

ORIGINAL

Decision No. 86689

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of ELVIN F. WALKER, JR.,)
and DORIS A. WALKER dba A & D)
LIMOUSINE SERVICE for a permit to)
operate a charter-party carrier of)
passengers service. (File No.)
TCP-365).

Application No. 55824
(Filed July 21, 1975)

Silver, Rosen, Fischer & Stecher, by John Paul
Fischer, Attorney at Law, for applicants.
James D. Brasil, Attorney at Law, for the City
and County of San Francisco, protestant.
Thomas P. Hunt, for the Commission staff.

O P I N I O N

Elvin F. Walker, Jr. (EFW), and Doris A. Walker, husband and wife, doing business as A & D Limousine Service, operate pursuant to Charter-party Carrier of Passengers Permit TCP-365. The permit was originally granted to applicants on August 29, 1972, and an annual renewal was granted in 1973. A protest to any further renewal of the permit has been filed by the city and county of San Francisco (City). By Resolution PE 289 dated April 8, 1975 applicants were granted an interim continuance of their permit pending a hearing and decision on their request for an annual renewal thereof. Public hearing was held before Examiner Arthur Mooney on November 3 and 20, 1975 and January 23, 1976 in San Francisco, and the matter was submitted upon the filing of written closing statements on February 24, 1976:

Applicants

The following evidence was presented by EFW: Prior to commencing the business in issue, he was employed by another charter-party carrier and has had considerable experience in this field. His wife and he presently operate two 1975 Lincoln Continental Limousines and a 1973 Oldsmobile Custom Stationwagon. All of the vehicles are insured in accordance with the Commission's regulations. As of October 1, 1975, applicants had business and personal assets of \$129,440, liabilities of \$60,832.18, and a net worth of \$68,607.82. The charges they assess for a vehicle are the same as those published by Associated Limousines of San Francisco-The Gray Line (Associated), and it is his understanding that these charges are approved by the City. The rates shown in this publication are \$16 per hour or 80¢ per mile, whichever is the greater, and there are also certain minimum, tour, special, and other charges included therein. Gerald J. Walker (GJW), his brother, drives one of the limousines and is their only employee. The brother is paid 90 percent of the revenue he earns, and he pays for the gas and oil used. They pay for the insurance on this vehicle. He and his wife own all of the equipment, and although they are in fact the registered owners, apparently his brother has been erroneously listed along with himself with the Department of Motor Vehicles as the registered owner of the two limousines. The company office is in Daly City; however, because of a lack of space there, the two limousines are kept at his brother's residence at 608 Matsonia Street, Foster City. He does not have two-way radios in the vehicles, but does have a pager service. The net income of the business averages approximately \$2,000 per month. The company books are kept by his wife and himself. His wife occasionally drives one of the vehicles.

The witness testified as follows regarding the operations of the company to and from the San Francisco International Airport (SFO): His operations here have been on an irregular, prearranged order basis only. The orders are received by telephone, telegram, or letter. Approximately 80 percent of the company's business involves SFO, and most customers are from out of state. Sometimes his vehicles are at the airport only once or twice a week, and at other times they are there more frequently. Many times the vehicles go to the airport empty to pick up prearranged passengers. He is aware that the airport does not allow solicitation at its facility. He has never been arrested for violating this regulation, and he has always adhered to it and has instructed his brother to do likewise. However, his brother was arrested for soliciting on one occasion, and an injunction was issued against him for this. When he goes to the airport to pick up a prearranged customer, he parks in one of the marked limousine zones unless he is to be there longer than the 10-minute parking limit because of flight delays in which case he will park in the garage. He has heard that there is an airport rule that limousine operators are not to go into the terminal building, but he has never been furnished a copy of this regulation. He does go into the baggage area to arrange for a porter for his customer's luggage, and he will meet a customer inside the terminal building if the customer wants to be met there. He has at times been asked by airport police in the terminal building for the pickup slip for his customer. Sometimes he has shown them the slip and other times he has not. Occasionally he will not have a pickup slip if he knows the party he is to meet. If a person were to come up to him at the SFO and ask for transportation to San Francisco, he would comply with the request if he were not picking up a passenger. He does not consider this solicitation on his part, but if he were aware that this is against airport regulations he would

discontinue this practice. It is not necessary in his operation to solicit business at the airport. He has been harassed by airport police. They have told people that he is not a legitimate operator, that he has no insurance, that he overcharges, and that acts of violence have been committed in his limousines. None of this is true. On February 22, 1974, he was jostled by airport police, and as a result of this, he filed a suit against the City. The matter was settled and dismissed. He was issued a citation for parking in a limousine zone at the airport on January 16, 1976. At that time he was standing outside the terminal building waiting for a pre-arranged passenger and had not been in the zone over 10 minutes. The airport officer who issued the citation informed him that he was instructed by his superior to ticket any limousine in the zone that did not have a sticker issued by SFO. Although Associated pays part of its profit to the airport, it does receive certain benefits from the airport, including counter space in the Central and South Terminals. He applied to the airport for a permit on October 31, 1975 which has not been issued to him. If the application is granted, he will continue to operate the same as he now does at SFO. If the permit is renewed and a restriction is included therein specifically limiting his operation at the airport to prearranged customers at the limousine stand only, he would accept such a restriction but does not agree that it should be included in the permit.

EFW was questioned by the attorney for City regarding the transportation of two passengers from SFO to Novato on or about May 1, 1975. He denied that either he or his brother ever made such a trip. He stated that the round-trip mileage for such a trip would have been approximately 84 and that based on 80¢ per mile, the charge would be \$67.20 plus 75¢ bridge toll. He asserted that Yellow Cab Co. would have charged approximately \$60 plus bridge toll for such a trip.

GJW, EFW's brother, testified as follows: A preliminary injunction was issued on July 23, 1974 and a permanent injunction was issued on June 24, 1975, against him and various other defendants, not including EFW, ordering them to cease and desist from soliciting passengers within the boundaries of the SFO without permission from the SFO. He has followed and will continue to follow both the preliminary and permanent injunctions. Most of applicants' business is through travel agents. He does go into baggage areas in the terminal buildings. Occasionally he will stand there, and if a person asks him for transportation, he will comply with the request. He does not consider this solicitation or in violation of the injunctions. He uses curbside parking for prearranged customer pickups. He will attempt to contact a customer he does not know by the courtesy telephone, and if this does not work, he will wait outside the terminal and ask people coming out if they are the customer until he locates the customer. If the permit is renewed and restricts his operations to the limousine stand, he would abide by this restriction as best he could. However, he pointed out that at times the stand is crowded with other limousines. He is of the opinion that the limousine he drives is registered to his brother and his brother's wife, and that the insurance policy names them. If his name is on the registration for the limousines, it would be because he co-signed for the loans for them. He has never applied to the Commission for a permit of his own.

City

The following evidence was presented by an SFO police sergeant: Associated has been issued a permit by the Airports Commission of the City to do business at the SFO. The permit provides, among other things, that permittee shall have counter space in the ground floor baggage claim area of both the South and Central

Terminals and parking space for up to seven limousines about the terminal; that permittee shall pay certain fees to the airport and obtain a faithful performance bond; and that permittee shall comply with all rules and regulations of the airport. The SFO Rules and Regulations provide in part that limousines may park in specifically marked reserved areas for this purpose only; that limousines and similar vehicles may not operate regularly at the airport without a contract and/or permit granted by the Airports Commission, except to deliver and/or pick up prereserved customers on an infrequent or irregular basis; and that only limousine dispatchers authorized by a limousine company under written contract and/or permit with the Airports Commission may solicit fares at the airport. Permittee is required to have a man in the booths at both terminals at all times, 24 hours a day and seven days a week. A decal is placed on all vehicles of the permittee. Permittee must let people come to it at its booths and cannot solicit passengers elsewhere on airport property. It can use the white courtesy telephones to locate customers. A notice dated July 12, 1973 was distributed to all limousine operators informing them of the location of limousine parking areas at both terminals; that they are 10-minute parking zones; and that if the passenger does not arrive within the 10-minute period, the limousine must leave but may return not less than 10 minutes later and may wait for another 10-minute period; and that no limousine operator's vehicle shall be allowed in excess of two waiting periods for any one passenger. There are presently three limousine waiting areas, one opposite the Central Terminal and two opposite the South Terminal. A limousine operator who does not have a permit from the Airports Commission may deliver passengers to the airport, and if he has an order to pick up a customer, he may use the 10-minute limousine parking zones and the white courtesy telephone to locate the customer.

A.55824 km

All other activities by such operators are prohibited. The witness asserted that he has observed both EFW and GJW at the airport and has observed either or both of them violating the airport's rules and regulations. The airport is extremely busy with traffic, and there are now approximately 70 limousines authorized by the Airports Commission to do business here.

Following is a summary of the testimony presented by two SFO police officers and a former member of the SFO police detail who left the airport service on July 28, 1975: All, in addition to other duties, have been on the limousine service detail at the airport. If they hear a limousine operator who does not have authority from the Airports Commission soliciting a potential customer, they inform the operator that such solicitation is illegal. There are signs regarding this at both terminals. All have seen both EFW and GJW at the airport. One asserted that he has discussed airport regulations with EFW. Each had made out a report regarding unauthorized solicitation by GJW at the airport. The dates on the reports were May 2 and 29, 1974 and August 19, 1975. According to each of the reports, the passenger had informed the officer that he did not have a prearranged order for transportation by GJW but that he approached GJW and asked him for the transportation. One officer had made out two reports dated June 23 and October 4, 1975 regarding EFW. Both reports stated that the customer informed the officer that he did not have a prearranged order with the limousine operator. According to one of the reports, the passenger was referred to EFW by another limousine operator, and according to the other report, the customer approached EFW and requested the transportation.

A limousine owner-operator testified as follows: He is a member and the president of Associated which holds a permit from the Airports Commission to do business at the airport. He operates in the City and at the SFO. Associated's agreement with the SFO is an

exclusive agreement to provide limousine service at the airport, and it requires round-the-clock service. Presently there are approximately 72 limousines and many busses covered by this agreement. Associated's rates are regulated and approved by the airport. It has a special rate between SFO and Novato which is \$48.75. This is not printed in its brochure. People who want service come up to Associated's counter and are quoted rates verbally. Some vehicles are owned by the association, and others are owned by owner-operators. All work under one charter-party permit. Anyone could become a member of the association if he were voted in by the membership. Also, a person could buy a membership from a member.

A resident of Novato called as a witness by the City testified that she returned with her daughter to the SFO from Hawaii in early May 1975 around 9:00 p.m.; that she was taken off the aircraft in a wheelchair by a uniformed attendant who recommended a Mr. Walker for the transportation home; that the attendant took her and her daughter to a waiting room where she waited for the limousine operator; that the driver took them to Novato where they arrived around 11:00 p.m.; that he charged \$76.25 for the transportation; that he would not take a personal check, and she had to pay him in travelers checks; that it was dark when she was picked up, and she does not know if she would recognize this person again; and that she did not recognize either EFW or GJW as the person who performed the transportation.

Position of Parties

It is the position of applicants that none of the allegations made by the City have been proven; that no limousine patron testified in the proceeding that he or she had been solicited by applicants or their employee at the airport; and that in the circumstances the application should be granted.

City argued that applicants go to the airport daily to conduct business; that these operations are conducted in violation of the airport's regulations and in violation of the court restraining order against GJW; that the State's charter-party permits were never intended to be used to violate local laws or regulations or court orders; that such action is an abuse by the permittees that warrants denial of further renewal of their permit; and that issuance of a new permit to applicants will only result in further abuses to the detriment of the State, local authorities, and the general travelling public.

The Commission staff participated in the development of the record but did not make a recommendation.

Findings

1. Applicants operate pursuant to Charter-party Carrier of Passengers Permit TCP-365. The permit was originally granted on August 29, 1972, and was renewed in 1973 for an additional one-year period. The permit has been continued on an interim basis pending the decision in this matter.

2. Applicants operate two 1975 Lincoln Continental limousines and a 1973 Oldsmobile Custom Stationwagon in their business.

3. Applicants have the ability, experience, and equipment to perform the charter-party carrier of passengers service in issue.

4. Applicants' only employee, GJW, has been permanently enjoined by court order to cease and desist from soliciting passengers at the SFO.

5. Although the SFO personnel have prepared reports that EFW and also GJW, subsequent to the injunction against him, have violated the SFO rules and regulations regarding for-hire passenger carrier

operators, there is no information on this record regarding the disposition of these matters, other than the injunction against GJW referred to in Finding 4, or that either directly sought out and solicited potential customers.

6. Applicants have the required insurance coverage for a charter-party carrier of passengers on file with the Commission.

7. Applicants have the required fitness to hold the sought permit.

8. The authority sought by applicants has been justified.

9. Because of the concern of the City and to assure that applicants will comply with the SFO Rules and Regulations governing the operations of for-hire passenger carriers within the confines of its airport, the permit to be granted to applicants should be specifically restricted to prohibit any activities at the SFO not authorized by the airport's applicable rules.

10. It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

Conclusion

The application should be granted subject to the restriction and conditions set forth in the following order.

O R D E R

IT IS ORDERED that:

1. Subject to the following restriction and conditions, Charter-party Carrier of Passengers Permit TCP-365 authorizing Elvin F. Walker, Jr., and Doris A. Walker, doing business as A & D Limousine Service, to operate as a charter-party carrier of passengers, as defined in Section 5384(b) of the Public Utilities Code shall be renewed:

Restriction:

Permittees cannot serve the San Francisco International Airport except for the delivery and/or pickup of prereserved customers on an infrequent or irregular basis.

Conditions:

- (a) Any violation of the above restriction shall result in the revocation of the permit granted to applicants.
- (b) The permit does not insulate applicants or their employees from prosecution for any violation of the San Francisco Airport's Rules and Regulations governing the operations of charter-party carriers of passengers at its airport.

2. In providing service pursuant to the permit, applicants shall comply with and observe the following service regulations. Failure so to do may result in a cancellation of the operating authority.

Applicants will be required, among other things, to comply with and observe the safety rules administered by the California Highway Patrol, the rules and other regulations of the Commission's General Order No. 98-Series, and the insurance requirements of the Commission's General Order No. 115-Series.

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

Dated at San Francisco, California, this 30th
day of NOVEMBER, 1976.

William J. Quinn President
Thomas L. Sturgeon
Edward Ross
Robert Beckman Commissioners

Commissioner D. W. Holmes, being necessarily absent, did not participate in the disposition of this proceeding.