

Decision No. 70712

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

GREYHOUND LINES, INC., WESTERN
GREYHOUND LINES DIVISION, a
corporation,

Complainant,

vs.

SANTA CRUZ TRAVEL CLUB, INC.,
a corporation, PEERLESS STAGES,
INC., a corporation, HOWARD E.
DAVENPORT, PEARL HALL, PATRICIA
LA HERRON, ROBERT J. MEYER, VERNA
PADEN, ALEX J. GAETA and DON HALL,

Defendants.

Case No. 8031
(Filed October 2, 1964)

McCutchen, Doyle, Brown, Trautman & Enersen by Craig
McAtee, for Greyhound Lines, Inc., complainant.
Murphy & Adams, by Donald O. May, for Santa Cruz Travel
Club, Inc., Howard E. Davenport, Pearl Hall, Patricia
La Herron, Robert J. Meyer and Verna Paden, defendants.
John F. Balaam, for Peerless Stages, Inc., and Alex J.
Gaeta, respondents.

O P I N I O N

October 2, 1964, complainant Greyhound Lines, Inc.,
Western Greyhound Lines Division, hereinafter called Greyhound,
filed its complaint against Santa Cruz Travel Club, Inc., hereinafter
called Travel Club; Peerless Stages, Inc., hereinafter called
Peerless; Howard E. Davenport, Pearl Hall, Patricia La Herron,
Robert J. Meyer and Verna Paden, directors of Travel Club; Alex J.
Gaeta, general manager of Peerless; and Don Hall, an employee of
Peerless and a member of Travel Club, praying that the Commission:

(1) Issue a preliminary order requiring defendants, pending decision on the complaint, to cease and desist from offering and providing passenger stage service over the public highways of the State of California, except pursuant to certificates of public convenience and necessity;

(2) Refuse to renew Peerless' charter party permit, TCP-3 upon its expiration October 10, 1964, pending a determination as to whether Peerless is fit to hold such authority;

(3) Issue a final order requiring defendants to cease and desist from offering and providing passenger stage service over the public highways of the State of California, except pursuant to certificates of public convenience and necessity issued by this Commission;

(4) Issue a final order requiring Travel Club to cease and desist from contracting, agreeing or arranging to charge or to demand or receive individual-fare compensation for transportation to be provided by a charter-party carrier; and

(5) Grant such other or further relief and take such other and further action as may be necessary or proper.

Peerless filed its answer to the complaint on October 27, 1964, and answers were filed by Travel Club and its directors on November 9, 1964, and on March 4, 1965. Public hearing was held and this matter was taken under submission upon the filing of the closing brief of complainant on June 18, 1965.

The following issues have been raised in this proceeding:

1. Is Travel Club a broker which has sold transportation by a charter-party carrier on an individual-fare basis in violation of Section 5401 of the Public Utilities Code?

2. Is Travel Club a corporation which has sold transportation by passenger stages on an individual-fare basis for sightseeing trips in California on routes for which a passenger stage corporation has obtained a certificate of public convenience and necessity, when Travel Club has chartered such passenger stages in California at rates per passenger which are less than the individual fares for which the transportation is sold, in violation of Section 5402 of the Public Utilities Code?

3. Has Peerless in providing passenger stages to Travel Club on a charter-party basis for transportation for which individual fares have been sold by Travel Club violated Sections 5401 and 5402 of the Public Utilities Code?

4. Are Travel Club and Peerless operating as passenger stage corporations as defined in Section 226 of the Public Utilities Code in violation of Section 1031 of the Public Utilities Code?

The sections of the Public Utilities Code which are involved in this proceeding are the following:

"226. 'Passenger stage corporation' includes every corporation or person engaged as a common carrier, for compensation, in the ownership, control, operation, or management of any passenger stage over any public highway in this State between fixed termini or over a regular route. . ."

"1031. No passenger stage corporation shall operate or cause to be operated any passenger stage over any public highway in this State without first having obtained from the Commission a certificate declaring that public convenience and necessity require such operation, . . ."

"1035. Whether or not any stage, auto stage, or other motor vehicle is being, or is proposed to be operated as a passenger stage corporation 'between fixed termini or over a regular route' within the meaning of this part is a question of fact, and the finding of the commission thereon is final and is not subject to review. 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 city 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 part."

"4803. 'Motor transportation broker' means any person who, acting either individually or as an officer, commission agent, or employee of a corporation, or as a member of a copartnership, or as a commission agent or employee of another person, sells or offers for sale, or negotiates for or holds himself out as one who sells, furnishes, or provides, transportation over the public highways of this State, when such transportation is furnished, or offered or proposed to be furnished by a motor carrier."

"4804. 'Motor carrier' means any person, firm, or corporation, their lessees, trustees, receivers or trustees appointed by any court whatsoever, transporting or offering or proposing to transport property for compensation over any portion of the public highways of the State."

"4875. Any person, firm, or corporation, shall be understood to be acting as a motor transportation broker who:

"(a) Orally or by card, circular, pamphlet newspaper, radio, sign, billboard, or any other way, advertises himself, or itself, as one who sells, furnishes, negotiates for, or provides transportation over the public highways of this State, when the transportation is furnished or offered, or proposed to be furnished, by motor carriers.

"(b) Manages or conducts as manager, conductor, agent, proprietor, lessor, lessee, or otherwise, a place where transportation is, or is offered, or proposed to be sold, furnished, negotiated for, or provided by a motor carrier.

"(c) Aids and abets, or without being present advises and encourages any person, firm or corporation in acting as, or to act as, a motor transportation broker.

"One act of the nature set forth in this section shall constitute a person, firm, or corporation doing or committing the act, a motor transportation broker."

"5401. Charges for the transportation to be offered or afforded by a charter-party carrier of passengers shall be computed and assessed on a vehicle mileage or time of use basis, or on a combination thereof, which charges may vary in accordance with the passenger capacity of the vehicle, or the number of persons to be transported, but it shall not be lawful for a charter-party carrier of passengers to directly or through his agent, or otherwise, or for a broker, to contract, agree or arrange to charge or to demand or receive compensation for the transportation offered or afforded which shall be computed, charged, or assessed on an individual-fare basis, . . ."

"5402. No person, partnership, corporation, or organization shall sell transportation by a passenger stage on an individual-fare basis for a sightseeing trip in California on a route for which a passenger stage corporation has obtained a certificate of convenience and necessity if the seller intends to charter or charters the passenger stage in California at a rate per passenger which is less than the individual fare for which the transportation is sold."

Based upon a consideration of the record herein the Commission finds as follows:

1. Travel Club is a nonprofit corporation organized in July of 1964 by its directors Howard E. Davenport, Pearl Hall, Patricia La Herron, Robert J. Meyer and Verna Paden "for the purpose of providing chartered transportation where men and women may find companionship and the opportunity to pursue their interests in travel both near and far; also to provide a meeting place for the furthering of educational, recreational and social activities."

2. At the time of its organization in July of 1964 Travel Club had approximately 30 members and as of the date of the hearing on March 16, 1965, its membership had grown to 631 members.

3. Defendant Don Hall, an employee of Peerless, actively participated in the organization of Travel Club, was a charter member, and has been a driver of buses chartered by Travel Club from Peerless for many of its intrastate bus trips. Defendant Pearl Hall, his wife, has been treasurer of Travel Club since its organization.

4. Mr. Cole, the manager for Peerless in San Jose, attended Travel Club's organization meeting and advised that Peerless was purchasing more buses of the type it uses for long tours.

5. The principal office of Travel Club for the transaction of business is a room furnished without charge in the suite of Riordan-Winnett Travel Agency, a commercial travel agency, at 1338 Pacific Avenue, Santa Cruz, California.

6. Travel Club has an arrangement with Riordan-Winnett Travel Agency to make all accommodation and transportation arrangements for Travel Club trips in excess of 150 miles, except trips from Santa Cruz to Lake Tahoe. On such trips for which it makes the arrangements Riordan-Winnett Travel Agency charters the bus from Peerless in its own name and the passengers frequently pay their individual fares to Riordan-Winnett Travel Agency.

7. Membership in Travel Club was open to the public until September 1, 1964, upon the payment of annual dues of \$1, and subsequent to September 1, 1964, it has been open to the public upon the payment of annual dues of \$2.

8. Membership meetings at which travel movies are shown and travel talks are given are held the second Monday evening each month. Such meetings have been held at the Surf and Sand Mobile Home Park, the Soquel Grange Hall, and the Trade Winds Mobile Park.

9. Travel Club solicits members and advertises intrastate trips at individual fares on buses chartered from Peerless through handbills and newspapers distributed to the general public in the Santa Cruz area.

10. Such trips were advertised to be operated from Santa Cruz to San Francisco in 1964 on August 2, 22, 29 and 30, September 23, October 14 and 24, November 14, and December 5 and 16, and in 1965 on January 13, February 10, March 19-20, and April 7. The trips on September 23, October 14, November 14, December 5 and 16 were so-called "free days" because no organized activities in San Francisco were planned for, or purchased by, the passengers, who were free to do as they pleased in San Francisco. The trips on the other days were in conjunction with organized night club tours, or other special events such as attendance at theatres, the Ice Follies, the Flower Show, the Grand National Stock Show and Rodeo, and the Winter Sports Show. On August 2 and August 22 trips to Fisherman's Wharf were included with the Ice Follies matinees.

11. Travel Club sells tickets for the "free day" Santa Cruz-San Francisco round trips at individual fares of \$2.50. As Travel Club charters buses for the Santa Cruz-San Francisco round trip for \$89 and sells up to 41 tickets, Travel Club receives a gross revenue of \$102.50 and a net revenue of \$13.50 for a full bus after deducting the charge for the chartered bus.

12. A representative of Greyhound actually made the Santa Cruz-San Francisco round trip operated by Travel Club on January 13, 1965. On this trip each passenger paid Travel Club a fare of \$4.50 and received a movie ticket which cost Travel Club \$1.25 and round-trip transportation on a bus chartered by Travel Club from Peerless for \$89. As there were 33 passengers on the trip,

excluding the driver and two escorts who paid no fares, the gross revenue amounted to \$148.50 and the net revenue after deducting the \$89 charter charge and the cost of \$43.75 for 35 movie tickets amounted to \$15.75.

13. Travel Club has also offered intrastate sightseeing round trips from Santa Cruz, as follows:

December 30 and 31, 1964 and January 1 and 2, 1965.

Four-day trip to Pasadena New Year's Rose Parade with Dinner-Dance and entertainment at Statler-Hilton Hotel New Year's Eve 1964. Side trips to Disneyland, Knott's Berry Farm and Marineland.

March 17, 18 and 19, 1965. Three days to Monterey, 17-Mile Drive, Carmel, Hearst Castle, Madonna Inn, and Solvang.

March 23, 24 and 25, 1965. Three-day trip to Hearst Castle and Solvang.

April 27 to May 4, 1965. Eight days. Two nights in Long Beach, two nights in San Diego, then to Hemet for the Ramona Pageant, overnight at Sun City Motel, then two nights in Palm Springs, and tour Cathedral City, Indio, Blythe and the Colorado River.

14. Travel Club plans its trips with the intention of realizing a net revenue to be placed in Travel Club's treasury to be used for other Travel Club expenses and to help defray any losses which may actually occur on any of the trips.

15. Some of the handbills distributed by Travel Club state that anyone is invited to take the intrastate trips whether a member or not. Such invitation was discontinued after the filing

of the complaint herein, but persons not on the Travel Club's membership roll have taken intrastate trips offered by Travel Club since the date of the filing of this complaint.

16. Travel Club has purchased charter-party transportation from Peerless for its own account and has resold the transportation on an individual-fare basis to its own members and others.

17. Travel Club holds no authority of any kind from this Commission.

18. Peerless has a charter permit, but its passenger stage certificate authorizes service as a common carrier only between Oakland and Santa Cruz via San Jose.

19. Greyhound is authorized by this Commission to operate as a passenger stage corporation between Santa Cruz and San Francisco via four different routes, and its round-trip bus fare from Santa Cruz to San Francisco and return is fixed by this Commission at an individual adult fare of \$3.85.

20. Greyhound by its certificate of public convenience and necessity is authorized to operate as a passenger stage corporation over the routes set forth in Appendix A to Decision No. 55893 in Application No. 39394. Such routes are shown on the map which is Exhibit 1.

21. Greyhound offers Special Operations Services between points between which it is authorized to render regular route, on-call or Special Operations Services. Tickets for transportation are sold at the published tariff rate. Such Special Operations Service is sold when: (1) a travel agency desires to arrange for all-expense or "package" tours to be sold at individual fares, and (2) a group of individuals, such as students, sportsmen, or members of the armed forces wish to

travel as a group and purchase individual tickets.

22. Greyhound has offered for sale on an individual-fare basis transportation and tickets to the following special events in the San Francisco area:

- (1) "Auntie Mame", "Mr. Roberts", "The Solid Gold Cadillac", "The Teahouse of the August Moon", and "No Time for Sergeants" at the Circle Star Theatre;
- (2) "The Sound of Music" at the United Artists Theatre;
- (3) Forty-Niner League Football Games at Kezar Stadium; and
- (4) San Francisco Giants Baseball Games at Candlestick Park.

23. Greyhound has offered the following escorted sight-seeing tours from San Francisco which are similar to those offered by Santa Cruz Travel Club: (1) Rose Parade Bowl Tour; (2) Hearst Castle at San Simeon, including Monterey Peninsula; (3) Palm Springs Fun-a-rama; (4) Ten-Day California Wonderland Tour, including Monterey Peninsula, Santa Barbara, San Diego, Disneyland, Knott's Berry Farm, Los Angeles, San Joaquin Valley and Yosemite Valley; and (5) Five-Day Follow the Sun Tour, including San Diego, Palm Springs and Santa Barbara.

24. Defendant Howard E. Davenport is also president of Travel Club, and defendant Alex J. Gaeta is president of Peerless.

Counsel for Greyhound at the hearing stated that the purpose of this proceeding is to obtain from this Commission a clear statement of the laws of California, particularly Section 5401 of the Public Utilities Code which was amended in 1963 and Section 5402 of the Public Utilities Code which was added in 1963, rather than to impose any punitive sanctions, other than a cease and desist order, on defendants herein.

Based upon the foregoing findings the Commission concludes as follows:

1. Travel Club is not a "motor transportation broker" as defined in Section 4803 of the Public Utilities Code as it is engaged in the transportation of persons by passenger stage and not property by motor carrier pursuant to the definition of "motor carrier" in Section 4804 of the Public Utilities Code.

2. Travel Club is not a broker which has sold transportation by a charter-party carrier on an individual-fare basis in violation of Section 5401 of the Public Utilities Code, as it has purchased the charter-party transportation for its own account and resold the transportation to its own members and others. In Webster's Third New International Dictionary, pp 281-82, a broker is defined as:

"... b: An agent middleman who for a fee or commission negotiates contracts of purchase and sale...between buyers and sellers without himself taking title to that which is the subject of negotiation and usu. [usually] without having physical possession of it...."

We do wish to point out here, however, that those Travel Club advertisements which offer chartered bus trips using Peerless buses on an individual-fare basis may mislead the public into thinking that Travel Club is acting as an agent or broker in offering transportation by a charter-party carrier on an individual-fare basis. For that reason we suggest that the word "chartered" either be eliminated from such advertisements or that such advertisements be expanded to show clearly that Travel Club itself is chartering the buses from an authorized charter-party carrier.

3. The evidence is insufficient to show that Travel Club is a corporation which has sold transportation by passenger stage on an individual-fare basis for sightseeing trips in California on routes for which Greyhound, a passenger stage corporation, has obtained a certificate of public convenience and necessity, and Travel Club has intended to charter and has chartered passenger stages from Peerless for such trips at rates per passenger which have been less than the individual fares for which Travel Club has sold the transportation, all in violation of Section 5402 of the Public Utilities Code.

As charter-party trips for special events alone are not sightseeing trips, the trip described in finding 12, above, was not a sightseeing trip. The two trips in finding 10 on August 2 and August 22, to the Ice Follies with trips to Fisherman's Wharf included, might or might not have been sightseeing trips depending on the purpose of the trips to Fisherman's Wharf, i.e., whether the trips to Fisherman's Wharf were for the purpose of having dinner, shopping, or seeing the area as a tourist attraction, or for all three purposes.

The record does not show the routes taken by Travel Club on the sightseeing trips listed in finding 13 so that a determination can be made whether such routes are routes for which Greyhound or any other passenger stage corporation has obtained a certificate or certificates of public convenience and necessity. Also, the record does not show whether the individual fares charged by Travel Club for such transportation are more than the rates paid by Travel Club to the charter-party carriers, reduced to a per capita basis.

Travel Club is admonished, however, not to sell transportation on an individual-fare basis for a sightseeing trip in California where such sightseeing trip is on a route for which a passenger stage corporation has a certificate of public convenience and necessity and where Travel Club charters a passenger stage to provide the transportation at a rate per passenger which is less than the individual fare for which Travel Club in turn sells the transportation.

4. The evidence is insufficient to show that Travel Club by reason of its soliciting the general public to join its organization for the purpose, among others, of purchasing from Travel Club on an individual-fare basis transportation by passenger stage over public highways in California is operating as a passenger stage corporation in violation of Section 1031 of the Public Utilities Code.

Since the fares charged by Travel Club for the bus transportation are on an individual-fare basis, under Section 1035 of the Public Utilities Code the provision of the transportation by Travel Club is presumed to be an act of operating as a passenger stage corporation. The fact that Travel Club charters rather than leases or owns the buses by which it provides transportation does not prevent it from being a passenger stage corporation if the other elements of operation as a passenger stage corporation under Section 1031 of the Public Utilities Code are present. The public advertisements offering bus transportation on an individual-fare basis to

members of the public upon application for membership in Travel Club and payment of an annual membership fee of \$2 are offers of bus transportation to the public. The remaining question is whether the transportation is between fixed termini or over a regular route.

The only California intrastate trips which have occurred with sufficient frequency to require analyses are the trips from Santa Cruz to San Francisco on August 22, 29 and 30, and the two sightseeing trips to Hearst Castle at San Simeon and Solvang on March 17-19 and March 23-25. The March 19-20 trip to San Francisco was a nightclub tour with an overnight stay in a San Francisco hotel.

For the purpose of determining the frequency of the trips between Santa Cruz and San Francisco this Commission will apply the following general rules:

(a) If the trip is a so-called "free day", the termini are Santa Cruz and San Francisco.

(b) If the trip is for a special event in San Francisco and the total package fare is not substantially in excess of the common carrier passenger stage fare, the termini are Santa Cruz and San Francisco.

(c) If the trip is for a special event in San Francisco, the total package fare is substantially in excess of the common carrier passenger stage fare, but the arrival and departure times do not substantially correspond with the time of the special event, the termini are Santa Cruz and San Francisco.

(d) If the trip is for a special event in San Francisco, the total package fare is substantially

in excess of the common carrier passenger fare, and the arrival and departure times substantially correspond to the time of the special event, the termini are Santa Cruz and the particular location of the special event in San Francisco. In this situation it is unlikely that the passengers will go anywhere in San Francisco except to the special event.

Applying the above rules we conclude that Travel Club held out to the public three round trips between Santa Cruz and San Francisco during the nine-day period from August 22 to and including August 30, 1964, and two round trips from Santa Cruz to Hearst Castle at San Simeon and Solvang during the nine-day period from March 17 to and including March 25, 1965. Had Travel Club continued to offer such trips with the same degree of frequency we would have concluded that Travel Club was operating as a passenger stage corporation in violation of Section 1031 of the Public Utilities Code. We admonish Travel Club that a frequency of operation between the same termini or over a particular route of once or more every nine days will warrant further investigation to determine if Travel Club is operating as a passenger stage corporation in violation of Section 1031 of the Public Utilities Code.

5. A charter-party carrier of passengers should not knowingly permit its buses to be used by another in violation of Sections 1031, 5401 or 5402 of the Public Utilities Code.

O R D E R

IT IS ORDERED that the complaint herein is dismissed without prejudice.

The Secretary of the Commission is directed to make service of a copy of this order by registered mail upon complainant and each of the defendants named herein, and the effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 17th day of MAY, 1966.

Frederick B. Hallock
President

Robert E. Mitchell

George H. Trover

William B. Beards
Commissioners

Commissioner A. W. GATOV
present but not voting.