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Decision 91-12-011 December 4, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Star Shuttle, a passenger stage company, owned by Michael A. Miller and David W. Miller, for addition of the names Rajinder S. Judge and Sukha S. Thiara under that certain Certificate of Public Convenience and Necessity, PSC-1429.

ORIGINAL

Application 90-08-028 (Filed August 10, 1990)

Danny G. Williams, Attorney at Law, for Sukha Thiara and Rajinder S. Judge, applicants. Rajinder S. Judge and Sukha Singh Thiara, for themselves, applicants. James T. Quinn, Attorney at Law, and Masaru Matsumura, for the Transportation Division.

OPINION

Summary

This decision denies the application of brothers Michael A. and David W. Miller (Millers), dba Star Shuttle (Star) to add Rajinder S. Judge and Sudka S. Thiara as one-quarter partners. The denial is based on the recent, extensive, and serious vehicle code violations of both Thiara and Judge, and the lack of sufficient time since the violations to demonstrate their rehabilitation.

The Transportation Division (TD) is ordered to develop a suggested Order Instituting Investigation (OII) into the operations of Star Shuttle.

Background

This application is one of two similar applications filed by the Millers to add a partner(s). By this application they request authority to add Judge and Thiara to their PSC-1429 operating authority, with each as a one-quarter partner.

In the earlier Application (A.) 90-05-043, Millers sought to add Michael R. Kincaid as a one-third partner. That application had not yet been handled by the Commission, no hearing had been held and no decision had been issued when this application was filed. Initially, Kincaid indicated he would protest it, but at a prehearing conference held for both applications, he indicated no such desire, and agreed with the Millers that A.90-05-043 should be dismissed. At the Millers' request, it was dismissed by Decision 90-12-046.

A joint protest to this application was filed by Ronald G. LaGoe of Sac-Davis Airporter, and Rose and Fred Andres of Sacramento Airport Transit. Hearings were held on April 9 and May 21, 1991 in Sacramento before Administrative Law Judge Stalder. Applicants presented the testimony of George R. Miller, Michael A. Miller, Thiara, and Judge. George R. Miller is not related to the Miller brothers who own Star.

The Transportation Division (TD) staff presented the testimony of Ruben S. Ortegon of the TD Stockton office, Paul Wuerstle of the TD San Francisco office, and Daniel J. Wisner of the Sacramento County Department of Airports.

Protestants Rose Andres and Ronald LaGoe testified on their own behalf.

Briefs were filed by applicant and by TD.

The TD prepared an investigative report on Star's service at the Sacramento Metropolitan Airport (Sac Metro). The investigation was done to determine whether the Millers were actually operating the service, or whether instead the prospective

partners, Judge and Thiara, were operating the service as LaGoe and Andres allege. The report may be summarized as follows:

1. The Millers turned the business over to Judge and Thiara in late 1990.
2. The records of Star are incomplete and simplistic. There is no record of Judge or Thiara having been employees of Star. No bank accounts were maintained for Star by Millers, Judge, or Thiara. Star's 1990 PUCTRA (PUC Transportation Reimbursement Account) filing is overdue and has not been made.
3. The driving records of Judge and Thiara raise the issue of their fitness to operate a passenger stage service.

Judge was convicted of the following vehicle code violations.

1. Reckless driving on January 5, 1984. Judge was placed on probation.
2. Refusing to submit to a chemical test for driving under the influence of drugs or alcohol, February 22, 1987. Judge was placed under court restriction of driving privileges and given three years probation.
3. Driving in violation of his court restricted license, April 17, 1987.
4. Improper passing on the right and failure to wear a seat belt, August 17, 1988.
5. Disregarding a stop sign, August 22, 1988.
6. Unsafe driving in and out of a lane of traffic, December 1, 1988.
7. Exceeding the maximum speed on the freeway, December 9, 1989.

Additional Department of Motor Vehicles (DMV) actions against Judge's driving privilege include the following:

1. License probation beginning August 10, 1989 for negligent operations.

2. License suspended beginning March 5, 1990 for a cancelled insurance certificate; reinstated March 23, 1990.
3. License suspended from July 29, 1990 through August 13, 1990 for violation of probation.
4. License suspended March 4, 1991 for a cancelled insurance certificate. Ortegon checked with DMV and found that the license was still suspended on March 25, 1991, yet he observed Judge driving a Star van, dropping off passengers in Sacramento on March 8 and 13, 1991.

In addition, Ortegon found that Sacramento Municipal Court records indicate that Judge pleaded "no contest" to a February 9, 1989 arrest for soliciting an act of prostitution. He was placed on unsupervised probation for three years.

Thiara was convicted of the following violations:

1. Reckless driving on May 1, 1986.
2. Unsafe driving in and out of a lane of traffic, not wearing a seat belt, and exceeding the maximum speed allowed on a freeway on June 12, 1988.
3. Improper passing on the right and failure to wear a seat belt, August 17, 1988.
4. Refusing to submit to a chemical test for driving under the influence of drugs or alcohol and obstructing a police officer, August 5, 1988. The DMV revoked Thiara's driver's license from November 10, 1988 to November 9, 1990.

Wuerstle presented TD's recommendation that the application not be granted since it is not in the public interest. The reason for this recommendation is the lack of fitness of Thiara and Judge due to:

1. Poor driving records with numerous violations, and license suspensions for both. Wuerstle believes that this

demonstrates a pattern of contempt for the law, and a lack of fitness to operate a passenger stage service.

2. Judge and Thiara have effectively taken over ownership and operation of Star without Commission authorization, and attempted to mislead the Commission in this regard.

Wuerstle further recommends that the Commission open an investigation to consider whether the Millers authority should be revoked for effectively transferring the operation without Commission authority.

Andres testified that Star has been operating illegally, with Judge and Thiara operating as owners, has not kept records, and has not paid payroll taxes for employees. She stated that Thiara asked her to prepare phony records showing that he and Judge are employees of Star, in order to satisfy the Commission investigators. In addition, she stated that Star does not operate on a regular schedule as it is required to. Instead, it only operates during the prime periods for airport passengers, early morning and late afternoon.

Wisner testified that he was surprised and disturbed by the results of the investigation, having had a friendly and seemingly cooperative relationship with Judge and Thiara in his dealings with them at the Sac Metro. His dealings with the Millers, however, have been unfavorable due to inadequate paperwork, including tariffs, and their unsatisfactory operation of Star with regard to schedule, courtesy, appearance, and general unresponsiveness, (including their unavailability by phone). Their license to operate at Sac Metro has been delayed several times because of this. Wisner would like to see the demise of Star.

LaGoe testified that Judge told him around August 1990 that he paid Michael Miller's insurance, late Commission fees; in addition he paid money to Michael Miller in exchange for taking

over the Star operation. Judge indicated that Thiara would be joining in the operation of Star later in 1990. LaGoe was told many times by Judge and Thiara after August 1990 that they own Star and that Michael Miller has nothing to do with it.

Michael Miller testified that he has not turned over the Star operation to Judge and Thiara. Rather, he began the process of selling equipment such as vehicles to them in anticipation of Commission approval of the application. He explained that David Miller has not been active in running the business for the past two years, but was available to sign documents that required both Millers' signature. Michael Miller has not been driving on a regular basis, but anticipates doing so when Sac Metro becomes an international airport, which should significantly increase airport shuttle business. He testified that Judge and Thiara are employees of Star. Whether proper taxes such as payroll were paid is uncertain; he assumed that it was somehow taken care of. He has received an extension of time to pay social security taxes. Until recently, the business was run on a cash basis with bills paid in cash using the fare receipts.

Thiara testified that when Ortegon asked for the records of Star, he became scared and had records prepared in a hurry, since none had been kept. Regarding the conviction of driving with a suspended license, Thiara explained that he had just returned from India and was not aware of this, which was a misunderstanding he cleared up at the DMV. Thiara has several years of experience driving taxicabs, and believes he has had no traffic tickets for the past two or three years.

Judge testified that in his opinion he was an innocent interpreter for a non-English speaking fare when he was arrested for soliciting prostitution, and that the Oakland accident he was involved in was a no-damage bumper tap on the Bay Bridge. Judge admitted that his actual weekly earnings were around \$500 to \$600, rather than the \$340 shown on the records. He later testified that

his weekly earnings were \$300 to \$400. Judge believes that the competition does not like Star both from the competitive standpoint and because of cultural prejudice because he is East Indian.

Discussion

It is clear from the testimony of the parties that Star has been operating in a slipshod manner with regard to record keeping and schedules. The records produced were obviously created after the fact, and may not bear much resemblance to the actual operation. The testimony that Star has operated primarily during peak periods is unrefuted.

However, the principal issue is whether Judge and Thiara are fit to become partners and to operate Star as a passenger stage operation. We intend to consider the severity of offenses, the issue of rehabilitation, as well as the recent operation of Star in determining whether to approve this application.

The secondary issue we will consider is whether to open an investigation into the operations of Star, as TD recommends.

Regarding the first issue, TD presented significant evidence on the driving records of both Judge and Thiara. In addition, Judge has the criminal violation of soliciting prostitution.

Applicant attempts to downplay the offenses on the basis that TD and the Commission do not have stated criteria for determining the fitness of drivers of passenger stage operations, and that Thiara and Judge are rehabilitated, having had no recent violations or conviction.

TD responds that while rehabilitation is possible, it is not demonstrated by the relatively short time period of no offenses in this case.

We acknowledge that the Commission has not developed stated criteria on which to judge the fitness of drivers, to do so would be difficult and any adopted criteria may not cover all conceivable instances. Similarly, we have not developed criteria

on rehabilitation. We believe these issues may properly be considered on a case-by-case basis, assessing the particular facts presented.

First, we consider the severity of offenses. Both Judge and Thiara have convictions due to failure to submit to a chemical test for driving under the influence of drugs or alcohol. This is a most serious offense; when persons have such an offense on their record, we must question whether they might drive under the influence in the future, and possibly with passengers. Star argues that these people have been rehabilitated. However, we note that while Thiara apparently has had no traffic violations since August 17, 1988, his license was revoked from November 10, 1988 to November 9, 1990. Thus, he had a valid drivers license for only a few months of the period alleged to demonstrate his rehabilitation. We are not convinced.

The other driving offenses are similarly troubling to us.

For example, Thiara's list of offenses include reckless driving, unsafe lane changing, not wearing a seat belt, speeding, and improper passing on the right. We conclude that these are offenses that demonstrate a pattern of unsafe driving, and may demonstrate disregard for the law.

Similarly, Judge has a record of reckless driving, improper passing on the right, not wearing a seat belt, disregarding a stop sign, speeding, and driving with a suspended license. We conclude that these offenses demonstrate unsafe driving, and may demonstrate a pattern of disregard of the law. In addition, the charge of soliciting prostitution must be considered. Judge argues that he was a victim of circumstance, yet he pleaded no contest to the charge.

The issue of rehabilitation requires a degree of judgement; it would be difficult to set forth objective criteria that would apply to every instance. The judgment in this case is not difficult; insufficient time has elapsed to demonstrate that

either Judge or Thiara has been rehabilitated. Judge's drivers license was still under suspension during TD's investigation, and Thiara's drivers license has only recently been reinstated.

We are not sympathetic to the argument by applicants that Judge and Thiara suffer from cultural differences and therefore should be viewed more leniently. It is their responsibility to understand and obey the law.

The Commission has a responsibility to protect the public from unsafe operations. Sufficient evidence has been presented in this case to raise overriding concerns about both Judge and Thiara. Granting the application could jeopardize the public safety.

We conclude that the application should be denied. At this time neither Judge nor Thiara is reasonably qualified, in our view, to operate a passenger stage business. The fact that they both have been recently convicted of offenses dealing with driving under the influence is sufficient reason to deny the application. When combined with the multitude of other driving offenses, demonstrating potential disregard for the law, we must conclude that Judge and Thiara are unfit. Their lack of fitness to serve is reinforced by their disregard of keeping required records, and by their failure to operate according to schedules.

The second issue to consider is the recent operation of Star. TD and protestants believe that Star has been operating as if this application had been approved by the Commission. Star maintains that Judge and Thiara were employees. In either case, adequate records were not kept, and those made available were created after the fact, apparently through creative accounting. The Millers apparently were at most minimally involved in the operation. We believe that Star may have been able to obtain a competitive advantage through its slipshod operations and accounting, considering that it very likely did not pay payroll taxes. Assuming its competitors kept proper records and paid the required payroll taxes, the competitors had a greater cost of doing

business than Star. We know that the records of trips and passengers at Sac Metro are false, since they do not agree with the records of the airport. Star's records appear to understate the numbers of both trips and passengers. Star also apparently did not operate according to its schedules; rather, it generally operated only during the busiest, and hence most profitable times. This violates the certificate granted by the Commission.

We conclude that a formal investigation into Star's operations is warranted, in order to determine whether its operating authority should be revoked. We will order TD to develop a suggested OII for our consideration at the earliest reasonable date. Until that effort is completed, we encourage Sac Metro to use its authority to insure that Star operates in a satisfactory manner at Sac Metro, if it is to continue operating there.

In drafting the suggested OII, TD should consider at least the following:

1. Star's operations relative to its operating authority, especially with regard to schedules, fares, and employees.
2. Star's recordkeeping, including timekeeping for drivers and trip records.
3. Star's compliance with state and federal laws regarding payroll taxes.
4. Star's compliance with insurance requirements.
5. Star's safety training and monitoring of driver records and violations.
6. The condition of Star's vehicles, and its maintenance practices.

In summary, we conclude that granting this application could jeopardize the safety of the public. In addition, the operations of Star should be investigated to determine whether its authority should be revoked.

Findings of Fact

- 1. Star is a partnership owned by brothers Michael A. and David W. Miller.
- 2. Star operates under PSC-1429 operating authority, providing passenger stage service between Sac Metro and points in the greater Sacramento area.
- 3. Star requests authority to add Rajinder S. Judge and Sudka S. Thiara as one-quarter partners.
- 4. A joint protest to the application was filed by Sac-Davis Area Airporter and Sacramento Airport Transit.
- 5. Star has not maintained proper records, and may not have paid payroll taxes for its employees, including Judge and Thiara.
- 6. Star has effectively been operated by Judge and Thiara since late 1990. The Millers have had only limited activity in the operation since then.
- 7. Judge has serious recent driving convictions and has had his driving license suspended by the DMV.
- 8. Judge pleaded no contest to the criminal violation of soliciting prostitution.
- 9. Thiara has serious recent driving convictions and has had his driving license suspended by the DMV.
- 10. Star's operations may be unsatisfactory.

Conclusions of Law

- 1. The driving records of Judge and Thiara demonstrate their lack of fitness to serve the public in a passenger stage operation.
- 2. Insufficient time has elapsed since the convictions of Judge and Thiara to demonstrate rehabilitation.
- 3. The application should be denied.
- 4. The Commission should open an investigation into the operations of Star.

ORDER

IT IS ORDERED that:

1. The application of Michael A. Miller and David W. Miller to add Rajinder S. Judge and Sudka S. Thiara as partners is denied.
2. The Transportation Division shall develop a proposed Order Instituting Investigation into the PSC-1429 authorized passenger stage operations of Michael A. Miller and David W. Miller, and place it on the Commission's agenda within 120 days of the effective date of this decision.

This order becomes effective 30 days from 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