

ALJ/PAB/jt

Mailed

DEC 6 1990

Decision 90-12-009 December 6, 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Complaint by )  
SFO Airporter, Inc., )

Complainant, )

v. )

Airport Limousine Service of )  
Sunnyvale, dba Airport Connection, )

Defendant. )

**ORIGINAL**

Case 89-09-009  
(Filed September 6, 1989)

ORDER OF DISMISSAL

SFO Airporter, Inc. (complainant), a certificated passenger stage corporation (PSC) with service between San Francisco International Airport and points within the city and county of San Francisco, complains that a competitor, Airport Connection (defendant), also a certificated PSC, is operating in violation of General Order (GO) 98-A, Part 12. GO 98-A, Part 12 requires that PSCs shall not operate unless the driver of its vehicles is under the complete supervision, direction, and control of the operating carrier and is: (1) an employee of the operating carrier, or (2) an employee of a public transit agency or of another Commission-authorized carrier who owns or leases the vehicle, or (3) an owner-driver holding a specialized charter-party permit.

The Complaint

Complainant alleges the decision in Order Instituting Investigation 87-10-014 interpreting GO 98-A requires that anyone operating a vehicle under the control of a PSC must either be a

bona fide employee of the operation or hold charter-party authority from the Commission in his or her own name. Complainant provides no facts to support this allegation.

Complainant alleges that defendant is uniformly violating other applicable rules and regulations of this Commission pertaining to passenger stage operations. Complainant provides no facts to support this allegation.

Complainant requests an immediate cease and desist order based upon its complaint, the imposition of a penalty, and any other proper relief within the discretion of the Commission.

The Answer

Defendant denies that it is violating GO 98-A, Part 12. Defendant contends that it has a significant number of employee drivers and hires other employees of charter-party carriers under a written contract. Defendant alleges it has no owner-drivers. Defendant asserts that it follows a standard industry practice that has been the subject of numerous previous hearings.

Defendant contends that as the result of a former complaint its independent contract operations have been audited several times by representatives of the Commission Transportation Division-Compliance and Enforcement Branch, the most recent audit being less than 12 months ago. Defendant invites this Branch to verify these assertions.

Defendant considers complainant's allegation of other violations to be vague and requests that complainant be ordered to be specific and substantiate these claims or that they be dismissed.

Defendant considers complainant's request for an immediate cease and desist order to be evidence of a continuing pattern of harrassment to prevent competitive airport service.

Defendant requests that the relief requested be denied and the complaint dismissed.

Complainant has filed no response to defendant's motion to dismiss.

Administrative Law Judge's (ALJ) Ruling

On January 29, 1990, ALJ Bennett ruled that complainant must file an amended complaint 60 days from the time discovery was provided by defendant. Defendant informed ALJ Bennett in a letter dated June 24, 1990, that discovery was provided to complainant on March 14, 1990. According to the ALJ ruling, the amended complaint deadline was May 15, 1990.

On September 9, 1990, complainant requested that this matter be dismissed. No response was received from defendant.

Complainant has not filed an amended complaint within the time allowed. Therefore, this complaint should be dismissed for lack of prosecution.

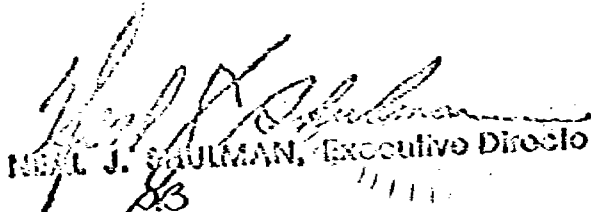
IT IS ORDERED that this complaint is dismissed, without prejudice.

This order becomes effective 30 days from today.

Dated December 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

  
NEIL J. SAULMAN, Executive Director