

DEC 4 1991

Decision 91-12-007 December 4, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
the Estate of Sami Shabaan doing)
business as E Z Way Out Shuttle)
Service of Hayward, a sole)
proprietorship, and Samia A. Shabaan,)
his surviving spouse, for authority)
to transfer the certificate of public)
convenience and necessity and assets)
of the business.)

ORIGINAL

Application 91-09-042
(Filed September 23, 1991)

OPINION

Statement of Facts

By Application (A.) 90-11-034 filed November 20, 1990, Sami Shabaan, an individual dba E Z Way Out Shuttle Service of Hayward, sought to obtain a certificate of public convenience and necessity to operate as a passenger stage corporation, as defined in Public Utilities (PU) Code § 226, to transport passengers and their baggage on an "on-call" and scheduled basis between Oakland International Airport and points in the Cities of Turlock, Modesto, Pleasanton, and Santa Rosa, as well as other points in Contra Costa and Alameda Counties.

By Decision (D.) 91-04-016 issued April 10, 1991, the application was granted and a certificate was issued subject to written acceptance by the applicant within 30 days of April 10, 1991, and certain other requirements. By a letter dated April 24, 1991, Samia Shabaan, on behalf of E Z Way Out Shuttle Service of Hayward, accepted the certificate.

By mid-June 1991, evidence of insurance, California Highway Patrol service approval of the vehicles to be used, and tariffs and timetables had been filed with the Transportation Division. Accordingly, on June 19, 1991, the Tariff and License

In June 1991, when filing for charter party authority, Samia Shabaan furnished the Commission with a June 27, 1991 balance sheet which she adopts here as evidence of her financial condition. She proposes to continue service with the same fleet, which is also listed, and to follow the same tariffs and timetables as were applicable in the authority authorized her deceased husband.

Discussion

The problem presented by this application is that the application of an individual, interrupted during processing and before the requested authority has been granted, by the death of that individual, is a nullity. And a certificate of public convenience and necessity cannot be valid if through ignorance of the death or in error, it was granted to a deceased individual applicant--no authority at all can be said to flow from it. Nor can a letter of acceptance of a certificate granted to an individual applicant be signed by other than a living certificate recipient or his legally designated representative.

Accordingly, in the present matter, no valid authority to operate as a passenger stage corporation ever existed, the November 20, 1990 application of Sami Shabaan having been nullified by the untimely death of the individual applicant on January 29, 1991, before the issuance, in ignorance of his death, of a certificate on April 10, 1991 by the Commission. Therefore, there existed no certificate authority to be transferred as community property, with the authorization of this Commission,² on the death of Sami Shabaan. And in the absence of any valid certificate authorizing passenger state operations, the vehicles, radios, and other assets proposed to be dedicated to public utility operations never de jure came under Commission jurisdiction, but remained the undedicated property of the deceased's estate. It appears that

² See Supra, footnote 1.

CORRECTION

**THIS DOCUMENT HAS
BEEN REPHOTOGRAPHED
TO ASSURE
LEGIBILITY**

mailed

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By mid-June 1991, evidence of insurance, California Highway Patrol service approval of the vehicles to be used, and tariffs and timetables had been filed with the Transportation Division. Accordingly, on June 19, 1991, the Tariff and License

Branch wrote Shabaan to authorize the beginning of the operations authorized by D.91-04-016. Operations were begun and continue at present.

However, unbeknown to the Commission, Sami Shabaan had died on January 29, 1991, two and one half months before the certificate was issued.

On June 27, 1991, Samia Shabaan, the surviving spouse of Sami Shabaan filed an application for charter party authority listing her intention to do business as E Z Way Out Shuttle Service. In that application, under "Previously Issued Authority", she listed the TCP 6995-P authority as "issued to Sami Shabaan applicant's deceased husband." On August 21, 1991, pursuant to PU Code § 5384(b), a Charter Party Carrier Permit No. TCP 7358-P was granted to Samia Shabaan. And the Commission's Passenger Stage file on Sami Shabaan was flagged, indicating "a transfer" to Samia Shabaan.

On September 23, 1991 Samia Shabaan filed present A.91-09-042 seeking, pursuant to PU Code § 1031,¹ to transfer the passenger stage authority and assets of "Sami Shabaan an individual" doing business as E Z Way Out Shuttle Service of Hayward, "to" "Samia Shabaan, an individual," and stating her intention to carry on the business as E Z Way Out Shuttle Service. She asserts that when Sami Shabaan died intestate, the certificate passed as community property under §§ 202 and 203 of the California Probate Code without necessity of administration to her as the surviving spouse.

1 PU Code § 1031 as relevant to this matter states in part: ". . . Any right, privilege, franchise, or permit held, owned, or obtained by any passenger stage corporation may be sold assigned, leased, mortgaged, transferred, inherited, or otherwise encumbered as other property, only upon authorization by the commission" (emphasis added).

In June 1991, when filing for charter party authority, Samia Shabaan furnished the Commission with a June 27, 1991 balance sheet which she adopts here as evidence of her financial condition. She proposes to continue service with the same fleet, which is also listed, and to follow the same tariffs and timetables as were applicable in the authority authorized her deceased husband.

Discussion:

The problem presented by this application is that the application of an individual, interrupted during processing and before the requested authority has been granted, by the death of that individual, is a nullity. And a certificate of public convenience and necessity cannot be valid if through ignorance of the death or in error, it was granted to a deceased individual applicant--no authority at all can be said to flow from it. Nor can a letter of acceptance of a certificate granted to an individual applicant be signed by other than a living certificate recipient or his legally designated representative.

Accordingly, in the present matter, no valid authority to operate as a passenger stage corporation ever existed, the November 20, 1990 application of Sami Shabaan having been nullified by the untimely death of the individual applicant on January 29, 1991, before the issuance, in ignorance of his death, of a certificate on April 10, 1991 by the Commission. Therefore, there existed no certificate authority to be transferred as community property, with the authorization of this Commission,² on the death of Sami Shabaan. And in the absence of any valid certificate authorizing passenger state operations, the vehicles, radios, and other assets proposed to be dedicated to public utility operations never de jure came under Commission jurisdiction, but remained the undedicated property of the deceased's estate. It appears that

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pursuant to California Probate Code §§ 202 and 203, this property has passed as community property to his surviving spouse. Assertedly, there is no court order of any kind appointing an executor, administrator, or other personal representative of the deceased's estate.

What then is to be done? Samia Shabaan has been and is now operating this passenger stage service in the belief that she inherited the authority as she did the physical assets involved in the operation. If given authorization to do so, she states that she will carry on the operation in the same manner and under the same tariffs and timetables as were approved to be authorized to her husband in what has turned out to be an erroneous grant in D.91-04-016. The operation would continue to be conducted with the same vehicle fleet as at present, a vehicle fleet cleared by the California Highway Patrol and properly insured. Samia Shabaan presents the same financial condition, represented by the August 6, 1991 balance sheet, as was found acceptable by the Commission in granting her Charter Party Carrier Permit No. TCP 7358-P on August 21, 1991. Granting the authority to and in the name of Samia Shabaan will not in any way affect the existing service to the public. The matter is noncontroversial and will not adversely affect the public interest in any way. There would be no changes in rates.

Granting or withholding a certificate of public convenience and necessity is an exercise of the State's power to determine whether the rights and interests of the general public will be advanced by provision of the proposed service. The Commission's power and discretion in acting upon an application for a certificate is very broad. (California Motor Transportation Company v. Railroad Commission (1947) 30 C 2d 184.) In the present matter, given the fact that the same evidence of need for the service, financial ability to provide it, ability to provide the service, etc., would have applied to the wife as it did to Sami

Shabaan, had the Commission been informed of the husband's death and had Samia asked to substitute herself as the applicant, the certificate to operate issued invalidly on April 10, 1991 to her deceased husband undoubtedly would have been granted to her.

But we cannot do now what should have been done then. A "nunc pro tunc order" may be used to make the record reflect the transaction which actually occurred, and which is not reflected by the record because of inadvertence or mistake, but cannot be extended to make the record show what ought to have been done or to correct omissions or errors of the Commission.

Accordingly, since public convenience and necessity have been demonstrated, and Samia Shabaan has demonstrated that she has the ability, equipment, experience, and financial resources to continue to perform the service, a certificate should be granted to her.

Notice of filing of this application having appeared in the Commission's Daily Calendar of September 27, 1991, and there having been no protest, there is no need for a public hearing.

Findings of Fact

1. Sami Shabaan died, unbeknown to the Commission, on January 29, 1991, while A.90-11-034 was being processed.
2. D.91-04-016 was issued on April 10, 1991 to the deceased applicant whose surviving spouse Samia Shabaan accepted the certificate, obtained insurance and California Highway Patrol clearance, and has operated the service to date in the belief she had inherited the certificate as community property as she had inherited the assets used in the service.
3. Samia Shabaan has the ability, equipment, and financial resources to perform the passenger stage service she has been performing and now seeks to continue in her own right to perform.
4. No protests to the application have been filed.
5. It can be seen with certainty that the service will have no significant adverse effect on the environment.

6. A public need for the service has been demonstrated, and the same is being met. Accordingly, the order which follows should be made effective immediately.

7. A public hearing is not necessary.

Conclusions of Law

1. The authority intended to be granted to Sami Shabaan by D.91-04-016 issued April 10, 1991 in A.90-11-034 was rendered null and void by the death of Shabaan before the decision was signed by the Commission.

2. There is no certificate authority to operate a passenger stage service existing based on D.91-04-016 which can be transferred to Samia Shabaan as sought by the present application.

3. The doctrine of "nunc pro tunc" is not applicable to the facts of this application.

4. Public convenience and necessity nonetheless have been demonstrated, and a certificate should be granted to Samia Shabaan to continue the passenger stage service she has been operating in the mistaken belief the service was authorized by the Commission.

ORDER

IT IS ORDERED that:

1. The authority to operate a passenger stage service stated to be granted to Sami Shabaan by D.91-04-016 was null and void when issued.

2. A certificate of public convenience and necessity is granted to Samia Shabaan, an individual who will do business as E. Z. Way Out Shuttle Service, authorizing her to operate as a passenger stage corporation, as defined in Public Utilities (PU) Code § 226, between the points and over the routes set forth in Appendix PSC-7358, to transport persons and baggage.

3. Applicant shall:

- a. File a written acceptance of this certificate within 30 days after this order is effective.
- b. Continue the service, tariffs, and timetables existing under the filings made pursuant to the void order in D.91-04-016, and refile these tariffs and timetables in her own name within 120 days after the present order is effective.
- c. Continue to comply with General Order Series 101, 104, and 158, and the California Highway Patrol Safety Rules.
- d. Continue to maintain accounting records in conformity with the Uniform System of Accounts.

e. Remit to the Commission the Transportation Reimbursement Fee required by PU Code § 403 when notified by the Commission to do so.

4. Applicant shall notify the airport's governing body of the change in the certificate holder, and shall not operate into or on airport property unless such operations are also authorized by the airport's governing body.

5. Applicant shall within 15 days of the effective date of this order file with the Executive Director of the Commission copies of applicant's notices to its insurance carrier and the California Highway Patrol of applicant's substitution for Sami Shabaan as certificate holders and operator of this service as authorized herein by the Commission.

6. Applicant shall comply with Public Utilities Code §§ 460.7 and 1043, relating to the Workers' Compensation laws of this state. This order is effective today.

Dated December 4, 1991, at San Francisco, California.

PATRICIA M. ECKERT
President
JOHN B. OHANIAN
DANIEL Wm. FESSLER
NORMAN D. SHUMWAY
Commissioners

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

Neal J. Shulman
NEAL J. SHULMAN, Executive Director

CERTIFICATE
OF
PUBLIC CONVENIENCE AND NECESSITY
AS A PASSENGER STAGE CORPORATION
PSC-7358

Showing passenger stage operative rights, restrictions,
limitations, exceptions, and privileges.

All changes and amendments as authorized by
the Public Utilities Commission of the State of California
will be made as revised pages or added original pages.

Issued under authority of Decision 91-12-007,
dated December 4, 1991, of the Public Utilities Commission
of the State of California in Application 91-09-042.

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Issued by California Public Utilities Commission.

Decision 91-12-007, Application 91-09-042.

SECTION I. GENERAL AUTHORIZATIONS, RESTRICTIONS, LIMITATIONS,
AND SPECIFICATIONS.

Samia Shabaan, an individual, by the certificate of public convenience and necessity granted by the decision noted in the margin, is authorized to transport passengers and their baggage on an "on-call" and scheduled basis, between the points described in Section II, and Oakland International Airport (OAK), over and along the routes described in Section III, subject, however, to the authority of this Commission to change or modify the routes at any time and subject to the following provisions:

- a. When route descriptions are given in one direction, they apply to operation in either direction unless otherwise indicated.
- b. The term "on-call", as used, refers to service which is authorized to be rendered dependent on the demands of passengers. The tariffs and timetables shall show the conditions under which each authorized on-call service will be rendered.
- c. No passengers shall be transported except those having a point of origin or destination at OAK.
- d. This certificate does not authorize the holder to conduct any operation on the property of or into any airport unless such operation is authorized by the airport authority involved.

Issued by California Public Utilities Commission.

Decision 91-12-007, Application 91-09-042.

SECTION II. SERVICE AREAS.

The Cities of Turlock, Modesto, and Santa Rosa.

Cities and communities in the County of Alameda

Oakland, Emeryville, Berkeley, Albany, Hayward,
Pleasanton, and Fremont.

Cities and communities in the County of Contra Costa

Concord, Walnut Creek, Lafayette, Orinda, Richmond,
El Cerrito, and San Ramon.

SECTION III. ROUTE DESCRIPTIONS.

SCHEDULE SERVICE

Route 1 - Turlock - Modesto - Pleasanton - OAK

Commencing from Oakland International Airport to:

Holiday Inn, Dublin Canyon Road - Pleasanton
Holiday Inn, Sisk Road - Modesto
Adventure Travel, E. Main Street - Turlock
The Garden, Pedras and Devinyon Roads - Turlock

Issued by California Public Utilities Commission.

Decision 91-12-007, Application 91-09-042.

SECTION III. ROUTE DESCRIPTION (continued).

ON-CALL SERVICERoute 1 - Cities and communities in the County of Alameda

Commencing from Oakland International Airport then to any point or place in Oakland, Emeryville, and Berkeley.

Route 2 - Cities and communities in Contra Costa and Alameda Counties

Commencing from Oakland International Airport then to any point or place in Concord, Walnut Creek, Lafayette, Orinda, Berkeley, Emeryville, Albany, Richmond, El Cerrito, San Ramon, Hayward, and Fremont.

Route 3 - Santa Rosa - OAK

Commencing from Oakland International Airport then to Santa Rosa.

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