

Decision No. 90605 JUL 31 1979

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of DAVID MUNOZ for authority to purchase all of the issued and outstanding shares of capital stock of Whippet Charter Service, Inc., from Richard H. Thompson, Shirley M. Thompson, Richard Lighthill, and Ruth Lighthill, and for authority to execute a security agreement.

Application No. 58762
(Filed March 26, 1979)

O P I N I O N

David Munoz seeks authority under Section 854 of the Public Utilities Code to control Whippet Charter Service, Inc., (Whippet) and the latter seeks authority to execute and deliver a Security Agreement pursuant to Section 851, of the Code.

Notice of the filing of the application appeared on the Commission's Daily Calendar of March 28, 1979.

Whippet is authorized by Commission Decision No. 89213, dated August 8, 1978, in Application No. 58083, to operate as a passenger stage corporation between Hayward, Union City, Newark, Fremont, Milpitas, and Dublin, on the one hand, and United Airlines Maintenance Base at the San Francisco International Airport, on the other hand.

David Munoz proposes to control Whippet through the purchase of all of the issued and outstanding capital stock of Whippet, consisting of 1,180 shares of common stock. The stock is presently held by Richard A. Lighthill, Ruth Lighthill, Richard Thompson and Shirley Thompson (collectively referred to as Sellers).

David Munoz and Sellers have entered into an agreement for the sale of the stock and repayment of corporate loans. A copy of the agreement is attached to the application. Under the terms of the agreement the total purchase price of the stock is \$52,500. David Munoz would make a down payment of \$9,300 and

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issue a promissory note for the balance of the purchase price in the amount of \$43,200. The note will bear interest at the rate of 10 percent per year and will be payable in various amounts over a period of four years. The note will be secured by the assets of Whippet and a pledge of the stock to be acquired. A form of the note is attached to the application.

The agreement between David Munoz and the Sellers also provides that David Munoz advance the sum of \$10,500, to Whippet, which will be used by the company to repay prior loans made to the company by Sellers.

The Sellers' attorney informed the commission staff that Richard A. Lighthill and Ruth Lighthill desire to sell due to the possible dissolution of their marriage and a pending move of Mr. Lighthill to another city. The Commission is also advised that Richard A. Thompson and his wife, Shirley M. Thompson, are considering investing in another business and desire to sell their interest in Whippet.

David Munoz, buyer, has been a Whippet driver and mechanic. For the past four months, he has been managing the company and overseeing the purchase of fuel. Sellers' attorney has informed the Commission staff that David Munoz is financially able to meet his obligations under the terms of the agreement with Sellers without relying on the income from Whippet.

Whippet, according to Commission records, is under suspension for failing to file a certificate of insurance or a notice of reinstatement of insurance as is required by the Commission's General Order No. 101-C. We will therefore condition the authority to acquire the stock and control of Whippet upon the filing by the carrier of a certificate of insurance.

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The annual report to the Commission for the year 1978 indicates that Whippet had total operating revenues of \$153,034 and a net loss of \$13,519. The Carrier's financial position at December 31, 1978 is summarized as follows:

<u>Assets</u>	
Current assets	\$ 5,773
Carrier property and equipment less accumulated depreciation	8,812
Total	<u><u>\$ 14,585</u></u>
<u>Liabilities and Capital</u>	
Current liabilities	\$ 7,553
Advances from stockholders	10,500
Common stock equity (deficit)	(3,468)
Total	<u><u>\$ 14,585</u></u>

Whippet was authorized by Decision No. 90024, dated February 27, 1979, in Application No. 58236, to increase its fares. The increase would result in estimated additional annual revenues of \$30,816 and a net income of \$15,016. The estimated cash flow would amount to \$20,316 on an annual basis.

The Revenue Requirements Division and the Transportation Division of the commission staff have reviewed the application and have no objection to granting the authority requested on the condition that Whippet file a certificate of insurance as required by General Order No. 101-C.

Findings of Fact

1. Whippet is a California corporation and a passenger stage certificated carrier subject to the jurisdiction of the Commission.
2. The control of Whippet by the buyers, through the acquisition of the issued and outstanding capital stock of Whippet, pursuant to the agreement of sale attached to the application would not be adverse to the public interest.

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3. The agreement of sale would encumber property necessary or useful in the performance of Whippet's duties to the public. The encumbrance of the assets would not be adverse to the public interest.

4. Whippet has not filed a certificate of insurance as required by the Commission's General Order No. 101-C. Authority to acquire the stock, control and encumber the assets of Whippet should be conditioned upon Whippet filing the certificate of insurance.

5. There is no known opposition and no reason to delay granting the authority requested.

Conclusions of Law

1. The application should be granted upon the conditions set forth in the order which follows.

2. A public hearing is not necessary.

The authorization granted herein is for the purpose of this proceeding only and is not to be construed as a finding of the value of the assets or capital stock of Whippet.

O R D E R

IT IS ORDERED that:

1. David Munoz may acquire all of the issued and outstanding capital stock and control Whippet Charter Service, Inc., in accordance with the terms contained in the Agreement for Sale of Stock and Repayment of Corporate Loans to Shareholders attached to the application. This authority is granted on the condition that Whippet Charter Service, Inc., files a certificate of insurance pursuant to General Order No. 101-C.

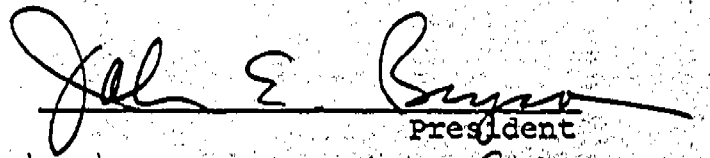
2. Whippet Charter Service, Inc., may execute and deliver a Security Agreement in accordance with the terms detailed in the Agreement for Sale of Stock and Repayment of Corporate Loans to Shareholders on the condition specified in the preceding Ordering Paragraph No. 1.

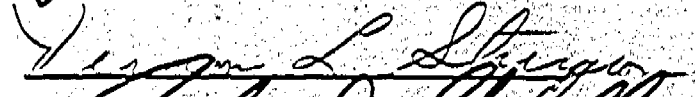
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3. Within 90 days after the effective date hereof David Munoz shall notify the Commission, in writing, of the date upon which the transfer of control was consummated.

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

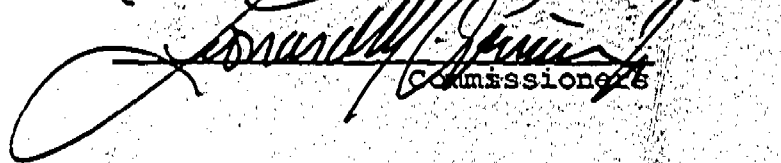
Dated JUL 31 1979, at San Francisco, California.


President








Commissioners