

Decision 83 11 043 November 2, 1983

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the operations and
practices of Francisco, Aurelio,
and Manuel Medinilla, a partnership,
doing business as Express Transit
District.

OII 83-04-01
(Filed April 6, 1983)

Jack E. Kaufman, Attorney at Law, for
Aurelio Medinilla, respondent.
David L. Ray, Attorney at Law, for
Estate of Express Transit District;
Stanley R. Arnold, Attorney at Law,
for Investors of Express Transit
District; Richard T. Powers, Attorney
at Law, for Southern California Rapid
Transit District; James P. Jones, for
United Transportation Union; K. D.
Walpert, for Department of Transportation,
City of Los Angeles; Kathryn Grannis,
Attorney at Law, for Hector Flores and
Raul Orellana; Alan C. Sugarman, Attorney
at Law, for David Ray; and Roberta S.
Goldenberg, Attorney at Law, for Maria
de la Rocha: interested parties.
Alberto C. Guerrero, Attorney at Law, and
Michael Coughlin, for the Commission
staff.

O P I N I O N

This proceeding is an investigation on the Commission's
own motion into the operations and practices of Francisco, Aurelio,
and Manuel Medinilla, a partnership, doing business as Express
Transit District (ETD), (PSC-1200), to determine:

1. Whether respondents violated the Commission's General Order 98-A by not complying with the requirement that a driver for a passenger stage corporation be an employee of the operating carrier, unless specifically authorized otherwise by the Commission.
2. Whether respondents used owner/drivers in their operations who did not themselves hold Commission authority as specialized charter-party permit carriers, under Public Utilities (PU) Code Section 5384(a).
3. Whether respondents violated PU Code Sections 818 and 823 by issuing evidence of interest, ownership, or indebtedness without first securing from the Commission an order authorizing the issue and, if so, whether any such issuance is void under PU Code Section 825.
4. In the event unauthorized issuance of interest, ownership, or indebtedness should be found, whether a penalty of up to \$20,000 should be imposed on respondents under PU Code Section 826, and whether the Commission should file felony charges against any officer, agent, or employee of respondents involved in an unauthorized issuance under PU Code Section 827.
5. Whether respondents sold, leased, assigned, transferred, or otherwise disposed of or encumbered any part of their property necessary or useful in the performance of their duties to the public, or any franchise or permit or any right thereunder, without first having secured Commission authorization under PU Code Sections 851 and 1031.
6. Whether respondents operated beyond the scope of the authority granted in their certificate of public convenience and necessity.

7. Whether respondents have failed to provide protection against liability by failing to maintain insurance required by the Commission General Order 101-C.
8. Whether respondents should be ordered to cease and desist from any and all unlawful operations and practices under PU Code Section 1034.
9. Whether respondents are operating vehicles that have not been inspected and approved by the California Highway Patrol (CHP), and whether their required preventive maintenance program has been properly approved by the CHP.
10. Whether the operating authority of respondents should be canceled, revoked, or suspended.
11. Whether any other orders that may be appropriate should be entered in the lawful exercise of the Commission's jurisdiction.

A public hearing was held before Administrative Law Judge William A. Turkish in Los Angeles on May 16, 1983 and the submission date was stayed upon the request of the receiver for ETD to enable him to file an application for authority to operate the business. The receiver was ordered to file an application by June 15, 1983. On June 14, 1983 the court-appointed receiver requested an extension of time to file the application and an extension until June 23 was granted. As of the close of business on June 23, no application had been filed by the receiver and, accordingly, the matter is deemed submitted on June 24, 1983.

Francisco and Manuel Medinilla were not present for the hearing. The third partner, Aurelio Medinilla, testified on behalf of himself as an individual only and disassociated himself completely from the affairs and operations of his two brothers.

Michael A. Coughlin, senior transportation representative in the Compliance and Enforcement Branch of the Transportation Division, testified on the findings of his investigation and he sponsored Exhibit 2, which are copies of subpoenaed documents in the hands of the Los Angeles County Office of the District Attorney. The documents are rental agreements entered into between various parties and Francisco and Manuel Medinilla, and limited partnership agreements entered into between various persons and Francisco and Manuel Medinilla.

Coughlin testified that his investigation was the result of several complaints received by the Commission about the hazardous and unsupervised operations by the partners in the operation of their passenger carrier service as well as complaints regarding safety. During the course of the investigation the witness learned that Francisco and Manuel Medinilla, the active partners in the business, had left the United States and are now believed to be somewhere in Mexico. The witness testified that ETD operations apparently ceased sometime during the first week of April 1983. Because of other complaints alleging fraud in the resale of several buses by the two active partners, the Los Angeles County District Attorney's Office commenced an investigation which resulted in the issuance of a search warrant and the confiscation of business records of ETD. Insurance coverage of the vehicles previously operated by the company lapsed on April 17, 1983. Prior to the lapse of insurance, ETD's attorney requested a 45-day voluntary suspension. Resolution TE-455 was issued by the Commission on April 7, 1983 which placed the certificated authority of the carrier in voluntary suspension until May 24, 1983.

From a review of ETD's available records it appeared to the witness that the company had approximately eight drivers, 90 buses, and over 500 owner/operator investors. Because of the complete lack of documentation, the total number of owner-operators could not be obtained. By comparing a daily driver list for December 1982 furnished by Francisco Medinilla to a staff representative and an investor's list furnished by the carrier's attorney to the staff representative, a representative list of 10 possible owner-operators was developed. Interviews with those persons were conducted by the investigator.

A review of the available records and the interviews made by the investigator discloses that as a matter of policy, driver-employees were required to enter into written daily lease agreements with Francisco and Manuel Medinilla. These agreements provided for a daily payment of \$50 to the Medinilla brothers by the driver in return for the use of a bus for the day. The driver was given a specific route and kept all fares less the above \$50 rental fee. The documentary evidence of such written agreements is shown in parts 1 and 2 of Section A of Exhibit 1.

In an interview with Jose Peraza, an individual who entered into a vehicle rental contract with Francisco and Manuel Medinilla, Peraza informed the investigator that he was hired as a driver from September 18, 1982 until February 2, 1983. Peraza paid the Medinillas a \$50 daily vehicle rental fee and kept the balance of the fares collected. Peraza also disclosed to the investigator that he purchased a bus from ETD and entered into a written partnership agreement with Francisco and Manuel Medinilla on February 3, 1983. The purchase price of the bus was \$12,000

and Peraza made a \$5,000 down payment. Item 2 of the agreement required him to make a \$100 per month contribution to ETD for the privilege of operating a route assigned to him from which he kept all the fares collected. He operated under this arrangement until April 1, 1983. Insurance on the vehicle was maintained by ETD. According to Peraza, no bill of sale document was issued. There is no record of Peraza holding any operating authority from the Commission. According to the investigator, Department of Motor Vehicles records show Peraza to be the registered owner of the bus but legal ownership is not shown.

The investigator conducted an interview with Jose Chavez on April 27, 1983 and Chavez indicated he was hired as a driver from December 25, 1982 until February 22, 1983. Chavez stated that he paid a \$50 rental fee to Francisco and Manuel Medinilla daily for the rental of a bus and kept the balance of the fares collected. The interview with Chavez disclosed that on or about February 23, 1983 he purchased a bus from ETD which he operated until April 1, 1983. Chavez indicated to the investigator that he entered into a partnership agreement with ETD but he did not have the document in his possession. The investigator has failed to locate such document in his search of the records. However, Chavez, at the time of the interview, did have in his possession a receipt for \$4,000 issued by Manuel Medinilla. The interview also disclosed that during his employment, and also as an owner-operator, Chavez drove the bus over an area which was outside ETD's certificated authority. Documents in Exhibit 2 reflect the \$50 per day rental of the bus.

With respect to a possible violation of PU Code Section 5384(a), the investigator conducted interviews with four bus owner-operators operating on routes of ETD under the name of ETD. Two of the four owner-operators purchased their buses from outside sources and operated their buses for approximately two months on the routes of ETD. The other two owner-operators interviewed originally operated ETD equipment under rental agreements and later purchased buses from ETD. They too operated over ETD routes under the name of ETD. None of the owner-operators hold charter-party operator or passenger stage authority from the Commission.

An interview conducted by the investigator with Nelson Ortiz on April 27, 1983 disclosed that he commenced operating an ETD bus on November 16, 1982 under a rental agreement similar to those described earlier. He informed the investigator that he later purchased two buses from ETD. The first bus was purchased on January 10, 1983 and was leased back to the company for \$200 a week. The second bus was purchased on January 19, 1983 under a limited partnership agreement between Ortiz and Francisco and Manuel Medinilla and was operated by Ortiz himself. The purchase price of this bus was \$18,000, with a down payment of \$7,000. Ortiz also paid one monthly contribution of \$100 in cash for the use of an ETD route. Ortiz operated the equipment over the route assigned to him and kept all the fares collected until April 1, 1983. According to the records of the Department of Motor Vehicles, Ortiz is both the registered and legal owner of the bus. There is no record of Ortiz holding charter-party or passenger stage operating authority from the Commission.

The investigator conducted an interview with Alexander Berson on April 30, 1983 which disclosed that Berson was one of the original investors in ETD. He originally invested \$6,000 and provided his own two buses which he had purchased from an outside source in Oakland. His son operated one of the buses under a separate limited partnership agreement with the Medinilla brothers and he operated one for two months in 1982 under a limited partnership agreement which was dated August 1, 1982. During the two-month period he made \$100 a month contributions for the use of a route provided by ETD and retained all the fares collected along the route. At the end of the two months, he gave up driving, discontinued paying the \$100 contribution to ETD, and leased the bus to ETD for \$175 a week under a verbal agreement until approximately April 1, 1983. In the interim, he purchased two additional buses from outside sources and although he entered into two additional limited partnership agreements with ETD, he leased his two buses for \$175 a week to ETD under verbal rental agreements. Berson produced the pink slip for the vehicle he operated and the Department of Motor Vehicle records show Berson is both the registered and legal owner of the bus. According to Berson's statement to the investigator, insurance on his vehicles was maintained by ETD but Berson paid the premiums to ETD.

The investigator interviewed Anatoly Bezman on April 30, 1983, another investor in ETD. He stated to the investigator that he invested \$3,000 and furnished one 1979 Ford bus which he had purchased from an outside source. Bezman entered into a limited partnership agreement with ETD in August 1982 which required him to pay a \$100 monthly fee for the use of a route furnished by ETD.

Bezman operated the bus for approximately two months during which time he kept all the fares collected. At the end of two months, he gave up driving and leased the bus to ETD for \$175 a week under a verbal agreement. He informed the investigator that he did not receive any rental payment from ETD after February 1983. He paid ETD \$550 in August 1982 and a \$186 per month payment thereafter for insurance premiums. He produced a pink slip for the investigator which shows him to be both the registered and legal owner of the bus.

With respect to possible violation of operations beyond the scope of certificated authority, the investigator interviewed Jose Chavez which disclosed that Chavez operated the Pico-Rimpau route which is also known as Route 9. He admitted that as a matter of course, he operated over an extended area of Route 9 for which there has been no authority granted by the Commission.

Testifying on his own behalf, Aurelio Medinilla, one of the three partners in ETD, testified as to the origin of ETD and his role in the company. He stated that in 1981 his brother Manuel was a taxicab driver and his brother Francisco, who had been working as a delivery man, was layed off and he joined Manuel as a taxicab driver. His brothers approached him in 1981 and informed him that they were having considerable trouble transporting people from hotels to the airport because of the limited size and space in a taxi, and that they were thinking of buying a bus to transport passengers to the airport. They indicated to him that they found a bus that they could purchase for \$4,000. Because they did not have the money, he loaned his brothers \$4,000 to purchase the bus after which time they filed an application with the Commission for a certificate of public convenience and necessity. He stated that his brothers came

to him and asked him to sign the application because they indicated they needed three signatures to file an application. The witness then signed the application. During hearings on the application Aurelio Medinilla was present but was not called upon to testify. He testified that he told his brothers at the outset that he would not have any time to work with them in their bus endeavor as he had his own silk-screen printing business and that the only reason he signed the application was because they told him they needed three signatures. At no time did he have any intention to participate with his two brothers in this new enterprise. The witness introduced Exhibit 3, which is a letter dated July 29, 1982 signed by Francisco and Manuel Medinilla. The letter states that the principals involved in ETD are Francisco and Manuel Medinilla and no others and that only those individuals would be solely and jointly responsible for the organization, administration, and management of the enterprise. The letter further states that the name of Aurelio Medinilla on the application for a certificate of public convenience and necessity appears only as a cooperating petitioner and not as an indication of any present or future participation in the formation of the relationship which may come into being between Francisco and Manuel Medinilla, nor as a silent partner, either de facto or de jure, or as a financial contributor or guarantor of any or all obligations which may be incurred in the operations of ETD by either or both Francisco or Manuel Medinilla. The letter also states that the status of Aurelio Medinilla is that of a well-wisher and adviser which does not, and will not, in any way obligate or make him liable for any of the acts, commitments, or representations of Francisco and Manuel Medinilla, respectively or collectively, nor will Aurelio Medinilla either now or in the future be considered compensated by

any form of consideration for his good offices in connection with the issuance of the aforementioned franchise. According to the witness, his brothers told him that they were going to give a copy of this letter to the Commission. He further testified that from the time the certificate was issued to his brothers he has received no moneys from his brothers or from ETD, was never on its payroll, and never signed any agreements on behalf of ETD. He stated that the only document he ever signed was the application for a certificate of public convenience and necessity and that he has no interest at all in operating the jitney service of ETD. He is in favor of transferring the business to the investors. With respect to the letter dated July 29, 1982, the witness testified that the letter was prepared by a friend of his, upon his request, because he had indicated to his friend that he did not have time to be with his brothers in the business nor did he want any part of the business. The purpose of the letter was to disassociate himself from the activities of ETD.

Jose Luis Peraza appeared as a witness and he corroborated the testimony of the investigator as to statements attributed to him by the investigator. The witness verified that his signature appeared on the bus rental agreement with ETD which is contained in Exhibit 1, part 1, Section A. He also verified his signature on the limited partnership agreement in Exhibit 1. He acknowledged that prior to the time of entering into the limited partnership agreement with Francisco and Manuel Medinilla, he was obliged to sign the rental contract on a daily basis or he could not get a bus. He also testified that under the limited partnership agreement he was to pay ETD \$100 per month in order to operate the bus on ETD routes. He gave the Medinilla brothers \$5,000 for the purchase of the bus which he operated under the limited

partnership agreement. He further acknowledged that he neither applied for nor received any authority from the Commission to operate a bus as an owner-operator.

Luis Chavez appeared as a witness and he too corroborated the testimony of the staff investigator with respect to statements attributed to him by the investigator. Chavez, like Peraza, testified to driving an ETD bus as a driver and later investing in a bus as an owner-operator under a limited partnership agreement entered into between him and Francisco and Manuel Medinilla.

Nelson Ortiz appeared as a witness and he also corroborated the earlier testimony of the staff investigator relating to his interview with the investigator. He testified that he initially worked for ETD as a driver under a daily contract which required that he pay \$50 a day to ETD in return for keeping the remainder of the fares collected. He also purchased a bus from Francisco and Manuel Medinilla and he acknowledged his signature on the rental agreement and the limited partnership agreement contained in Exhibit 1. The witness admitted that he neither applied for nor received any operating authority from this Commission.

Anatoly Bezman appeared as a witness and testified that he was an investor in ETD entering into a limited partnership agreement with Francisco and Manuel Medinilla. He purchased his own buses from outside sources and was required to pay ETD \$100 a month for the opportunity to operate his buses on ETD routes. In addition, he paid ETD sums of money for insurance and he was permitted to keep all the fares collected on his routes. The witness acknowledged that he never applied to nor received any authority from the Commission to operate a bus service. He stated that his dealing with ETD was primarily with Francisco

Medinilla. After approximately two months of operations he leased the buses to ETD for \$175 a week. He testified that originally he was one of approximately 90 investor-owners operating buses on routes granted to ETD. Each was working independently of one another.

Ralph Clark, an employee of the State of California, Department of Highway Patrol, Motor Carrier Safety Unit, testified that he inspected the ETD vehicles. He made two separate inspections when ETD was still in operation and he went back for a third followup inspection at approximately the time ETD ceased operations and locked the gates of their bus terminal. On January 3, 1983 six vehicles which had been previously placed out of service for numerous mechanical safety violations were again inspected and he also inspected ETD's preventive maintenance program. He stated that he wrote up four maintenance record violations, one driver's record violation, and he further testified that there was no evidence of a preventive maintenance program carried on by ETD. He discussed the condition of the vehicles and the failure to comply with the requirements of the Administrative Code and the Vehicle Code with Francisco Medinilla on that date. He again made an inspection on February 7 and again on February 8, 1983. During those inspections he inspected 16 buses and 10 of the buses were placed out of service for unsafe vehicle conditions. Two vehicles which he had inspected on January 3 and found to have defects had not been corrected and from the mileage record he determined that they had been in use, in violation of the Vehicle Code.

Maria de la Rocha, a field investigator for the State of California, Division of Industrial Relations, testified that she conducted an investigation after her office received a wage claim against ETD. On January 23, 1983 she visited the offices of ETD and spoke with Manuel and Francisco Medinilla. On March 11, 1983 her office received 12 wage claims from bus drivers who stated that they were not being paid minimum wages and were being considered independent contractors by the Medinilla brothers. Another visit was made to ETD's offices on March 14, 1983 during which time she informed Francisco Medinilla that her office did not consider his employees independent contractors as they did not fall under the qualifications for independent contractors. He was informed that he was to abide by state labor laws and pay his people minimum and overtime wages. She testified that her office conducted an audit and found ETD owing employees approximately \$140,000 in back wages and that the company has not paid those amounts.

She testified that from her interviews with drivers there were days when the drivers did not even collect the \$50 for the rental of the buses and as a result the drivers were working for nothing.

Findings of Fact

1. A certificate of public convenience and necessity for the operation of a passenger stage corporation was granted to Francisco, Aurelio, and Manuel Medinilla, a partnership, doing business as ETD, in Decision (D.) 82-07-084 dated July 21, 1982.
2. Respondents contracted with their drivers on a daily basis where for payment of \$50 daily by the drivers to respondents the drivers could retain the passenger bus fares collected each day.

3. The drivers operating the buses of ETD were employees of the partnership and they were not independent contractors.

4. Respondents entered into limited partnership agreements with various investors under terms of which investors would purchase buses from respondents or from other sources and operate those buses on respondents' authorized routes in return for payment by such investors to respondents of \$100 per month plus amounts for insurance premium coverage. The investor-owners were permitted to retain all the fare receipts collected on their routes.

5. No investor-operator has applied for or received operating authority from this Commission.

6. Respondents operated beyond the scope of the authority granted in their certificate of public convenience and necessity by permitting their drivers and/or their investor-owner limited partners to operate on unauthorized routes.

7. Respondents unlawfully operated buses which had been placed out of service for various defects by the California Highway Patrol.

8. Respondents have failed to maintain a preventive maintenance program as required by the California Highway Patrol.

9. Respondents violated PU Code Sections 818 and 823 by issuing limited partnership agreements without first securing from the Commission an order authorizing the issue.

10. Respondents sold, leased, transferred, or otherwise disposed of or encumbered property necessary or useful in the performance of their duties to the public without having first secured Commission authorization under PU Code Sections 851 and 1031.

11. Respondent Aurelio Medinilla is not now, nor has he ever been, an active participant in the operations of ETD. The only activity of Aurelio Medinilla in connection with ETD was that of a signator of the application for a certificate and the source of moneys given to his two brothers.

Conclusions of Law

1. Francisco and Manuel Medinilla have been in violation of PU Code Sections 818, 823, 851, 1031, and 5384(a).
2. Respondents' operating authority should be revoked.
3. As the operations of ETD have been suspended since April 1, 1983 and the whereabouts of Francisco and Manuel Medinilla are unknown, the order should be made effective on today's date.

O R D E R

IT IS ORDERED that:

1. The certificate of public convenience and necessity issued to Francisco, Manuel, and Aurelio Medinilla, a partnership, doing business as Express Transit District (ETD), which was issued in D.82-07-084 dated July 21, 1982, is revoked.
2. Appendix PSC-1200 is canceled.
3. All current tariffs and timetables filed with the Commission by ETD are canceled.

4. The Executive Director is ordered to cause personal service of this order be made upon the court-appointed receiver of ETD and upon Aurelio Medinilla.

This order is effective today.

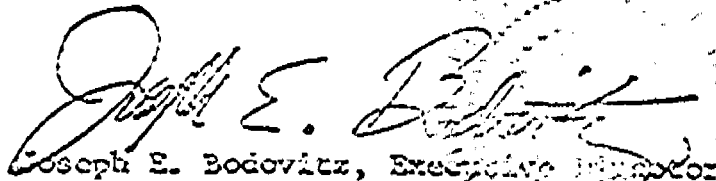
Dated NOV 2 1983, at San Francisco, California.

LEONARD M. GRIMES, JR.
President

VICTOR CAIWO
PRISCILLA C. CREW
WILLIAM S. DAGLEY
Commissioners

Commissioner Donald Vial, being necessarily absent, did not participate.

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


Joseph E. Bodovitz, Executive Director

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