

KD \*

**ORIGINAL**

Decision No. 90066 MAR 13 1979

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of AGENTOURS, INC., a )  
corporation, for authority to renew )  
a Class A certificate to operate as )  
a charter-party carrier of passengers, )  
San Francisco. (File-TCP-108-A) )

Application No. 58002  
(Filed April 14, 1978)

Silver, Rosen, Fischer and Stecher, by  
John Paul Fischer, Attorney at Law, for  
Agentours, Inc., applicant.  
Michael Aminadav and Glen David Cox, for  
themselves, protestants.  
Marc E. Gottlieb, for the Commission staff.

O P I N I O N

By this application Agentours, Inc. (Agentours) seeks to renew its Class A certificate to operate as a charter-party carrier of passengers, File No. TCP-108-A. Agentours is currently operating under a temporary certificate issued May 19, 1978 and effective on April 25, 1978.

The application was protested, in writing, by Michael Aminadav, a former driver-guide of Agentours from its Los Angeles office. It is alleged that Agentours uses its motor vehicles to transport passengers, mainly foreign tourists, contrary to the statutes, regulations, and standards prescribed by law, in that the said motor vehicles are unsafe, maintenance and service is below standard, tires are not changed until the last tread is gone, and the vehicles are filthy, unkempt, and in no way fit to transport passengers. It is further alleged that the vehicles do not carry distinctive identifying symbols, as required, and that Agentours' driver-guides do not possess the required Class 2 driver's license, but are told at time of hiring that their Class 3 license is sufficient.

After duly published notice hearing was held on the matter before Administrative Law Judge Bernard A. Peeters on Friday, September 29, 1978, in San Francisco. The matter was submitted on said date.

The Evidence

Agentours presented its case through its president and one other witness. The evidence shows that Mr. John P. Jenkins, president, is the sole shareholder of Agentours which provides tourist services for international tourists coming to the Western United States. In doing that, it operates vehicles under a charter-party certificate and acts also as an agent, arranging transportation in other vehicles, meals, hotel accommodations, guide services, admissions, and every possible facet of the total travel itinerary package. It acts as agent for some of the major international tour companies such as Abreu Tours of Portugal and Brazil, Air France through their subsidiary Jetours of Paris, Camino Tours in Paris, and Compania Italiano Tourisma which is associated with the Italian National Railroad.

Agentours maintains offices in California at San Francisco, Los Angeles, and San Diego. In the Los Angeles office there are presently six employee driver-guides, four of whom have Class 2 driver's licenses, the other two are in the process of obtaining Class 2 licenses. In the San Francisco office six driver-guides are employed. No issue was raised with respect to licenses for these drivers. In addition there are eight office employees and three part-time employees. Exhibit 3 lists twelve vehicles that are currently in service. Ten of these are vans with a seating capacity from eleven to fourteen passengers; two apparently are sedans with passenger capacity of seven people. Exhibit 9 is a photo of the vans without markings. A computer has recently been installed for processing reservations, communications, and eventually accounting. Approximately \$45,000 has been invested in the computer plus an additional \$10,000 to \$12,000 for programming. Exhibit 4 is a copy of the California Highway Patrol Safety Compliance Report with

A.58002 kad

respect to the vehicles operating out of the Los Angeles office. The report is dated September 8, 1978 and indicates that the inspector evaluated Agentours' maintenance records, driver records, vehicles, and terminal with its highest rating of "A". There were some equipment deficiencies noted. These consisted of minor items, such as an insufficient number of band-aids in the first-aid kit, the lack of flares in the vehicles, and in two vehicles the fire extinguisher had loosened from its holder. Exhibit 5 is a statement of the insurance coverages of Agentours which indicated compliance with our General Order No. 101-C. Exhibit 6 is a document of Agentours entitled "1979 Confidential Rates and Services". The rates contained in this document appear to be rates predicated on an individual basis. Mr. Jenkins' explanation is that the rates are published on a pro rata basis. In response to questions that these are not individual fares, he stated: "But in actuality, the rates diminish as the size of a group grows larger. Unlike the Gray Line situation that has a city tour for one rate, no matter how many there are, our rate is computed on the basis of the size of the party and the combined expenses in its operation, which includes guide service, admissions to attractions, some cases meals, as well

as the transportation portion." Exhibit 6 is addressed to the international travel agent for use in preparing tours for his customers. The exhibit spells out Agentours' responsibilities and basis for charges.<sup>1/</sup>

Mr. Jenkins testified that he knew Mr. Aminadav, the protestant here, because he had been a part-time employee in Agentours' Los Angeles office in 1976 and through the fall of 1977.

---

<sup>1/</sup> "RESPONSIBILITY: Agentours, Inc. is insured in excess of minimum requirements of the California State Public Utilities Commission. Statements of insurance coverage will be supplied upon request, covering both persons and property. When acting as a carrier, Agentours' responsibility is limited to the maximum proscribed by law of California and decisions of the P.U.C. When acting as agent, Agentours is not responsible for acts or omissions of subcontractors, hotels, transport companies, etc. In all cases Agentours' responsibility is limited to the price charged for the contracted services and never extends to Acts of God, or secondary consequences of a failure of Agentours to properly perform. All programs are prepared and offered by Agentours, Inc., Travel Promoter Department using the services of various methods of transport, charter and scheduled bus companies, airlines, railroads, taxi companies, water carriers, etc., and include, as required, bilingual escorts-guides, and admissions, meals where indicated, and general planning and supervision charge. Services are offered and provided only to bona fide travel agents for the use of groups traveling as an organized party. The prices hereinafter stated are charges for the entire 'package' of Agentours, Inc., Travel Promoter Department's service, and the division of the charges by the number of passengers in the group is a mathematical computation performed in this list of prices as a method of assistance for the Travel Agent in computation of his itinerary expense.

"ITINERARIES: Although every effort will be made to accommodate passengers' desires regarding the times of services and type of transportation, the necessities of a particular day's service problems may require guests following the same itinerary to share one vehicle, and/or rearrangement of times and sequence of services. If guaranteed exclusive occupancy at exact predetermined times is required, such service must be requested and confirmed at the prices quoted herein plus a surcharge of: for 2/3 passengers, 100%; 4/6 passengers, 50%; 7/14 passengers, 20%; 15 or more, 10%; except in the Hawaiian Islands, where all services are basis 'seat in a car or bus' and special quotations must be requested for private vehicle service. Tour itineraries shown herein are suggestions and they may be modified at passengers' request."

Exhibit 7, introduced through Mr. Jenkins, is a notification from the Employment Development Department with respect to Mr. Aminadav's claim for unemployment compensation which was denied on the ground that he was discharged for cause.

Mr. Jenkins stated that if his Class A certificate is renewed he will provide the services authorized thereunder; that he will maintain his equipment in good order both from a safety standpoint and for appearances and cleanliness; and that in all other ways he would operate in a lawful manner. On cross-examination Mr. Jenkins admitted that it is a policy of Agentours to have its drivers and/or guides sell optional tours to the tourists on an individual-fare basis and pay a commission to the driver-guide for these sales.

Mr. Jenkins pointed out that approximately 15 percent of his total dollar revenue, on an annual basis, is derived from operations strictly under his Class A charter-party certificate. It was pointed out that Agentours' equipment is not marked with identifying symbols as required in General Order No. 98-A. Upon being apprised of this Jenkins agreed to arrange to have the vehicles properly identified in accordance with the General Order.

Agentours presented Mr. Egar E. Hensley, president of Pacific International Tours, Inc. (PIT), in support of its application. PIT represents several hundreds of retail travel agents in the United States who send their people on tours overseas and in turn acts on behalf of a large number of overseas travel agents and tour operators who send their customers to the United States. PIT does not provide transportation for these tours. It engages a company in California, such as Agentours, for the transportation tours it requires. PIT has been doing business with Agentours for approximately twelve years, and is more than satisfied with the service it has received. PIT is particularly satisfied with Agentours because of its flexibility of operation. For example, Mr. Hensley indicates that they have requests for groups ranging

in size from one person, who wants a private car by himself, up to full bus loads; that when arrangements are originally made with PIT it could be a group of twenty-five people, yet when they actually arrive the group has dropped down to twelve; Agentours, however, is able to handle these last minute changes to the satisfaction of PIT. Mr. Hensley pointed out that just the transferring of people from the airport to the hotel in the international travel business means something entirely different than it does to a transportation company such as Gray Line. In the international travel business it means someone who communicates with the customer in his own language; takes care of his baggage, the baggage tips, and getting the customer into the vehicle; and goes over with him, in many cases, what is going to happen on the rest of the trip, making sure that he is checked into his hotel, etc. This is necessary not only because of the language difficulties involved but also because of different ways of doing things with which foreign passengers are not familiar. Agentours has bilingual and/or multilingual guides and drivers who can aid and assist in performing these services.

The protestants' case was put on by Mr. Aminadav who presented Mr. Cox, a former part-time driver for Agentours. Mr. Cox was employed for a short time in 1976 during a period prior to the period under review for renewal of Agentours' Class A certificate. The renewal period under consideration is from April 25, 1977 to the present. Since Mr. Cox had no firsthand knowledge of Agentours' operations, his employment having being terminated prior to this period, his testimony was not material nor relevant and was not received.

Mr. Aminadav testified on his own behalf. Essentially, his testimony consisted of accusations as set forth in his complaint with some documentation in the form of personal diary notes with respect to the selling of tours to Disneyland on an individual basis

rather than on a time and/or mileage basis. He also pointed out that during the time he was employed by Agentours, in his opinion the equipment that he operated was in an unsafe condition and that the tires were not safe, the buses were unclean, and that generally the foreign tourist was not getting the kind of service and equipment for which he was being charged. Mr. Aminadav alleges that Agentours is violating Sections 5401 and 5402 of the Public Utilities Code.<sup>2/</sup>

A definite showing that sightseeing trips are on a route for which a passenger stage corporation has a certificate is necessary in order to find a violation of Section 5402 of the Public

---

<sup>2/</sup> "5401. Charges for the transportation to be offered or afforded by a charter-party carrier of passengers shall be computed and assessed on a vehicle mileage or time of use basis, or on a combination thereof, which charges may vary in accordance with the passenger capacity of the vehicle, or the size of the group to be transported, but it shall not be lawful for a charter-party carrier of passengers to directly or through his agent, or otherwise, or for a broker, to contract, agree, or arrange to charge or to demand or receive compensation for the transportation offered or afforded which shall be computed, charged, or assessed on an individual-fare basis, except school bus contractors who are compensated by parents of children attending public, private, or parochial schools.

"5402. No person, partnership, corporation, or organization shall sell transportation by a passenger stage on an individual-fare basis for a sightseeing trip in California on a route for which a passenger stage corporation has obtained a certificate of convenience and necessity if the seller intends to charter or charters the passenger stage in California at a rate per passenger which is less than the individual fare for which the transportation is sold."

A.58002 kad

Utilities Code. (Clarence Crary (1966) 65 CPUC 545, 547.) No evidence was adduced which would support such a finding.

The staff recommends that the certificate be renewed. It requests, however, that the Commission require Agentours to identify its vehicles in accordance with the provisions of General Order No. 98-A and that it order Agentours to cease and desist from charging fares on an individual basis for the optional tours in California which are sold by its driver-guides.

Findings of Fact

1. Agentours has been in the tourism business for at least the past twelve years and during that time has held charter-party carrier operating authority from the Commission.

2. Agentours provides a flexible tourism and charter-party carrier of passengers service for the international tourist trade by providing bilingual and/or multilingual guides and driver-guides, handling of all baggage, paying for baggage tips, etc., checking tourists into and out of hotels, transferring passengers to and from airports, and conducting or arranging sightseeing trips of large and small groups in conjunction with foreign tourist travel itineraries.

3. Agentours acts as a representative for various foreign travel agencies providing comprehensive tour arrangements, local sightseeing tour service, and transfers from airports to hotels in various cities in California and the western United States which become part of the total service sold to the international tourist by the international travel agent.

4. The evidence is inconclusive with respect to the charges for tours and services quoted in Exhibit 6 as being assessed on an individual-fare basis.

5. Agentours also provides what are called optional tours, i.e., those which are not included in the total package sold by the international travel agent.



6. The optional tours are sold by the driver-guide on an individual-fare and cash basis for which they are paid a commission.

7. Agentours' vehicles have been inspected by the California Highway Patrol for safety and found satisfactory.

8. The vehicles owned and operated by Agentours are not marked with identifying symbols as required by General Order No. 98-A.

9. Four of the drivers in the Los Angeles office have Class 2 driver's licenses; the other two have applied for them.

10. The service performed by Agentours is generally satisfactory.

11. About 15 percent of Agentours' total gross revenues are derived from services performed as a charter-party carrier of passengers.

12. Agentours' financial records indicate it possesses adequate financial fitness and responsibility.

#### Conclusions of Law

1. The assessing and collecting of fares by driver-guides for optional tours on an individual-fare basis is a violation of Section 5401 of the Public Utilities Code. Agentours should be ordered to cease and desist this practice.

2. Agentours' lack of proper vehicle marking is in violation of General Order No. 98-A, Part 10. Agentours should be ordered to comply with Part 10 of General Order No. 98-A.

3. The violations listed above are not of sufficient gravity to conclude that the renewal of Agentours' authority for one year is not in the public interest.

4. It is not adverse to the public interest to renew, for another year, Agentours' Class A charter-party carrier of passengers certificate.

#### O R D E R

IT IS ORDERED that:

1. Agentours, Inc. shall immediately comply with the requirements as to display of company names, signs, and numbers contained in Part 10 of General Order No. 98-A.

2. Agentours, Inc. shall immediately cease and desist from the practice of having its driver-guides assess and collect individual fares for optional tour services performed in California as a charter-party carrier of passengers.

3. Pursuant to Section 5376 of the Public Utilities Code, Agentours, Inc.'s Class A charter-party carrier of passengers certificate is renewed for one year from the effective date of this order.

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

Dated at San Francisco, California, this 13<sup>th</sup> day of MARCH, 1979.

John E. Bryan  
President  
William L. Strogan  
Charles D. Clark  
Clair J. DeLoach  
Samuel W. Dennis  
Commissioners