

ORIGINAL

Decision No. 86542

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of MAX KESSLER dba
CHARTER MARIN LIMOUSINE for a
permit to operate a charter-party
carrier of passengers service.
(File No. TCP-355)

Application No. 55886
(Filed July 16, 1975)

Morley H. Shapiro, Attorney at Law, for applicant.
James B. Brazil, Attorney at Law, for the City and
County of San Francisco, protestant.
Thomas P. Hunt, Louis Krug, and Richard O. Collins,
for the Commission staff.

O P I N I O N

Max Kessler, doing business as Charter Marin Limousine, holds Charter-party Carrier of Passengers Permit No. TCP-355 and by this application seeks renewal of his annual permit which was to expire in June 1975. The Commission extended the permit temporarily until this application is resolved.

The application is opposed by the city and county of San Francisco. Public hearings were held on January 19 and 29, February 23, and March 15, 1976 in San Francisco. The proceeding was submitted subject to briefs, which have been filed.

Protestant owns and operates the San Francisco International Airport located in San Mateo County. A municipal airport owned and operated by a city in a proprietary capacity can regulate the access and conduct of limousine operators at the airport regardless of the Commission authority the limousine operators hold (City of Oakland v Burns (1956) 46 Cal 2d 401; United States v Gray Line Tours of Charleston (4th Circuit 1962) 311 Fed 2d 779).

Protestant has adopted certain rules and regulations, one of which, Rule 1.4-5(c), prohibits limousine companies not under written contract with the Airport Commission from soliciting fares at the airport.

The Professional Independent Limousine Operators and Transporters, Inc., a California corporation, brought suit against San Francisco (San Mateo County No. 170663) and requested that San Francisco be enjoined from enforcing the solicitation rule. The injunction was denied, but plaintiff and a group of individuals, including Max Kessler, were permanently enjoined under the cross-complaint from "(a) soliciting passengers for hire within the boundaries of San Francisco International Airport, or (b) picking up passengers for hire at the airport except at such convenient airport locations as are prescribed by airport management and is pursuant to prior appointment with any such passenger." The order is dated February 1, 1973, and was filed with the county clerk on February 2, 1973.

Applicant presented the following testimony:

A San Rafael doctor testified that applicant solicited his business in San Rafael and has been transporting his patients for two years, primarily between points within the city limits. Patients are occasionally transported to or from the San Francisco Airport, and the witness has made 20 or 30 trips with the applicant between the airport and San Rafael; it takes about one hour and costs \$20 one way. The doctor testified that applicant gives prompt service, charges reasonable rates, and has made a favorable impression on the patients he transports.

A lady who does not drive testified she has used applicant's service to the airport 10 or 12 times during the past 2½ years. The fare was \$20; she rode alone and was picked up at her home. She has used applicant's service to go to other destinations than the airport.

The manager of a large motel in San Francisco testified that she provided her guests with Kessler's business telephone number because he is reliable and will pick up at the time requested by the guest. The guest is usually transported to, or picked up at, the airport although some go to the Oakland Airport. Kessler's service is not used to San Rafael.

A law clerk testified that her employer arranged for her to be picked up by applicant at the airport and transported to downtown Colma; the fare was \$14. She stated applicant was on time and provided excellent service.

Applicant's testimony was limited to giving information on financial status. He estimated his net worth at \$5,100, which consists of several bank accounts and the value of his 1969 Cadillac. He has no liabilities other than a Master Charge account. His financial position was corroborated by a family friend. She testified that applicant assisted her when she first came to the United States and he has been a close friend for ten years; she will loan applicant the equivalent of his net worth, without security, if he needs it. She further testified that Kessler recently drove her to the airport and left her in the terminal while he parked his car. She later met him outside the terminal at the lower level. When applicant walked up to take her to his limousine an airport police officer advised her not to ride with applicant because he doesn't have proper insurance coverage or a current operating permit from the Public Utilities Commission. On cross-examination, she admitted taking calls for applicant as recently as two weeks prior to the hearing, although she merely referred the callers to another number.

The operations supervisor of the San Francisco Airport testified for protestant. He stated that the airport is served by two types of surface passenger carriers; several operators, chosen for size and reliability, solicit and transport passengers under

contracts with the airport; they are required to serve all flights and airlines on a 24-hour basis; and they pay for the privilege of being the only passenger-carriers allowed to solicit business from booths inside the terminals. All operators who are not under contract can drop passengers at the airport, but cannot pick up unless they have a note or invoice identifying the passenger to be picked up and the time of arrival; the noncontract operators are required to park in the garage or in a special zone and are not permitted to loiter in the terminals or baggage areas. The airport police enforce the regulations by questioning all limousine operators who enter the terminals and asking those without prearranged pickups to leave.

A private investigator testified that he was standing at the location described as the lower central airport terminal, just outside the entrance at 2:00 p.m., on August 14, 1974; he was dressed casually with a suitcase and was on surveillance for San Francisco; applicant walked up, asked if he wanted a ride into town and said that the fare was \$7 a person. The witness told applicant that he was waiting for someone and applicant walked away.

Several airport police officers testified. One stated he encountered Kessler and an army sergeant in the terminal about six weeks prior to January 29, 1976; the sergeant said that Kessler was driving him to Travis; the officer suggested he go by Greyhound and drove the sergeant to the bus stop; Kessler drove off by himself while the officer was talking to the sergeant.

A second officer testified that he stopped an Effie Sharabi at the airport on September 23, 1975, at 2:05 p.m. Sharabi had a passenger and when asked for operating authority produced Kessler's permit (TCP-355); Sharabi then told the officer his passenger was a friend he was transporting free; the passenger said he was not acquainted with Sharabi.

Sharabi was driving a leased vehicle, License No. 05769X, which, according to testimony from another witness, was not on the Kessler P.U.C. permit.

This witness also testified that Kessler leased the Sharabi vehicle in November 1975, and it may have been added to the Kessler permit in late 1975.

Another officer testified that he stopped the Kessler vehicle during last June or July in front of the taxi stand at the United Terminal; two passengers were in the back seat who said that they had been solicited; the passengers left the vehicle and Kessler drove away. He also questioned Sharabi in the limousine stand at the lower central front terminal at 12:50 p.m. on December 3, 1975; Sharabi had a passenger in the back seat who said that he was solicited in the terminal; Sharabi was driving a black limousine with Kessler's permit number (TCP-355) stenciled on the bumper.

The proof of solicitation here is more persuasive than the evidence before the Commission in Decision No. 85973 dated June 22, 1976 in Application No. 55326, which denied a renewal of the Walter Hoffman (Ace A-1 Limousine Service) charter-party carrier of passengers permit.

It is evident from the record that applicant has continued soliciting at the San Francisco International Airport in violation of the San Mateo County Superior Court injunction and the regulations of the San Francisco International Airport. Applicant's disregard of court orders and airport regulations demonstrates a fundamental disregard for the law, not consonant with the degree of "reasonable fitness" requisite under Section 5374.

Findings

1. Applicant holds Charter-party Carrier of Passengers Permit No. TCP-355 extended by Commission resolution pending a decision in this application.

2. The Airport Commission of the city and county of San Francisco has contracted exclusively with another operator to provide adequate limousine service to accommodate passengers arriving on all air carrier flight schedules.

3. Applicant has solicited passengers for hire at the San Francisco International Airport without the required authority from the Airport Commission.

4. The Superior Court of San Mateo County enjoined further solicitation by applicant, and others. The injunction order was signed on February 1, 1973, and was filed with the county clerk on February 2, 1973.

5. Applicant has continued to solicit at the airport during the past three years.

6. Applicant has demonstrated that he does not have the requisite "reasonable fitness" required by Section 5374 of the Public Utilities Code.

7. It is not in the public interest to grant the application.

The Commission concludes that the application to renew should be denied.

O R D E R

IT IS ORDERED that applicant's renewal request is denied,
and the interim authority is terminated.

The effective date of this order shall be twenty days
after the date hereof.

Dated at San Francisco, California, this 26th
day of OCTOBER, 1976.

I dissent
Leonard Ross
Commissioner

[Signature]
President
William J. [Signature]
Veronica L. [Signature]
Robert Bateman
Commissioners