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ORIGINAL

Decision No. 50999 NOV 6 1979

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
EUGENE YEN, doing business as AIR )  
PASSENGER SERVICES, INC., a to-be- )  
formed California corporation, for )  
a Certificate of Public Convenience )  
and Necessity to operate as a )  
passenger stage corporation, trans- )  
porting passengers, their baggage )  
and express shipments between certain )  
points in the City and County of San )  
Francisco and the City of Oakland and )  
San Francisco International Airport )  
and Oakland International Airport and )  
to issue stock. )

Application No. 58207  
(Filed July 7, 1978;  
amended September 26, 1978)

Loughran & Hegarty, by Ann M. Pougiales, Attorney  
at Law, and James H. Gulseth, Attorney at Law,  
for Eugene Yen, applicant.

James S. Clapp, Attorney at Law, for Lorrie's  
Travel & Tours, Inc.; Handler, Baker & Greene,  
by Walter H. Walker, III, Attorney at Law, for  
SFO Airporter, Inc.; Horace G. Campbell, for  
Airport Limousine Service of Sunnyvale, Inc.;  
and David I. Kroopnick, Deputy City Attorney,  
for Airport Commission, City and County of San  
Francisco; protestants.

Thomas J. Clausen and Tom Enderle, for the  
Commission staff.

#### O P I N I O N

Applicant Eugene Yen (Yen), doing business as Air Passenger Services, Inc. (APS), a to-be-formed corporation, requests a certificate to operate a passenger stage service between the San Francisco International Airport (SFIA), the Oakland International Airport (OIA), San Francisco, and Oakland. The application was protested by SFO Airporter, Inc., Lorrie's Travel & Tours, Inc., (Lorrie's), Airport Limousine Service of Sunnyvale, Inc., various taxicab companies, and the Airport Commission of the City and County of San Francisco. APS also seeks authority to issue and sell

101 shares of capital stock having a par value of \$100 a share. Hearing on the matter was held before Administrative Law Judge Pilling on October 17, 18, and 20, 1978, and November 21 and 22, 1978.

On the first day of hearing on October 17, 1978, Yen testified that he had been and was currently transporting passengers for compensation on a per capita fare basis in both directions between San Francisco and SFIA without operating authority from the Commission. He currently employs a 15-passenger 1977 Dodge maxi-van supplemented by a 1973 Dodge sedan. He stated that the service developed as an offshoot of his former employment as a driver for a San Francisco taxicab company. Through his employment he became acquainted with numerous airline personnel who, on occasion, would hire his cab for transportation between San Francisco and SFIA. This led him to the idea of providing service for them with his own vehicles, charging a lesser rate than the taxicabs, and transporting more than one person in the same vehicle at the same time. He implemented his idea two years ago, and since then, has transported numerous airline and nonairline personnel in his service. Finally, after two years of providing his own service on a part-time basis, he left his employment in 1978 with the taxicab company to devote himself to providing his service on a full-time basis. Off and on, he employs two other drivers. Subsequently, he became aware of a need for a passenger stage certificate from the Commission and so filed the herein application on July 7, 1978. Despite his knowledge that a certificate from the Commission was required to perform his operation, he stated:

"I felt that just as the public need would have to be the determining factor in this Commission's decision on my application, it would be the determining factor in my decision as well. Although

the choice was difficult, I opted to continue providing the service between San Francisco and the San Francisco International Airport." (Exhibit 1, page 13.)

Yen presented the testimony of 10 public witnesses in support of his application. Seven of these public witnesses testified, among other things, that they have been regular users of Yen's APS for-hire per capita fare van service between San Francisco and SFIA, often riding along with other passengers in the van. Yen offered to produce 12 additional witnesses who would testify, among other things, that they were also regular users of Yen's APS for-hire per capita fare van service between San Francisco and SFIA. This offer was rejected by the administrative law judge as constituting cumulative evidence. Yen admitted that the insurance policies covering these individual fare operations did not meet the Commission's minimum insurance requirements. On October 20, 1978, at the hearing, Yen testified that APS had ceased his San Francisco-SFIA per capita fare passenger operation a couple of days previous.

On August 29, 1978, Yen applied to the Commission for a permit to engage in charter-party operations. The permit was issued to him on October 27, 1978, and authorized him to use only a seven-passenger 1977 Dodge van in the operation.

On November 9, 1978, a private investigator hired by protestant Lorrie's to investigate APS service testified he telephoned APS's answering service and made arrangements to be picked up by APS at the Sheraton-Palace Hotel in San Francisco the next day, November 10, 1978, for transportation to SFIA. He was told by the APS answering service the fare would be \$5. On November 10, 1978, an employee of protestant Lorrie's testified she called the APS answering service and made arrangements with APS to be picked up at the intersection of Kearny and California Streets in San Francisco for transportation to SFIA. She stated that at the appointed place and time of pickup she was approached by the driver

of a green passenger car, who called himself "Jim", and asked if she was waiting for APS to the airport. She replied in the affirmative and boarded the passenger car and was driven to the Sheraton-Palace Hotel where the aforementioned private investigator, as well as an officer of Lorrie's, was picked up. The private investigator described the pickup car as a green Pontiac sedan, license plate number YGX 447. The driver then asked for a fare of \$5 each from the employee of Lorrie's, the private investigator, and the officer of Lorrie's; and they each paid the driver \$5. On the way to SFIA, the driver represented that he was driving in APS service which was owned by a man named Eugene. The private investigator testified that the driver told them all that APS picked up people at any location, and often several people, at different locations for the same ride and that the fare was a flat \$5 per person. They were transported to and deposited at SFIA.

A second woman employee of Lorrie's testified she was asked by Lorrie's to investigate the APS service and she telephoned the APS answering service on November 15, 1978, and asked if she could get a ride to the airport from San Francisco and how much it would cost. She stated the person who answered the telephone said, "APS Service, may I help you" and informed her the fare would be \$5. She made reservations to be picked up the next day, November 16, 1978. At the appointed time and place, she was picked up by a driver who greeted her with, "I am from APS Service." She identified the driver in the hearing room as Yen, the applicant herein. Yen drove her to SFIA after picking up another passenger in San Francisco, who happened to be the private investigator hired by Lorrie's involved in the previous incident. Yen first dropped off the private investigator but did not ask for his fare. Subsequently, Yen remarked to her that "He didn't pay me my \$5... Well, I will catch

him the next time around," or something to that effect. She paid \$5 when Yen dropped her off at SFIA. The investigator testified that the vehicle, which carried him in this latest incident, was a green Pontiac sedan, license plate number YGX 447. At the hearing on November 21, 1978, Yen testified that since obtaining his charter-party permit he had not transported any passengers on an individual fare basis and that to his knowledge neither have his employees. License number YGX 447 is registered to a 1969 Pontiac belonging to James or Joyce Yee. James Yee is a friend of Yen's and was a sometimes driver in APS's service, according to Yen. Yee chauffeured some of Yen's supporting witnesses to the hearing. The Commission's records do not show that the subject Pontiac is included in Yen's insurance coverage for his charter-party operation.

A recitation of any further evidence adduced at the hearing is unnecessary because of our disposition of the case.

#### Discussion

Yen's testimony on October 20, 1978, that his unlawful passenger stage service had ceased and his testimony on November 21, 1978, that no such service had been given since he received his charter-party permit (October 27, 1978) was overwhelmingly refuted by witnesses who had used such service on November 10 and 16, 1978. This lack of adherence to the truth by Yen and his habitual refusal to cease his unlawful operations knowing a certificate from the Commission is a prerequisite to a passenger stage operation negates the sublimity of his reasons for his previous operations without a certificate and reflects a fundamental underlying contempt for the law. The evidence does not show that Yen is reasonably fit to be entrusted with a passenger stage certificate. ~~It is apparent that from his conduct prior to and during this proceeding that if Yen were granted a certificate he would probably feel little compulsion to abide by the rules and regulations attendant to serving the public trust.~~ Km

#### Findings of Fact

1. Yen requests a certificate to operate as a passenger stage corporation between San Francisco, Oakland, SFIA, and OIA.

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2. Yen has been operating an auto stage over a regular route between the fixed termini of San Francisco and SFIA and charging individual fares without a certificate from the Commission since two years before he filed the herein application until at least November 16, 1978.

3. Yen opted to continue to provide such service even after he became fully aware that a certificate from the Commission was a prerequisite to his operation.

4. Yen testified that he had ceased his passenger stage operations a few days before October 20, 1978.

5. Yen testified on November 21, 1978, that he had not been performing any passenger stage service at least since October 27, 1978.

6. Witnesses testified that on November 10 and 16, 1978 they they had been transported in Yen's per capita for-hire passenger transportation service between San Francisco and SFIA.

7. Yen has not shown that he is reasonably fit to be entrusted with a passenger stage certificate.

#### Conclusions of Law

1. Yen has been operating as a passenger stage corporation since two years before he filed his application in violation of the certificate provisions of Public Utilities Code Section 1031.

2. Yen has not shown himself fit to receive a passenger stage certificate from the Commission.

3. The application should be denied.

4. Yen should be admonished to refrain from operating as a passenger stage corporation until he is properly certificated.

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O R D E R

IT IS ORDERED that:

1. Application No. 58207 is denied.
2. Eugene Yen is admonished to refrain from operating as a passenger stage corporation until he is properly certificated.

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

Dated NOV 6 1979, at San Francisco, California.

John E. Gypson  
President

Vernon L. Stinson

Robert W. Koval

Charles J. DeSjogh

Donald W. Jones  
Commissioners