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Decision 96-07-037 July 17, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations and practices of Joseph Perez, an individual, doing business as AMBASSADOR LIMOUSINE SERVICE, Respondent. (Filed December 21, 1994)

ORIGINAL

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David D. Ribeiro, Attorney at Law, for Joseph Perez, respondent; Laura Tudisco, Attorney at Law, for Safety and Enforcement Division.

Whether any other orders that may be appropriate are needed in the exercise of the Commission's jurisdiction.

Background

On December 21, 1994 the Commission issued this Order instituting investigation into the operations and practices of Joseph Perez, an individual, doing business as Ambassador Limousine Service (respondent) to determine:

- a. Whether respondent violated Public Utilities (PU) Code § 5378.1 by engaging employees in his charter party carrier operations without filing a certificate of Workers' Compensation coverage or a certificate of self insurance;
b. Whether respondent violated General Order (GO) 157-B, Paragraph 5.02 by failing to enroll his employees in the State Fair Pull Notice Program and/or by operating with a driver who is presumed to be negligent;
c. Whether respondent violated §§ 5371 and/or 5379 of the PU Code by operating after the expiration and/or during the suspension of his authority;

- d. Whether respondent violated GO 157-B, Paragraph 5.01 by operating with an improperly licensed driver;
- e. Whether the Commission should impose civil penalties as provided in §§ 5378 and 5415 of the PU Code;
- f. Whether the operating authority of respondent should be suspended or revoked, or, as an alternative, whether a fine should be imposed, as provided in § 5378 of the PU Code;
- g. Whether respondent should be ordered to cease and desist from any unlawful operations (and practices), and
- h. Whether any other orders that may be appropriate should be entered in the lawful exercise of the Commission's jurisdiction.

The Commission would determine whether respondent would be fined to the full extent allowed by the PU Code and whether his operating authority would be suspended or revoked.

Hearings Duly noticed hearings were held on December 20, 1995, and March 7, 1996.

The investigation of Safety and Enforcement Division (S&E) staff began as a result of an informal complaint by Wayne L. Shipman, who as a passenger in an Ambassador limousine, observed that vehicle collide with his personal vehicle parked in front of his house. The driver told him that Ambassador was insured by State Farm, but he was later told that Ambassador would pay for the damages out of pocket. However, he was unsuccessful in collecting from respondent for the approximately \$600 in damages to his vehicle.

The S&E staff's investigative reports found that respondent had violated the following:

- a. PU Code § 5379 by operating after expiration of his Charter-Party Class B

certificate and during suspension of his Charter Party Carrier Permit by PU Code § 5391 by operating without having evidence of public liability and property damage (PL&PD) insurance on file at the Commission, and by employing persons without having a certificate of Workers' Compensation Insurance on file at the Commission.

GO 157-B, Section 5.02 and California Vehicle Code (CVC) 1808.1(b) by failing to enroll all drivers in the Department of Motor Vehicles (DMV) Pull Notice Program.

GO 157-B, Section 5.01 and CVC 14606(a) by allowing a driver to operate a vehicle without the proper driver's license issued by DMV.

GO 157-B, Section 5.02 and CVC 1808.1(f) by continuing to employ a driver whose license is suspended for negligent operations.

Settlement

As a result of continuing negotiations between respondent and S&E staff, a stipulation for settlement (Settlement) was reached during the March 7 hearing, and is attached to this order as Appendix A.

The Settlement terms are as follows:

1. Respondent shall serve a 24-month probation period during which:
 - a. Operating authority shall be suspended for 152 days, 141 of which shall be waived if full compliance with the Settlement is achieved. The remaining 11 days of imposed suspension shall be served during the first 12 months of the probation period. Respondent shall inform S&E staff no later than one week in advance of each of the 11 days of suspension.

a. If respondent operates during any future suspension period during the probationary period, the Commission will impose a portion of the 141-day suspension period held in abeyance, in an amount of two days suspension for each day of operation during Commission imposed suspension. If all 141 days are exhausted during the 12-month probation period, respondent's operating authority will be automatically and immediately revoked for cause and with prejudice.

b. Respondent shall prepare and present to the S&E Division quarterly reports of compliance with Commission regulations, including:

- 1) list of drivers engaged by Ambassador Limousine for the prior quarter;
- 2) the drivers' license numbers for each driver listed in 1) above;
- 3) evidence of compliance with the DMV Pull Notice Program; and

4) income and expense statement for the prior quarter.

The reports shall continue until completion of the probation period.

c. Respondent shall provide S&E with copies of the Employment Development Department (EDD) quarterly Form DE3 within 15 days of filing them with EDD. S&E will use these as a cross check to assure that all employees are covered by Workers' Compensation Insurance.

d. Respondent shall file an annual report, under oath, with the number, classification and compensation of all employees, and owner-operator drivers hired or engaged during the reporting period. S&E will also use this to insure that adequate Workers' Compensation Insurance has been in effect.

If respondent is found to have employed unlicensed drivers or failed to comply with the DMV Pull Notice Program before the 24-month probation period has ended, operating authority will be automatically and immediately revoked for cause and with prejudice.

f. If respondent violates the Settlement, the Commission may reopen this proceeding to consider further sanctions.

2. Respondent agrees to pay the Commission the amount of \$24,000 in payments of \$500 monthly with \$12,000 excused if respondent fully complies with the Settlement. No interest is payable on this amount.

3. Respondent agrees to comply with PU Code § 6378.1 requiring the filing of evidence of Workers' Compensation with the Commission.

4. Respondent agrees to comply with GO 157-B regarding operation of charter-party operations.

5. Respondent agrees to comply with the Settlement immediately upon adoption by the Commission.

6. Respondent agrees that the Settlement is intended to resolve only the regulatory matter of this Discussion.

The problem originated due to Perez's refusal to pay for the damage to Shipman's vehicle when an additional amount of \$54,299 was added to the original damage estimate of \$462.39. Perez did not turn this matter in to his insurance company because the amount of damage was less than the deductible amount for this coverage. When attempts to resolve the matter failed, Shipman contacted the Commission to report the problem. Eventually Shipman had his vehicle repaired without compensation by Perez.

Perez apparently thought that the additional amount added to the damage estimate was questionable, but did not follow up on the matter to satisfy his doubts. However, nobody disputes that

the damage was caused by an Ambassador limousine, and Perez should have promptly resolved the matter.

Many of respondent's problems uncovered by S&E's investigation were due to lapses in PL&PD and workers' compensation insurance coverage. In one instance there was no PL&PD insurance since the check for payment was returned for insufficient funds.

Perez has made serious errors in judgement in the past, in our view. While the violations were of relatively short duration, they were nonetheless serious to the public and to Perez's employees. Perez appears to have had problems in managing his business and adequately handling the details necessary for compliance with laws, rules, and regulations.

However, we note that he has dealt with this investigation in an apparent up-front manner. Perez has demonstrated a willingness and ability to correct his operations. To assure compliance with all rules, regulations, and the Settlement, he will have his attorney monitor his operations during the probationary period.

If Perez does not fully comply with the Settlement, severe penalties are mandated, including ultimate revocation of authority for continuing future violations.

The Settlement is the result of substantial negotiation between S&E staff and Perez. We believe it is fair in protecting the public and allowing Perez to operate.

We are satisfied that the two-year probationary period is adequate to insure that Perez is both sincere and capable of full compliance with all laws, rules, and regulations. We appreciate the willingness of both parties to reach a compromise that appears workable and fair.

We will adopt the Settlement in the order that follows.

Findings of Fact
A Settlement has been reached between S&E staff and respondent. However, nobody doubts the matter to satisfy his doubts.

2. The Settlement is reasonable.
3. This order should be effective on the date signed in order to initiate the Settlement as soon as possible.

Conclusions of Law

1. The Settlement should be approved.
2. This proceeding should be closed.

ORDER

IT IS ORDERED that:

1. The Settlement attached to this order as Appendix A is approved.
2. This proceeding is closed.

This order is effective today.

Dated July 17, 1996, at Sacramento, California.

P. GREGORY CONLON
President
DANIEL Wm. FESSLER
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own notion into the operations and practices of Joseph Perez, doing business as Ambassador Limousine, an individual, Respondent.

STIPULATION FOR SETTLEMENT

This Stipulation for Settlement (Settlement Agreement or Agreement) is entered into by and between the Safety and Enforcement Division of the California Public Utilities Commission, (Safety and Enforcement Division) and Ambassador Limousine. The effective date of this Agreement shall be the date of its approval and adoption by the California Public Utilities Commission (Commission).

The Commission regulates charter party carrier of passengers pursuant to its authority under Article XII of the California Constitution, Public Utilities Code (P.U. Code) Sections 5351 et. seq., and General Order (G.O.) 157. Ambassador conducts such operations under its charter party operating authorities, TCP 4365-B and 4365-P.

On December 21, 1994, the Commission issued an order instituting investigation (OII) into the charter party permit of Joseph Perez, doing business as Ambassador Limousine. The OII sought to determine the following:

- (a) whether Respondent violated Public Utilities Code Section 5378.1 by engaging employees in his charter party carrier operations without filing a certificate of worker's compensation coverage or a certificate of self insurance;

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

(b) whether Respondent violated General Order 157-B, Paragraph 5.02 by failing to enroll his employee drivers in the Department of Motor Vehicles Pull Notice Program and/or by operating with a driver who is presumed to be negligent;

(c) whether Respondent violated Sections 5371 and/or 5379 of the Public Utilities Code by operating after the expiration and/or during the suspension of his authority;

(d) whether Respondent violated General Order 157-B, Paragraph 5.01 by operating with an improperly licensed driver.

THE PARTIES TO THIS PROCEEDING now pending before the Public Utilities Commission, desiring to avoid the expense, inconvenience, and uncertainty attendant to litigation of the issues in dispute between them, have agreed upon a Settlement of the issues raised in the OII and submit this Settlement Agreement to the Public Utilities Commission for approval and adoption as its final disposition of the matters herein. The parties to this Agreement are: the California Public Utilities Commission's Safety and Enforcement Division and Ambassador Limousine, Mr. Joseph Perez.

In order to effectuate a Settlement of this matter before the Commission, Ambassador Limousine, Mr. Joseph Perez shall not contest the above allegations. Joseph Perez agrees that CPUC Staff can, in any future enforcement or licensing proceeding involving either Ambassador Limousine or Joseph Perez, introduce the alleged violations and the violations will not be contested.

self insurance

NOW, THEREFORE, in consideration for the mutual promises set forth herein, the parties agree as follows:

AGREEMENT

1. Probation. Ambassador Limousine shall serve a twenty-four month probation which shall begin on the date this Agreement is approved and adopted by the Commission. During probation, Ambassador Limousine is subject to the following terms and conditions:

(a) Suspension. During probation, the operating authority of Ambassador Limousine, Joseph Perez (TCP 4365-B and TCP 4365-P) shall be suspended for a period of 152 days, 141 of which shall be held in forbearance to ensure compliance with this Agreement.

The 11 days of imposed suspension shall be imposed in any combination not to exceed four periods of suspension imposed. All of the

days of suspension imposed shall be served during the first twelve months of the probation period.

The Respondent, through counsel representing him in I.94-12-010, will, not later than one week before the beginning of each period of suspension served, inform Safety and Enforcement Division of the dates on which the 11 days of imposed suspension will be served.

Should the Commission find that Joseph Perez, doing business as Ambassador Limousine, operated in violation of any Commission order of suspension during the probation period, the Commission will impose a portion of the suspension days held in forbearance, to equal the number of days on which Ambassador Limousine is found to have operated during such period of suspension. Should all 141

days of suspension held in forbearance be imposed before the twenty-four month period is over. Respondent's operating authorities will be automatically and immediately revoked, for cause and with prejudice, under authority of the Commission order adopting this agreement.

(b) **Progress Reports.** During probation, Ambassador Limousine shall prepare and present to the Safety and Enforcement Division quarterly reports of its compliance with Commission regulations. The quarters will correspond to the four quarters of the calendar year. The quarterly report shall include:

- (1) a list of the drivers engaged by Ambassador Limousine for the prior quarter;
- (2) the drivers' license number of each driver listed in 1(a)(1) above;
- (3) evidence of compliance with Section 1808.1 of the Vehicle Code which would include the Pull Notice and DMV printouts;
- (4) income and expense statements for the prior quarter.

The report shall be due on the 15th day after the beginning of each quarter for the previous quarters operations. The first report shall be due the 30th day after the beginning of the quarter immediately following the Commission's adoption of this Agreement. Ambassador Limousine shall continue to provide these reports until completion of probation.

(c) Employment Development Department (EDD) Form DE3.

Ambassador Limousine shall provide the safety and Enforcement Division with copies of the quarterly EDD Form DE3 filed with the EDD. Ambassador shall provide these reports within 15 days of filing them with the EDD and shall continue to provide the reports until completion of probation.

(a) Worker's Compensation Reports. During probation, Ambassador Limousine shall, under oath, file annually a report, indicating the number, classification, and compensation of all employees and owner-operator drivers hired or engaged during the reporting period. The Commission staff will provide a copy of the report to the administrator of

the carrier's workers' compensation self-insurance plan if the carrier is self-insured, or to the carrier's workers' compensation insurer if the carrier's workers' compensation protection is provided by a policy or policies of insurance. The first such report shall be filed within thirty days after the effective date of the Commission order adopting this agreement. Each subsequent annual report shall be filed twelve months after the previous report is filed. The reports will be submitted to the Enforcement Section, Safety and Enforcement Division of the Commission.

(e) Driver Retention, Licensing, DMV Pull Notice Program. Ambassador Limousine further agrees not to allow any unlicensed driver to operate any company vehicle and shall fully comply with the Department of Motor Vehicles Driver Pull Notice Program. Should the Commission find that Ambassador operated in violation of Pull Notice requirements or driver licensing requirements before the twenty-four month

period is over, Respondent's operating authorities will be automatically and immediately revoked for cause and with prejudice.

(f) Further Proceedings: In the event that Ambassador Limousine violates the terms of this Agreement, the Commission may reopen this proceeding to reconsider the terms of this Agreement, including, without limitation, adopting findings of violations of applicable rules and regulations and those sanctions which have been or should be imposed for any past, present, or future acts or omissions with respect to Ambassador Limousine's performance of its charter party operations.

2. Monetary Payment. Ambassador Limousine agrees to pay a total monetary payment of \$24,000 with \$12,000 held in forbearance unless Ambassador Limousine violates the terms or conditions of this Agreement. Ambassador Limousine agrees to pay this amount in twenty four installments as follows: The first installment of \$500 shall be due on or before the first of the month following the Commission adoption of the Agreement. The remaining installments shall be due on or before the first of each subsequent month for the next twenty three months. Each installment shall be in the amount of \$500 except the twenty fourth installment which shall be in the amount of \$12,500. During the sixty days prior to the completion of probation, Ambassador Limousine may apply to the Commission to be excused from \$12,000 of the twenty-fourth installment making the amount due \$500. In the event that Ambassador Limousine has fully complied with the terms of this Agreement, the Safety and Enforcement Division will not oppose this application. No interest is payable with respect to the settlement amount.

3. Workers' Compensation Coverage Requirements. Ambassador Limousine will comply with the provisions of P.U. Code Sect. 5378.1 which require it to file with the Commission evidence of workers' compensation coverage for its employees.

4. Compliance With General Order 157-B. Ambassador Limousine will comply with the provisions of General Order 157-B.

5. Ambassador Limousine agrees that immediately upon the Commission adoption of this Settlement Agreement it will be in compliance with the terms of the Agreement.

6. Ambassador Limousine agrees that this Settlement Agreement is intended only to resolve the instant regulatory matter affecting it that is before the Commission.

The parties agree jointly by executing and submitting this Settlement Agreement that the relief requested herein is just, fair, and reasonable and in the public interest, and that the terms are binding when approved by the Commission. The parties respectfully request that the Commission adopt findings and conclusions consistent with the Settlement Agreement and that the instant proceeding be terminated upon such order of the Commission.

IN WITNESS WHEREOF, the parties hereto have executed this Settlement Agreement on the date set forth opposite their respective signatures.

AMBASSADOR LIMOUSINE,

Joseph Perez

This usine will comply with the provisions of General Order 147-B.

Dated: 3/7/96 By: *Joseph Perez*
Joseph Perez, Owner, Ambassador Limousine

AMBASSADOR LIMOUSINE agrees that this Settlement STAFF OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION

The parties agree jointly by executing and submitting this Settlement Agreement to the Commission for its review and approval. The Commission reserves the right to modify or reject the Settlement Agreement if it is not in the public interest, and that the Commission's findings and conclusions shall be final and not subject to judicial review. The Commission's findings and conclusions shall be final and not subject to judicial review. The Commission's findings and conclusions shall be final and not subject to judicial review.

Dated: 3-7-96 By: *M. H. Simmerson*
M. H. Simmerson, Supervisor
Enforcement Section
Safety and Enforcement Division