

Decision No. 75089**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ROBERT MORTON,

Complainant,

vs.

Case No. 8856

CHARTER SEDAN SERVICE, INC.
and CARL RICHARD JERNBERG, JR.,

Defendants.

ORDER OF DISMISSAL

In January of 1968 defendant Charter Sedan Service, Inc. was granted a passenger stage certificate between specified points. (Decision 73678 in Application 49556.) A permit to operate as a charter-party carrier of passengers had been issued to Charter Sedan Service in 1966. In February of 1968 defendant was issued an initial annual certificate as a Class "A" charter-party carrier of passengers, pursuant to Public Utilities Code sec. 5371.1.

The present complaint seeks an order that defendant cease and refrain "from continuing any further activity" as a charter-party carrier or as a passenger stage corporation. It alleges that a "fraudulent" financial statement was submitted with defendant's application for a Class "A" certificate (par. VI), the entries therein being "at that time aged as of February 28, 1967" in violation of procedural Rule 17 (par. VII), and that such statement was defective in that it omitted certain information required by the procedural rules (par. IX).

"Grandfather" applicants for charter-party certificates were not required to file applications in accordance with the procedural rules, but were furnished forms prescribed by the Commission. The statute required issuance of initial annual certificates to all "grandfather" applicants making timely filing therefor. That

action has become final and may not now be challenged by complaint.

A charter-party certificate may be revoked upon any of the grounds set forth in sec. 5378.^{1/} But the complaint does not allege facts invoking any of the grounds there specified.

The complaint alleges further that in June of 1968 defendant applied for an additional passenger stage certificate between Palo Alto and San Jose Municipal Airport. [This is pending Application 50297, filed June 30, 1968.] Complainant alleges that this pending application "was misleading and submitted upon false grounds" because the application alleges that applicant [defendant here] has certificates as a passenger stage corporation and as a charter-party carrier, but that this is "a perjured statement in that the Decision and Order referred to was predicated upon a false and defective document of the defendant's financial condition." (Pars. X and XI.) Complainant then alleges that at all times mentioned defendant was in a condition of financial collapse, filed a bankruptcy petition in February of 1968, was adjudicated a bankrupt in June of 1968, and could not have made a valid showing of financial ability during the times mentioned in the complaint.

The issues that may be invoked in pending Application 50297 must be decided in that proceeding, and not in a separate complaint proceeding.

1/ Sec. 5378 reads as follows:

"5378. The commission may cancel, revoke, or suspend any operating permit or certificate issued pursuant to the provisions of this chapter upon any of the following grounds:

(a) The violation of any of the provisions of this chapter, or of any operating permit or certificate issued thereunder.

(b) The violation of any order, decision, rule, regulation, direction, demand, or requirement established by the commission pursuant to this chapter.

(c) The conviction of the charter-party carrier of passengers of any misdemeanor under this chapter.

(d) The rendition of a judgment against the charter-party carrier of passengers for any penalty imposed under this chapter.

(e) The failure of a charter-party carrier of passengers to pay any fee imposed upon the carrier within the time required by law.

(f) On request of the holder of the permit.

(g) Failure of a permit or certificate holder to operate and perform reasonable service."

Paragraphs XV and XVI of the complaint allege that defendants filed a rate of \$10.00 per passenger between San Jose and the San Francisco International Airport, effective September 1, 1968, but have since regularly charged \$8.00 per person for such transportation. Allegations of violation of statute or order in the conduct of present passenger stage operations should be in a complaint relating to such operation, and not intermingled with allegations concerning past proceedings or pending applications.

For the reasons indicated Case No. 8856 is dismissed without prejudice.

Dated at San Francisco, California, this 17th day
of DECEMBER, 1968.

William J. Linn
President

August
Frank P. Monahan
Commissioners

Commissioner William M. Bennett, being necessarily absent, did not participate in the disposition of this proceeding.