

ORIGINAL

Decision No. 86262

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

STUART ALAN MESSNICK, dba
THE CO-ORDINATORS, a California
passenger stage corporation,

Complainant,

vs.

HOLIDAY TOURS, INC., a corporation,

Defendant.

Case No. 10078
(Filed April 12, 1976)

Stuart Alan Messnick, for himself,
complainant.

Silver, Rosen, Fischer & Stecher, by
John Paul Fischer, Attorney at Law,
for defendant.

Knapp, Stevens, Grossman & Marsh by
Warren N. Grossman, Attorney at Law,
for Gray Lines Tour Company; D. W.
Boyles, for Airport Service, Inc.
and Orange Coast Sightseeing Co.;
Intervenors.

John deBrauwere, for the Commission
staff.

O P I N I O N

The complainant (Messnick) avers that Holiday Tours, Inc. (Holiday), a California corporation, holds itself out to provide, and does provide passenger stage transportation on an individual fare basis between Buena Park and San Ysidro (essentially the

Mexican border), among other routes, while holding no authority for passenger stage corporation service from this Commission, in violation of Section 1031 of the Public Utilities Code.^{1/} Section 1031, as far as pertinent, provides:

"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 this commission a certificate declaring that public convenience and necessity require such operation, ..."

Holiday admits it holds no certification of any kind from this Commission. Messnick holds passenger stage certification from, generally, the Orange County area to San Ysidro.^{2/} Holiday is alleged to be operating unlawfully in direct competition with Messnick. Messnick advised Holiday of its alleged unlawful activities, which advice was ignored by Holiday.

Messnick also avers that Holiday is in violation of Section 5402 and Penal Code Section 654.1. Since these alleged violations are not pertinent to our decision in this matter, we shall not further consider them.

Pursuant to the complaint and the affidavits and exhibits attached thereto, we issued D.85700 dated April 16, 1976 where we ordered Holiday to cease and desist from conducting operations as a passenger stage corporation, and cease and desist from holding itself out to provide passenger stage service. That decision also

1/ All references to section numbers shall be to the Public Utilities Code, unless otherwise specified.

2/ D.84186 dated March 11, 1975 in A.54963.

noticed a hearing to inquire into whether the cease and desist order should be continued or terminated. That hearing was held before Examiner Phillip E. Blecher in Los Angeles on April 30, 1976.

At the hearing Messnick and Holiday advised the Commission that they had entered into a stipulation to have a permanent cease and desist order entered against Holiday prohibiting Holiday from originating tours in Orange County with stops and/or destinations in and around Tijuana and any other route similar to that of Messnick, without first obtaining a certificate of public convenience and necessity as a passenger stage corporation from this Commission. Holiday also represented that it would not unlawfully operate as a passenger stage corporation in the future.

At the hearing Gray Line Tours Company, Airport Service, Inc., and Orange Coast Sightseeing Co. appeared as intervenors. The intervenors are all duly certificated operators. They stated that the permanent cease and desist order stipulated by the original parties should be extended to their routes, as the complaint and exhibits attached thereto indicate Holiday was unlawfully operating on their respective routes. Since the purpose of the hearing was to inquire into the continued viability of the existing cease and desist order issued in Decision No. 85700 and for other procedural reasons, their request was properly denied.

Holiday, although given the opportunity, did not present any evidence.

Messnick's uncontroverted complaint and affidavit and exhibits attached thereto specifically and voluminously document two clear violations of Section 1031 on March 31, 1976.^{3/}

^{3/} Two buses operated without certification on that day.

Findings

1. Messnick is a certificated passenger stage corporation operating between Orange County, generally, and the Mexican border.
2. Holiday has no operating authority or certification of any kind from this Commission.
3. On March 31, 1976 Holiday operated two buses in direct competition with Messnick. On that day Holiday transported persons on an individual fare basis between Buena Park, California, and San Ysidro, California.
4. Holiday's two bus operations on March 31, 1976 constituted two unlawful operations in violation of Section 1031.
5. Holiday represents that it will not, in the future, unlawfully operate as a passenger stage corporation.
6. Holiday and Messnick have stipulated to the entry of a permanent cease and desist order prohibiting Holiday from operating in competition with Messnick without first obtaining a certificate of public convenience and necessity as a passenger stage corporation from this Commission.
7. Holiday failed to comply with Section 1031.
8. Holiday knowingly violated Section 1031.
9. Holiday is not a public utility within the meaning of Section 216.

Conclusion

1. A permanent cease and desist order prohibiting Holiday from operating without certification in competition with Messnick should be issued. ✓
2. Decision No. 85700 dated April 16, 1976 should be rescinded and a new cease and desist order should be imposed. ✓

O R D E R

IT IS ORDERED that:

1. Holiday Tours, Inc., a California corporation, is permanently prohibited from operating as a passenger stage corporation in ✓

violation of Code Section 1031, over any route the same as, or similar to, the routes of Stuart Alan Messnick, doing business as the Coordinators, without prior Commission authorization.

2. Decision No. 85700 dated April 16, 1976 is hereby rescinded.

3. All other requests for relief are denied.

4. The Executive Director of the Commission is directed to cause personal service of this order to be made upon Holiday Tours, Inc.

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

Dated at San Francisco, California, this 17th day of AUGUST, 1976. ✓

William Spurgeon
President
V. L. Sturgeon
Robert Bateman
Commissioners

Commissioner Vernon L. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.