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Decision April 18, 1984

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

GOLDEN STATE LIMOUSINE, INC.,

Complainant,

vs

AIRPORT CONNECTION CORPORATION/
AIRPORT LIMOUSINE SERVICE OF
SUNNYVALE, INC..

Defendants.

Case 82-11-03
(Filed November 15, 1982)

James S. Clapp, Attorney at Law, for
Golden State Limousine, Inc.,
complainant.

Peter Kerman, Attorney at Law, and
Clifford Orloff, for Airport Connection
Corporation and Airport Limousine Service
of Sunnyvale, Inc., defendants.

Phillip Scott Weismehl, Attorney at Law,
R. E. Douglas, R. O. Collins, and
George Zaback Jr., for the Commission
staff.

O P I N I O N

By this complaint, Golden State Limousine, Inc.
(complainant) requests the Commission (1) Find that Airport
Connection Corporation (ACC) and Airport Limousine Service of
Sunnyvale, Inc. (ALSS) (defendants) violated specific sections of the
Public Utilities (PU) Code, the Commission's Rules of Practice and
Procedure, Commission orders; (2) revoke Passenger Stage Certificate
PSC-899 issued to ALSS; and (3) order defendants to cease and desist
from performing passenger stage operations.

Complainant is authorized to provide passenger stage shuttle services between points in Alameda, San Mateo, and Santa Clara Counties on the one hand and Oakland, San Francisco, and San Jose Airports on the other hand. Complainant operates under Passenger Stage Certificate PSC-978.

ALSS is a wholly owned subsidiary of ACC providing door-to-door limousine service between points in Alameda, San Mateo, and Santa Clara Counties on the one hand, and Oakland, San Francisco, and San Jose Airports on the other hand. ALSS operates under Certificate PSC-899 granted by Decision (D.) 93207 dated June 16, 1981. Clifford S. Orloff (Orloff) is the principal owner of ACC and president of ALSS.

Complaint

The complaint alleges that D.93207 dated June 16, 1981 authorized ACC to acquire all outstanding shares of ALSS and for Jake Sellers to transfer control of ALSS to ACC. Ordering paragraph 4 of that decision required ACC to notify the Commission within 90 days that the transfer of control had been consummated. The complaint states that ACC and its president Orloff assumed physical control of ALSS but waited until February 1, 1982 to advise the Commission that the transfer was consummated. The complaint states that a fleet operator service contract¹ dated July 1, 1981 between ACC and ALSS was not approved by the Commission and thus has no force or effect, nor does a supplemental agreement dated June 29, 1981 vest control and management of ALSS in ACC.

The complaint further states that on July 1, 1981 Orloff, as president of ACC, increased ALSS rates without Commission approval.

¹ The contract provided for ALSS to provide transportation services for ACC as needed.

The complaint alleges that by declaring ALSS bankrupt² defendants have avoided repayment of any overcharges collected for fares deemed to be unauthorized.

Finally the complaint states that by defendants' acts and omissions, complainants and the general public have sustained damages and loss of public confidence which will require years to repair.

Complainant prays that the Commission find respondents in contempt of the Commission's orders, and that respondents' activities are contrary to statute, rules and regulations. Complaint requests that respondents be ordered to cease and desist performing passenger stage operations and that Certificate PSC-899 be revoked.

Answer

Defendant's answer states that transfer and control of ALSS occurred July 1, 1981 and that notwithstanding the February 1, 1982 notification, all conditions of D.93207 have been fully met.

Regarding the sale, the answer states:

"A dispute between Mr. Sellers and ACC over the ownership of ALSS securities is currently the subject of extensive and complex litigation pending in Federal court as part of the ALSS Bankruptcy proceedings, and a decision favorable to Respondents is expected within the next 60 days. As this allegation is already being decided by another jurisdiction, it does not seem appropriate that this allegation be treated as a Complaint until pending litigation is completed."

Respondent states that the fares charged by ALSS are now and always have been the effective fares on file with the Commission.

² On February 19, 1982, Orloff, as president of ALSS filed in Federal Bankruptcy Court under Chapter 11, a proceeding entitled Bankruptcy re Airport Limousine Service of Sunnyvale, Inc. No. 3-82-00207 LK, and on July 7, 1982 filed a pleading to include Airport Connection Corporation. On May 17, 1982 Jake Sellers filed personal bankruptcy, Chapter 7, No. 582-01788A listing ALSS as his personal asset.

The answer denies that ALSS intends to conduct continuing and future operations in violation of Commission rules and regulations and that complainant's argument concerning the ALSS bankruptcy is without merit.

Finally defendant states that complainant's request to revoke Certificate PSC-899 is an easy way to eliminate a competitor and thereby double complainant's volume and is not necessarily in the public interest.

The defendant requests that the complaint be dismissed arguing it is without substance or merit and is designed to harass a competitor during a difficult ownership transition and corporate turnaround.

Hearing

Hearing was held June 1, 1983 in San Francisco. At the June 1, 1983 hearing Orloff requested the opportunity to engage counsel and the matter was then continued to a date to be set. Further hearings were held July 19 and 20, 1983 in San Francisco at which time the matter was submitted.

At the July 19, 1983 hearing, counsel for defendant objected to proceeding with the hearing. He stated that both defendant companies are currently under the protection of Chapter 11 of the Federal Bankruptcy Act which invokes an automatic stay in this proceeding against defendants. Counsel stated that the Commission and all parties had been cautioned by the attorney for the Trustee in Bankruptcy for Jake Sellers against proceeding with this complaint pending outcome of the bankruptcy proceedings but that the objection was withdrawn when the trustee no longer sought title to ALSS.

Witnesses for the complainant were Janet Thurston, a shareholder of ACC and former manager of Public Services Planning and Analyses (PSPA), an Orloff-owned company; Chuck Coker, an independent charter-party owner-operator; and Brian Willson, a former employee of ALSS and ACC.

Thurston stated that PSPA did not begin its Peninsula service in July of 1981 although authorized to start service in September 1980, and that when Sellers offered to sell ALSS to Orloff all operations were "put on hold". She stated that after an August 17, 1981 ALSS tariff filing was made, fares were increased and a new service added. She added she understood the August 1981 tariff filing was made by a new method to cover emergencies.

Coker, subpoenaed by complainant, testified he worked as an owner-operator, beginning in 1972 and received his charter-party certificate in 1980. He stated he now performs charter service for ALSS providing door-to-door service using ACC's published fares. On cross-examination he admitted he had filed a complaint against Orloff with the National Labor Relations Board (NLRB) over various requirements Orloff had imposed on his drivers.

Willson testified that he had been engaged in limousine service for over 16 years having worked for ALSS and/or ACC for 12 years as a driver, dispatcher, or shift supervisor. He stated that during his ALSS and ACC employment the Economy Doorside Service (EDS) was not marketed nor were there any calls for such service. Instructions were given employees that any request for EDS service was to be referred to Orloff. On cross-examination Willson stated both he and his wife had worked for ALSS but because of differences with Orloff they left in early 1983.

Testifying for the Commission's staff was George Zaback. He stated he was given an assignment to investigate the general nature of limousine operations at the San Francisco International Airport (SFO) with emphasis on the licensing status of those operating to and from the airport. He stated the majority of the limousine vehicles operating out of SFO were in compliance with the Commission's rules and regulations and that enforcement action had been taken against several nonlicensed operators. He stated that on June 8, 1983 he spoke to Mr. Todaro of ACC and was assured that all

of their owner-operators who did not have the proper operating authority would immediately acquire proper authority. The following day the Commission began receiving applications for charter-party authority. He stated he believed all of those working for respondent Orloff have made application for operating authority. The staff made no specific recommendation regarding this complaint.

Having been subpoenaed by complainant, Ellen Isaacs of the Commission's Transportation Division also testified. On examination by complainant's counsel Isaacs stated she had many conversations with Orloff beginning in the middle of 1981. She stated that she explained to Orloff how tariffs must be filed and what they must contain. She stated that on August 17, 1981 Orloff filed a tariff which was "tentatively accepted" and that prior to this filing Orloff had adopted the ALSS tariff on file at the time of transfer of ownership. She stated that she had several conversations with Orloff regarding the acceptance of the transfer of ALSS and the continuation of existing service and explained that a new tariff must be filed and accepted before offering a new service. With regard to respondents' promotional fares and whether there was a conversation regarding the length of time promotional fares could be offered, she stated she may have had such a discussion with Orloff but she did not remember specifically.

Discussion

Physical possession of ALSS was accomplished by Orloff on July 1, 1981, but notice was not given the Commission until February 1, 1982. While not condoning such dilatory action we recognize that consummation of ownership has been complicated by the civil contractual controversy between Orloff and Sellers plus the subsequent bankruptcy filings. In recognizing the unusual circumstances herein and the complications encountered by defendant, we would point out that such problems are not grounds for noncompliance with Commission orders or adherence to the PU Code. We

also note that our staff did not initiate informal nor recommend formal action to assure compliance with D.93207, nor any action with respect to the delay in compliance by Orloff.

The record shows that both prior and subsequent to the authorized takeover date, Orloff had discussions with various members of the staff in an attempt to resolve the many problems relative to the transfer and operation of ALSS.

As to the issue of illegal operations, the staff Compliance and Enforcement witness testified that the majority of the limousine vehicles operating out of SFO are properly certificated. He also testified that he believed that the owner-operators employed by ALSS and/or ACC either had, or had applied for, valid operating authority. Complainant produced no substantive evidence on this issue.

Regarding the allegations in the complaint of overcharges and that defendant's actions caused complainant and the general public damages and loss of public confidence, no evidence or testimony was adduced and this requires no comment.

With respect to the allegation that defendant increased fares without Commission approval, we note that the staff witness, testifying under subpoena by complainant, stated that Orloff has been in constant contact with the staff in an attempt to comply with Commission's tariff filings and operational requirements. The evidence is not conclusive that fares were increased and implemented. We cannot determine from this record whether defendant violated its tariffs, as no specific incident was cited. While referring to tariff filings, we note that tariffs are not and cannot be "tentatively" accepted as testified to by the staff witness.

In addition to the pending bankruptcy proceedings, in an attempt to clarify operations, on July 6, 1983, PSPA, dba ACC, and ALSS filed A.83-07-08 requesting that PSPA's Certificate PSC-1009 be

suspended and all service be provided under ALSS Certificate PSC-899. The application states that approval would eliminate any overlapping service now provided.

Further, on May 26, 1983, TPMC, Inc. of which Orloff is president and owner of a 36% interest, filed A.83-05-63 seeking a certificate to provide passenger service between points in the Counties of Santa Clara, Alameda, Contra Costa, and San Mateo, on the one hand, and SFO, on the other hand, using on-call radio dispatched 10-14 passenger mini-vans. These proceedings, to determine the sphere of operations for Orloff and his affiliates, were protested and hearing has been held. A decision is pending.

While some of Orloff's and/or defendant's actions raise serious questions, as noted above corrective action such as contact with the Commission staff, applications for operating authority by independent operators, and applications to consolidate overlapping operations, has been taken. While no punitive action will be imposed at this time, Orloff is placed on notice that any future unlawful operations will not be tolerated and any such operations will be severely dealt with. Orloff should take particular care to ensure that the operations performed do not exceed the scope of authority granted.

Findings of Fact

1. Complainant, Golden State Limousine, Inc., operates passenger stage shuttle service between points in Alameda, San Mateo, and Santa Clara Counties, and the San Francisco and San Jose Airports under Certificate PSC-987.

2. Defendant ALSS is a wholly owned subsidiary of ACC providing passenger service between points in Alameda, San Mateo, and Santa Clara Counties, and the Oakland, San Francisco, and San Jose Airports under Certificate PSC-899.

3. D.93207 dated June 16, 1981 authorized ACC to acquire the outstanding shares of ALSS. and Jake Sellers to transfer control to ACC.

4. Clifford S. Orloff is the owner of ACC and president of ALSS.

5. D.93207 required ACC to notify the Commission within 90 days from the effective date of the order that transfer of control of ALSS had been consummated.

6. Orloff and ACC assumed control of ALSS on July 1, 1981. Orloff notified the Commission of the transfer of control of ALSS by letter dated February 2, 1982.

7. On February 19, 1982 Orloff, as president, filed for bankruptcy of ALSS and on July 7, 1982 filed to include ACC in the ALSS bankruptcy proceeding.

8. On May 17, 1982 Jake Sellers filed for personal bankruptcy listing ALSS as his personal asset.

9. The contested ownership of ALSS is being litigated in the Federal Bankruptcy Court. The federal bankruptcy proceeding has created unusual complications for the transfer of ALSS to ACC.

10. On February 5, 1982 ACC filed a notice adopting all tariffs of ALSS on file as of July 1, 1981, the date of takeover by ACC.

11. Orloff as representative of ALSS and ACC has been in constant contact with the Commission staff in an attempt to comply with Commission orders and the PU Code.

12. On July 6, 1983, PSPA, dba ACC, and ALSS filed A.83-07-08 to suspend operations under PSPA Certificate PSC-109 and provide that service under ALSS's Certificate PSC-899.

13. By A.83-05-63, TTMC Inc. seeks a Certificate of Public Convenience and Necessity to provide passenger service between points in the Counties of Santa Clara, Alameda, San Mateo, and Contra Costa, on the one hand, and the San Francisco International Airport, on the other hand. This application was protested. Orloff is the principal shareholder in TTMC, Inc.

14. Hearing in A.83-07-08 and A. 83-05-63 has been held to determine the sphere of Orloff's operations. A decision is pending.

Conclusions of Law

1. Orloff and defendants are attempting to comply with the Commission certification requirements and the PU Code.
2. The complaint should be dismissed.

O R D E R

IT IS ORDERED that the complaint by Golden State Limousine Inc. in Case 82-11-03 is dismissed.

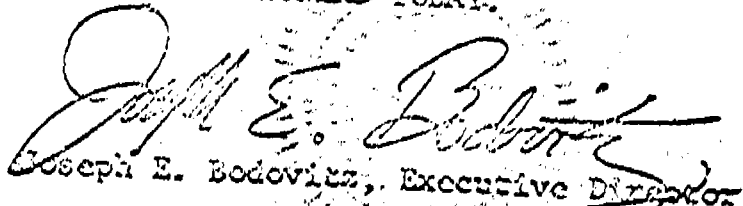
This order becomes effective 30 days from today.,

Dated APR 18 1984, at San Francisco, California.

LEONARD M. GRIMES, JR.
President

VICTOR CALVO
PRISCILLA C. CREW
DONALD VIAL
WILLIAM T. BAGLEY
Commissioners

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY.


Joseph E. Bodovitz, Executive Director

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