

Decision No. 84731

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of DEMETRIOS ZACHARIADIS, }
an individual doing business as }
OLYMPIC LIMOUSINE SERVICE, of }
San Mateo County, for renewal of a }
permit as a charter party carrier of }
passengers. (File No. TCP 289.) }

Application No. 55299
(Filed November 4, 1974)

Howard Moore, Jr., Attorney at Law, for
Demetrios Zachariadis, and Demetrios
Zachariadis, for himself, applicant.
James B. Brasil, Deputy City Attorney, for
City and County of San Francisco, protestant.
Thomas P. Hunt, for the Commission staff.

O P I N I O N

Demetrios Zachariadis, doing business as Olympic Limousine Service, holds charter-party carrier of passengers permit TCP-289, and by this application seeks renewal of annual authority which was to expire March 13, 1974.

The Commission, by Resolution PE-265 dated December 17, 1974, extended the authority beyond March 13, 1974 pending resolution of this application.

The application is opposed by the city and county of San Francisco, even if amended to exclude service of the San Francisco International Airport.

A duly noticed public hearing was held January 17 and 27, March 3, 4, and 11, 1975 before Examiner Porter and the matter was submitted.

The protestant owns and operates the San Francisco International Airport located in the county of San Mateo. A municipal airport owned and operated by a city in a proprietary capacity can regulate the access and conduct of limousine operators at the airport

regardless of what Commission authority they hold (City of Oakland v Burns (1956) 46 C 2d 401; United States v Gray Line Tours of Charleston (4th Cir 1962) 311 F 2d 779).

The protestant has adopted certain rules and regulations, one of which, Rule 1.4.5(C), prohibits limousine companies not under written contract with the Airport Commission from soliciting fares at the airport. Evidence was presented that applicant, as well as others, disregarded that rule. As a consequence, protestant sought injunctive relief, and after a hearing pursuant to a Show Cause Order, on October 29, 1973 applicant was enjoined from soliciting passengers for hire within the confines of San Francisco International Airport (Exhibit No. 4). ✓

Subsequently on July 11, 1974 the court determined that applicant on two occasions had willfully violated the preliminary injunction, and found the applicant in contempt. Sanctions were ordered. The applicant failed to pay the fine or serve the time ordered, resulting in a bench warrant being issued and forfeiture of his bail (Exhibits Nos. 5, 6, 7, and 10).

Before renewal of a permit to operate as a charter-party carrier of passengers will be issued, an applicant must establish "reasonable fitness and financial responsibility" to conduct the service (Section 5374). It is here wherein the gravamen of the protest lies. The protestant contends that by his actions heretofore

in flouting the authority of the Airport Commission in enforcing Penal Code Section 602.4^{1/} and in ignoring to contempt the injunction of the Superior Court, the applicant cannot now assert "reasonable fitness" and his application should therefore be denied. With this contention we are in agreement.

In the Commission's view "reasonable fitness" connotes more than mere adequacy or sufficiency in training, competency, or adaptability to the appropriate technical and vocational aspects of the service to be rendered. It also includes an element of moral trustworthiness, reliance, and dependability. The standards must be based on the interests of the public as distinguished from the interests of the applicant, and the burden rests with the applicant to demonstrate that he is reasonably fit to be entrusted with a renewal of Commission authority.

While competition among limousine operators and others for business to and from San Francisco International Airport may appropriately be termed as "cutthroat" (Decision No. 81684 in Applications Nos. 52849, 52862, 52829, and 52844), the Commission cannot fail to note what appears to be a disdain for the law by this applicant in his past operations. The public interest cannot be furthered if an application supposedly based upon the reasonable fitness of an operator were granted to one who openly demonstrates his unfitness by disregarding not once but twice a restraining order of a court of

1/ Penal Code Section 602.4:

"Every person who enters or remains on airport property owned by a city, county, or city and county but located in another county, and sells, peddles, or offers for sale any goods, merchandise, property, or services of any kind whatsoever, to members of the public, including transportation services, other than charter limousines licensed by the Public Utilities Commission, on or from the airport property, without the express written consent of the governing board of the airport property, or its duly authorized representative, is guilty of a misdemeanor.

"Nothing in this section affects the power of county, city, or city and county to regulate the sale, peddling or offering for sale of goods, merchandise, property, or services."

competent jurisdiction involving a pivotal aspect of his operation. It is a well established principle of this Commission that operating authority will not be granted upon a showing resting upon unlawful operations (20th Century Delivery Service (1948) 48 CPUC 78,84), although exceptions may be carved out where the public interest so requires (Holiday Airlines (1966) 66 CPUC 537, 542-43).

The testimony of witnesses tends to the conclusion that a pattern of repeated solicitation of passengers at the San Francisco International Airport is characteristic of the applicant's operation. A court of competent jurisdiction has found that on two specific occasions applicant has solicited passengers for hire at the airport despite existence of a restraining order which enjoined that very act. From the admittedly precarious financial position of the applicant, it appears that without volume augmented by his unlawful airport solicitations, he cannot successfully operate. Unhappily for the applicant's cause, elimination of his service from the airport entirely would not serve to deprive the public of the benefit of services essential to its requirements, which fact makes unavailable to the applicant any exception to the general rule on granting of authority (Re Gilroy (1942) 44 CRC 457, 459, and Holiday Airlines, supra). The existing contractually authorized service at the San Francisco International Airport apparently meets the needs of the public. It is significant that the only complaints before us from the public on service dealt with allegations of unethical and unsatisfactory service by the applicant. The applicant made no showing of inadequate existing contractually authorized service - his complaints went only to the allegedly monopoly aspects of that service. The testimony of the one witness for the applicant, a social acquaintance who had used his limousine service, only served to point up some troubles of the airport and the consequences to the applicant of his own prior unlawful operations. Its worth was lessened by a significant contradiction.

Considering the financial exigencies facing the applicant and the solicitation opportunities that from time to time present themselves, an occasional lapse might be explained, but when applicant makes a practice of solicitation, persisting after an injunction ordering him to cease, he goes too far and demonstrates a fundamental disregard for the law not consonant with the degree of "reasonable fitness" requisite in Section 5374.

Findings

1. Applicant holds charter-party permit No. TCP-289 extended by Commission Resolution PE-265 pending resolution of this application.
2. The Airport Commission of the city and county of San Francisco has contracted exclusively with another service to provide adequate limousine service to accommodate passengers arriving on all air carrier flight schedules.
3. Competition among limousine operators and others for business to and from San Francisco International Airport is cutthroat.
4. Applicant's financial condition is precarious. He (as well as others) has resorted to repeated solicitations for passengers for hire within the confines of San Francisco International Airport. These activities were not authorized by the city and county of San Francisco.
5. The Superior Court of San Mateo County enjoined further solicitation by applicant (and others). Applicant disregarded the restraining order and continued solicitation, was apprehended, found in contempt, and fined. He responded only when a bench warrant was issued.
6. Applicant by these actions has not demonstrated that he possesses the requisite "reasonable fitness" under Section 5374.
7. Existing contractually authorized limousine service at the airport is adequate.

8. It is not in the public interest to grant the application.

Conclusion

The application to renew should be denied.

O R D E R

IT IS ORDERED that applicant's renewal request be denied, and the interim authority granted by Resolution PE-265 be terminated.

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

Dated at San Francisco, California, this 5th
day of AUGUST, 1975.

President
William J. Harrison
Vernon L. Stinson
Commissioners

Commissioner D. W. Holmes, being necessarily absent, did not participate in the disposition of this proceeding.