

Decision No. 84864**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application  
of STUART ALAN MESSNICK, dba THE  
CO-ORDINATORS, for a certificate  
of public convenience and necessity  
to operate a sightseeing tour  
service between Buena Park,  
California and San Ysidro, California.

Application No. 54963  
(Filed June 13, 1974)

ORDER DENYING PETITION TO REOPEN

Decision No. 84186 dated March 11, 1975 awarded Stuart Alan Messnick (Messnick), doing business as The Co-Ordinators, a certificate of public convenience and necessity to operate a one-day round-trip passenger bus route between certain locations in Buena Park and Anaheim on the one hand, and a location in San Ysidro near the Mexican border on the other hand. The service is intended primarily to provide tour service to Tijuana. Rehearing of this decision was denied (Decision No. 84411, dated May 6, 1975), and on August 6 the California Supreme Court denied a petition for a writ of review filed by Greyhound Lines, Incorporated, Western Division (Greyhound). Greyhound was a protestant to the application, and had also filed Case No. 9781, a complaint against Messnick, alleging that he operated an unlawful route without having a certificate. Decision No. 84186 disposed of the issues in Case No. 9781.

On July 28, 1975 Greyhound filed a petition to reopen this proceeding. Although the caption of the petition to reopen indicates both the complaint and the application, the allegations in it, discussed hereafter, are entirely directed to the applicant's fitness to maintain the route. Therefore, we will consider the pleading filed by Greyhound to be directed to Application No. 54963 only.

The substance of the petition is that newly discovered evidence calls into question certain parts of Messnick's testimony and therefore raises questions about Messnick's fitness to operate the route. The petition requests that Decision No. 84186 be stayed.

During the hearing Messnick had introduced certain exhibits concerning his headquarters office known as "The Box Office". Messnick's testimony indicated that the air-conditioned room shown in a photograph was for the use of his customers. Messnick's testimony also at least implied that he had the right to use the immediate outside area for the purpose of loading and unloading passengers.

An affidavit filed with the petition to reopen disputes this testimony. The affiant is Earl Garr, the operator of the Saga Motor Hotel located at 1650 South Harbor Boulevard, Anaheim. The affidavit indicates that Garr leases certain space to Messnick but that this is restricted to an office on the outside of the motor hotel with one counter and an upstairs office, and does not include the lounge and the patio area which Messnick had indicated was for the use of the passengers. The affidavit also says that Messnick without any authority from Garr is using certain areas marked "no parking" for his buses. ✓

A stay would, of course, have the effect of revoking Messnick's certificate and discontinuing his service without taking any evidence. The public would be without the service awarded in Decision No. 84186 until new hearings could be held and until the issuance of a new decision. Such a drastic step should be taken only in the most serious and clear-cut case of injury to the public or to protestants in Greyhound's position.

We do not believe that the recitations in either the petition or the accompanying affidavit demonstrate the type of case warranting a stay. Decision No. 84186 found that there was clear evidence of public need and that the public strongly preferred

Messnick's service to certain other service offered by Greyhound which we regarded, and still regard as basically add-on service to Greyhound's San Diego-to-San Ysidro tour route. Greyhound's service, insofar as it offered one-day non-stop tour service from the Buena Park-Anaheim area to the San Ysidro border area near Tijuana, was, for the reasons stated in that decision, found to be inadequate. Under the circumstances, it would be completely inappropriate for the Commission to issue a stay which would deprive the public of the service awarded.

This is particularly true since the matter of Messnick's use of various areas of the Saga Motor Hotel is the subject of litigation between Garr and Messnick. Messnick, on July 31, 1975 filed a pleading and supporting papers before us opposing any stay or reopening, showing that Garr and others had been preliminarily enjoined from doing certain acts which would interfere with Messnick's use of the premises, and that Garr and others had later been found in contempt of court for violating certain provisions of the preliminary injunction. For us to determine that a stay should issue would be to decide, for our own purposes, that Messnick has no valid defense to Garr's claims.

Regarding whether, without issuing any stay, we should reopen this proceeding, we again conclude that the answer is in the negative.

Commission Rule 84 governs reopening and requires that a petition to set aside the submission of a case be filed before the issuance of a decision. The present petition was filed over four months after the decision was issued.

But even if we were to ignore this requirement and determine the matter under Section 1708, fairness would dictate that reopening is inappropriate at this time.

First, the correspondence file in this application places in question whether either (1) the dispute between Garr and Messnick arose after our decision, or (2) Garr, being aware of the proceeding before us, chose not to present evidence. Garr did not appear at the hearings, but wrote a letter to the Commission dated February 5, 1975 over a month before Decision No. 84186 was issued, containing none of the information in his above-discussed affidavit. The body of the letter reads, in entirety:

"I am the operator of the motel in which Stuart Alan Messnick A.K.A. Stuart Alan, Dorothy Messnick, The Box Office and the Coordinators maintain their premises.

"I have been talking to Mr. John deBrouwere who said you are the person to contact concerning the cases with these principals. The case numbers are #54963 and #9781. May I please have any information as to the outcome of this hearing."

Garr wrote a subsequent letter asking for copies of some of the exhibits.

But most importantly, reopening the proceeding at this time would not enable us to make any determination concerning the merits of the petition, and therefore the need for any possible modification of Messnick's route, (which would seem to be the most drastic remedy called for) since the issues concerning the use of the Saga Motor Hotel premises have not been determined by the appropriate court, in the pending litigation between Garr and Messnick.

We therefore conclude that a stay should be denied, and the petition to reopen should also be denied.

IT IS ORDERED that:

1. The petition for a stay of Decision No. 84186 is denied.
2. The petition to reopen Application No. 54963 is denied.
3. The Secretary of the Commission shall serve a copy of this decision by mail upon Earl Garr, Saga Motor Hotel, 1650 South Harbor Boulevard, Anaheim, California. ✓

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 3rd day of SEPTEMBER, 1975.

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President  
  
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Commissioners