

ORIGINAL

Decision No. 89021 JUN 27 1978

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

H. TOURIST, INC., a corporation,
and HARBOR CARRIERS, INC., a
corporation,

Complainants,

vs.

CATALINA MOTOR CRUISERS, INC., a
corporation, and M.G.R.S., INC.,
a corporation,

Defendants.

Case No. 10262
(Filed February 15, 1977)

Vaughan, Paul & Lyons, by John G. Lyons,
Attorney at Law, for H. Tourist, Inc.
and Harbor Carriers, Inc., complainants.
James H. Lyons, Attorney at Law, for
Catalina Motor Cruisers, Inc., and
Timothy K. Nixon, Attorney at Law, for
M.G.R.S., Inc., defendants.
Radovan Z. Pinto, Attorney at Law, and
Thomas Hunt, for the Commission staff.

O P I N I O N

By their complaint in Case No. 10262, filed February 15, 1977, complainants seek revocation by the Commission of the operating rights of defendants as common carriers of passengers by vessel.

The complaint was heard on May 25, 1977 in Los Angeles before Administrative Law Judge William S. Pilling. Staff counsel of the Commission assisted in developing the record by examination of witnesses.
Evidence of Complainants re Complaint

Mr. Tim Mazur, the general manager of complainants, testified that complainant H. Tourist, Inc. operates in scheduled and unscheduled service as a common carrier of passengers by vessel between San Pedro and named points on Santa Catalina Island. Service was begun during the summer of 1976. Complainant Harbor Carriers, Inc. has been in

operation for several years in scheduled and unscheduled service between Long Beach and named points on Santa Catalina Island. During the last 12 months, complainants have been able to accommodate all requests for service. Exhibit No. 2 shows, by months, numbers of passengers transported by complainants to Catalina Island during 1974, 1975, 1976, and 1977 (partial). Mr. Lester C. Bedient, vice president and general manager of Crowley Maritime Corporation, parent company of complainants, testified that complainants have added vessels to their fleet used in their service from time to time as need required. They are prepared to add equipment to their fleet if required. In addition, complainants have available a recently constructed 700-passenger vessel which can be added to their fleet if needed.

Witness Mazur testified that defendant Catalina Motor Cruisers, Inc. is not presently performing scheduled operations between San Pedro and Avalon as required by its certificate and has not performed scheduled operations since Thanksgiving Day of 1976. In addition, defendant M.G.R.S., Inc. did not perform operations during the summer of 1976 as required by its certificate. Furthermore, neither defendant Catalina Motor Cruisers, Inc. nor defendant M.G.R.S., Inc. now own or control any vessel equipment. Moreover, witness Mazur testified that to his knowledge defendant Catalina Motor Cruisers, Inc. has performed no unscheduled operations between Long Beach and any point on Santa Catalina Island during the last three years.

Evidence of Defendants re Complaint

Defendant M.G.R.S., Inc. offered no evidence and stipulated, through its attorney, that its operating authority might be revoked as requested in the complaint.

Evidence on behalf of defendant Catalina Motor Cruisers, Inc. was introduced by Mr. Robert D. Filson, its president. Mr. Filson testified that his company encountered financial difficulties and

ceased operations on Thanksgiving Day 1976 of necessity when the M.V. Avalon had mechanical problems. He stated that his company did not wilfully abandon operations. He offered no evidence of intent or ability to resume operations. He offered no evidence of past operations by Catalina Motor Cruisers, Inc. to or from Wilmington. He testified that in September 1975 Catalina Motor Cruisers, Inc. performed a charter operation from Long Beach to Avalon Bay. He offered no evidence of any unscheduled operations during 1976 or 1977.

By affidavit filed after the close of the hearing, Tim Mazur states that Catalina Motor Cruisers, Inc. has transferred the M.V. Avalon to Catalina Holiday Cruisers, Inc. and that the M.V. Avalon is now stationed in Hawaii.

Defendant Catalina Motor Cruisers, Inc. has failed to submit its proposed Opinion and Order as required by the administrative law judge.

Discussion

Complainants request the revocation of the operating rights of M.G.R.S., Inc. and Catalina Motor Cruisers, Inc. M.G.R.S., Inc. has no vessel and stipulated that its operating authority may be revoked. That authority should be revoked.

Catalina Motor Cruisers, Inc. contends that it did not wilfully cease operations in November 1976 when the M.V. Avalon developed mechanical problems. Yet it appears that Catalina Motor Cruisers, Inc. has made no effort during the ensuing five months to resume and continue operations by means of some other vessel. Nor was mention made of repairs to the M.V. Avalon or possible resumption of operations by Catalina Motor Cruisers, Inc. using the M.V. Avalon. Under these circumstances we must conclude that Catalina Motor Cruisers, Inc. has abandoned its operating rights.

Findings

1. M.G.R.S., Inc. performed no operations during 1976 under its certificate of public convenience and necessity as a common carrier of passengers by vessel and may not be expected to resume operations.

2. Counsel for M.G.R.S., Inc. stipulated that its operating authority could be revoked.

3. Catalina Motor Cruisers, Inc. is not presently performing any operations under its certificate of public convenience and necessity authorizing and requiring operations as a common carrier of passengers by vessel.

4. Catalina Motor Cruisers, Inc. has performed no operations in scheduled service between San Pedro and Avalon since November 25, 1976.

5. Catalina Motor Cruisers, Inc. has performed no operations in unscheduled service between Long Beach and Santa Catalina Island since September 1975.

6. Catalina Motor Cruisers, Inc. is not performing any service to or from Wilmington.

7. Catalina Motor Cruisers, Inc. does not intend to perform operations under its certificate.

8. No need has been shown for the resumption of the service formerly performed by Catalina Motor Cruisers, Inc.

9. H. Tourist, Inc. and Harbor Carriers, Inc. are fit, willing, and able to accommodate the public need for service by vessel common carrier of passengers between San Pedro and Long Beach, on the one hand, and, on the other hand, points on Santa Catalina Island.

Conclusions

1. The certificate of public convenience and necessity heretofore granted to M.G.R.S., Inc. should be revoked and canceled.
2. The certificate of public convenience and necessity heretofore granted to Catalina Motor Cruisers, Inc. should be revoked and canceled.

O R D E R

IT IS ORDERED that:

1. The certificate of public convenience and necessity granted to M.G.R.S., Inc. by Decision No. 69131 in Application No. 47463, as amended by Decision No. 82347 in Application No. 54470, is revoked and canceled.

2. The certificate of public convenience and necessity granted to Catalina Motor Cruisers, Inc. by Decision No. 69131 in Application No. 47465 is revoked and canceled.

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

Dated at San Francisco, California, this 27th day of JUNE, 1978.

William J. Gerson Jr. President
Vernon L. Sturgeon
Robert W. Gault
Clair L. DeRube Commissioners

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