

Decision No. 89354

SEP 6 1978

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

C. D. LEWIS, dba
ORANGE BLOSSOM LINES,

Complainant,

vs.

JAMES WARFIELD,

Defendant.

Case No. 10543
(Filed April 17, 1978;
amended April 19, 1978)

ORDER GRANTING MOTION TO DISSOLVE CEASE AND DESIST ORDER

The instant proceeding arises out of a complaint and motion for an immediate Cease and Desist Order filed by complainant on April 17, 1978 and amended on April 19, 1978.

Based on the complaint, as amended, we issued ex parte Decision No. 88804 dated May 2, 1978, wherein defendant was ordered to cease and desist from operating as a passenger stage corporation until further order of the Commission or a decision upon the complaint. On May 29, 1978 defendant filed a Motion to Dissolve said Cease and Desist Order. Hearing on the motion was held June 9, 1978 in Los Angeles before Administrative Law Judge Peeters, and was submitted on said date.

Defendant sets forth as a basis for his motion the following: (1) no investigation of any type or character whatsoever was made prior to issuance of said order; (2) defendant had no opportunity to be heard in the matter; (3) the issuance of the order is based upon unsubstantial, unverified, and misleading allegations in violation of the Code of Ethics (Rule 1) of the Commission's Rules of Practice and Procedure; and (4) results in a denial of due process to defendant herein as provided by the Constitution of the State of California. Defendant presented its case on the motion through six exhibits and four witnesses, including the defendant himself.

Complainant's answer to defendant's Motion to Dissolve Cease and Desist Order was filed on June 7, 1978. Said answer points out, among other things, that defendant's due process argument is specious since Section 1034 of the Public Utilities Code^{1/} authorizes the Commission to issue a cease and desist order, and such "statute is constitutional as a valid exercise of the regulatory power conferred by the State upon the Commission." In Re Marriott (1933) 218 Cal 179.

During the hearing the parties stipulated and offered into evidence Exhibits C-1 and C-2 pertaining to Routes 1 and 2 of complainant which show the list of passengers who were riding with complainant but left to ride with defendant. The exhibits also show the specific passengers who returned to complainant's operation after defendant ceased operations pursuant to our order. It was also stipulated by the parties that during defendant's unauthorized operations (April 6 to May 12, 1978) complainant's losses on Route 1 amounted to \$1,056 and on Route 2 \$1,600. ✓

Defendant testified that he observed the home-to-work operations of George D. McAfee dba Consolidated Services; of Goodall Charter Bus Service, Inc.; of Mr. Lewis' Orange Blossom Lines; and of Mr. Trahan's Get-A-Way Lines, both before and after they obtained their certificates of public convenience and necessity. He stated that this appeared to be a profitable business to enter into and therefore bought two buses and commenced operations. He relies upon the following statement in Decision No. 88206 dated December 6, 1977, which granted certificates to both George D. McAfee and Goodall's Charter Bus service, Inc., as justifying his starting operations without prior authority from the Commission:

"Both McAfee and Goodall's have been transporting construction workers and other workers to buses to and from the San Onofre power station over regular routes at individual fares without authority to operate as passenger stage corporations."

1/ "1034. When a complaint has been filed with the commission alleging that any passenger stage is being operated without a certificate of public convenience and necessity, contrary to or in violation of the provisions of this part, the commission may, with or without notice, make its order requiring the corporation or person operating or managing such passenger stage, to cease and desist from such operation, until the commission makes and files its decision on the complaint, or until further order of the commission."

We have had occasion to rule recently on the same argument.^{2/}

It is the Commission's duty to see that constitutional and statutory provisions pertaining to matters cognate and germane to the regulation of utilities are enforced and obeyed. Brotherhood of R.R. Trainmen v Southern Pacific Company (1930) 35 CRC 183. The Commission's power to promulgate an order requiring one to refrain from operating a passenger stage service between certain points in the absence of a certificate or other operative right is well established. Joe Galik (1937) 40 CRC 555. We have also held where an unlawful operation has in fact ceased and it is not likely to be resumed, we would not issue a Cease and Desist Order. George Garvin (1947) 47 CPUC 241.

We note that defendant has filed an application for a certificate (A.58045) and a complaint against C. D. Lewis dba Orange Blossom Lines (Lewis) (C.10586); that Lewis has filed for an extension of his certificate (A.58014); and that R. E. Trahan dba Get-A-Way Lines has filed an application to extend his home-to-work certificate to San Onofre (A.58112), all of which have been consolidated with this complaint for hearing on July 27, 1978.

In view of the foregoing and defendant's sworn testimony at the hearing that he has stopped his unauthorized operations and upon the assurance of his attorney that he will not commence operation until he has proper authority therefor, we see no reason to continue the

^{2/} "Dolphin argues that no cease and desist order should issue. It claims that such an order is in the nature of equitable relief and for a claimant to obtain such relief it must come into court with clean hands. It argues that both Goodall and McAfee operated without proper authority initially and were granted certificates later. Therefore, Dolphin argues, it should be given the same opportunity. Dolphin misses the point in its argument. This is not a matter of equity, but rather of upholding the law. Dolphin has an adequate remedy at law which is to file an application for the proper operating authority." Decision No. 88252 dated May 16 1978 in Case No. 10482 Goodall's Charter Bus Service, Inc. vs Marr-Lorr, Inc. dba Dolphin Charter Company, et al.

restraining order in effect. We will grant defendant's Motion to Dissolve Cease and Desist Order contained in Decision No. 88804.

IT IS ORDERED that the Cease and Desist Order contained in Decision No. 88804 is terminated.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 10th day of SEPTEMBER, 1978.

Robert Zaturil

President

William J. ...

... ..

Charles D. ...

Commissioners

Commissioner Claire T. Dedrick, being necessarily absent, did not participate in the disposition of this proceeding.