

Decision No. 92680 FEB 4 1981

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

J. Mark Lavelle, dba )  
DOLPHIN TOURS, )  
) )  
Complainant, )  
) )  
vs. )  
) )  
JOY-TAK, INC., )  
) )  
Defendant. )

Case No. 10767  
(Filed August 8, 1979)

Richard J. Lee, Attorney at Law, for J. Mark Lavelle, complainant.  
R. Stewart Baird, Jr., Attorney at Law, for Joy-Tak, Inc., defendant.  
James S. Clapp, Attorney at Law, for O'Connor Limousine Service, and Dennis E. Richardson, for Franciscan Lines, Inc., interested parties.  
Robert Cagon, Attorney at Law, for the Commission staff.

O P I N I O N

J. Mark Lavelle, dba Dolphin Tours (Dolphin), complains that defendant Joy-Tak, Inc. (Joy-Tak) conducts passenger stage transportation consisting of sightseeing tours in San Francisco while holding no authority from this Commission to do so.

Hearing in this matter was held before Administrative Law Judge Meaney in San Francisco on December 3 and 4, 1979, and the case submitted after argument at the close of the hearing. Based upon the record in this proceeding, we determine that: (1) Joy-Tak formerly conducted such operations, but ceased doing so, (2) Dolphin's request for suspension or revocation of Joy-Tak's charter-party

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✓

authority should be denied, (3) but Joy-Tak should be ordered not to resume unlawful operations, and should be ordered to cease from continuing certain practices. (See Findings and Conclusions below.) ✓

Findings of Fact

1. Dolphin is a passenger stage corporation with certain sightseeing routes originating in San Francisco.

2. Joy-Tak is a California corporation with its principal office in San Francisco. It holds authority from this Commission as a charter-party carrier pursuant to Public Utilities Code Section 5384(b).

3. In 1978 and for approximately two years prior, Joy-Tak operated a "city tour" entirely within the corporate limits of San Francisco, advertised and sold on a per capita basis, over a fixed route. The evidence demonstrates that because of Joy-Tak's other transportation movements, this tour was not exempted from passenger stage regulation under Public Utilities Code Section 226, first paragraph. ✓

4. Until 1979, Joy-Tak also sold and held itself out to provide certain other fixed-route sightseeing tours to the public on a per capita basis.

5. Joy-Tak now advertises and sells its services only to travel organizations wishing to purchase transportation for groups. Payment for the vehicles is on a per mile or per diem basis. However, Joy-Tak's "Confidential Tariff for Travel Agent" sic creates the impression that "special tours" are offered, and untruthfully states, "Our drivers have been screened by the Public Utilities Commission."

6. Joy-Tak conducts some of its airport transfer transportation for groups in vehicles having a capacity to seat more than 14 passengers plus the driver.

7. Joy-Tak sells its charter-party transportation service to several different tour companies. While transportation is performed frequently to popular destinations (Monterey-Carmel; Santa Cruz), the record is not clear on how often such transportation is furnished for any one tour company.

Conclusions of Law

1. Joy-Tak terminated any unlawful passenger stage operations in 1979, and should be ordered not to reinstitute such operations.

2. Assuming that one of Joy-Tak's tour company customers sells a fixed-route tour on a per capita basis frequently enough (see Finding of Fact 7), that tour company, and not Joy-Tak, may be performing passenger stage service. (Lavelle v Japan Air Lines, Case No. 10732, Decision No. 92455, dated December 2, 1980.)

3. Joy-Tak should be ordered to revise its publicity so that it is clear to tour companies that the charges are on a per vehicle basis by mileage or time (or a combination) and not on a fixed-route or "special tour" basis.

4. Joy-Tak should be ordered to cease from representing that its drivers are licensed, examined, processed, screened, or otherwise approved by this Commission.

5. Joy-Tak should be ordered to cease using vehicles larger than those permitted under its authority.

6. Otherwise, relief should be denied.

7. The effective date of this decision should be the date it is signed in order to terminate the practices which are the subject of the order.

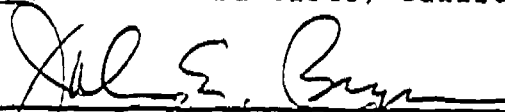

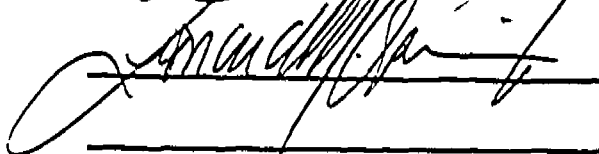
O R D E R

IT IS ORDERED that:

1. Joy-Tak, Inc. shall:
  - a. Not reinstitute any unlawful passenger stage operations or commence any new passenger stage routes, without first obtaining proper authority from this Commission;
  - b. Revise its publicity to clarify that it does not offer fixed-route transportation and that its charges are on a per vehicle basis (by mileage or time, or a combination, plus other lawful charges);
  - c. Cease from representing that its drivers, or other personnel, are licensed, examined, processed, screened, or otherwise approved by the Commission;
  - d. Cease from using vehicles having a seating capacity greater than 15 passengers, or a gross weight of more than 7,000 pounds (Public Utilities Code Section 5384(b)) without first obtaining authority to do so.
2. All relief not granted is denied.

The effective date of this order is the date hereof.

Dated FEB 4 1981, at San Francisco, California.

  
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President  
  
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Commissioners