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Decision 92-07-041 July 22, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Babaeian Transportation Company,)
 a California corporation, dba)
 Checker Cab Co., dba Burbank)
 Taxi, dba Pasadena Taxi,)

Complainant,)

vs.)

Southern California Transit)
 Corporation, a California)
 corporation, dba People Car)
 Service,)

Defendant.)

ORIGINAL

Case 91-04-016
(Filed April 15, 1991)

Eldred & Gantus, by John M. Gantus, Attorney at
Law, and Robert Sainburg, for complainant.
Benni H. Freund, Attorney at Law, for
defendant.

O P I N I O N

Summary

Complainant, Babaeian Transportation Company, is a taxicab corporation which operates Checker Cab, Burbank Taxi and Pasadena Taxi in Los Angeles, Burbank, and Pasadena, respectively. Defendant, Southern California Transit Corporation, is licensed to provide charter-party service under the name, People Car Service.

Complainant alleges that defendant violates Public Utilities Code § 5353(g), Part 3.03 of General Order (GO) 157, and an express provision in its certificate by operating a taxi service instead of a charter-party service.

Complainant also alleges that defendant has violated portions of GO 157 by engaging in the following activities: operating vehicles which have not been reported to the Commission (Part 6.01); employing unlicensed drivers (Part 5.01); and, having inadequate insurance (Part 1.05).

Complainant alleges that defendant also engages in unfair competition by charging a flat fee, accepting referrals from Valley Cab Company for taxi customers desiring transportation to areas outside Valley's taxi service territory, eavesdropping on complainant's radio frequencies to respond to complainant's service calls, and unlawfully responding to telephone inquiries generated by Central Cab Co. advertisements.

Complainant alleges defendant's actions are causing a loss of business and requests that defendant's permit be revoked, or alternatively, that defendant be ordered to cease and desist its wrongful activity and that it be prohibited from operating in Pasadena, Glendale, and Burbank.

Defendant denies all of complainant's allegations.

Defendant cross-complains that complainant is operating without a license and files this complaint only to harrass the defendant and to "forum shop,"¹ since there is a civil proceeding pending in the Los Angeles Superior Court between these same litigants. Defendant requests that complainant be ordered to cease and desist from its alleged harassment and illegal operations and that no relief be granted.

An evidentiary hearing was held in Los Angeles on December 16-18, 1991. At the hearing, complainant called seven witnesses: its general manager, two private investigators, two polygraph examiners, defendant's vice-president (as a hostile witness) and a taxi driver employee. Defendant called three witnesses: its vice-president and two taxi driver employees.

1 A litigant is open to a charge of "forum shopping" when there is a choice of courts in which to file a lawsuit and the litigant chooses the forum which will provide the most favorable outcome to its case.

After review of the evidence and legal argument presented in this proceeding, we conclude that defendant is engaging in unlawful taxi operations; and we revoke its operating authority.

The proposed decision of the assigned administrative law judge was filed with the Commission and mailed to the parties on June 5, 1992. Defendant, Southern California Transit Corporation, filed comments on June 25, 1992. We conclude that defendant's arguments are without merit. We made only minor revisions to the proposed decision.

Taxi Operations

As evidence of operating a taxi service, complainant presented photos of defendant's vehicles, ads of Central Cab and People Car Service, defendant's waybills for the years 1990 and 1991, testimony of private investigators who used defendant's service, testimony of normal taxi operations and normal charter-party operations and the defendant, himself, describing his charter-party operations.

The photos of defendant's and complainant's vehicles show that defendant has stationwagons painted the same color as some of complainant's stationwagons. The name of the service, its telephone number and license identification number appear in the same location on both cars, the side panel and rear back door. One must read the information on the cars to distinguish the taxi from the charter-party carrier, and even then, one must understand the difference between the two services. If a customer does not read the logos, because of the likeness of model and color of the two vehicles, the customer may reasonably mistake defendant's car for a taxi.

Defendant testified that this likeness is not a violation of Commission regulations and that he is required to place identifying information on his vehicles. However, we find that the act of painting vehicles the same color scheme as taxis is persuasive evidence of taxi operations.

Defendant's ads for People Car Service and Central Cab appear in local directories under the heading of "Taxicabs". He explained that he placed the Central Cab ads in anticipation of receiving a taxi permit in Pasadena. He deleted these ads and disconnected the phones for Central Cab after the grant of authority was reversed by the City of Pasadena and a temporary injunction was issued by the Los Angeles Superior Court. Complainant should pursue alleged violations of this injunction in the Superior Court.

Defendant denies that he violates GO 157 or operates a taxi service. He denies that his company represents to the public that it is a taxi service. He denies any intent to start a taxi-like operation, but admits that he criticises taxi fares in his ads and advertises that his service is cheaper. He admits directly marketing to those not familiar with charter carriers. He believes his service is new and customers are curious about how it works. He advertises what he believes to be true, that he does not charge for traffic delay and only charges mileage. He believes this is a new system. His TCP number appears in all but one ad for People Car Service. Defendant admits he has no taxi authority, since the authority earlier granted in Pasadena was reversed on appeal.

Advertising under the heading of "taxicabs" in the yellow pages is not a violation of any Commission regulation. However, we have concluded in previous cases that such advertising supports allegations of taxi operations. Defendant's yellow page ads and door hanger ads to the customers who previously used his taxi service cause us to conclude that his advertising to taxi customers is further evidence of taxi operations. He is advertising to a population with known transportation needs, namely, taxi transportation.

Complainant's witness, Rick Ward, who operated a charter-party service for five years, described the typical

charter-party service as transporting groups of 2-60 people from a point and returning by a prearranged reservation. He testified that prearrangement for charter bus transportation is usually three to seven days in advance and limousine reservations are made 24-48 hours in advance. He contrasts taxi service. In his experience as an investigator of "bandit taxi" operations, taxi service is instantaneous, available at a moment's notice with no consideration of return transportation. He estimates that 85% of taxi trips transport one passenger.

Scott Schaeffer, complainant's general manager, estimates that taxi service has an average response time of 15 minutes, an average trip distance of 2 1/2 - 3 miles and an average trip time of 10-12 minutes. Schaeffer estimates that 75% of taxi advertising is in the "yellow pages" of telephone directories and 90% of service requests are by telephone. He considers defendant's operations to be the same as taxi service.

Complainant hired private investigators to use defendant's service. They testified that their trips were short notice, short distance trips, with and without return transportation and they were charged according to mileage travelled.

Complainant introduced defendant's waybills for specified drivers in specified months on 1990 and 1991. These waybills show the time service was arranged and provided, and the number of passengers, miles, and fare per trip. The majority of the trips are with 1-2 passengers for short distances and short reservation time. Defendant himself estimates that in his operation, 50% of his trips are a number of blocks, 70% involve one passenger, 90% are upon short response times of 10-20 minutes, the average trip is 5 miles and the average trip time is 20 minutes. The only difference between taxi service and defendant's operation is that taxi customers sometimes do not call in advance. We conclude that

these operations are like the instant, short trip service provided by taxis.

Complainant alleges a loss of drivers because defendant charges a driver \$80 per week to lease a car and use his authority and taxi companies charge \$280 per week to operate under a taxi permit. Defendant denies this allegation. However, Davitian, defendant's own witness, testified that the car he drives is owned by defendant and leased by the driver for \$80 per week, and that the driver keeps all monies above \$80. As a driver, he charges straight mileage. He has worked for defendant for two years and was a taxi driver before joining defendant's company. We must find that defendant's method of employing drivers is not like a typical charter-party carrier.

Complainant introduced the testimony of Ward that Soleymani agreed to accept referrals of taxi customers from Valley Cab as further evidence that defendant operates a taxi service. His testimony is contested by Soleymani. Soleymani testified that there was no agreement and that he told Valley Cab to instruct potential customers to call People Car Service directly. He then instructed employees to explain that People is cheaper than taxis, does not charge for waiting in traffic and customers must call in advance to receive service. Defendant's driver supported the testimony that he explains defendant's service to any referred customer. However, this only shows that the customer initiates the service call rather than the cab company. Defendant did not decline the business, which tends to show his desire to serve taxi customers.

Complainant alleges that defendant hails customers, cruises the public streets for customers and waits for customers in taxi zones. However, Serozh Mesropian, complainant's own witness, repudiated his written statement that these allegations are true. Mesropian testified that he was coerced into signing the statement. Therefore, we cannot find that these allegations are true.

Defendant testified that he no longer charges flat rates, but established a minimum rate of \$3 and now does not transport passengers for a few blocks generally. Since complainant's investigators testified they were charged by the mile and complainant's driver testified he charges by the mile, we cannot find that defendant continues to charge a flat rate.

We conclude that the evidence is insufficient to find that defendant charges flat rates, hails customers, waits in taxi zones, or accepts taxi customers without explaining his service. However, we do find that defendant paints his vehicles like a taxi, advertises to taxi customers, operates almost entirely on short notice for short distances, carries 1 to 2 passengers per trip and leases vehicles to drivers.

Defendant argues that this service takes advantage of more flexible charter party regulations in GO 157, which allow short trips arranged on short notice by telephone. He also argues that GO 157 invalidates previous case law concerning "bandit taxis," because GO 157 was issued after these cases were decided. We disagree. GO 157 certainly brought up-to-date the regulation of charter-party carriers. However, the prohibition against operating a taxi service which stems from Public Utilities Code 5353(g), now appears in Part 3.03.

It is true that GO 157 allows short notice reservations by telephone. However, interpreting the rule to allow the majority of transportation service to be short notice or immediate response, gives the effect of allowing a charter-party carrier to operate a taxi service. We cannot allow this interpretation to prevail. Under no interpretation of GO 157 may defendant operate a taxi service.

Our findings that defendant paints his vehicles like a taxi, advertises to taxi customers, operates almost entirely on short notice for short distances, carries 1 or 2 passengers per trip, and leases vehicles to drivers is sufficient evidence to

conclude that defendant operates a taxi service. We conclude that defendant provides a service which is taxi service, not charter-party service.

Since we find no lawful charter-party service is being conducted under this authority, we will revoke it.

Insurance Coverage

We granted complainant's request to take official notice of three documents contained in Commission licensing files: Notice of Suspension (April 29, 1990), Notice of Revocation (May 30, 1990), and Notice of Reinstatement (June 6, 1990). Based upon these documents, complainant alleges that defendant had inadequate insurance during May 1990. Complainant then introduced waybills to show that defendant operated during the period of this suspension and revocation.

Soleymani testified that he is currently insured and to his knowledge has had no lapse in insurance coverage or Commission authority. He explained that he was not aware of the Commission notices until he received them through discovery in the pending civil lawsuit filed by complainant. He called the Commission to inquire about the documents and was told that his new insurance company had failed to send the correct insurance form. The company later sent the correct form. However, in the interim, a Notice of Revocation was generated but not sent to defendant because the Commission was waiting for the correct form. Therefore, to his knowledge he has never been suspended or revoked for inadequate insurance.

We take official notice that defendant accurately described the Commission's action under these circumstances. Therefore, we find no violation of our requirement for adequate insurance.

Harrassment

Soleymani testified that complainant and his employees made numerous "silent" calls to him over his cellular telephone.

He testified that there were other calls where Jack, complainant's dispatcher, insulted and threatened him. The "silent" calls occurred 10 times a day and sometimes 20-25 times in the evening, resulting in cellular telephone charges of \$300, \$1,200 and \$1,800 for three months in 1989. He estimates that 80% of these calls were harrassment. Soleymani reported the calls to the police who traced the calls to Schaeffer's office. The police department talked to Schaeffer who promised to stop his employees from calling defendant. Schaeffer told the police that some of the calls were to verify violations in defendant's operation. Defendant indicated to the police that he would pursue the matter in a civil action.

We make no findings on the charges of harrassment because we cannot offer a remedy of damages for such behavior. The Commission does not have jurisdiction to award damages. Defendant may choose to pursue these allegations in a civil or criminal proceeding.

Unsupported Allegations

Complainant alleges defendant operates several vehicles that have not been inspected, uses drivers not authorized to provide transportation service and displays its TCP number on its vehicles in an inconspicuous place. Complainant presented no evidence addressing these allegations, therefore, has not met its burden to prove these violations.

Defendant presented no evidence to support its allegations that complainant's operations are unlawful or that the complainant is forum shopping. Accordingly, we cannot make findings on these issues.

Findings of Fact

1. Defendant performs transportation services in Burbank, Glendale and Pasadena. Defendant has no taxi authority to operate in these cities.

2. Defendant advertises in the yellow pages of local directories under the "Taxicab" heading.

3. Defendant places ads on the doors of customers who used defendant's previous taxi service.

4. Defendant paints his vehicles the same color as complainant's stationwagons and places his logo in the same place as complainant on these vehicles. Defendant's vehicles may reasonably be mistaken for a taxi.

5. Defendant provides immediate response to telephone requests for transportation service, the points of origin and destination being specified by the customer.

6. Of the total trips provided by defendant, 50% are a number of blocks, 70% involve one passenger, 90% are upon short response times, the average trip is 5 miles and the average trip time is 20 minutes.

7. Defendant's driver, Davitian, leases a car owned by defendant for \$80 per week to use in defendant's transportation operation.

8. Mesropian, complainant's witness, denies that he saw defendant hail customers on the street.

9. Defendant accepts the calls of customers referred by Valley Cab; however, defendant informs these callers that it is not a taxi company, that it charges by mileage, that it is less expensive than taxis, and that it requires that customers pre-arrange transportation.

10. We take official notice that although Notices of Suspension, Revocation and Reinstatement dated in 1990 are contained in defendant's Commission file, there was no lapse in his insurance coverage.

Conclusions of Law

1. Applicant operates a taxi service in Burbank, Glendale and Pasadena without a license.

2. Defendant's violates General Order 157, Part 3.03 by operating a taxi service.

3. Defendant's charter-party authority, TCP 5549-P, should be revoked.

4. This order should be effective immediately in order to halt unlawful operations.

ORDER

IT IS ORDERED that:

1. The complaint is granted.
2. Charter-party permit TCP 5549-P is revoked.

This order is effective today.

Dated July 22, 1992, at San Francisco, California.

DANIEL Wm. FESSLER
President

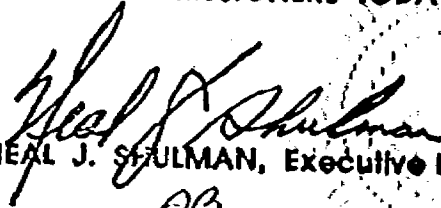
JOHN B. OHANIAN

PATRICIA M. ECKERT

NORMAN D. SHUMWAY

Commissioners

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


NEAL J. SHULMAN, Executive Director