

ORIGINAL

Decision 83 09 043 SEP 7 1983

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

TRANSPORTATION INVESTMENTS, INC.,)
dba VALLEY CAB COMPANY, a)
California corporation,)

Complainant,)

vs.)

BARBARA HACKETT and RALPH)
A. PAULSEN, dba CALL-A-CAR,)

Defendants.)

Case 82-03-12
(Filed March 25, 1982)

TRANSPORTATION INVESTMENTS, INC.,)
dba VALLEY CAB COMPANY, a)
California corporation,)

Complainant,)

vs.)

KAMBIZ MAHINFAR & HOSSEIN)
LOTFINEJAD, dba OLYMPIC TRANSIT)
EXPRESS,)

Defendants.)

Case 82-03-14
(Filed March 25, 1982)

Steve Neimand, Attorney at Law, for
complainant.

Barbara E. Hackett, for herself, and
for Ralph A. Paulsen, defendants in
C.82-03-12; and David Gurewitz,
Attorney at Law, for Kambiz Mahinfar
and Hossein Lotfinejad, defendants
in C.82-03-14.

O P I N I O N

Transportation Investments, Inc., doing business as Valley Cab Company (Valley), filed Case (C.) 82-03-12 seeking revocation of charter-party permit TCP 1805-P issued to Barbara Hackett and Ralph A. Paulsen, doing business as Call-A-Car (CAC); and C. 82 - 0 3 - 14 seeking revocation of charter-party permit TCP 1799-P issued to Kambiz Mahinfar and Hossein Lotfinejad, doing business as Olympic Transit Express (Olympic).

In each of the complaints, Valley alleges that defendants:

- a. Are violating Commission rules governing passenger charter-party carriers.
- b. Are operating unfranchised taxicabs in the San Fernando Valley and in the City of Los Angeles.
- c. Advertise and solicit business as taxicab companies and service those businesses in vehicles bearing TCP numbers.
- d. Operate sedans and other vehicles in providing such service which are not permissible for use by charter-party carriers.
- e. Lease their vehicles, which carry TCP numbers, to independent drivers on a per shift basis, which violates a Commission requirement that drivers be employees under the complete control of the licensee.
- f. Are not complying with regulations regarding prearranged service; e.g. their vehicles are found waiting at taxi stands and their drivers pick up customers who flag down their vehicles from the streets.

8. Operate some vehicles painted and decorated to look like taxicabs; some of those vehicles have dome lights and meters.

Valley further contends that the service being provided by CAC and Olympic is short-haul taxicab service, not charter-party carrier service.

At the direction of Administrative Law Judge (ALJ) Levander hearings on the two complaints were held on a consolidated basis in Los Angeles. Olympic argues that separate hearings of these cases should be held because the procedure is similar to a criminal trial involving nonrelated defendants and that the ex parte consolidation of hearings which could result in its being put out of business is a denial of its rights to due process and to equal protection under the law.

This decision separately discusses evidence relevant to each defendant. Several witnesses holding no regular relationship with either complainant or defendants gave testimony relevant to both complaints. The consolidation of hearings expedited the hearing process and did not prejudice any of the defendants.

Complainant called the following witnesses:

- a. George Piedra, Valley's vice president and general manager, whose duties include taxicab operations and related financial and business matters.
- b. Eddie Pruitt, an airport security officer, employed by the City of Los Angeles Department of Airports (Airports). His duties include vehicular patrol on or near airport property at a park-and-ride bus terminal, the Fly Away, used to provide shuttle bus service to Los Angeles International Airport (LAX).

- c. Jordan Rackerby, a security officer employed by Airports. He provides security inside the Fly Away terminal.
- d. Kenneth Walpert, a public utilities engineering associate employed by the City of Los Angeles Department of Transportation (DOT). His duties include rate studies and recommendations for the regulation of taxicabs and autos for hire.
- e. Rex Mitchell, an attorney employed by The Pacific Telephone and Telegraph Company (Pacific), who does legal work related to Pacific's yellow and white page directories.
- f. G. Vincent De Caesar, president of a taxicab company franchised in the San Fernando Valley and president of a limousine company which operated under a charter-party permit.
- g. John Lotierzo, a taxicab driver now employed by Valley. He formerly drove Olympic vehicles.
- h. Christopher Darryn, an individual, hired by Valley to investigate unfranchised taxicab operations by Olympic and CAC.
- i. Ronald Sinsabaugh, a public utilities inspector employed by DOT. His primary duties involve enforcement of DOT's rules and regulations for public transportation vehicles including taxicabs.

Olympic called the following witnesses:

- a. James Ferro, a division engineer in the regulatory and enforcement division of DOT.
- b. David Gurewitz, Olympic's attorney.

CAC also sponsored Ferro as its witness. In addition, CAC called the following witnesses:

- a. Paul Ryan, CAC's general manager and dispatcher.
- b. Steve Neimand, Valley's attorney.
- c. Barbara Hackett, a defendant. She works as a dispatcher.

In addition, James E. Washington, senior public utilities inspector employed by DOT, was called by the ALJ to testify on DOT interoffice memoranda relevant to the complaints (Exhibits 4 and 6).

Introduction

Neimand filed Case No. C 401 361^{1/} in the Los Angeles County Superior Court for Transportation Investments, Inc., dba

1/ We take official notice of the following orders issued by Judge Dickran Tevrizian, Jr. in Los Angeles County Superior Court in Case No. C 401 361:

- a. A preliminary injunction filed March 16, 1982 enjoining and restraining Hossein Lotfinejad and Kambiz Mahinfar et al., dba Olympic Transit Express, from operating any taxicab service within the San Fernando franchise area granted to plaintiff by the City of Los Angeles or from advertising or soliciting telephone business or accepting calls for taxicab service within plaintiff's franchise area until defendants have been granted a taxicab franchise by the City of Los Angeles.
- b. A preliminary injunction filed April 21, 1982 imposing similar restrictions against Barbara Hackett and Ralph A. Paulsen et al., dba Call-A-Car.
- c. An order modifying preliminary injunction filed June 10, 1982 ordering Olympic and CAC to answer any calls for transportation from customers by stating "their company name immediately followed by 'We are not a licensed taxicab service but are licensed as a charter party carrier by the Public Utilities Commission.'"

Valley Cab Company, a California corporation, against the largest companies Conway believed to be operating as taxicab companies through unlawful use of Commission authority. Neimand testified that Valley's owners believe that (a) since Valley was encountering economic problems in meeting its franchise requirements, Valley should benefit from its limited monopoly position as a franchisee, without having to meet the unfair competition of alternate taxicab service from charter-party carriers; and (b) Valley had to act to stop further growth of unlicensed taxicab operations.

Neimand states that Judge Tevrizian suggested that he file complaints with the Commission concerning improper actions of carriers regulated by the Charter Party Act, since that is an area of Commission jurisdiction. These complaints resulted.

Complainant's Testimony on Olympic

Piedra testified that the color scheme of the Olympic Car Co. station wagon shown in Exhibit 1^{2/} resembles the Independent Cab Co. vehicles shown in Exhibits 2 and 3; and the Olympic vehicle shown in Exhibit 1 did not use a taximeter, but he had seen taximeters in Olympic vehicles four or five months ago.^{3/}

Officer Pruitt testified that he observed Olympic vehicles parked at the taxi stand in front of the Fly Away terminal, in the red zone in front of that taxi stand,

2/ Olympic operates cars labeled Olympic Car Co.

3/ Decision (D.) 82-05-069 dated May 17, 1982 in C.10902 prohibits use of taximeters and/or top lights by charter-party permittees. Those restrictions apply to new permits and annual renewals of existing permits.

creating a traffic problem for buses entering the terminal, across the street from the terminal, and in a 30-minute parking area in the terminal. He also saw Olympic vehicles driving through the terminal area posted "Buses Only". Pruitt responds to disturbance calls at the Fly Away. One such incident occurred two weeks before the hearing. At that time he found Olympic cars parked in the taxicab zone and in the red zone in front of the Fly Away and ordered Olympic's drivers to move. He saw Olympic drivers, at the Fly Away, waiting for bus passengers carrying their luggage. Based on the length of time the drivers waited, he felt those drivers were not meeting passengers on a prearranged basis. He has seen Olympic drivers leave their cars to successfully solicit people to use their vehicles. He admits that he did not overhear any conversations between Olympic drivers and the people they spoke to at the terminal.

Officer Rackerby testified that he has seen Olympic drivers walk up to passengers debarking from buses at the Fly Away, and heard Olympic drivers call out, "Anyone need a cab?" He has seen Olympic cars parked in the taxicab zone and the adjacent red zone in front of the Fly Away, and across the street from the terminal. He has seen Olympic drivers soliciting business from person to person. In addition, Olympic drivers have given him excuses for not leaving the Fly Away, and those drivers subsequently solicited business at the terminal.

Rackerby also testified that there used to be an Olympic Cab Company. He had recurring problems at the Fly Away with one of the Olympic drivers. He was sure that he was not confusing the identities of the two companies.

Walpert received interdepartmental correspondence from Sinsabaugh dated June 28, 1982 (Exhibit 6). Sinsabaugh testified on his report concerning the illegal operation of Olympic Car Company. Sinsabaugh observed an Olympic blue-and-white station wagon without license plates parked at the curb in front of the North Hollywood Greyhound Bus station. In Exhibit 6 he states:

"From observations, it appeared that the driver was there to solicit business from the Bus Terminal. Inspectors identified themselves to driver and asked him why he was parked at said location. Driver stated that he was a cab driver, and what was the problem? Inspectors asked the driver if he was there on a pre-arranged order. The driver replied, 'No, that he was waiting for patrons from the Bus Terminal.' Inspector asked driver if he owned the vehicle. Driver replied, 'No, that he did not own the vehicle, that he worked for Olympic Car Company.'

"Inspector informed driver that he could not operate his vehicle as a taxicab for hire, that he was in violation of State and City guidelines. Driver stated that he was not aware that he was breaking the law. The driver then started his vehicle and left the area."

He also states that the Olympic vehicle was registered to Kambiz Mahinfar.

Mitchell testified that Neimand had advised him of the issuance of a court order which prevents Olympic from advertising using the word "taxi". He received the injunction against Olympic from Neimand (see footnote 1.a.). Mitchell received the injunction one week before the North Hollywood-Van Nuys-Sun Valley May 1982

Yellow Pages directory was published by Pacific. At Mitchell's request another Pacific employee contacted Olympic about the status of its ad^{4/} in the taxicabs section of Pacific's telephone directory. At Olympic's request the word "taxi" could have been deleted from Olympic's ad. Olympic's large ad in the taxicabs heading, shown in Exhibit 9, is two columns wide and half a page high. Olympic also has a bold listing and a bold number listing under taxicabs and three-line ads in the limousine, delivery service, and messenger service headings of the directory which state, "Please See Our Ad Taxicab Hdg".

Under cross-examination Mitchell testified that he does not ordinarily make a determination whether or not an ad is false or misleading. Occasionally, he is asked to make an in-house determination whether the action on an ad that Pacific is about to take is legal or illegal. He did not believe that Pacific could be in violation of the court order (see footnote 1.a) regarding the publication of Olympic's ad. He formulated no opinion on whether Olympic's ad was an ad for taxicab service.

Lotierzo testified that he drove an Olympic car for approximately two months and during that time he parked at the Fly Away taxi stand, adjacent to the North Hollywood Greyhound bus terminal, and in front of the Valley Hilton Hotel to pick up fares. He stated that he solicited fares inside and outside of the Fly Away by asking people if they needed a taxi. If the taxi zone next to the Fly Away was empty, he parked his Olympic car in the taxi zone to solicit fares. He regularly used a taximeter on his trips until the meter was stolen and when a passenger got into the Olympic car, he dropped the meter flag to register

^{4/} Mitchell testified that Olympic's advertising contract was lost, but Exhibit 8, a business record, contains the billing information in that contract.

an initial \$1.30 charge. Olympic rented its car to him for \$25 per night before two-way radio equipment was installed in the car and \$30 per night after the radio equipment was installed. In addition, he paid for gasoline for the car. He kept all of the fare revenues. However, he could not earn enough on that basis and he terminated his relationship with Olympic. He went to work as a Valley taxicab driver.

As a Valley driver, Lotierzo frequently sees parked red, white, and blue Olympic station wagons in the taxi zone and the adjacent red zone in front of the Fly Away or across the street from the terminal. He has seen and overheard Olympic drivers waiting for passengers and soliciting fares at the Fly Away. He tells Olympic's drivers to leave the Fly Away, the Greyhound terminal, and the Valley Hilton Hotel when he is at those locations trying to pick up a fare.

Lotierzo testified that he never had a prearranged call to pick anybody up at the Fly Away, but he did pick up passengers by prearrangement at other locations, e.g. at bars. He routinely notified Olympic's dispatcher when he picked up a fare at the Fly Away or upon being flagged down on a street by saying "10-8" to his destination.

When cross-examined, Lotierzo admitted signing the following statement (Exhibit 10) prepared by Olympic:

"To All Drivers:

"This letter is a statement of facts about our operation so as to relieve some confusion.

"We are a state licensed operation, to wit a 'Charter Party Carrier'. We are not Taxi-Cabs. You may not take any order except when pre-arranged by the Company. You may not wait for

customers on Street corners or taxi stands. You may not pick up at an airport unless arranged through the Company as a normal order. You may not present yourself as a 'Vehicle for Hire'. You may not charge any rate except that quoted by the Company.

"It is unlawful for a charter-party carrier of passengers to directly or through an agent, broker, or others agree, arrange, or contract to charge for transportation computed on an individual fare basis.'

"The aforementioned rules are set down to us by the Public Utilities Commission. Any violation could result in revocation of our permit, as a result, any deviation from these rules will be cause for termination. No exceptions.

"I, /s/ John Lotzierzo, state that I will not assess or collect any individual fares under my Charter Party Authority. Charges will be based on time of usage, mileage rates or a combination of both."

Lotierz

o denied that he was fired for persistent violation of the Charter Party Act rules. He testified that defendants fired him because they believed he stole the taximeter in his car.

In redirect, Lotierz

o testified that Olympic's owners told him to pick up people standing in front of the Fly Away if there were no taxicabs there and when Olympic's owners were in the office they stayed by the dispatcher's radio and could hear him and other drivers calling "10-8" messages to the dispatcher. He stated that defendants rehired him a few days after firing him when they determined he was not responsible for the theft of the taximeter and at that time defendants told him to get back

to work and said nothing about picking up fares at taxi stands or at the Fly Away. He testified that neither defendants nor the dispatcher ever reprimanded him for such pickups. He was told that there was no insurance on the car he drove, but if he received a traffic ticket Olympic would have the car insured; and that Olympic's owners did not require their drivers to sign forms to enforce charter-party regulations but to make it look as if they were operating legally.

Darryn testified that he called Olympic seven times over several months to request taxicabs. Initially, his use of the word taxicab did not trigger any response from Olympic. The person answering his last call to Olympic identified the company and rapidly stated, "We are not a licensed taxicab service, but we are licensed as a charter-party carrier by the PUC."^{5/} When Darryn asked for a taxicab he was told, "I can send you a car and driver." The response to Darryn's request for an explanation of the difference between a car and driver and a taxicab was, "We are cheaper than a taxicab." He requested Olympic to provide the service. Approximately 20 minutes after his call a blue-and-white Olympic station wagon with a blue roof and red lettering on the side arrived to pick him up. Darryn testified that the vehicle did not have a dome light, but it looked like a taxicab to him. The driver called his dispatcher and said "I'm blue" to his destination. Other Olympic cars picking up Darryn looked like taxicabs to him, some of those vehicles were equipped with taximeters.

^{5/} This call was made after issuance of the injunction requiring Olympic to make that disclaimer.

Darryn requested trip receipts for each ride he took. The drivers generally wrote receipts on the back of business cards, e.g. for Olympic Trans Express, Olympic's Transit-Express. He also received an Olympic Trans Express card from one of Olympic's drivers which contained the word "taxi" in bold print. A copy of the original card filed in Superior Court Case No. C 401361 is Exhibit A of Exhibit 13 in this proceeding.

At Darryn's request Olympic drivers explained the difference between a taxicab and Olympic's operations as "We are not a taxicab, but we have a charter certificate; the only difference has something to do with licensing." They acknowledged that Olympic was operating as a taxicab service without a franchise and that Olympic was the cheapest taxicab company in town.

Darryn took a trip with Olympic and later called CAC to make a return trip. But the same Olympic car that took him out that day arrived to pick him up. The driver told him the two companies exchange referrals when either of them needed additional cars.

When cross-examined Darryn was uncertain about whether the copy of a receipt (Exhibit B of Exhibit 13) was written on the back of Exhibit A of Exhibit 13.

Olympic's Defense

In its answer to the complaint Olympic denies all of the allegations concerning operations other than as a charter-party carrier, alleges that Valley failed to state sufficient facts to constitute a cause of action for relief against defendants, and requests dismissal of the complaint because complainant did not follow an informal complaint procedure prior to filing the complaint.

Gurewitz testified that he reviewed the file in Superior Court Case 401 361; the reproductions shown on Exhibit A and Exhibit B of Exhibit 13 are on different cards; there is writing on the back of Exhibit A shown in the Superior Court file; and there is printed material on the reverse side of the original of Exhibit B which is identical to the card shown in Exhibit A, except for the whiting out of the word "TAXI".

Ferro testified that after DOT received a copy of the complaints it conducted investigations of the operations of Olympic and CAC. He received a memorandum from Washington which states an inspector placed a test call to Olympic; Olympic's dispatcher said it was not a taxicab service but a charter-party carrier operation; and that a private car and driver was available if the caller wished to use their service. Based on that information Washington concluded that Olympic was operating within the guidelines governing charter-party carriers.

Ferro also testified that he was familiar with taxicab franchisees and Transportation Investments, Inc. was not a taxicab franchisee in Los Angeles.

Under cross-examination Ferro testified that one call constituted the sole investigation of Olympic. He had previously seen Olympic cars operating on the streets, but he had not concluded that Olympic operated taxicabs. However, after looking at Exhibits 1, 2, and 3 he concluded that Olympic's car did resemble a taxicab, without a city seal.

Process

TD-7

In his closing argument Gurewitz denounced the testimony of Valley witnesses and contended that all of them are biased and lacked credibility. He alleged that Exhibit A to Exhibit 13 was stolen. He noted that Piedra did know the name of his employer, Valley's parent,^{6/} and that Ferro's testimony contradicts Piedra's testimony that Transportation Investments, Inc. is a taxicab franchisee in the City of Los Angeles. He argued that due to the multiplicity of taxicab companies, there could be no vehicle coloring used by Olympic which would not look like a taxicab and the clear and only implication from Olympic's ad "Why Wait for a Taxi" is that Olympic is not a taxi. He argued that there is no TCP or charter-party carrier classification in the Yellow Pages but that Olympic would prefer to use those classifications if they were available. He stated that since Olympic does not own a limousine, its limousine ad refers to its taxicab ad because that classification is the closest thing that Olympic could get to an ad for a charter-party carrier; and noted that Mitchell, Pacific's attorney, did not think Olympic's ad was in violation of the court order. ✓

Gurewitz contended that there is no evidence showing that Olympic's drivers are not employees. But he cited Royal Indemnity Company v Industrial Accidents Commission (1930) 104 CA 290 and Employee Stabilization Commission v Morris (1946) 28 Cal 2d 812 to show that an individual may be an employee for certain purposes but not for purposes of the Workers' Compensation Law. He noted a Business and Professions Code requirement that

6/ Piedra identified his employer as Transit Investments. The title box in both complaints contain an inked change of complainant's name from Transit Investments, Inc. to Transportation Investments, Inc., dba Valley Cab Company, a California corporation.

a real estate salesman must be an employee of a licensed broker to sell real estate, and a charter-party carrier requirement that a driver of its vehicle must be its employee. He argued that in the Employee Stabilization Commission case the court held that a person could be an independent contractor even though he was an employee and that common law relationships have not been outlawed by the Unemployment Insurance statute; and if a statute and common law can stand together, the statute should not be construed to abolish the common law.

Discussion of Olympic's Operations

Pruitt is a security officer whose duties include elimination of illegal traffic obstructions at the Van Nuys Airport and at the Fly Away. He has repeatedly observed Olympic drivers illegally parked at the taxicab zone and red zone in front of that terminal. Pruitt's testimony establishes that Olympic was operating an illegal taxicab service, not a charter-party service. We base this on Pruitt's repeated observations of Olympic drivers waiting excessive amounts of time in proscribed parking areas, in legal parking areas across the street from the terminal, and in the Fly Away parking lot as well as his observations of drivers leaving their cars to wait for buses and to solicit fares.

Rackerby confirmed Pruitt's testimony on the practices of Olympic drivers. In addition, he saw and heard conversations in which Olympic drivers solicited fares and called out, "Anyone need a taxi?"

Lotierzo's testimony confirms and expands on the officers' testimony on the illegal taxicab operations carried out by Olympic drivers. In addition, his testimony establishes that Olympic drivers reported illegal pickups to their dispatcher

and defendants stationed themselves near the dispatcher's radio at Olympic's office. Olympic's lease arrangement with Lotierzo violates General Order (GO) 98-A, Section 12. Olympic's owners illegally required Lotierzo to drive an uninsured vehicle and illegally encouraged him to pick up passengers if there was no taxicab around. As a job requirement Lotierzo signed a statement defining acceptable and nonacceptable Olympic driver conduct, but defendants' instructions to him demonstrate that defendants' written requirements were a sham, meant to protect themselves.

Sinsabaugh testified that an Olympic driver waiting outside a Greyhound bus terminal said he was a cab driver and that driver was unfamiliar with GO 98-A governing charter-party operations.

Three witnesses testified that some of Olympic's vehicles were equipped with taximeters.

Darryn's testimony shows that there was no significant difference between the vehicle coloring, fare structure, and immediate response dispatching procedures used by Olympic and those used by taxicabs. In addition, some drivers referred to themselves as taxi drivers and a business card identifies Olympic as a taxi service. Olympic and CAC illegally exchanged referrals because they did not receive the preconsent of persons requesting service for carrier substitutions.

Ferro testified there is not a precise definition of a taxicab, but if the vehicle looks like and is operated like a taxicab, it is a taxicab. Olympic's vehicle, photographed in Exhibit 1, looks like a taxicab.

Olympic's argument that its large ad emphasizing the word "taxi", placed under the taxicabs heading, could only be construed as a statement that Olympic was not a taxicab is disingenuous. Under the circumstances, we find that Olympic's

advertisement and listing under the heading "Taxicabs" in a classified telephone directory are solicitations to provide taxicab service.

The independent contractor relationships cited by Olympic are not pertinent to this proceeding. Olympic violated the provisions of GO 98-A, Section 12, drivers of equipment, in leasing its equipment on a day-to-day basis to an individual who is not an authorized carrier. In allowing and encouraging drivers to solicit taxicab business Olympic was not operating as a charter-party carrier.

Kambiz Mahinfar and Hossein Lotfinejad have operated an illegal taxicab service. Their charter-party permit, now suspended for failure to comply with the Commission's insurance requirements, should be revoked.

Gurewitz's Conduct

The Commission permits reasonable latitude in the conduct of parties in its proceedings, but Gurewitz has exceeded the bounds of reasonable conduct representing defendants in C.82-03-14. In his closing argument he misstates the record,^{7/} alleges Exhibit A of Exhibit 13 was stolen, and makes intemperate allegations that Olympic's witnesses are biased. Most of those witnesses provided damaging testimony against his clients. During the hearing he implied Neimand was offering tampered evidence to the Commission and he was admonished by the ALJ for throwing and

^{7/} Pruitt did not claim to both see and hear through windows, doors, people, and cars. Mitchell did not testify that Olympic's taxicab ad was not in violation of the court injunction.

scattering a declaration during a recess called to let defendants inspect that material (RT 194).

He made unsubstantiated allegations that Lotierzo was living with a woman employee of Olympic, quarreled with defendants, threatened them, and was making up his testimony. He presented no testimony in support of these allegations. During Lotierzo's cross-examination the ALJ had to request Gurewitz to remain behind the counsel table.

Lotierzo testified he was fired by Olympic for allegedly stealing a taximeter and rehired when defendants found that the supposition was incorrect, not because he was illegally operating as a taxicab driver. As discussed above, those illegal operations were encouraged by defendants. Gurewitz presented no witness to substantiate his other allegations. We construe the raising of spurious allegations and argument as an attempt to mislead the ALJ and the Commission as violations of the Code of Ethics, Rule 1^{8/} of the Rules of Practice and Procedure. In addition, Gurewitz's conduct at the hearing was improper. We put Gurewitz, an attorney at law, on notice that a repetition of improper conduct in other Commission proceedings will not be tolerated.

8/ 1. (Rule 1) Code of Ethics:

"Any person who signs a pleading or brief, enters an appearance at a hearing, or transacts business with the Commission, by such act represents that he is authorized to do so and agrees to comply with the laws of this State; to maintain the respect due to the Commission, members of the Commission and its Administrative Law Judges; and never to mislead the Commission or its staff by an artifice or false statement of fact or law."

Complainant's Testimony on CAC

Pruitt testified that he observed CAC vehicles at the Fly Away on weekends, CAC vehicles parked in the red zone in front of the Fly Away, CAC drivers get out of their cars to enter the terminal and approach passengers in the terminal, and passengers getting into CAC vehicles. Rackerby did not see CAC drivers soliciting fares at the Fly Away.

Darryn took eight rides in CAC cars over a period of several months. He called CAC to request a taxicab.^{9/} Initially his use of the word "cab" did not trigger any response from CAC. Later he was told he could be sent a car and driver. In response to his question on the difference between a taxi and a car and driver, he was told that CAC was much cheaper than a taxi and there was a difference in licensing.

On the last day Darryn rode CAC, he telephoned CAC. The dispatcher rapidly answered, "CAC Charter, we are not a taxi." Darryn continued to use the word "cab" in making arrangements to be picked up. An unmarked maroon car, with a jammed rear door, arrived to pick him up. There was a small business card in the lower right-hand side of the car windshield, but the car had no permit number. Darryn did not know if that car was sent to pick him up until the driver asked him if he had called CAC. He sat next to the driver who explained that the difference between a cab service and a charter-party service was that CAC did not have meters and you pay \$1.30 when you get in and a dollar a mile.

^{9/} As noted above, an Olympic car responded to one of his calls to CAC.

On another occasion a green station wagon, which had no permit number, picked him up. This vehicle had its rear seat torn out, its interior was in disarray, and a broken door lock. The driver told him that the only difference between a CAC and a taxicab service was that he could not park at the airport or taxi stands, but he could accept fares who flagged him down. Another driver told him that "What I like best about driving a cab is that you can park anywhere." The driver of an old style Checker taxicab, sent by CAC to pick him up, told him he previously worked for Checker Cab and he and CAC jointly owned that taxicab.

Darryn requested receipts, stickers, and business cards from CAC drivers for the rides he took in CAC vehicles. He received receipts written on business cards, separate receipts, and stickers (Exhibits 14, 15, and 16). The stickers contained the question, "Tired of Waiting for a TAXI?" suggested "Try Call A Car", and offered prompt, courteous, 24-hour service (see Exhibits 14 and 16C and D). Taxi is emphasized in large bold print on the stickers. The cards are for Call A Transportation Service.

Mitchell received a call from Neimand informing him that a court order had been issued directing CAC not to use "taxi" in their advertising. Neimand provided Mitchell with a copy of that preliminary injunction (see footnote 1.b.). Mitchell caused CAC to be contacted concerning its advertising, which includes a two-column wide, half-page tall advertisement and two 2-line listings; one for CAC, the other for Valley Call-A-Car under the taxicabs heading (see pages 1272 and 1273 in Exhibit 9).

Under cross-examination, Mitchell testified that Pacific would not delete an ad on its own initiative unless it determined with certainty that a particular ad would be in violation of a court order. Otherwise, Pacific would give the advertiser every benefit of the doubt as to whether or not its ad was legal. His initial reaction to the CAC ad was to remove it. However, Pacific contacted CAC to ask why it wanted to run an ad which fits the specification of the injunction. CAC replied that it is a PUC-licensed carrier which is identical to a taxicab service but not a taxicab service, and CAC could not advertise at any other place in the directory. Mitchell conceded that when Pacific contacted Hackett, she was given the choice of pulling her ad or letting it run and take a chance. He concluded that if the ad was in violation of the court order, Pacific would not be responsible for the violation, but CAC would. There are CAC ads under the limousine section of the directory. In addition, the directory contains headings for "Buses-Charter and Rental", chauffeurs, and lounge car tours. CAC has listings in three of Pacific's Yellow Pages directories.

CAC's Defense

In its answer to C.82-03-12, CAC alleges that a DOT compliance check demonstrates that it (a) is in compliance with Commission requirements; (b) never operated taxicabs; (c) never advertised as a taxicab; (d) was referred to the taxicabs heading in the Yellow Pages for want of a more appropriate heading; (e) operates nine-passenger maroon station wagons, with no top lights or meters, which do not resemble taxicabs; (f) pays its employees a commission or the minimum wage, whichever is greater; (g) maintains office records of charter trips and requires drivers to turn in daily records of every charter trip driven; (h) contracts for many trips on a weekly or monthly basis; (i) does not permit its drivers to park at taxi stands or pick up customers trying to flag them down on a street; and (j) will charter trips regardless of the length of a trip. Two driver declarations attached to the answer partially support items (e), (f), (g), and (i) of defendants' answer.

Ferro testified that DOT's investigation of CAC did not establish any illegal activity. The investigation report (see Exhibit 4) states:

"Inspectors placed test calls to identify each companies mode of operation:

"1. CALL-A-CAR - 841-8555
14:00 HRS - From: Valley Hilton to:
12825 Ventura Boulevard

Inspector placed call requesting a taxicab. The dispatcher asked the name, location and destination of Inspector. The dispatcher stated that it would be approximately 10 minutes. At 14:25 hours a mint green, chevrolet chevelle station wagon, License Number 459 HXU with the name CALL-A-CAR on the R/L

front door of the vehicle arrived to make the pick-up. The vehicle was plain in design (other than identification) and did not simulate a taxicab in any way, shape or form. The driver transported Inspectors to their destination. Inspectors observed a beeper and driver's waybill. The driver stated that the fare was a \$1.30 drop and \$1.00 a mile. The driver issued a receipt to Inspectors for \$4.00."

Ryan testified that most of CAC's customers were people dissatisfied with taxicab service in the San Fernando Valley; approximately 75% of CAC's business is from return customers. He presented:

- a. Exhibit 17 consisting of invoices, payment stubs, or remittance statements from medical establishments, Lockheed-California Company, and Southern Pacific Transportation Company (SP). (The SP remittance statement indicates payment for "CABS".)
- b. Exhibit 18 consisting of a standard CAC transportation agreement form and an unsigned copy of a form to transport two individuals on a weekly basis. (Hackett states they are exceptional children.)

In answering calls for CAC, Ryan asks the party where they are, where they are going, their telephone number, and when they want to be picked up. In working for taxicab companies, he only asked where the party was, but if requested he would estimate how long it would be before the taxi would arrive. He wrote the message used on CAC's sticker (Exhibit 14) to suggest an alternative to taxicabs.

When cross-examined Ryan testified that he did not design the sticker which emphasizes the word taxi and that CAC instituted a telephone disclaimer statement to comply with a court decision.

Ryan also testified that the TCP designation is stenciled only on the front and rear bumpers of its vehicles; its rates consist of a \$1.30 seating charge plus \$1 per mile.

Neimand testified that (a) Valley instituted the complaint and court cases to stop an increasing number of state-licensed companies from operating as taxicabs in its territory; (b) Commission charter-party authorization is not meant to authorize alternate taxicab service; (c) charter-party regulations are not as stringent as taxicab regulations; and (d) Valley will fire any driver who refuses to pick up a fare or gives bad service.

Hackett submitted signed driver declarations setting out permissible and prohibited actions (Exhibit 19), a driver's log sheet (Exhibit 20), and copies of sales agreements and ownership certificates for the three vehicles CAC was operating (Exhibit 21).

Hackett testified that she had been unsuccessful in establishing a new classified ad heading for her operations, i.e. TCP vehicles. She testified that CAC does not operate buses or six-door Lincoln limousines. CAC is willing to transport children with behavioral problems and to pick up persons at unsafe locations at night. CAC has contracted with a bar owner to carry its customers on request. Taxicab companies and other charter-party carriers are unwilling to pick up minors or provide service under those difficult conditions. CAC does not want to provide limousine service with a two-hour or \$50 minimum charge.

Hackett asked why bus companies, trains, and aircraft companies can claim to operate faster and/or cheaper than competitors, but CAC cannot claim to have better service than a taxicab. She argued that CAC did not want to obtain a taxicab franchise. She maintained that it conducted its business in accordance with Commission requirements and that DOT's investigation did not support the complaints' allegations. Pacific's Yellow Pages provide no appropriate place for CAC's ads and Pacific was unwilling to establish a new heading. She argued that there is no evidence that CAC's vehicles resemble taxicabs, and that they are not equipped with top lights or meters. Its drivers do not lease cars from CAC. She argued that Darryn established that CAC accepted prearranged calls and that his persistence in asking for a taxicab after hearing CAC's disclaimer does not establish that CAC operated taxicabs. She believes Valley's complaint was unreasonable harassment of CAC. CAC denied owning a Checker taxicab, but did not explain why a taxicab was sent to pick up Darryn in response to his call to them.

Discussion of CAC's Operations
and Practices

Darryn's testimony establishes that some CAC drivers believed they operated taxicabs, did operate as taxicabs, or were aware that they were evading regulations governing charter-party carriers.

Pruitt's testimony was not specific about observing illegal solicitation activity by CAC drivers. Rackerby and DOT did not observe CAC solicitations.

Although CAC obtained driver statements prohibiting taxicab operations it did not stop its drivers from performing illegal taxicab operations.

Some of CAC's vehicles do not comply with GO 98-A as follows: "Part 10, Requirements as to Display of Company Name, Signs, and Numbers; Part 4...Cleanliness..." In addition, CAC operated unsafe equipment.

The immediate dispatch procedures and fare structures used by CAC are similar to those used by taxicabs.

CAC put large display ads in the taxicab heading of Yellow Pages telephone directories with a heading "Tired of Waiting for a Taxi?" which highlights the word taxi. The ad also states that reservations are accepted and offers prompt, courteous service. CAC's claim that this ad offers an alternative to taxicab service is without merit. CAC's sticker (Exhibit 14) does not mention reservations. CAC did not issue telephone disclaimers until ordered to do so by court injunction.

CAC's evidence does not rebut evidence that it is providing illegal taxicab services, is operating vehicles not in compliance with GO 98-A, is illegally exchanging referrals with another charter-party carrier, and is holding itself out to provide taxicab service. CAC's permit should be revoked.

Complaints' Standing

The question of complainant's interest in Valley Cab Company was not clarified on the record; however, the complaints raise valid issues about defendants' failure to comply with the rules and regulations governing their operations as passenger charter-party carriers, and of defendants' unlawful operations as taxicabs.

Even if Transportation Investments, Inc. did not have any interest in a taxicab franchise, as defendants allege, the Commission would not have been required to dismiss the complaints because of the absence of direct damage to it (see PU Code

Section 1703). That issue was recently addressed by the Commission in Affiliated Cab Drivers v K.T.L. Co. Limousines [sic] et al. (D.82-05-069) involving a complaint filed by an association of taxicab drivers seeking to prevent three charter-party carriers from operating as taxicabs and in Paul K. Montgomery v James Water Company, Inc., et al., D.93585 dated October 6, 1981 in Case (C.) 10815, which contains a conclusion of law that complainant (a former water company customer) had standing to file a (public utility status) complaint against that water company.

Both decisions refer to our policy in accepting complaints as follows:

"We are liberal in viewing the construction of complaints due to our desire to pinpoint and rectify genuine grievances (Utility User's Assistance League v P.T.&T. Co, et al., ..." D.60612 dated August 23, 1960 in C.6333).

Complainant's failure to explain how it controls Valley Cab Company is not central to the valid issues raised in the complaints.

Classified Directory Listings

Pacific did not seek to establish a new directory heading for CAC because Hackett could not explain the difference between her operation and a taxicab. While the listing of a service under a "taxicab" heading does not in and of itself violate any Commission order, coupled with other facts it can lend weight to the evidence that an entity is holding itself out as offering taxicab service. There may be a need for a more descriptive heading(s) for charter by automobiles, which are not limousines or lounge cars. A TCP heading is not descriptive

to the general public. The charter-party industry should discuss appropriate headings for charter by automobiles with communications utilities publishing Yellow Pages directories. PU Code Section 728.2 does not permit the Commission to establish alternate headings.

Findings of Fact

1. Charter-party permit TCP 1799-P issued to defendants Mahinfar and Lotfinejad has been suspended because defendants failed to comply with the Commission's insurance requirements. Defendants did business as Olympic Transit Express.
2. Olympic drivers solicit fares and pick up passengers who hail them down on the streets. Olympic drivers report pickups made without reservations to their dispatcher. Mahinfar and Lotfinejad stationed themselves near the dispatcher's radio at Olympic's office.
3. Mahinfar and Lotfinejad required Olympic drivers to sign statements defining acceptable and nonacceptable conduct, but they encouraged their drivers to pick up passengers not holding reservations.
4. In providing service under their charter-party permit, Mahinfar and Lotfinejad required Lotierzo to drive an uninsured vehicle; leased a vehicle on a daily basis to a driver holding no operating authority from the Commission; operated vehicles equipped with taximeters; charged rates containing an initial drop charge and a mileage rate; advertised in the taxicabs section of Pacific's Yellow Pages directory; did not issue telephone disclaimers on providing taxicab service until required to do so by court injunction; did not make available a copy of GO 98-A to one of their drivers; offered to immediately dispatch vehicles

to pick up callers; operated vehicles painted to resemble taxicabs; and exchanged referrals from callers requesting service with other carriers without obtaining advance consent from those callers for carrier substitutions.

5. Defendants Hackett and Paulsen hold charter-party permit TCP 1805-P. They are doing business as Call-A-Car.

6. CAC drivers have signed statements prohibiting taxicab operations, but their drivers believe they are operating taxicabs, and either operate as taxicabs or are aware that they were evading regulations governing charter-party carriers.

7. CAC dispatched a Checker-style taxicab in response to one of Darryn's calls to it. Some of CAC's vehicles do not display the company name, signs, and numbers. Some of CAC's vehicles are not clean or safe. CAC exchanged with other carriers referrals from callers requesting service without obtaining advance consent from those callers.

8. CAC advertised in the taxicabs sections of three of Pacific's Yellow Pages telephone directories. CAC's dispatchers did not issue telephone disclaimers on providing taxicab service until ordered to do so by court injunction.

9. CAC charges rates containing an initial drop charge and a mileage rate. It offers to immediately dispatch vehicles to pick up callers.

10. Gurewitz threw and scattered material provided to him for inspection. He alleges without foundation that complainant's witnesses are biased and that Neimand was offering tampered evidence to the Commission.

Conclusions of Law

1. Mahinfar and Lotfinejad permitted and encouraged their drivers to provide unregulated taxicab service and held themselves out to provide taxicab service.

2. Mahinfar and Lotfinejad operated in violation of Parts 1.18, 4.01, 10.05(e), 12.01, and 13.01 of GO 98-A.

3. Mahinfar and Lotfinejad operated a motor vehicle not insured in compliance with GO 115-B. They operated motor vehicles resembling taxicabs, some of which were equipped with taximeters.

4. The exchange of reservations between Olympic and CAC, without obtaining advance consent for carrier substitutions, is not in conformity with the prereservation requirement to be met by charter-party carriers.

5. Hackett and Paulsen permit use of their vehicles in unlicensed taxicab operations.

6. Hackett and Paulsen hold themselves out to provide taxicab service, and have operated in violation of GO 98-A.

7. Gurewitz's actions in making unsupported allegations to discredit complainant or its witnesses and in disrupting the hearing were not in conformity with Rule 1 of the Rules of Practice and Procedure.

8. Complainant has standing to file these complaints.

9. The charter-party permit of Mahinfar and Lotfinejad should be revoked.

10. The charter-party permit of Hackett and Paulsen should be revoked.

O R D E R

IT IS ORDERED.that:

1. Charter-party permit TCP 1805-P issued to Kambiz Mahinfar and Hossein Lotfinejad is revoked.
2. Charter-party permit TCP 1799-P issued to Barbara Hackett and Ralph A. Paulsen is revoked.

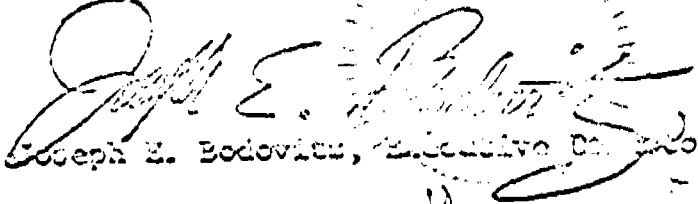
This order becomes effective 30 days from today.

Dated SEP 7 1983, at San Francisco, California.

Commissioner William T. Dogley
being necessarily absent, did
not participate.

LEONARD M. GRIMES, JR.
President
VICTOR CALVO
PRISCILLA C. CREW
DONALD VIAL
Commissioners

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


Joseph E. Bodovick, Executive Director

18 *case in point*
In his closing argument Gurewitz denounced the testimony of Valley witnesses and contended that all of them are biased and *looked* incredible witnesses. He alleged that Exhibit A to Exhibit 13 was stolen. He noted that Piedra did know the name of his employer, Valley's parent,^{6/} and that Ferro's testimony contradicts Piedra's testimony that Transportation Investments, Inc. is a taxicab franchisee in the City of Los Angeles. He argued that due to the multiplicity of taxicab companies, there could be no vehicle coloring used by Olympic which would not look like a taxicab and the clear and only implication from Olympic's ad "Why Wait for a Taxi" is that Olympic is not a taxi. He argued that there is no TCP or charter-party carrier classification in the Yellow Pages but that Olympic would prefer to use those classifications if they were available. He stated that since Olympic does not own a limousine, its limousine ad refers to its taxicab ad because that classification is the closest thing that Olympic could get to an ad for a charter-party carrier; and noted that Mitchell, Pacific's attorney, did not think Olympic's ad was in violation of the court order.

Gurewitz contended that there is no evidence showing that Olympic's drivers are not employees. But he cited Royal Indemnity Company v Industrial Accidents Commission (1930) 104 CA 290 and Employee Stabilization Commission v Morris (1946) 28 Cal 2d 812 to show that an individual may be an employee for certain purposes but not for purposes of the Workers' Compensation Law. He noted a Business and Professions Code requirement that

6/ Piedra identified his employer as Transit Investments. The title box in both complaints contain an inked change of complainant's name from Transit Investments, Inc. to Transportation Investments, Inc., dba Valley Cab Company, a California corporation.