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Decision No. 85140

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

THE GRAY LINE, INC., a California Corporation,

Complainant,

v.

TOURS/SAN FRANCISCO, a Partnership, Ronald J. Ratti, Donald L. Fassett and James D. Kavanaugh,

Defendants.

Case No. 9993
(Filed October 17, 1975)

CEASE AND DESIST ORDER

Complainant passenger stage corporation, engaged in providing round-trip sightseeing tours and other transportation pursuant to authority granted by this Commission in Appendix A to Decision No. 66165 dated October 15, 1963 in Application No. 45707, as amended, alleges that defendants Tours/San Francisco, a partnership comprised of defendants Ronald J. Ratti, Donald L. Fassett, and James D. Kavanaugh, at present holding no operating authority from this Commission to offer or provide passenger stage service, are holding themselves out to provide, and in fact do provide, passenger stage transportation for the general public between San Francisco and Muir Woods and return, all in violation of Public Utilities Code Section 1031.[1/]

1/ Which provides in relevant part:

"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, ..."

Complainant further alleges that defendants are causing permanent and irreparable injury to complainant's goodwill and trade reputation and its ability to enjoy business generated by word-of-mouth advertising, by misleading, disparaging, and derogatory remarks made to third persons about complainant's business.

Defendants filed Application No. 55877 dated August 20, 1975 requesting a certificate of public convenience and necessity to operate a passenger stage service for sightseers between the downtown Airlines Terminal in San Francisco and various Bay Area points. This application has been extensively protested. Public hearing on the application initially was set for October 27, 1975, but was reset for December 16, 1975 at the specific request of defendant partner Donald L. Fassett.

Complainant seeks a cease and desist order from this Commission:

(1) Prohibiting defendants from offering and providing passenger stage service except pursuant to authority issued by this Commission, and

(2) Prohibiting defendants from making disparaging and derogatory remarks about complainant's business operations.

Based upon the allegations and verified statements of the complainant, and noting its authority under Public Utilities Code Section 1034,[2/] the Commission finds good cause exists for issuance

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2/ "When a complaint has been filed with the commission alleging that any passenger stage is being operated without a certificate of public convenience and necessity, contrary to or in violation of the provisions of this part, the commission may, with or without notice, make its order requiring the corporation or person operating or managing such passenger stage, to cease and desist from such operation, until the commission makes and files its decision on the complaint, or until further order of the commission."

of the relief requested as to the alleged offering and providing of uncertificated passenger stage services. As to the other relief sought, it is questionable that the Commission has jurisdiction to directly prohibit or control questionable business practices such as defendants' alleged indulgence in trade disparagement. We need not, however, decide on this point in these proceedings, because, assuming the Commission has jurisdiction, we find no compelling need and decline to exercise it herein. We believe that issuance of a cease and desist order under Section 1034 will serve to alleviate the latter problem as well. Accordingly, we conclude that we will issue and limit our order to the relief authorized under Section 1034.

IT IS ORDERED that defendants Tours/San Francisco, and each of them, pending resolution of defendants' Application No. 55877 and/or hearing on December 16, 1975, shall cease and desist from offering and providing passenger stage service over the public highways of the State of California except pursuant to certification by this Commission. Case No. 9993 is hereby consolidated with Application No. 55877 and is set for further proceedings on December 16, 1975 in San Francisco.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 18th day of NOVEMBER, 1975.

President

Commissioners