

Decision 90 07 027 JUL 6 1990**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's)
 own motion into the operations and)
 practices of Paul James Nave, an)
 individual, doing business as Nave's)
 Limousine Service.)

I.90-06-039
 (Filed June 20, 1990)

Lawrence Garcia, Attorney at Law, for the
 Transportation Division.

O P I N I O N

On June 20, 1990, this Commission issued an Order Instituting Investigation (OII) against Paul James Nave (Nave), an individual doing business as Nave's Limousine Service (NLS). Nave is the holder of a charter-party carrier permit under TCP 3617-P. In the OII, we also entered an order for Nave to appear at a public hearing before Administrative Law Judge (ALJ) Ann Watson on July 2, 1990 to show cause why his operating permit should not be revoked based on Nave's guilty pleas to felony charges of sales of narcotics and possession of a deadly weapon. Based on the record and the written request of the permit holder, the Commission revokes TCP 3617-P, effective immediately.

Discussion

Nave was first issued a charter-party carrier permit by this Commission on December 27, 1985. Nave's application for renewal was signed December 20, 1988 but filed dated January 3, 1989. The present permit, TCP 3617-P, was issued on July 11, 1989 and will expire on December 27, 1991. TCP 3617-P shows the terminal address for NLS at 351 Airport Road in the City of Novato and County of Marin.

On October 23, 1989, Information No. 11345 was returned against Nave and others in Superior Court of Marin County. The

information charged one count of sale or transportation of narcotics, cocaine, on July 20, 1990 in violation of California Health and Safety Code Section 11352 (Section 11352) and one count of sale or transportation of narcotics, cocaine, on July 24, 1989 in violation of Section 11352. These two felony charges were enhanced under Penal Code Section 12022.1 because Nave committed the felonies while released from custody on bail on a May 1989 felony narcotics and gun arrest and under Penal Code Section 1203.073(b)(1) due to the quantity of narcotics involved.

On November 29, 1989, Information No. 11387 was returned against Nave and others in Superior Court of Marin County. It charged one count of possession for sale of narcotics, cocaine, in violation of Health and Safety Code Section 11351; one count of sale or transportation of narcotics, cocaine, in violation of Section 11352; and one count of possession of a deadly weapon, a sawed-off shotgun, in violation of Penal Code Section 12020(a), all occurring on May 1, 1989. The two narcotics charges were enhanced under Penal Code Section 1203.073(b)(1) due to the quantity of narcotics involved. At the hearing, San Rafael Police Officer Brooks Blaskower, of the special crimes unit, testified the sawed-off shotgun had been found by the doorway inside the storage room in the NLS offices at 351 Airport Road. Officer Blaskower stated that the stock of the gun had been removed and replaced with a pistol grip. Both the gun's overall length and barrel length are illegal.

On April 3, 1990, Nave entered guilty pleas to all charges, including all enhancements. Nave was sentenced in late June, 1990 and is currently believed to be in San Quentin Prison (prison), located in Marin County, California.

On May 23, 1990, Staff was first notified of the police investigation and Nave's guilty pleas by an officer of the San Rafael Police Department. On June 20, 1990, the Commission opened

this OII and ordered Nave to appear on July 2, 1990 to show cause why his operating authority should not be revoked.

At the evidentiary hearing on the show cause order, Staff investigator Wilson Lewis testified that, on Wednesday, June 27, 1990, he went to the Marin County Jail (jail) and gave a copy of I.90-06-039 to Susan Ruchetti, an investigator with the Marin County District Attorney's Office. Ruchetti served the OII on Nave in the jail in Lewis' presence. A copy of the certificate of personal service was entered as Exhibit 1. The original is part of the formal file along with a certificate evidencing mailing of the OII, to the NLS terminal address, on June 26, 1990.

Staff investigator Larry McNeely then testified that, commencing around noon June 27, 1990, he received and accepted between four to eight collect telephone calls from Nave at the jail. These conversations occurred after Nave had received the OII. Nave went through the OII with McNeely page by page. Nave then asked McNeely the mechanics of how to revoke his permit and terminate the show cause hearing set for July 2, 1990. McNeely informed Nave that Staff must have written confirmation of Nave's desire to agree to the termination of his permit. McNeely instructed Nave to send this to his attention at the Commission's Van Ness Avenue address in San Francisco. McNeely also suggested Nave send a representative or attorney to the July 2 hearing. Nave was told the writing should be in the Commission's hands prior to the hearing.

Nave indicated he was about to be transferred to the prison, but would send the letter immediately. On June 27, 1990, McNeely also spoke with Nave's mother by telephone. She stated that she knew the Commission had scheduled the show cause hearing for July 2, 1990.

Nave again called McNeely collect, several times, on Thursday, June 28, 1990. On that date, Nave stated a letter had

been mailed to the Commission by him, declaring that he agreed to the revocation.

At some time between June 27, 1990 and July 2, 1990, Nave was believed to have been transported from the jail to the prison. Both the jail and the prison are located in Marin County.

McNeely received no letter from Nave prior to the 10:00 a.m., July 2, 1990 hearing. No attorney or representative of Nave attended the hearing. Officer Blaskower testified he contacted the jail and was informed it did not monitor outgoing letters and could not verify whether Nave had sent a letter to the Commission.

The hearing was adjourned but reconvened late on July 2, 1990. McNeely testified to his recent receipt of a hand-written letter on yellow legal pad paper stating the following:

"6/27/90

To Public Utilities Commission - Larry McNeely,

I Paul J. Nave' do hereby revoke any charter-party operating authority TCP-3617-P effective July 1, 1990. Thank you.

Sincerely
/s/ Paul J. Nave'"

The letter was stamped received by the Commission on July 2, 1990. McNeely testified he received it at 1:30 p.m., July 2, 1990, by hand delivery to his workstation through the Commission's internal mail operations. The envelope was cancelled: "North Bay California 28 Jun 1990." The letter and envelope were entered as Exhibit 2. North Bay is the postal mark for both the jail and the prison.

McNeely testified that he compared the signature on the letter to other file documents in File TCP 3617-P and stated that the letter's signature appeared very similar in nature to those on file. Entered as Exhibit 3 was a photocopy of the final page of Nave's most recent renewal application with his signature dated

December 20, 1988. McNeely observed the signature on the letter had the distinctive accent aigu after the e in Nave and that this accent appeared only on Nave's signatures in the file, but not on typewritten documents. He noted the letter's signature appeared consistent with those throughout the Nave file. The ALJ then examined various signatures of Nave found throughout the file and stated she found them nearly identical.

The day after the evidentiary hearing was closed, McNeely received a second letter from Nave which further elaborated on Nave's desire to revoke his own operating authority. Nothing in this letter alters the Commission's decision.

Under Public Utility (PU) Code § 5374, reasonable fitness is a prerequisite to obtain or renew a permit as a charter-party carrier. See also, Application of Walter Hoffman, 80 Cal. PUC 117 (1976).

Pursuant to PU Code § 5381, the Commission has the power to supervise and regulate every charter-party carrier of passengers in California and to do all things which are necessary and convenient in the exercise of this power and jurisdiction. Continuing oversight of the reasonable fitness of the permit holder is part of this grant of power.

In addition, PU Code §§ 5381 and 5378(a)(i) permit the Commission to cancel, suspend or revoke any carrier's operating permit based on violation of any of the provisions of PU Code §§ 5351 through 5420. Failure to continue to meet the reasonable fitness requirements of PU Code § 5375 is such a violation which authorizes this Commission to revoke Nave's operating permit.

Nave has tendered to the Commission a handwritten document attempting to express his desire not to contest the revocation of his operating permit and to consent to revocation of the permit. The Commission notes that Nave is not an attorney or party skilled in the Commission's statutes, rules and procedures. We find that Nave, when stating he revokes TCP 3617-P effective

July 1st, means to request revocation of his operating permit and to consent thereto. Based on Nave's request and consent, and the record before us, we hereby revoke TCP 3617-P.

Due to the seriousness of Nave's felonies, one of which involves an illegal weapon found on NLS' terminal premises, protection of the public interest and safety require the revocation to be effective immediately.

Notice of this matter did not appear on the Commission's public agenda; however, an emergency exists in that, when issuing the OII, we recognized the serious questions of fitness herein concerned and the possible threat to public safety and also in that the permit holder is incarcerated in prison and has consented to the revocation effective immediately, which justifies our action today under PU Code § 306(b).

Findings of Fact

1. Paul James Nave is an individual doing business as Nave's Limousine Service under charter-party carrier permit TCP 3617-P.

2. TCP 3617-P is a renewal of a prior permit pursuant to an application for renewal signed December 20, 1988 and dated January 3, 1989.

3. On July 11, 1989, this Commission issued the renewal of Nave's charter-party carrier permit under TCP 3617-P.

4. On October 23, 1989 and November 29, 1989, Nave was indicted for a total of three felony counts of sale or transportation of narcotics; one count of possession for sale of narcotics; and one felony count of possession of a deadly weapon, a sawed-off shotgun. The deadly weapon was found on NLS terminal premises. These felony charges were enhanced by the large amount of cocaine involved and the commission of some offenses while released from custody on bail for a prior felony arrest.

5. On April 3, 1990, Nave pleaded guilty to all felony charges and enhancements.

6. On May 23, 1990, the Commission was first notified of Nave's guilty pleas to the felony charges.

7. On June 20, 1990, the Commission opened this OII and ordered Nave to appear on July 2, 1990 to show cause why his operating authority should not be revoked.

8. In late June, 1990, Nave was sentenced to prison and placed in custody at the Marin County Jail.

9. On June 27, 1990, Nave was personally served with the OII. Later that day he declared to Staff his intention to agree to the revocation of TCP 3617-P rather than participate in the show cause hearing set for July 2, 1990.

10. Nave was requested to communicate his consent in writing prior to the July 2 hearing. He was also advised to send a representative to the hearing.

11. On June 28, 1990, Nave stated to Staff that his letter of consent had been mailed to the Commission at its San Francisco address.

12. As of the morning of July 2, 1990, no letter from Nave had been received.

13. Neither Nave nor a representative attended the show cause hearing.

14. On the afternoon of July 2, 1990, Staff received a handwritten letter, dated June 27, 1990, stating: "I Paul J. Nave' do hereby revoke my charter-party operating authority TCP 3617-P effective July 1, 1990." The letter was signed: "Paul J. Nave'". The envelope was postmarked "North Bay CA", the postal area in which both the jail and prison are located, and was cancelled June 28, 1990.

15. The signature is very similar or virtually identical to other documents in Commission files which are signed by Nave.

16. Nave is believed to reside presently in San Quentin Prison.

Conclusions of Law

1. Nave has failed to appear, in person or by representative, to sustain his burden of proof that he is

reasonably fit to continue to render services as a charter-party carrier to the general public under TCP 3617-P.

2. This Commission retains continuing oversight of the reasonable fitness of all charter-party carriers throughout the term of any operating permit.

3. Guilty pleas to five felony narcotics and firearms charges, involving an illegal and deadly weapon on a limousine service's premises, are grounds for revocation of TCP 3617-P pursuant to PU Code § 5378.

4. Nave's letter stating he revokes his operating permit effective July 1, 1990 is his consent to the Commission's revocation of TCP 3617-P.

5. Nave's operating permit TCP 3617-P should be revoked by this Commission.

6. The investigation should be closed upon revocation of TCP 3627-P, subject to being reopened in the discretion of the Commission.

7. This order should be effective immediately, the public interest and safety requiring it.

O R D E R

IT IS ORDERED that:

1. The charter-party carrier permit TCP 3617-P, of Paul James Nave, an individual doing business as Nave's Limousine Service, is revoked by this Commission.

2. Transportation Division Staff shall immediately remove the TCP number for Paul James Nave's operating permit from all vehicles operating under the authority of TCP 3617-P, as required by General Order 157, Part 4.07.

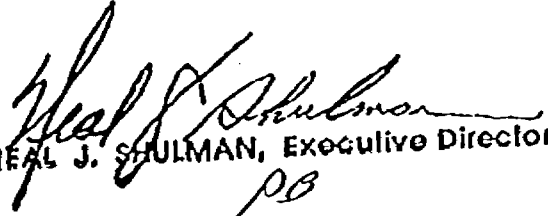
3. The investigation on the Commission's own motion into the operations and practices of Paul James Nave, an individual, doing business as Nave's Limousine Service, is hereby closed, subject to being reopened in the Commission's discretion.

This order is effective today.

Dated JUL 6 1990, at San Francisco, California.

G. MITCHELL WILK
President
FREDERICK R. DUDA
STANLEY W. HULETT
JOHN B. OHANIAN
PATRICIA M. ECKERT
Commissioners

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


NEAL J. SHULMAN, Executive Director
PB