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ORIGINAL

Decision No. 90518 JUL 3 1979

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 O'CONNOR LIMOUSINE SERVICE, INC.,)
 doing business as O'Connor Tour)
 Service, for a certificate of public)
 convenience and necessity to operate)
 a passenger stage corporation.)

Application No. 56580
 (Filed June 25, 1976)

James S. Clapp, Attorney at Law, for O'Connor Limousine
 Service, Inc., applicant.
Richard M. Hannon, Attorney at Law, for The Gray Line,
 Inc., protestant.
Ora A. Phillips, for the Commission staff.

OPINION ON REHEARING

By Decision No. 90154, dated April 10, 1979, the Commission granted to applicant a certificate of public convenience and necessity authorizing it to operate as a passenger stage corporation.

On April 30, 1979, The Gray Line, Inc. filed its application for rehearing of Decision No. 90154. Decision No. 90416, dated June 5, 1979, granted limited rehearing in the following terms:

"IT IS ORDERED that limited rehearing is granted to receive evidence on the financial fitness of the applicant, O'Connor Limousine Service, Inc., subsequent to its change in ownership."

A public hearing was held on June 18, 1979, pursuant to Decision No. 90416, before Administrative Law Judge Robert T. Baer and the matter was submitted.

The ordering paragraph assumes that there has been a change of ownership, as did the three witnesses for applicant, Daniel F. McCarthy, assertedly the recent purchaser of 60 percent of applicant's stock, James E. O'Connor, formerly sole stockholder and now owner of a 40 percent interest, and Anthony Ruiz. McCarthy testified that his 60 percent interest was paid for by a check for \$12,000 on the account of Ace Mini Bus Company, a charter party carrier of passengers of which he is the sole proprietor. Ruiz, McCarthy's general manager and step-father, however, testified that the 60 percent interest in the applicant was not paid for by a check or checks drawn on the Ace Mini Bus Company account. O'Connor testified that he has not been paid directly for a 60 percent interest in the applicant and that the agreement between himself and McCarthy had yet to be embodied in a written contract but would be in the future.

Although it was never articulated as such by any witness, it may be inferred that McCarthy and O'Connor have an oral understanding that McCarthy will contribute \$12,000 to applicant by paying, or obligating himself to pay, 60 percent of applicant's start-up costs (not to exceed \$12,000). Since O'Connor has himself expended \$8,400 to launch applicant in business, the proportions of capital contributed or to be contributed by O'Connor and McCarthy are roughly 40 percent and 60 percent, respectively.^{1/}

^{1/} Applicant's attorney stated that he had possession of the shares of stock representing McCarthy's 60 percent interest. Were this statement evidence, it might be inferred that applicant's attorney was acting as an escrow.

Assuming, therefore, that McCarthy is, or will be, the owner of a 60 percent interest in applicant, it remains to analyze his and O'Connor's ability to infuse applicant with capital sufficient to propel it to a successful conclusion. McCarthy introduced his personal balance sheet (Exhibit RH-1) showing assets of \$329,700, liabilities of \$63,000, and net worth of \$266,700. The principal asset relied upon as a source of capital for applicant is a single family residence at 733 Parkway, South San Francisco, which is owned by McCarthy free of encumbrances. It is valued by McCarthy at \$140,000. McCarthy expects to be able to borrow \$100,000 against the equity in the property, which sum he states he is willing to devote to the capital needs of applicant.^{2/}

McCarthy also submitted a letter (Exhibit RH-4) from Wells Fargo Bank, San Leandro Office, indicating that as of June 15, 1979, the bank had committed to either a Letter of Credit or a loan in the amount of \$45,000 in favor of McCarthy. In oral testimony McCarthy stated that no collateral was necessary for this loan. Thus, McCarthy stated, a total of \$145,000 credit is available to finance applicant's operations.

McCarthy also testified that, although he was relying principally upon the house loan and the loan from Wells Fargo Bank, he could also fund applicant's cash needs in part from the income of Ace Mini Bus Company. He submitted a balance sheet and income statement of that company in support of his contention (Exhibits RH-2 and RH-3). The financial statements, which are for the four-month period ending April 30, 1979, require some comment.

^{2/} The home is a 3-bedroom, 2-bath structure, about 2,000 square feet in size. It was originally owned by the mother of Tony Ruiz, who deeded it to her step-grandson, McCarthy. Ruiz lives there, paying only taxes and insurance for the privilege.

First, under current assets on the balance sheet are accounts receivable totaling \$20,776.04, of which \$18,240.85 is due from Lorrie's Travel & Tours, Inc. (Lorrie's).^{3/} The sum of \$20,776.04 is almost three times the net income of Ace Mini Bus Company for the four-month period, i.e., \$7,045.26. Second, although McCarthy testified he had paid \$12,000 from the accounts of Ace Mini Bus Company for his 60 percent interest in applicant, neither Ace Mini Bus Company's nor McCarthy's balance sheets reflect this investment. Ace Mini Bus Company's balance sheet does show under current assets \$100 as advances to O'Connor Limousine Service, Inc. Third, the balance sheet shows that Ace Mini Bus Company suffered a loss of \$10,018 in 1978.

Ace Mini Bus Company's income statement is more remarkable for what is missing than for what is there. No item appears for management salaries, expenses, or benefits,^{4/} maintenance of the vans, tolls and parking, tires and tubes, public liability and property damage insurance; and collision or comprehensive insurance.^{5/} According to Ruiz' testimony, Lorrie's bears all of the van related expenses.

^{3/} Lorrie's is a corporation wholly owned by Joan Donahoe and managed by Ruiz, who is Donahoe's uncle. Lorrie's leases vans from Ace Mini Bus Company. The leases are the source of the receivables.

^{4/} Mr. Ruiz testified he receives only his car and expenses and otherwise works without compensation. He also works without compensation for Lorrie's.

^{5/} In addition, income taxes will ultimately be payable if net income is obtained. These taxes, if any, would be paid through McCarthy's return. He is a full-time employee of GTE-Lenkurt.

From the above we can only conclude that it is unlikely that any significant amount of cash can be diverted from Ace Mini Bus Company to applicant.

O'Connor testified in a similar vein. He orally updated his personal balance sheet dated February 28, 1977. (Exhibit 23, pages 13-15.) In summary it now shows assets of \$648,000, liabilities of \$65,150, and net worth of \$582,850. He stated that he would make available \$100,000 (by purchasing 40 percent of any future issue of stock, or by loans) to the applicant for its capital needs.

Findings of Fact

1. The undisputed evidence shows that McCarthy and O'Connor have a net worth between them sufficient to infuse applicant with capital totaling approximately \$250,000, and each has committed himself to make either loans to or purchases of stock of the applicant in proportion to his respective stock ownership.

2. Applicant has demonstrated that it is financially able to operate as proposed.

Conclusions of Law

1. The application should be granted upon the terms and conditions heretofore stated in Decision No. 90154.

2. This order should be made effective the date hereof in order to allow applicant to commence operations as soon as possible, since the summer sightseeing season is now at its peak.

ORDER ON REHEARING

IT IS ORDERED that the application of O'Connor Limousine Service, Inc. is hereby granted upon the terms and conditions set forth in Decision No. 90154.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 3rd day of JULY, 1979.

John E. Gunn

President

Charles D. Smith

Clair T. [unclear]

Edward M. [unclear]

Commissioners

I dissent
Vernon L. Sturgeon