

Decision No. 86770

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
Alan and Allan Corporation, Gary )  
Ettin & Martin Levy (sole share- )  
holders) for authority to acquire )  
control of The Gray Line, Inc. )

Application No. 56753  
(Filed September 15, 1976)

ORDER OF DISMISSAL

This application was filed pursuant to Section 854 of the California Public Utilities Code by Gary A. Ettin and Martin A. Levy, sole shareholders of the Alan and Allan Corporation (applicants), to obtain Commission authority to acquire "all the interest of The Gray Line Incorporated" (seller).

As filed, the application was deficient in that it did not comply with Rules 16 and 35 of the Commission's Rules of Practice and Procedure. The Rule 16 deficiency was absence of a certified copy of the applicants' articles of incorporation. The Rule 35 deficiency was failure to include the authorized signature of one party, the seller, as well as certain specified data, including, but not limited to, details as to the agreed purchase price and terms of payment.

On October 15, 1976, the examiner advised applicants that to proceed the application would require amendment to remedy the above deficiencies. Applicants were given until November 5, 1976 to comply, and informed that in the absence of action on their part by that date, the application would be processed for dismissal. Applicants thereafter by telephone advised the examiner of their inability to comply and amend the application in that the seller allegedly had withdrawn from the contract. Applicants stated they had entered a civil suit against seller on the matter.<sup>1/</sup>

By letter dated October 18, 1976, seller advised the Commission that "the contract between the applicants and Greyhound Lines, Inc., did not close, and that said contract is a matter of litigation between the parties thereto."

In that the date set for amendment of the application to remedy the deficiencies has passed, and it appearing that applicants cannot remedy the deficiencies in one critical regard,<sup>2/</sup> therefore,

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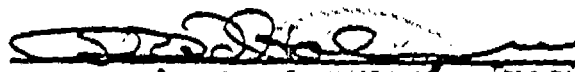
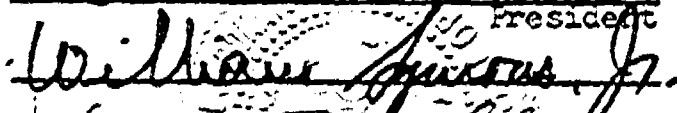

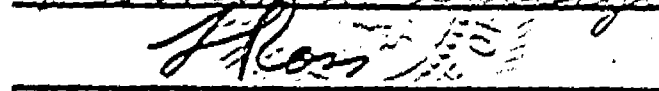
<sup>1/</sup> If having contracted to sell, the owner of a public utility refuses to comply with his contract, the Commission is not empowered to determine that he should carry out his bargain. The Commission cannot compel him to sell. That is a matter for the courts. (Hanlon v Eshleman (1915) 169 C 200, 202-3; Wm. L. Carpenter (1947) 47 CPUC 535.)

<sup>2/</sup> The provision that an owner may not sell without the consent of the Commission implies that there must be an owner ready to sell and seeking authority so to do before the Commission is called upon to act. (Hanlon v Eshleman (1915) 169 C 200, 202-3.)

IT IS ORDERED that Application No. 56753 is dismissed without prejudice.

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

Dated at San Francisco, California, this 21<sup>st</sup> day of DECEMBER, 1976

  
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President  
  
  
  
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Commissioners

Commissioner Robert Batinovich, being necessarily absent, did not participate in the disposition of this proceeding.