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ORIGINAL

Decision 88 03 084 MAR 23 1988

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Coast Yellow Cab Cooperative,  
Inc.,

Complainant,

vs.

Michael J. Perzo, dba Associated  
Transportation Service, aka  
Perzo & Dillulo, Inc., dba  
Associated Transportation  
Service, aka Yellow Cab Service,

Defendant.

Case No. 86-09-052  
(Filed September 26, 1986)

ORDER MODIFYING D.87-10-086 AND DENYING REHEARING

ASSOCIATED TRANSPORTATION SERVICE (ATS or Defendant) has filed an application for rehearing of Decision (D.) 87-10-086, which cancelled defendant's Charter-party carrier authority and, in addition, suspended his authority for a period of one year. COAST YELLOW CAB COOPERATIVE, INC., (Complainant) has filed a response to the application. On January 28, 1988, we extended the automatic stay in the matter but ordered defendant to cease operations for failure to have current operating authority. We have carefully considered all the arguments raised in the application and response and are of the opinion that sufficient grounds for granting rehearing have not been shown. We are, however, of the view that the decision should be modified in several respects.

Therefore, good cause appearing,

IT IS ORDERED that D.87-10-086 is modified as follows:

1. The first clause of the first sentence following "Evidence of Taxicab Operation" on page 2, is modified to read:

"The following facts developed on the record in this case tend to show that a taxicab-like operation is being conducted:"

2. The following paragraphs are inserted at the end of the section entitled "Defendant's Charter-party Record" on page 9, immediately preceding "Authorities Cited":

" We quote further from the staff's report submitted at the hearing on February 24, 1987 (Exhibit 10):

TCP 710-B FILE HISTORY:

A Class "B" charter-party carrier of passengers certificate (TCP 710-B) was issued June 7, 1985, to Michael Perzo, doing business as Associated Transportation Services, of Santa Ana, California. Mr. Perzo had filed for charter-party certification on March 15, 1985. Upon receipt of a notice of cancellation of liability insurance, on November 10, 1985, TCP 710-B was suspended. Re-instatement followed receipt of evidence of liability insurance protection on February 25, 1986[1]. A renewal application was sent to Mr. Perzo March 3, 1986, followed by a second renewal notice on May 6, 1986. A renewal application was received by Service and Cost Branch - San Francisco on June 9th, in the name of Perzo and Dilullo, Inc., doing business as Associated Transportation Service. An application filed June 27, 1986, requested transfer of 710-B from Mr. Perzo to Perzo and Dilullo, Inc. As late as November 1986 this pending application remained deficient in that evidence of liability insurance protection on file remained in the name of Mr. Perzo, and did not list Perzo and Dilullo, Inc., as the insured.

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1 A non-standard filing of reinstatement was accepted under special circumstances. See pages 7 and 8 for discussion.

On November 13, 1986, Transportation Division recommended that the applications for renewal and transfer of TCP 710-B be consolidated with C 86-09-052. On December 19, 1986, ALJ O. I. Wright ruled in prehearing conference that the status of 710-B should remain unchanged until the hearing in February.

Service and Cost Branch - San Francisco received on December 10, 1986, a notice of insurance cancellation effective January 18, 1987. On that date a notice of suspension due to lack of insurance was sent to Mr. Perzo. On February 2nd evidence representing a new policy, effective January 28, 1987, was received in San Francisco. This policy lists Mr. Perzo as the insured.

We are persuaded from this evidence that defendant's Class "B" Charter-party carrier of passengers certificate (TCP 710-B), issued June 7, 1985, expired June 7, 1986, and that defendant has been operating thereafter without authority of the Commission."

3. The second sentence in the first full paragraph on page 10, is modified to read:

" We held that Charter-party permit holders who engaged in driving an uninsured vehicle, leasing a vehicle on a daily basis to a driver holding no operating authority from the Commission, advertising in the taxicabs section of Pacific Telephone's yellow pages, offering to immediately dispatch vehicles to pick up callers, not issuing telephone disclaimers on providing taxicab service, and operating vehicles painted to resemble taxicabs, should have their permits revoked."

4. The second sentence in the last full paragraph on page 10, is modified to read:

" Although the defendants in Affiliated Cab Drivers, supra, committed certain illegal acts in violation of their Charter-party permits (e.g., providing illegal for-hire services), their permits were not revoked.

One defendant was an unsophisticated owner-operator of a small passenger vehicle used in providing separate for-hire service. Also, both the complainant and the Department of Transportation, City of Los Angeles were willing to allow defendants to operate so long as their permits contained conditions prohibiting taxicab service and so long as defendants complied with those conditions."

5. That portion commencing with the first sentence on page 11 continuing through to the last sentence on page 16, is deleted and inserted in its place is the following:

"ATS Position and Discussion

Although its owners admit that they operate a taxi-like service, ATS makes the technical contention that its taxi operations are lawfully permitted to a Charter-party carrier. ATS views the P.U. Code, local ordinances, and Commission decisions as inexact with respect to defining and regulating taxicab operations. It is contended that Charter-party operators should be permitted to do business as taxicabs until the legislature acts to provide a more precise definition of taxis.

The Commission is not persuaded by these arguments. Past precedents of the Commission have taken a position contrary to that asserted by ATS here. However, the Commission need not reach these issues because the evidence establishes other violations of statute and Commission orders with respect to Charter-party carrier authority unrelated to taxicab operations. Having determined that the extent of alleged taxicab operations need not be considered for purposes of granting or suspending any future application for Charter-party authority, the past taxicab operations admitted by it are nonetheless relevant to limitations which may be imposed within any future grant of authority for the Charter-party carriage of passengers. Because of the Commission's clear policy prohibiting all elements of service akin to taxicab operation, Charter-party permits may contain prohibitions against them. (Department of Transportation, City of Los Angeles v. Cosmo Sales and

Leasing, Inc. (1981) D.93406, August 4, 1981, C.10910.) These prohibitions shall be included in any future Commission grant of transportation authority to defendant.

Findings of Fact

1. Messrs. Perzo and Dilullo, owners of ATS, admit that they provide taxi-like service and the public may reasonably believe from reading ATS's advertisements that ATS renders a taxicab service.

2. DTS advertises in telephone directories, in prominent print on its vans, and in other media that a taxicab service is offered to the public.

3. ATS trip records were insufficient in that they often did not identify the name and address of the person requesting the charter and the date the request was made; often failed to identify who paid for the transportation and/or describe how payment was made; often failed to disclose how the charge was computed; often failed to detail the points of origin and destination; rarely indicated the total number of hours the driver was on duty and total driving time; failed to identify the driver and person in charge of the party; and, failed to list all stops with departure and arrival times, a description of any supplementary services performed, and the driver's remarks concerning the conduct of the charter and performance of the vehicle.

4. Until February of 1987, many of ATS's drivers were not under the complete supervision, direction and control of defendant but instead, were independent contractors.

5. On two occasions ATS continued to operate during periods when its liability insurance coverage had lapsed.

6. On two occasions ATS continued to operate after notice of suspension was given it by the Commission.

Conclusions of Law

1. ATS and its owners, Michael Perzo and Joseph Dilullo, hold themselves out as providing taxicab service and, in fact, perform taxi-like service in local jurisdictions that license taxicab operators.

2. ATS failed to comply with the record-keeping requirements of General Order 98-A, Part 13.

3. ATS failed to comply with the requirements of General Order 98-A, Part 12, in that its drivers were not at all times under the complete supervision, direction and control of ATS.

4. ATS failed to comply with the requirements of General Order 115-D by failing to maintain minimum liability insurance coverage at all times during operation.

5. ATS failed to comply with the requirements of Public Utilities Code §5379 by continuing to operate after receipt of notice of suspension from the Commission.

6. TCP 710-B expired June 7, 1986, and has not been renewed so that ATS has been operating unlawfully from that date without authority from the Commission.

7. In the event that Michael J. Perzo, Joseph Dilullo, and/or Perzo & Dillulo, Inc. obtain the required taxicab licenses in the municipalities they serve, they, or either of them, may apply for Charter-party authority incidental to taxicab operations.

8. In the event that Michael J. Perzo, Joseph Dilullo, and/or Perzo & Dillulo, Inc. do not obtain the required taxicab licenses in the municipalities they serve, they, or either of them, shall not receive any Commission authorized transportation authority for a period of three (3) months from the effective date of this order. If after three months from the effective date of this order, it appears to the satisfaction of representatives of the Transportation Division that defendant has removed from its vans and advertisements all taxicab markings, symbols, colors, or devices of any kind; that it no longer employs the words "Yellow", "taxi", "taxicab", and/or "cab", either on its vehicles or in its advertisements; that it no longer receives passenger solicitations from advertisements in telephone directories (e.g., yellow pages) using the words: "yellow", "taxi", "taxicab", and/or "cab"; that it will not charge individual fares as prohibited under Public Utilities Code section 5401; and, that it will comply with all relevant statutory provisions, General Orders, regulations and directions of the

Commission, defendant shall be permitted to file an application with the Commission's docket office for Charter-party carrier authority pursuant to Public Utilities Code §§ 5351 et seq."

O R D E R

IT IS ORDERED that:

1. In the event that Michael J. Perzo, Joseph Dilullo, and/or Perzo & Dilullo, Inc., obtain the required taxicab licenses in the municipalities they serve, they, or either of them, shall be permitted to file an application with the Commission's docket office for Charter-party authority incidental to taxicab operations.

2. Any application not incidental to properly licensed taxicab operations by Michael J. Perzo, Joseph Dilullo, and/or Perzo & Dilullo, Inc., for Charter-party carrier authority will be rejected for a period of three (3) months. If after three months from the effective date of this order, it appears to the satisfaction of representatives of the Transportation Division that defendant has removed from its vans and advertisements all taxicab markings, symbols, colors, or devices of any kind; that it no longer employs the words "Yellow", "taxi", "taxicab", and/or "cab", either on its vehicles or in its advertisements; that it no longer receives passenger solicitations from advertisements in telephone directories (e.g., yellow pages) using the words: "yellow", "taxi", "taxicab", and/or "cab"; that it will not charge individual fares as prohibited under Public Utilities Code section 5401; and, that it will comply with all relevant statutory provisions, General Orders, regulations and directions of the Commission, defendant shall be permitted to file an application with the Commission's docket office for Charter-party carrier authority pursuant to Public Utilities Code §§ 5351 et seq.

IT IS FURTHER ORDERED that rehearing of D.87-10-086 as modified herein is hereby denied.

This order is effective today.

Dated MAR 23 1988, at San Francisco, California.

STANLEY W. HULETT  
President

DONALD VIAL

FREDERICK R. DUDA

G. MITCHELL WILK

JOHN B. OHANIAN

Commissioners

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

*[Signature]*  
V. J. Wulfer, Executive Director



L/PSB/lmz

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ORDER

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