

Decision No. 86046

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ORANGE COAST SIGHTSEEING
COMPANY, a California cor-
poration,

Complainant,

vs.

LEIGH ZAREMBA dba CONVEN-
TION TRANSPORTATION
SERVICES,Defendant.
(Amended Title)Case No. 9385
(Filed May 31, 1972;
amended February 1, 1973)James H. Lyons, Attorney at Law,
for complainant.Stewart R. Suchman, Attorney at Law,
for defendant.David P. Christianson, Attorney at
Law, for The Gray Line Tours
Company, intervenor.Stuart Alan Messnick, dba The Coordinators,
interested party.John deBrauwere, for the Commission
staff.CONTEMPT PROCEEDINGO P I N I O N

By complaint filed on May 31, 1972, as amended by a supplemental complaint filed on February 1, 1973, complainant Orange Coast Sightseeing Company (Orange Coast) alleged that defendant Leigh Zarembo (Zarembo), doing business as Convention Transportation Services, was engaged in operations as a passenger stage

corporation under Section 1031 of the Public Utilities Code without holding appropriate authority from this Commission. Complainant further alleged that defendant proposed to continue such unlawful activities unless enjoined by this Commission. Complainant sought issuance of a cease and desist order prohibiting defendant from continuing such course of conduct and for the imposition of sanctions. The Gray Line Tours Company (Gray Line) intervened in support of complainant.

On July 3, 1973, the Commission, after hearing and stipulation of the parties, issued Decision No. 81570, which ordered that:

"IT IS ORDERED that until defendant holds appropriate authority from this Commission under Section 1031 of the Public Utilities Code, defendant, either directly or through the guise of acting as a tour director for a convention or other organized groups, is hereby ordered to cease and desist from providing or offering per capita transportation in the form of sightseeing tours or per capita transportation to points served by Orange Coast Sightseeing Company and/or The Gray Line Tours Company to the general public or a segment thereof, such as members of a convention or other groups, under circumstances where the risk of profit or loss on such transportation is assumed wholly or in part by the defendant."

On June 11, 1976, Orange Coast and Gray Line filed a Declaration Initiating Contempt Proceedings and Petition for Order to Show Cause (Declaration), which alleged that Zarembo was violating the cease and desist order contained in Decision No. 81570. An Order to Show Cause was duly issued on June 11, 1976. A hearing on the Order to Show Cause was held before Examiner Banks in Los Angeles on June 18, 1976, and the matter was submitted.

The issue presented is whether Zarembo is in violation of Decision No. 81570 by acting as a tour director under the fictitious firm names of Omnisphere Travel and Omnisphere International.

The record is uncontroverted that Zaremba operates under several fictitious names, including Omnisphere Travel and Omnisphere International.

At the hearing it was revealed that, as early as August 1975, Zaremba began soliciting per capita sightseeing business at a conference of square dance participants in San Diego, California, in anticipation of the 25th National Square Dance Convention to be held June 22, 1976, in Anaheim, California. On April 25, 1976, Zaremba entered into a written arrangement (Exhibit 5) with a nonprofit corporation entitled 25th National Square Dance Convention, Inc. (Convention or NSDC) which he had been negotiating for a period of two years or more, under the terms of which Zaremba undertook the performance of certain functions related to the performance of passenger transportation. Included in the contract is the performance of a local sightseeing tour program. Tickets for the tours are sold to convention attendees on a per capita basis. The contract provides that:

"All income from the sale of sightseeing tickets, whether pre-sold or sold on-site, will be deposited in the Convention's account. Bills relating to the sightseeing program will be sent to the Convention in care of Omnisphere's office, where they will first be audited. Omnisphere will then send an accurate accounts payable list to the Convention for payment from the sightseeing account, along with a complete report of tickets sold for the Convention's records. Omnisphere's management bill will amount to whatever funds remain in the sightseeing income account after all other bills and costs relating to the sightseeing program have been paid."

Attached to the Declaration as Appendix A was a copy of a brochure outlining specific sightseeing tours to be offered at the convention. Zarembo acknowledged on cross-examination that he aided the convention committee in preparing the brochures but insists he was only advising the committee.

In the course of his testimony Zarembo stated that his activities from the standpoint of provision of sightseeing service include (1) the provision of ticket booth manager, (2) the provision of bus dispatchers, (3) the arrangement for hiring of buses, (4) the provision of cost estimates to the Transportation Committee of NSDC to include an increment to cover Zarembo's anticipated profit, and (5) the enjoyment of all profits after payment of expenses.

Zarembo's operations are substantially similar to those in which he engaged prior to this Commission's order issued by Decision No. 81570 dated July 3, 1973. He admits that he provided a cost estimate to NSDC, which included a profit to him. Zarembo admits that he had knowledge of the Cease and Desist Order issued by this Commission, that he read the same, and that he discussed the same with his attorney. He does not deny that the operations proposed would include sightseeing tours to points served by Orange Coast and/or Gray Line. Although he contends that he is currently operating as a transportation manager, the description of Zarembo's activities reflects that of a tour director, and his testimony reflects that his operations are substantially similar to those conducted by him as a tour director prior to issuance of this Commission's Cease and Desist Order dated July 3, 1973. In addition, the contract with NSDC reflects that Zarembo's consideration consists of the profit from the sightseeing operation and that, at least with regard to Omnisphere Travel, Zarembo assumes the entire loss on the portions of the sightseeing operations conducted under that fictitious business name.

Compliance with Decision No. 81570 can be had only by Zaremba ceasing to provide or offer per capita transportation in the form of sightseeing tours or per capita transportation to points served by Orange Coast and/or Gray Line to the general public or a segment thereof, such as members of a convention or other groups, under circumstances where the risk of profit or loss on such transportation is assumed wholly or in part by Zaremba.

It is abundantly clear that Zaremba is operating as a tour director for a convention in violation of Decision No. 81570 and is therefore in contempt of the Commission.

Findings of Fact

1. On July 3, 1973, the Commission entered Decision No. 81570. The order provides that:

"IT IS ORDERED that until defendant holds appropriate authority from this Commission under Section 1031 of the Public Utilities Code, defendant, either directly or through the guise of acting as a tour director for a convention or other organized groups, is hereby ordered to cease and desist from providing or offering per capita transportation in the form of sightseeing tours or per capita transportation to points served by Orange Coast Sightseeing Company and/or The Gray Line Tours Company to the general public or a segment thereof, such as members of a convention or other groups, under circumstances where the risk of profit or loss on such transportation is assumed wholly or in part by the defendant."

2. Zaremba acknowledged receipt of the Commission's order and reviewed same with counsel.

3. On June 11, 1976, a declaration was filed with the Commission alleging that Zaremba, after being served with a copy of Decision No. 81570 and having the ability to comply therewith and while said decision remained in force and effect, knowingly and willingly failed and refused to obey said lawful decision and order of this Commission.

4. On June 11, 1976, the Commission duly issued its order directing Zaremba to appear before Examiner Burt E. Banks at 9:00 a.m. on the 18th day of June 1976, in the Courtroom of the Public Utilities Commission, State Building, Los Angeles, California, and then and there to show cause why he should not be adjudged to be in contempt and punished therefor in the manner prescribed by law.

5. Zaremba was personally served and on June 18, 1976 appeared with counsel in response to said Order to Show Cause.

6. On April 25, 1976, Zaremba entered into a contract to provide sightseeing service to members of the NSDC convention, to points served by Orange Coast and/or Gray Line to a segment of the general public under circumstances wherein the entire risk of profit on such transportation was assumed wholly by Zaremba.

7. Zaremba had notice of Decision No. 81570 and the order therein and had the ability to comply therewith. While the said decision and order remained in force and effect, Zaremba knowingly and willfully failed to obey and comply with said decision and order in that on April 25, 1976 the agreement that he entered was an offer to act as a tour director to provide per capita transportation in the form of sightseeing tours to points served by Orange Coast and/or Gray Line to a segment of the general public under circumstances where the risk of profit or loss on such transportation was wholly or in part assumed by Zaremba.

8. Each day of operation at the NSDC convention constitutes a separate contempt of the Commission.

Conclusions of Law

1. Zaremba is in contempt of Decision No. 81570.
2. Zaremba should be punished for contempt for willfully disobeying the terms of Decision No. 81570.
3. Zaremba should be fined \$500 for contempt.

4. To discourage further contempts our order will be made effective the date of signing.

O R D E R

IT IS ORDERED that Leigh Zaremba is guilty of contempt of the Commission and shall be punished by the payment of a fine in the sum of \$500 payable to the Executive Director of the Commission on or before July 1, 1976.

The Executive Director is directed to cause personal service of this order on Leigh Zaremba.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 29th day of JUNE, 1976.

William L. Grooms President
James L. Stinson
~~James L. Stinson~~ L. K. Koon
Robert B. Buehner Commissioners

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