   |
| Total   | <u>\$222,160.25</u> |

Since February 15, approximately \$18,000.00 has been expended for improvements to one of the vessels.

According to the testimony, no value is assigned to good will. The \$161,000.00 item which is included in the assets consists of \$9,500.00 for legal and accounting fees, \$6,966.17 for leasehold improvements and \$144,533.83 for rights for dock space at Fisherman's Wharf in San Francisco, at Sausalito and at Angel Island. Applicants assert that the landing pier at Fisherman's Wharf is the only suitable one for excursion and sight-seeing operations from San Francisco, that considerable time was required to obtain the rights to utilize the space now available, and that the estimated net income for the year 1961, assuming such space had been available for the entire 12 months, would have been \$18,000.00.

It is clear that it is convenient and no doubt necessary for the point of departure for the excursion and sight-seeing operations to be located in the vicinity of Fisherman's Wharf and that time and no doubt expense were required of applicants in perfecting their arrangements. However, there is nothing of substance in the record that we can utilize in assessing the cost or value of the dockage rights associated with the operations and, in the absence of such information, we cannot accept the \$144,533.83 figure as a proper base for an order authorizing the issue of stock. Eliminating this amount from the total assets, as reported, would leave a balance of \$77,627.00. Of this latter amount, approximately \$20,000.00 will be represented by indebtedness the new corporation will assume and which it proposes, and seeks authorization, to refinance with new notes.

Upon reviewing this matter, we find and conclude that the transfer of the operations to a corporation will not be adverse to the public interest, under the terms set forth herein, and that the corporation should be authorized to assume indebtedness of not to exceed \$20,000.00 and to issue not to exceed \$57,630.00 par value of its common stock. In entering our order in accordance with these findings, we are making no determination of the cost or value of the operative rights and assets to be transferred.

O R D E R

A public hearing having been held in the above-entitled matter and the Commission having considered the evidence and being of the opinion that the application should be granted to the extent set forth herein; that the money, property or labor to be procured or paid for through the issue of stock in an amount not to exceed \$57,630.00 par value and the issue of notes in the amount of \$20,000.00 is reasonably required for the purposes specified herein; and that such purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income; therefore,

IT IS ORDERED that -

1. Russell G. Lewis, on or after the effective date hereof and on or before April 30, 1962, may transfer his certificate of public convenience and necessity and his assets as set forth in this application to Bay & Ocean Cruises, Inc.

2. Bay & Ocean Cruises, Inc., in acquiring said certificate and assets, may assume the payment of outstanding indebtedness in an amount not to exceed \$20,000.00 and may issue its common stock in an aggregate amount of not to exceed \$57,630.00 par value.

3. Bay & Ocean Cruises, Inc., may execute a preferred ship mortgage, or mortgages, and may issue a note, or notes, in the aggregate principal sum of not to exceed \$20,000.00 payable on or before three years after the date of issue, with interest at the rate of 6 per cent per annum, for the purpose of refunding indebtedness it is herein authorized to assume.

4. The request of Bay & Ocean Cruises, Inc., to issue \$142,370.00 of common stock is denied.

5. Applicants, immediately upon the transfer of said rights and properties and on not less than ten days' notice to the Commission and to the public, effective concurrently with the consummation of the transfer, shall supplement or reissue the tariff on file with the Commission insofar as it names rates, rules and regulations covering the common carrier operations now conducted by Russell G. Lewis to show that said Russell G. Lewis has withdrawn or canceled and Bay & Ocean Cruises, Inc., has adopted or established as its own, said rates, rules and regulations. The tariff filing made pursuant to this order in all respects shall comply with the Commission's Tariff Circular No. 2.

6. Bay & Ocean Cruises, Inc., shall file a report, or reports, as required by General Order No. 24-A, which order, insofar as applicable, is made a part of this order.

7. The authority herein granted shall become effective when Bay & Ocean Cruises, Inc., has paid the minimum fee prescribed by Section 1904(b) of the Public Utilities Code, which fee is \$25.00.

Dated at San Francisco, California, this 12th day of DECEMBER, 1961.

[Signature]  
President

[Signature]

[Signature]

[Signature]

Commissioners

Commissioner C. Lynn Fox, being necessarily absent, did not participate in the disposition of this proceeding.

