

ORIGINAL

Decision No. SS139 NOV 22 1977

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Berkeley Charter Lines, Inc. made by C.F.G. Corporation doing business as Park Avenue Tours, for rehearing of Revocation of Certificate No. TCP 122-A and/or an application for a new permit or certificate pursuant to Public Utilities Code Section 5379.

Application No. 56132
(Filed December 19, 1975)

Irvin J. Borof, Attorney at Law,
for applicant.

Russell & Schureman, by R. Y. Schureman,
Attorney at Law, for American Buslines,
Inc., and Continental Trailways, Inc.;
Alan T. Smith, for Falcon Charter
Service; and Alex B. Allen, for Allen
Transportation Co./Amador Stage Lines,
and American Pacific Stage Company;
protestants.

Mary Carlos, for the Commission staff.

O P I N I O N

By this application, C.F.G. Corporation (CFG), doing business as Park Avenue Tours, seeks rehearing of Commission Resolution PE-214 dated September 25, 1973, which revoked the Class A charter-party carrier of passengers certificate issued to Berkeley Charter Lines, Inc. (Berkeley), and reinstatement of the certificate or, in the alternative, the issuance of a new Class A certificate to it. A formal motion to dismiss the matter was filed by the Commission staff on March 26, 1976. Public hearing was held before Administrative Law Judge Arthur M. Mooney on March 29, 1976 in San Francisco. Evidence in support of the application was presented

by Mr. Alex J. Gaeta who is the general manager of Peerless Stages, Inc. (Peerless) and a former officer of CFG. The application was protested by American Buslines, Inc. (American), Continental Trailways, Inc. (Continental), Falcon Charter Service, Allen Transportation Co./Amador Stage Lines, and American Pacific Stage Company. The matter, including the staff motion to dismiss, was taken under submission subject to the filing of briefs which have been received.

Background

The following facts are established by the record in this proceeding and the Commission's official records and we find them to be such:

1. A grandfather Class A charter-party carrier of passengers certificate (Certificate TCP 122-A) was issued to Berkeley in 1967. Its office was located in the city of Berkeley.
2. Pursuant to the Order Consenting to Transfer Securities of the Commissioner of Corporations dated December 30, 1969, all of the 2,705 shares of outstanding stock of Berkeley were transferred to CFG which had been in business since approximately 1968.
3. Until the early part of 1973, Mr. Gaeta was the secretary-treasurer of CFG and in charge of transportation for it. He held 36 percent of CFG's stock until mid-1973 or early 1974 and has had no business or financial interest in the company since then. He has known the president of CFG for some time and is presently acting as a consultant for the company without compensation. There is no connection whatsoever between his present employer, Peerless, which also holds a Class A charter-party carrier of passengers certificate, and CFG.
4. When CFG acquired the stock of Berkeley, Berkeley had one bus. CFG purchased two additional buses and operated Berkeley until latter 1970. It was Mr. Gaeta's understanding at the time that by holding all of the stock in Berkeley, CFG automatically became the owner of its Certificate TCP 122-A and all of its assets.

5. No notice of the sale of Berkeley's stock to CFG or the operation of Berkeley by CFG was given by either Berkeley or CFG to the Commission.

6. On August 20, 1970 an Agreement for Sale of Stock of Berkeley was executed by CFG and Marin County Transit Systems, Inc. (MCTS). Following is a summary of the pertinent provisions of the agreement: The shareholders of Berkeley agreed to sell and MCTS agreed to buy all of the outstanding shares of stock of Berkeley at a purchase price of \$25,000 with \$1,000 payable immediately, \$500 payable monthly for the next eight months, and \$1,000 payable monthly thereafter until the balance was paid, plus interest; MCTS agreed to pledge the stock as collateral to secure the purchase price; the Berkeley shareholders warranted that Berkeley had no liabilities or indebtedness, and the owners of MCTS agreed to hold them harmless of any indebtedness incurred after the transfer date and to personally pay any such indebtedness in the event there should be a default in the purchase price of the stock; and three buses were included in the sale.

7. At the time the above-referenced agreement was executed, MCTS held a certificate to operate as a passenger stage corporation between various points in Marin County. It had a contract with the Golden Gate Bridge and Highway District (District) to provide passenger service on four routes, and it provided its own service on an additional route.

8. By Decision No. 78525 dated April 1, 1971 in Application No. 52508, MCTS was authorized to sell and transfer its passenger stage corporation certificate to Berkeley, a wholly owned subsidiary.

9. The District did not renew its contract for passenger service with Berkeley. Subsequent to November 5, 1972, Berkeley had no evidence of liability insurance for its passenger stage operation on file with the Commission as required by General Order No. 101-C, and on or about December 31, 1972, it abandoned its passenger stage service and ceased operations. The corporate powers, rights, and privileges of Berkeley were suspended by the Secretary of State on February 1, 1974 pursuant to Section 23302 of the California Bank and Corporation Tax Law and reinstatement has never been effected. In the circumstances, the Commission by Decision No. 85582 dated March 16, 1976 in Application No. 52508 revoked Berkeley's passenger stage corporation certificate. In addition to others, a copy of this decision was served on Mr. Gaeta.

10. When Berkeley ceased passenger stage operations at the end of 1972, a balance of approximately \$18,000 was outstanding on the CFG-MCTS agreement of August 20, 1970. MCTS was then out of business. Nothing further was paid by anyone to CFG, and the purchaser was in default.

11. An Application for Consent to Transfer Securities dated April 20, 1972 was filed with the Department of Corporations by CFG for authority to transfer the Berkeley stock to MCTS subject to the pledge agreement. When the purchaser defaulted on the CFG-MCTS agreement of August 20, 1970, the application was not further pursued.

12. An investigation of the status of Berkeley was undertaken by a Commission staff transportation analyst in early 1973. Following is a summary of the analyst's memorandum dated April 26, 1973 setting forth the results of his investigation: The wife of the former executive vice president of Berkeley informed him that Berkeley had not operated since the beginning of 1973 and Mr. Gaeta of Peerless had taken possession of some of the equipment, and she

referred him to Mr. Stanley for further information; Mr. Stanley informed him that both MCTS and Berkeley ceased operations in December 1972; Mr. Kaplan, a former secretary of MCTS, informed him that Mr. Gaeta of Peerless had possession of five buses and a man in San Carlos had two others; the attorney for MCTS could add no additional information; and a representative of the Marin County Transit District informed him that a financial agreement for 1973 could not be reached with MCTS and that MCTS had filed a claim against it alleging breach of contract.

13. The transportation analyst, during his investigation referred to in Finding 12, did not contact Mr. Gaeta.

14. By Resolution PE-214 dated September 25, 1973, the Commission revoked Berkeley's Certificate TCP 122-A and ordered that a \$150 filing fee be returned to Mr. James McDonald of Concord. The resolution stated that the certificate had expired March 28, 1973, and there has been no insurance on file since November 5, 1972; that on February 7 and March 19, 1973, letters were sent to the last known holders of TCP 122-A regarding the continued existence of the certificate, and no reply has been received; that according to a letter dated May 7, 1973 from Mr. Charles E. Stanley of Opportunity Capital Corporation, Berkeley discontinued operations in December 1972; and that on August 1, 1973, Mr. James McDonald of Astro Coach, Inc. filed an application to transfer Certificate TCP 122-A into his name together with a filing fee of \$150, but since there was no transferor signature on the application, it was returned to Mr. McDonald, and the resolution provides for the return of the filing fee to him.

15. A petition for rehearing of Resolution PE-214 filed by CFG was denied by Decision No. 83152 dated July 16, 1974 in this matter. The decision was made effective on the date it was issued. The petition stated on its face that communications relating thereto should be addressed to CFG, 606 Mission Street, San Francisco.

According to the Commission's official service list of Decision No. 83152, a copy was sent July 16, 1974 by registered mail to the address shown for CFG, and the return receipt therefor shows a delivery date of July 18, 1974 and a receipt signature, the first name of which is John and the balance appears to be C. Hall.

16. The instant application, filed December 19, 1975, alleged, among other things, that to the best of applicant's knowledge, the petition for rehearing of Resolution PE-214 had never been acted upon. In other words, it alleged that no notice of any decision or determination by the Commission regarding its petition, had there been one, was ever in fact received by it, and that, for this reason, it was of the opinion that the petition had not been acted upon.

Discussion

Based on a review of the facts and circumstances herein, the positions of the parties stated at the hearing, and the arguments set forth in the briefs filed by applicant, the attorney for American and Continental, and the staff, we are of the opinion that equitable circumstances support the reinstatement of a Class A charter-party certificate to applicant.

We recognize that applicant has not made a showing of legal error in the Commission's earlier actions in regard to this certificate. The record before us supports the revocation of the certificate pursuant to Public Utilities Code Section 5378(g). However, we do find that the circumstances do support the reinstatement of the certificate to applicant pursuant to the discretion vested in the Commission by Section 5379.

We make this determination based on the applicant's good faith in pursuing this matter and in recognition of the public interest in preserving Class A certificates. We interpret Section 5379 as vesting in the Commission the authority to restore to the

carrier the same authority that was revoked. As this is the only means the Commission has of maintaining Class A certificates, we find such restoration here to be conducive of competition and in the public interest.

Additional Findings

17. Applicant has acted in good faith in seeking to have TCP 122-A reinstated.

18. Restoration of TCP 122-A will promote competition and is in the public interest.

Conclusions

1. The Commission committed no legal error in revoking TCP 122-A.

2. Equitable circumstances support the restoration of TCP 122-A to Berkeley Charter Lines, Inc.

O R D E R

IT IS ORDERED that Resolution PE-214 is rescinded and Charter Party Carrier Certificate 122-A is restored to Berkeley Charter Lines, Inc.

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

Dated at San Francisco, California, this 22nd day of NOVEMBER, 1977.

Robert Bateman
President
William Lyons
Veronica D. Sturgeon
Charles R. Howell
Clare J. Hedrick
Commissioners