

ORIGINAL

Decision No. 89595 OCT 31 1978

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application)
of MELVIN FRANK SIMS, doing)
business as SIMS LIMOUSINE SER-)
VICE, for a permit to operate as)
a charter-party carrier of passen-)
gers, Los Angeles.)

Application No. 58042
(Filed May 3, 1978)

Roger B. Sheinbein, Attorney at Law,
for applicant.
Burt Pines, City Attorney, by Michael
E. Waldorf, Deputy City Attorney,
for the City of Los Angeles, protestant.
William Austin, for the Commission staff.

O P I N I O N

Melvin Frank Sims (Sims), dba Sims Limousine Service, filed an application for an annual permit as a charter-party carrier of passengers pursuant to Section 5384(b) of the Public Utilities Code (Code). The application was accompanied by a \$50 filing fee for renewal. At a later date, an additional \$50 was deposited.

The Department of Public Utilities and Transportation of the city of Los Angeles (City) protested the application for renewal and a hearing was held in Los Angeles on June 9, 12, and 13, 1978 before Administrative Law Judge James D. Tante. The parties were requested to present briefs in the form of letters to the hearing officer on or before June 30, 1978 and the matter was submitted on the latter date. Briefs were presented by Sims and City.

In his application for renewal dated March 27, 1978 Sims certified under penalty of perjury that:

1. His business address was 1259 W. 69th Street, Los Angeles, California 90044.
2. He proposed to operate the following five vehicles: 1974 and 1976 Lincoln, and 1975, 1976, and 1977 Cadillac limousines, all of which were leased except for the 1976 Cadillac limousine.
3. His total assets were \$26,947 and his total liabilities were \$56,000.

Sims began the operation of a charter-party carrier of passengers in 1975 and from March 11, 1977 to March 11, 1978, he operated pursuant to a permit issued March 11, 1977 as File No. TCP-805-P. An application dated March 27, 1978 for renewal of the permit was submitted by Sims.

Because Sims' application for renewal was not filed until after the expiration of his previous permit, his application was amended by interlineation at the hearing on June 12, 1978 to show a new, rather than a renewal, application, and a business address of 5230 Onaknoll Avenue, Los Angeles, California 90043, where Sims testified that he had been living for nine months. The application was also amended to show an address and phone number for correspondence, and the address of Sims' insurance broker. The application was further amended to show the vehicles which Sims testified were currently in operation: 1977 and 1978 Cadillac limousines, and three 1978 Lincoln limousines, all of which vehicles were leased and not owned by Sims. Sims testified that his total assets were \$163,149 and his total liabilities were \$111,200.

Exhibit 7 and 15 were marked for identification only, and Exhibits 1 to 26, except 7 and 15, were received in evidence.

Mrs. Bernice Sweet Shinder testified that she is employed as a legal administrator for the law firm that is the employer of Sims' attorney in this case. She testified that she had used Sims' service for several years for a number of clients and that his service had been excellent.

Ms. Shelly Roth, advertising consultant, testified that for the past several months she had arranged for advertising for Sims in various periodicals; that she had used Sims' service on many occasions; and that it was always excellent. She further testified that she had consistently received complimentary statements concerning Sims' service, and that further, she had referred several large accounts to the service, such as the Los Angeles Strings, PSA Airlines, and FILMEX. She further testified that she was handling advertising in Time Magazine and other journals for Sims and had never found anyone who indicated that Sims' service was inadequate or that his bills were not timely paid.

Mr. William O. Austin, transportation analyst for the Commission, testified that he visited Sims at his residence on March 28, 1978 to inform him that his permit had expired and to discuss the protest of the City. He stated that the Commission record did not reflect that any notice had been sent to Sims regarding the expiration of his permit, and he could not recall with certainty whether or not Sims had given him a check and an application for renewal at the time of his visit. He further testified, as indicated in his written follow-up staff report (Exhibit 5), that he advised Sims on March 28, 1978 that his charter-party permit authority had expired and requested that he discontinue providing any "for-hire" transportation.

Messrs. Anthony Ragonex, Robert Hogan, Jr., John Franklyn, and Reginald Flowers testified that they are employed by Sims as limousine drivers and that they had been instructed by Sims as to proper driving and preparation of records. There was a stipulation that Sims provided courteous service, clean, well-maintained vehicles, and that his prearranged services were satisfactory. Mr. Flowers further testified that he had never heard of the Commission's General Order No. 98-A.

Mr. Ora Phillips, supervising transportation engineer for the Surface Passenger Engineering Branch of the Commission, testified that his department generally does not send out renewal applications to holders of charter-party carrier of passenger permits. He indicated that an application might be filed and as much as one month to 45 days may pass before the application is acted upon and a permit issued. He stated that the reason for such delay was that he is required to attend hearings and other meetings, and that his offices are understaffed for the volume of work which it is necessary to perform.

Sims testified that he employed seven drivers and also drives a limousine himself; that he has new vehicles on open-end leases; that he frequently has business at Los Angeles International Airport (LAX); that he has contracts to pick up passengers at LAX; that he provides service at the request of other limousine companies when they are unable to provide the service themselves; that he makes similar requests of other limousine companies when his company is unable to provide the requested service; that he keeps accurate payroll records; and that he gave Mr. Austin his completed renewal application and filing fee check on March 28, 1978.

Sims further testified that he operates from his home; that none of the newly leased vehicles have been inspected by the California Highway Patrol (CHP); that he recently was given

a copy of the Commission's General Order No. 98-A but was not familiar with the specifics of its contents; and that he did not have any permit or similar permission from the Interstate Commerce Commission to operate out of state notwithstanding the fact that he indicated in his testimony and in a brochure (Exhibit 9) that he provided limousine service to Las Vegas, Nevada.

Sims also testified that during the second half of 1977 he had in operation 1974 and 1976 Lincoln, and 1975 and 1977 Cadillac limousines, notwithstanding that the permit which was issued to him on March 11, 1977 only authorized two 1973, nine-passenger Cadillac limousines.

Sims gave a brief history of the development of his limousine service and his experience with prior limousine services as an employee. His business was commenced in 1975 and has been developed to the point where he employs eight drivers and is the lessee of five vehicles.

He testified that he instructs his employees to comply with all Commission and City applicable laws, rules, and regulations. He stated that he maintains all necessary records, waybills, logs, and other records to the best of his ability. He stated that the Commission requirements, specifically the requirements of General Order No. 98-A, are reviewed with his employees from time to time, and that on numerous occasions he has assisted his employees in the completion of the necessary waybills and logs. He testified that he maintains the appropriate insurance on his vehicles and drivers with Clifford Dabney, whose offices are located in Marina Del Rey, California. He stated that he has had no complaints concerning his service or that of his drivers other than the ordinary complaints which are anticipated in any business, and that he has attempted on every

occasion to resolve disputes to the satisfaction of his customers who were involved.

Sims further testified that he has adequate financial resources to properly maintain the vehicles necessary in his business; that he is prepared to and does provide the best possible service he is able to provide; and that, in his opinion, he has never disobeyed any of the above-mentioned laws, rules, or regulations. He stated that it is his desire to provide proper service to those desiring limousine service and he shall continue to abide by all of the applicable laws, rules, and regulations. He explained his record keeping and the manner in which he completed waybills and logs in the conduct of his limousine service.

Mr. Barry D. Mallek testified that on October 20, 1977, at 6:40 p.m., he was a special officer employed by the Los Angeles Department of Airports assigned to a plainclothes detail investigating illegal limousine and taxicab activity at LAX. He stated that while posing as a passenger carrying baggage, he was approached by Sims who solicited him for a ride in his limousine to a downtown Los Angeles hotel on an individual fare basis of \$18. He testified that Sims saw him a few days later and admitted that he had been fooled by the witness whom Sims did not recognize when he solicited him for the ride. The witness also indicated that he was in training at the Police Academy in preparation for his present position as a patrol officer with the Alhambra Police Department and failed to receive a subpoena to testify at Sims' criminal trial on the solicitation charge. He testified that after the solicitation remarks by Sims, Sims became abusive, profane, and resisted arrest by him, his partner, Officer William Grant, and Sergeant Harris.

William D. Grant testified that at 6:40 p.m., on October 20, 1977, he was a special officer with the Los Angeles Department of Airports^{1/} and observed Sims with the previous witness at which time he participated in the arrest of Sims. He corroborated witness Mallek's testimony regarding Sims' profanity, abusive language, and attitude at the time of the incident, which he stated was in the presence of numerous people at LAX. He further testified that on March 13, 1978 at 8:45 p.m., while working as a special officer at LAX, he observed Sims appearing to have conversations with well-dressed passengers in the Trans World Airlines (TWA) baggage area. He stated that he spoke with a Joseph Barrett, a corporate officer and resident of New York City, who appeared to have spoken with Sims, and was told by Mr. Barrett that Sims had asked him if he wanted a limousine or taxi and that he had declined the offer. Grant stated that it was his opinion that Sims was soliciting a passenger in violation of Section 23.27(b) of the Los Angeles Administrative Code. The witness testified that he confronted Sims regarding this violation and Sims became quite profane and verbally abusive, particularly towards another officer, Carl King, who participated in the investigation on that date. He stated Sims was informed that a complaint application would be made regarding the violation at which time Sims challenged King to a fight. He stated that the officers then left to respond to a radio call at another LAX location and a few minutes later Sims drove by and again challenged Officer King to fight. He stated that at the time of the incident involving Sims and Barrett he observed a TWA skycap (later identified as Mr. Taylor) who appeared to warn Sims of the officer's presence, whereupon Sims ceased his activities in the baggage area. The witness later informed Taylor that interfering

^{1/} He was, therefore, a peace officer pursuant to California Penal Code Section 830.4(a)(10).

with the duties of an officer was illegal and warned him not to identify plainclothes officers to possible suspects. He also testified concerning his numerous years of experience at LAX, the modus operandi of illegal limousine operators, and stated the opinion that Sims has operated his limousine service illegally at LAX. He further stated that it was his opinion that there is adequate taxicab service and adequate facilities for obtaining limousine service at LAX.

Edward J. Kenny testified that he is a special officer with the rank of sergeant, and has been employed by the Department of Airports for many years at LAX, with familiarity with all forms of public transportation at that location. Sergeant Kenny indicated that there is ample provision at LAX for taxi service. He further testified that each airline terminal provides special telephones whereby passengers may arrange to have limousine service. He described the methods employed by limousine operators who operate illegally and the problems thereby created, including traffic and parking congestion, and interference with legally operated limousines and taxis.

Sims presented two rebuttal witnesses. Mrs. Ernestine Lindsey, an owner of Lindsey Limousine Service, testified that she had referred an order to Sims to pick up a passenger at LAX at 5:00 p.m., on October 20, 1977. Mr. Robert Taylor, a TWA skycap at LAX, testified that on March 13, 1978 between 6:00 p.m. and 7:00 p.m., he flagged down Sims who was driving by and engaged him in a conversation about a personal matter at the main entrance of the TWA terminal. At that time, Officer Grant came up, tugged at Sims' coat, and told him he was under arrest for solicitation. Taylor testified that Sims did not approach any passengers; that there were few people in the vicinity; that Sims was not abusive towards Officer Grant; that Officer Grant

was insulting and abusive toward Sims; and that Grant threatened to see that Taylor lost his job. Taylor further testified that some skycaps have financial arrangements with taxi and limousine operators whereby they are paid to assist them in obtaining customers.

In rebuttal, the City called Carl King, a special officer for the Los Angeles Department of Airports who confirmed Officer Grant's testimony and refuted Mr. Taylor's testimony. Witness King further testified that at the time of the incident, 8:45 p.m. on October 20, 1977, there were numerous people in the vicinity.

Discussion

Sims has demonstrated reasonable fitness to operate in two respects: (1) he maintains clean, attractive vehicles; and (2) he offers excellent prearranged limousine service.

The permit issued to Sims on March 11, 1977 by its express terms and pursuant to Section 5376 of the Code terminated one year from the date of its issuance, on March 11, 1978. Sims' application for renewal, therefore, was untimely. Sims' March 27, 1978 application was deficient in that it failed to provide certain required information and contained several inaccuracies, including an incorrect business address.

The permit issued Sims on March 11, 1977 authorized the use of only two vehicles, two 1973 Cadillacs. However, Sims testified that in the latter-half of 1977 he was operating four different vehicles. There is no evidence that Sims obtained the authorization specifically required by the third condition of his permit to operate these different vehicles, or that he had complied with the Commission requirements regarding insurance and CHP inspection.

Sims' operation of vehicles not named in his most recent application for authority and filed with the Commission was in direct violation of his March 11, 1977 permit. Had Sims filed a written amendment to the application regarding vehicles proposed to be operated, he would probably not have been permitted to operate those vehicles until approximately 20 days after the date of the filing, so that necessary inspection and investigation could be completed.

Another condition of Sims' expired permit, consistent with Sections 5375 and 5378(b) of the Code, requires that Sims comply with all Commission orders, decisions, rules, directions, and requirements governing his operations. Section 1.18 of General Order No. 98-A requires Sims to have a copy of that general order in a place available to all drivers. Sims admitted unfamiliarity with the specifics of that general order and his driver Flowers' testimony of never having heard of it indicates that Sims has violated this order and has not, as his drivers testified, advised them regarding preparation of records. Furthermore, Part 13 of General Order No. 98-A contains explicit requirements as to the records which passenger charter-party carriers must maintain. As Exhibits 16 to 26 indicate, Sims' records are deficient in several respects, including: (1) the address of the person requesting service and the date the request was made; (2) when payment was made; (3) points of origin and destination as well as the mileage of the trip and the route; (4) the number of hours the driver was on duty; and (5) the driver's itinerary.

The trip tickets or waybills constituting Exhibits 16 to 26 cast further doubt on the adequacy of Sims' business records. Certain of the apparently sequential order numbers are repeated. The order numbers are not in sequence by day or by driver. An

audit of the records would, therefore, be difficult if not impossible. Furthermore, Exhibits 16 to 26 show that Sims had no order to discharge or pick up passengers at LAX on October 20, 1977 or March 13, 1978, at the times he was observed conducting illegal solicitation activities by the officers. No evidence or testimony was offered by Sims which legally justified his presence at LAX on those dates. Mrs. Lindsey's testimony would have placed Sims at LAX one hour and forty minutes before the violation observed on October 20, 1977, and Mr. Taylor's testimony would have placed Sims at LAX nearly two to three hours before the violation observed on March 13, 1978.

Sims' expired permit contained a stamped restriction which, in effect, prohibited operations at LAX unless authorized by LAX authorities. Sims offered no evidence that he had received such authorization.

The weight of the testimony indicates that on at least two occasions, October 20, 1977 and March 13, 1978, Sims illegally solicited business at LAX. In doing so, he not only violated the terms of his permit and Los Angeles Administrative Code Section 23.27(b), but also violated Section 5353(g) of the Code, since there is no testimony or evidence that he was at that time providing taxicab transportation service which was regulated and had been licensed by a city or county. In addition, the solicitation of Officer Mallek on October 20, 1977 included a separate violation of Section 5401 of the Code in that Sims arranged to charge for the transportation he offered on an individual fare basis. Also, Sims' profane and abusive conduct towards the law enforcement officers on those occasions does not demonstrate reasonable fitness to conduct publicly regulated transportation services.

Evidence produced by Sims to prove his financial responsibility is somewhat confusing. The record consists of essentially three different sets of financial data in this regard:

the financial condition as reported on the application dated March 27, 1978, the pertinent portions of Sims' testimony, and Exhibit 11 which contained a balance sheet as of June 30, 1977. Although there are wide variations and discrepancies contained in this data, together with the vagueness of the categories "other current assets" and "other liabilities" contained in the financial statement submitted with the application and amended application, the record demonstrates that he has the requisite financial fitness to conduct the proposed service.

Findings

1. From March 11, 1977 to March 11, 1978 Sims operated limousine vehicles under restricted Charter-party Carrier of Passengers Permit No. TCP-805-P.
2. Subsequent to March 26, 1978, Sims submitted an application to renew his permit.
3. After March 11, 1978, Sims operated without authority from the Commission.
4. Sims operated vehicles which were not named in his most recent application as early as late 1977, without having filed a written amendment to the application with the Commission.
5. On October 20, 1977 and March 13, 1978 Sims illegally solicited passengers at LAX without authority from LAX, used vulgar and verbally abusive language to law enforcement officers, and challenged one officer to fight.
6. Sims has violated Section 1.18 of General Order No. 98-A by not having available a copy of that general order for all drivers.
7. Sims has violated Part 13 of General Order No. 98-A in that complete records of all charter-party trips have not been maintained.

8. Sims has failed to comply with the requirements of his permit and the Motor Carrier Safety Section of CHP in that his vehicles listed in his amended application have not been inspected by the CHP. ✓

9. The application dated March 27, 1978 was incomplete, contained inaccuracies, and showed a current financial condition in which total liabilities were nearly twice the amount of total assets. ✓

10. The City licenses and regulates taxicab transportation service. ✓

11. Adequate taxicab transportation service and limousine service by prearrangement exists at LAX. ✓

12. Telephone service is provided at each terminal at LAX for passengers to call and arrange for limousine service. ✓

13. Illegally operated limousines interfere with legitimate taxicab and limousine service at LAX, and aggravate existing parking and traffic congestion problems at that location. ✓

14. Sims' permit expressly prohibited his conducting any operations on LAX property without prior authorization. ✓

15. Section 23.27(b) of the Los Angeles Administrative Code prohibits persons from engaging in any business or commercial activity of any kind at LAX without having obtained an appropriate license, lease, or permit. ✓

16. Sims did not have authorization from LAX or otherwise to operate at LAX other than by prearrangement. ✓

Conclusions

1. Sims' limousine operations have been conducted without legal authority since March 11, 1978.

2. Sims has not complied with all Commission orders, decisions, rules, directions, and requirements.

3. Sims has not followed all applicable state and local laws.

4. Sims has established reasonable fitness and financial responsibility to initiate and conduct the proposed transportation services.

5. Sims' application should be renewed only in the event that it will be subject to specific conditions which he agrees, in writing, to follow completely, understanding that failure to do so will result in action by the Commission under Section 5378 of the Code to cancel, revoke, or suspend his permit.

O R D E R

IT IS ORDERED that:

1. The request of Melvin Frank Sims, dba Sims Limousine Service, for a charter-party carrier of passengers permit pursuant to Section 5384(b) of the Public Utilities Code is granted as set forth in Appendix A attached hereto and subject to the conditions set forth herein.

2. In providing service pursuant to the permit herein granted, the applicant shall comply with and observe the following service regulations. Failure to do so will result in cancellation of the operating authority granted by this decision. ✓

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

3. The granting of the permit herein is subject to the following conditions:

- (a) The permit shall not authorize the applicant to conduct any operations on the property of any airport unless authorized by the airport authority involved, excepting delivery and pickup of persons (and their attendant baggage) with whom prearranged charter service has been

made. The driver of a charter-party vehicle on airport property shall, at the request of any agent of the airport authority involved, show such agent the record of the requested charter. Such record shall comply with Section 13.01 of General Order No. 98-A.

- (b) The applicant shall maintain all records required by Part 13 of General Order No. 98-A.
- (c) The odometers and speedometers in the charter-party vehicles of the applicant shall be inspected and sealed as required by the California Business and Professions Code.
- (d) The applicant shall not charge or receive compensation for transportation on an individual fare basis.
- (e) The applicant shall maintain accurate and complete records from which his financial condition can be determined.
- (f) The applicant and all persons conducting operations, relating to the charter-party carrier of passengers permit issued herein, shall be courteous and cooperative with all law enforcement officers and other governmental agents and employees charged with administering and enforcing federal, state, and local laws and all administrative orders, decisions, rules, directions, and requirements of such agencies and of this Commission.

(g) The applicant shall file written acceptance of the conditions attached to the issuance of the permit for the authority requested herein or the authority granted by this decision shall be cancelled.

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

Dated at San Francisco, California, this 31st day of OCTOBER, 1978.

Robert Bateman
President
William J. ...
James L. ...
Charles W. ...
Commissioners

I dissent
James L. Sturgeon
I dissent
Clare T. ...

**PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

**PERMIT TO OPERATE AS A
CHARTER-PARTY CARRIER OF PASSENGERS**

File No. TCP 805-P

Melvin Frank Sims

Name of Carrier

Sims Limousine Service

D.B.A.

<u>5203 Onaknoll Avenue</u>	<u>Los Angeles</u>	<u>Los Angeles</u>	<u>90043</u>
Number Street	City	County	Zip Code

Address of home terminal	<u>same as above</u>				
	Number	Street	City	County	Zip Code

The above-named Carrier, having made written application to the Public Utilities Commission of the State of California for a permit to operate as a CHARTER-PARTY CARRIER OF PASSENGERS, pursuant to Sections 5351-5419 of the Public Utilities Code, is granted this permit authorizing the transportation of passengers by motor vehicle over the public highways of the State of California as a CHARTER-PARTY CARRIER OF PASSENGERS, as defined in said Code, subject to the following conditions:

(1) No vehicle or vehicles shall be operated by said Carrier unless adequately covered by a public liability and property damage insurance policy or corporate surety bond as required by Section 5391.

(2) Said Carrier shall comply with all Commission orders, decisions, rules, directions and requirements governing the operations of said Carrier.

(3) All vehicles operated under this permitted authority shall comply with the requirements of the Motor Carrier Safety Section of the California Highway Patrol. No vehicle shall be operated by said carrier unless it is named in the carrier's most recent application for authority on file with this Commission. Written amendments to the application vehicle listing may be filed at any time prior to expiration of this authority and said vehicles may be operated at any time following 20 days after the date of said filing, unless otherwise advised by the Commission.

(4) This permit is subject to amendment or modification by the Commission and is subject to suspension or revocation as provided in the Code.

(5) This permit may not be sold, assigned, leased, or otherwise transferred or encumbered.

SUBJECT TO THE ADDITIONAL CONDITIONS ON PAGE 2 HEREOF.

(6) Special conditions: ~~within a radius of 50 miles from~~

~~(Special conditions do not apply on vehicles under 15-passenger seating capacity and under 7,000-pounds-gross-weight)~~

(7) THIS PERMIT DOES NOT AUTHORIZE THE HOLDER TO CONDUCT ANY OPERATIONS ON THE PROPERTY OF OR INTO ANY AIRPORT UNLESS ANY SUCH OPERATION IS AUTHORIZED BY THE AIRPORT AUTHORITY INVOLVED.

(8) This permit shall be effective from the effective date of the decision noted in the / to margin

September 30, 1979

Issued under authority of Decision No. 89595,
dated OCT 31 1978, of the Public Utilities Commission
of the State of California, in Application No. 58042.

CHARTER PARTY CARRIER OF PASSENGERS PERMIT
ADDITIONAL CONDITIONS OF PERMIT

- (a) The permit shall not authorize the applicant to conduct any operations on the property of any airport unless authorized by the airport authority involved, excepting delivery and pickup of persons (and their attendant baggage) with whom prearranged charter service has been made. The driver of a charter-party vehicle on airport property shall, at the request of any agent of the airport authority involved, show such agent the record of the requested charter. Such record shall comply with Section 13.01 of General Order No. 98-A.
- (b) The applicant shall maintain all records required by Part 13 of General Order No. 98-A.
- (c) The odometers and speedometers in the charter-party vehicles of the applicant shall be inspected and sealed as required by the California Business and Professions Code.
- (d) The applicant shall not charge or receive compensation for transportation on an individual fare basis.
- (e) The applicant shall maintain accurate and complete records from which his financial condition can be determined.
- (f) The applicant and all persons conducting operations, relating to the charter-party carrier of passengers permit issued herein, shall be courteous and cooperative with all law enforcement officers and other governmental agents and employees charged with administering and enforcing federal, state, and local laws and all administrative orders, decisions, rules, directions, and requirements of such agencies and of this Commission.
- (g) The applicant shall file written acceptance of the conditions attached to the issuance of the permit for the authority requested herein or the authority granted by this decision shall be cancelled.

Issued by California Public Utilities Commission.

Decision No. 89595, Application No. 58042.