

DEC 18 1997

Decision 97-12-086 December 16, 1997

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Investigation and Order to Show Cause into whether the Passenger Stage Corporation Certificate (PSC-4986) and Charter-Party Carrier Permit (TCP 4986) of Universal Transit System, Inc., doing business as AIRWAY SHUTTLE, a California corporation, and its corporate officers: Mohammad (Mike) A. Kohsari, Mohamad (Robert) Bagher Pakzadian, and Fariborz (Fred) Alishahi, Respondents, should be revoked.

**ORIGINAL**

Investigation 94-10-014  
(Filed October 12, 1994)

In the Matter of the Application of Mohammad A. Kohsari and Mohamad Bagher Pakzadian to transfer the stock of Universal Transit Systems, Inc., doing business as Airway Shuttle.

Application 95-11-014  
(Filed November 13, 1995)

John deBrauwere, Attorney at Law, for Universal Transit System, Inc., and Mohammad A. Kohsari, Mohamad Bagher Pakzadian, and Fariborz Alishahi, respondents and applicants.

Joseph DeUlloa, Attorney at Law, for the Safety and Enforcement Division,<sup>1</sup> complainant and protestant.

<sup>1</sup> In October 1996, by order of the Executive Director of the Commission, the Transportation Division ceased to exist; its duties and responsibilities being transferred to the newly formed Rail Safety and Carrier Division.

## TABLE OF CONTENTS

OPINION.....	2
Statement of Facts .....	2
Initial Public Hearing of I.94-10-014 .....	9
A.95-11-014.....	11
Protest of Safety and Enforcement Division to A.95-11-014 .....	11
The Safety and Enforcement Division Petition for Consolidation.....	12
The Reassignment of Administrative Law Judges.....	12
The Consolidated Public Hearing of I.94-10-014 and A.95-11-014.....	12
Additional Hearing Evidence .....	12
A. Nonparticipation in DMV Pull Notice Program .....	12
B. Van Overloading .....	13
C. Use of Unsafe Vans .....	13
D. Use of Nonemployee Drivers Not Holding Charter-Party Authority .....	14
E. Operating While Suspended for "Failure To Maintain Adequate Insurance" .....	15
Discussion .....	16
A. Transfer of Ownership and/or Control Without Authority .....	16
1. The Melvin Transfer of 40%.....	17
2. The Melvin et al. 40% Settlement Transfer to Hajimoradi .....	18
3. The April 10, 1990 Melvin Sale of 60%.....	18
4. The Hajimoradi-Alishahi Takeover in 1993 .....	19
5. The Hajimoradi-Alishahi October 1993 Sale to Kohsari and Pakzadian .....	20
B. Failure at All Times to be Enrolled in DMV Pull Notice Program.....	20
C. Wilful Filing of a False PUCTRA Report.....	21
D. Failure to Provide Records on Demand .....	21
E. Failure to Post Tariff Rates in Vehicles.....	22
F. Operations During a Period of Revocation or Suspension of Authority.....	22
G. Failure to Maintain Workers' Compensation Insurance .....	24
H. Van Overloading.....	24
I. Use of Mechanically Unsafe Vehicles .....	24
J. Drivers not Employees or Holders of TCP Authority.....	24
Summary .....	26
No Violation.....	26
Technical Violations.....	26
Significant Violations.....	27
The Unauthorized Transfers.....	27
The Pull Notice Violations.....	29
Operating During Periods of Suspension or Revocation.....	30
Conclusions - I.94-10-014 and A.95-11-014 .....	31
Comments on the Proposed Decision of the Administrative Law Judge.....	33
Findings of Fact .....	33
Conclusions of Law.....	36
ORDER.....	38

## OPINION

### Statement of Facts

By Decision (D.) 89-07-047 issued April 12, 1989 in Application (A.) 88-07-047, Universal Transit Systems, Inc. (Universal), a California corporation doing business as Airway Shuttle, was granted a certificate of public convenience and necessity to operate as a passenger stage corporation (PSC-4986). While the application stated that Carl Melvin was sole owner of the issued and outstanding 10,000 shares of Universal stock, recently obtained information is that Melvin either was or became, circumstances unknown, the front man as to 40% of his Universal stock. Behind Melvin was American Transportation, Inc. (American Transportation), another passenger stage corporation in the area. On April 30, 1991, Universal also obtained a permit (TCP-4986) to operate charter-party service. Universal provides service to Los Angeles and Orange Counties, Los Angeles International Airport (LAX), John Wayne Airport, Ontario Airport, Long Beach Airport, Los Angeles Amtrak, and the Port of Long Beach.

A year later, on April 10, 1990, Melvin executed (but did not copy the Commission) a "Stock Purchase Agreement," selling 20% of Universal's outstanding shares each to Mohammad (Mike) A. Kohsari, Mohamad (Robert) Bagher Pakzadian, and Fariborz (Fred) Alishahi.<sup>2</sup> On June 1, 1990, Kohsari was elected president of Universal and placed in charge of insurance, legal, and accounting, while Alishahi handled dispatching, and Pakzadian was treasurer. But this Purchase Agreement provided that "some" corporate decisions were to require a 75% vote of the corporate stock. It is asserted that while Kohsari, Pakzadian, and Alishahi nominally had control, the real power purportedly rested with Melvin, and behind him apparently, American Transportation.<sup>3</sup> Actual operations were conducted from American Transportation

---

<sup>2</sup> Kohsari, Pakzadian, and Alishahi were employees of Melvin and had been actively managing Universal's shuttle operation, known as Airway Shuttle, for Melvin.

<sup>3</sup> In 1986, 1987, and 1988, respectively, American Transportation, Southwest Transit, Inc. (Southwest), and L.A. Express were certificated as shuttle operators by the Commission, with

*Footnote continued on next page*

facilities. The initial Stock Purchase Agreement of April 10, 1990 assertedly was repeatedly revised by Melvin's attorney, Steven M. Neimand, until a final version was achieved in mid-1991 and back dated to April 10, 1990. In mid-1991, Universal moved its operation, by then employing five and using four vans, to Anaheim.

Up until early 1992, Commission staff had been informed of none of these corporate control aspects. Then, Kohsari came into the Commission's Los Angeles office to discuss some Public Utilities Commission Transportation Reimbursement Account (PUCTRA) quarterly-fee reports due. Representing himself as president of Universal, he talked with John Morgan, an investigator on the Commission staff. It developed that Kohsari was under the impression that PUCTRA fees were to be based on the net rather than gross revenues. Without actual revenue figures because Universal's accountant refused to return the carrier's records until he was paid, and lacking funds to pay the accountant, Kohsari had "guesstimated the revenues in filing Universal's PUCTRA reports." Subsequent to this visit there were a number of discussions during 1992 between Kohsari and various Commission investigators, culminating in a staff investigation of Universal's operations in 1993.

During these discussions, and after seeing from Commission files that Melvin was still listed as Universal's sole owner, Morgan questioned Kohsari about ownership and control of Universal. Morgan then advised Kohsari to get an attorney to regularize

---

Siroos Moatazedi, Fazi Bostajani, John C. Vallone, and Fooraj Hajimoradi as equal shareholders in the first two, and Hajimoradi and two other partners later being directors and officers of the third entity. At a time unknown to respondents here, Moatazedi, Bostajani, and Vallone obtained a 40% interest from Melvin in Universal, leaving Melvin to hold this interest in his name for them. In 1989 a legal dispute began involving American Transportation, Southwest, and L.A. Express, and in March of 1992 an "Agreement of Settlement and Mutual Release" was concluded by which Moatazedi, Bostajani, and Vallone were to convey this 40% interest in Universal held in Melvin's name to Hajimoradi.

<sup>4</sup> Kohsari was asked to produce Universal's federal and state tax returns to substantiate income levels. He was unable to do so because they were in the custody of the carrier's accountant. Because of a billing dispute the accountant would not return the carrier's records. The staff investigator's efforts to get these from the accountant were unsuccessful.

the asserted transfer of stock and control from Melvin. Records indicate that Melvin's attorney Neimand prepared an application to the Commission signed by the attorney, Melvin, Kohsari, Alishahi, and Pakzadian, which application assertedly was submitted together with 12 copies on November 11, 1991 to the San Francisco Docket Office. The Docket Office has no record of any such filing.<sup>3</sup> During one of Kohsari's visits to Morgan, he showed the latter his copy of the application, and told Morgan that he understood that the application had been rejected for some technical reason, but was not sure of that fact. At any rate, no further steps were taken to pursue the matter of stock transfer or control with the Commission.

In January of 1992, Universal was notified by the Commission that, as of January 6, 1992, its operating authority was revoked for failure to maintain liability insurance. The authority was reinstated on February 18, 1992. However, during the entire period from October 25, 1991 to October 25, 1992, Universal had had an appropriate liability insurance policy in force. Its policy was No. 17-4599-00031 with United States & Continental Reinsurance Co. through Toma (Del Rey) Surplus Lines Insurance Brokers, Inc. But then the policy had been assumed by Trelawney Insurances Limited, and on December 1, 1991 a form TL 676 listing Universal as "Universal Transit System," rather than "Universal Transit System, Inc.," had been sent by the broker in Bellevue, Washington, to the Commission. It had been rejected because of the typographic error of not including the "Inc.". The error was corrected by a resubmission on February 11, 1992. Staff on February 18, 1992 reinstated the authority. A later staff audit of Universal's dispatch records showed that Universal had not ceased operations during the revocation period but had made 28 dispatches during the period.

---

<sup>3</sup> In A.95-11-014 applicants state that this November 1991 filing was returned to attorney Neimand who was told by someone in the Docket Office that, since control had not changed at Universal, no application was necessary. However, no evidence to substantiate this assertion has been forthcoming. The Docket Office states that it would have been highly unlikely that a Docket Office staff member would have rejected an application on these subjective grounds.

In discussions with Kohsari on January 25, 1993, Morgan questioned about Universal's nonparticipation in the Department of Motor Vehicles (DMV) Pull Notice Program. Kohsari admitted he knew nothing of the requirement, but thereafter took steps to comply, and by March 22, 1993, Universal was officially enrolled with 10 drivers listed.<sup>4</sup>

On May 21, 1992, unbeknown to Kohsari at the time, the 40% Universal interest still held in Melvin's name (although purportedly really owned by Moatazedi, Bostajami, and Vallone) was transferred, using Melvin's new attorney Jefferey A. Lipow (an attorney involved in the American Transportation, Southwest, and L.A. Express lawsuit settlement), and turned over to Hajimoradi, an outsider at Universal but at the time general manager of L.A. Express, a direct competitor of Universal. Thereafter, Hajimoradi, now joined by Universal 20% partner Alishahi, and putting their 60% combined interest to effect, progressively assumed control of Universal, essentially leaving Kohsari and Pakzadian impotent bystanders with meaningless titles. By summer's end in 1993, Hajimoradi and Alishahi were running Universal and had taken over the carrier's records.<sup>7</sup> This continued until early October 1993, while the parties negotiated a resolution of matters.

Universal's insurance carrier advised the Commission on August 4, 1993 that the carrier's liability insurance would be canceled at the end of August. Accordingly, staff

---

<sup>4</sup> The DMV Pull Notice Program is a program whereby Commission regulated carriers register with DMV, and when the carrier hires employee drivers the carrier notifies DMV. At regular intervals DMV notifies the carrier of the driver's status. Driver violations are stated so that the carrier will know if its driver has been suspended as a "Negligent" driver under Vehicle Code § 12810.5, and can take steps to remove the driver from its operation. Carrier participation is mandatory under General Order (GO) 158 § 5.02.

<sup>7</sup> It was Kohsari testimony that, after Hajimoradi's takeover, Universal's safe containing its records was taken as well, the safe later being sold, and the records assertedly lost.

notified Universal that its operating authority was suspended September 1, 1993 and that operation during suspension was a misdemeanor carrying penalties. On September 20, 1993, Hajimoradi and Alishahi obtained liability coverage for Universal from York Insurance Company through JAHM Insurance Service (a broker) and notice of this coverage was faxed to the Commission. Alishahi on September 23, 1993 told Investigator Morgan of the new coverage and also that Universal was referring transportation requests to L.A. Express. On September 24, 1993 Morgan confirmed the coverage in a telephone call to the broker. On October 10, 1993, the broker gave Morgan a list of four Universal vans named in the policy and reconfirmed the coverage.<sup>4</sup>

In the meantime, the Commission's Compliance Unit had determined to operate a "sting operation." Assertedly, Kohsari and Pakzadian were not actively engaged in the Universal operation because of the Hajimoradi-Alishahi takeover of control, but nonetheless on September 22, 1993, Kohsari accepted a telephoned reservation for the next day, September 23, 1993, for carriage from the Kawada Hotel to LAX. The transportation was performed on September 23, 1993, as requested, by means of a 1992 Dodge, License No. 4S21941, with Universal's colors, bearing number 1023. The vehicle was driven by Nora Vinocour. The three passengers were Commission personnel and the pickup was witnessed by Investigator Morgan. This occurred at the time Alishahi was assuring staff that all Universal shuttle requests were being referred to L.A. Express. And on October 4, 1993, Hajimoradi also told staff that Universal was not transporting; that all calls placed through Universal were being handled by L.A. Express, using L.A. Express vans. However, staff obtained DMV records showing that van 1023 was registered to Universal and Nora Vinocour (the dual registration used because of Universal's poor credit rating). And while Universal was enrolled in DMV's Pull Notice Program, Nora Vinocour was not among the drivers listed. Nora Vinocour

---

<sup>4</sup> However, testimony at the hearing was to the effect that all vehicles of an insured are covered, whether listed in the policy or not; this being in conformance with Commission policy.

was Alishahi's wife. Thus, while Universal's operating authority was suspended, a Universal van operated on September 23, 1993.

During September, negotiations between Kohsari and Pakzadian on one hand, and Hajimoradi and Alishahi on the other, continued with the result that the latter two agreed to sell their interests in Universal to Kohsari and Pakzadian in trade for a number of Universal's vehicles. An agreement was reached early in October 1994. On October 6, 1993, when questioned by staff, Hajimoradi stated that he no longer was a stockholder or involved with Universal. Hajimoradi also stated that van 1023 was being added to the L.A. Express express fleet and that Nora Vinocour would be driving for L.A. Express.<sup>9</sup> On October 7, 1993, Kohsari and Alishahi assured staff that Nora Vinocour had not driven for Universal since September 1, 1993.

A staff check with Landside Operations of the City of Los Angeles Department of Airports revealed that the airport (acting from the notice of Commission suspension in the Commission's Daily Calendar) had in turn suspended Universal's airport operating authority effective September 17, 1993. An airport vehicle activity detail report applicable to Universal for the period September 17, 1993 through September 30, 1993 reveals that Universal registered vans logged 148 trips during the period.<sup>10</sup> However, despite the detailed staff evidence, the airport report, while showing van 1023 repeatedly in the airport between September 1 and September 17, and as having made

---

<sup>9</sup> L.A. Express's insurance agent on October 18, 1993 told staff that Nora Vinocour's vehicle, license No. 4S21941, registered to Vinocour and Universal, was added to L.A. Express's insurance on November 4, 1993.

<sup>10</sup> The airport tracks the vans of each carrier licensed to serve the airport. It uses a transponder affixed to each vehicle registered with the airport for the carrier. The transponder emits an electronic signal picked up by an airport antenna as the van enters or exits on either the departing passenger upper level or the incoming passenger lower level. Each pass is recorded, and the carrier is billed either weekly or monthly. Only lower level passes are charged to the carrier. Transponders are keyed to specific vehicles. Vehicles not registered for service are impounded by airport police when detected.



two upper level passes (one each September 21 and September 26), fails to indicate any pass at all on September 23, 1993 when the staff's sling operation assertedly took place.

Early in 1993, while visiting Universal, Commission investigators looked at Universal vans but failed to see rate sheets posted in them as required by GO 158. Universal corrected this thereafter, using yellow cards followed later by smaller red rate cards. Earlier, in October of 1992, in driver interviews at LAX, Universal vans had also been observed without rate notices posted.

During 1994, until June 29 (when DMV canceled Universal participation<sup>11</sup>), under the resumed control of Kohsari and Pakzadian, Universal had participated in the DMV Pull Notice Program. After June 29, assertedly Universal had no hired drivers, using Kohsari and Pakzadian to drive as needed. On December 16, 1994 Universal paid up and reenrolled, listing five drivers.

Back in February of 1993, the Compliance staff had determined to investigate Universal operations more formally, and had assigned personnel to the task. Their investigation culminated in a December 14, 1993 report proposed by Investigator Hall. Hall concluded that Universal had, as is rather common with all shuttle operations, experienced constant driver turnover, but that its drivers were indeed duly licensed; that all its vans were properly registered with DMV, with appropriate liability and workers' compensation insurance in effect, and complimented Universal's vehicle maintenance system and its maintenance records. However, Hall concluded that there were six violation items that should be addressed:

1. Failure to have prior Commission authorization for the transfer of control to Kohsari, Pakzadian, and Alishahi (Public Utilities (PU) Code § 854);
2. Failure to have been at all times enrolled in the DMV Pull Notice Program (GO 158, § 5.02);

---

<sup>11</sup> Universal owed \$35 in fees and failed to pay up.

3. Wilful filing of a false PUCTRA report (PU Code § 1033.5(2));
4. Failure to provide records to PUC investigators upon demand (PU Code §§ 581 and 582);
5. Failure to post tariff rates in vehicles (GO 158, § 8.04); and
6. Operating during revocation of passenger stage certificate authority (PU Code § 1031).

In response to Hall's report, on October 12, 1994 the Commission issued its Order Instituting Investigation (OII) and an Order to Show Cause (1.94-10-014), listing the alleged violations contained in Hall's report as well as two additional alleged violations charged by staff:

7. Failure to maintain workers' compensation insurance (PU Code § 460.7); and
8. Employing a driver when no workers' compensation insurance was in effect and on file with the Commission (PU Code § 460.7).

The OII placed Universal's financial ability and fitness to conduct passenger stage and charter-party operations in issue, and gave notice to the carrier that unless it could show cause to the contrary, its operating authorities could be suspended or revoked, with possible fines if the alleged violations were proven, or if violations were to continue up to the time of hearing ordered by the OII.

#### **Initial Public Hearing of 1.94-10-014**

On January 3 and 4, 1995, a duly noticed public hearing on the issues was held in Los Angeles, California, before Administrative Law Judge (ALJ) John S. Lemke. Commission staff witnesses were Investigators John Morgan, Deborah Zundel, Russ Hall, and James Badgett, Enforcement Section Representative Thomas Boyd, and Management Analyst William R. Boyd of the City of Los Angeles's Department of Airports. Respondent's witness was Mohammad A. Kohsari. At conclusion of the two-day hearing, the matter was submitted subject to the filing of a late-filed Exhibit 9, and the filing of concurrent briefs 30 days after filing of the hearing transcript.

At onset of the January 3, 1995 hearing, a threshold issue emerged regarding respondent appearances and legal representation. Ostensibly, up until the end of September 1993 Kohsari and Pakzadian were not in control of Universal. But at that point in time, the two assertedly obtained sole ownership and control of Universal. Both appeared as respondents pursuant to the OII, but Alishahi, also named in the OII as a respondent, did not appear. Attorney deBrauwere limited his representation as counsel to his clients Kohsari and Pakzadian and their activities through Universal's existence. He has appeared as counsel for Universal for Universal's activities since the end of September 1993, but conditioned on Commission acceptance of the various earlier transfers of control at Universal, so that since September 30, 1993 Kohsari and Pakzadian have been the sole owners and in control of Universal. Thus, apart from Kohsari and Pakzadian, none of the others legally or otherwise associated with Universal and its activities before September 30, 1993 were present or represented at this hearing.

At close of hearing on January 4, 1995, submission was delayed pending filing of concurrent final briefs to be due April 3, 1995. However, after close of the formal hearing, attorneys for staff and the respondent appearances sought to obtain a stipulated settlement, and, with the benign consent of the ALJ, the briefing schedule was held in abeyance. After modifications to the parties' initial product, on June 8, 1995 staff's attorney mailed a staff-signed copy of a proposed stipulation to respondent's attorney, regarding this as an "offer." On July 21, 1995 staff advised respondent that the "offer" would be terminated on August 1, 1995 unless accepted by them. Respondents assertedly signed the offered stipulation on July 31, 1995, but respondents' attorney neglected to immediately forward it to staff until August 9, 1995. Thus no valid

agreement was reached. Relations between the parties dissolved into rancor thereafter and negotiations ceased.<sup>12</sup>

**A.95-11-014**

Belatedly seeking to normalize the current certificate status of the present owners of Universal, the attorney representing Universal, Kohsari, and Pakzadian filed A.95-11-014 on November 13, 1995. By this application, the applicants sought post facto validation of the 1990 Melvin stock transfer to Kohsari, Pakzadian, and Alishahi; the subsequent transfer of Melvin's residual interest to Hajimoradi; and the fall 1993 transfers by Hajimoradi and Alishahi of their interests to Kohsari and Pakzadian, who since then have been the sole shareholders operating Universal. Alleging no adverse effect on the operations, the application asserted that the result has been mutually beneficial to all parties involved.

**Protest of Safety and Enforcement Division to A.95-11-014**

On December 1, 1995, the Safety and Enforcement Division filed a protest to Universal's application, asserting that continued monitoring of Universal's operations after the January 1995 hearing had disclosed evidence that applicants lacked fitness to hold operating authority, and staff asked for a hearing on the application. Asserted were:

1. Repeated failure to participate in the DMV "Pull Notice Program;"
2. Van overloading;
3. Use of mechanically unsafe vehicles; and
4. Use of drivers neither employees nor persons licensed by the Commission to provide for hire service.

---

<sup>12</sup> One of the provisions of the failed stipulation had been that respondents were to file an application to cover the prior Melvin transfer of control, this application to be filed by September 1, 1995.

**The Safety and Enforcement Division Petition for Consolidation**

On December 1, 1995, the Safety and Enforcement Division petitioned for a set-aside of submission of I.94-10-014 for the taking of additional evidence on the fitness of applicants, and sought consolidation of I.94-10-014 and A.95-11-014.

**The Reassignment of Administrative Law Judges**

On December 1, 1995 and December 8, 1995, A.95-11-014 and I.94-10-014, respectively, were reassigned to ALJ John B. Weiss (ALJ Lemke having retired). On January 4, 1996, ALJ Weiss issued a ruling consolidating I.94-10-014 and A.95-11-014 for further hearing and decision, noting that I.94-10-014 had not been submitted in view of the unfruitful settlement negotiations and was accordingly still an open matter.

**The Consolidated Public Hearing of I.94-10-014 and A.95-11-014**

On February 20, 1996, a duly noticed public hearing on consolidated proceedings I.94-10-014 and A.95-11-014 was held in Los Angeles before ALJ Weiss. Commission staff witnesses were Investigators James Badgett and Los Angeles Department of Airports Management Analyst William Jones. Respondent-applicant's witness was Kohsari. At conclusion of the hearing, the matter was submitted subject to the filing of concurrent and reply briefs, the latter being filed May 13, 1996.

During this second-phase hearing, staff introduced evidence in support of Badgett's Supplemental Declaration of September 26, 1995, the basis for staff's December 1, 1995 protest of A.95-11-014, and of Badgett's Second Supplemental Declaration of February 15, 1996, which raised the issue of Universal having operated while suspended for failure to maintain adequate insurance in January of 1996.

**Additional Hearing Evidence**

***A. Nonparticipation in DMV Pull Notice Program***

Between July 12 and September 13, 1995, Badgett checked with DMV regarding eight drivers of Universal vans he had interviewed at LAX. DMV informed him the drivers were not enrolled in the Pull Notice Program for Universal, and that Universal had been removed for nonpayment on June 26, 1994, and was not a participant as required. Kohsari conceded nonenrollment in periods between June 26,

1994 to July 26, 1995, and that the eight had driven for Universal, but that they were not employees, but "independent contractors;" although none owned the vans they drove or held charter-party authority. Kohsari testified that Universal repeatedly tried to get these drivers to obtain such authority but that none had done so.

***B. Van Overloading***

Badgett testified that on September 13, 1995 while at LAX he observed a Universal van at a distance of 100 yards. The van appeared overloaded with the passengers not seat-belted. When it pulled up to 20 feet from him, eight white adult and two children passengers emerged from the 7-passenger Universal van. When questioned, the driver stated he had been dispatched by Pakzadian to pick up the fares (from near Disneyland) to the airport - the pickup being a referral from Coast Shuttle.

***C. Use of Unsafe Vans***

On September 20, 1995, at LAX, the California Highway Patrol (CHP) as part of its SafetyNet Driver Vehicle Inspection program, inspected shuttle vans. Four of Universal's vans were inspected by CHP Officer Mendiola. The vans were three to five years old. The four were cited; one leaked oil from an axle; one had a brake light out; and one had a cracked wheel. One five-year old van had cracked welds on the steering gear box, a worn ball joint, an unsecured battery, and a disconnected smog pump. This last van was towed to a repair shop.

Kohsari testified that at each start of shift the drivers fill out an approximate 20-item check list and report problems; that the Universal vans go in for maintenance every two weeks (basically 4,000-5,000 miles); and that files are kept on each unit and staff has favorably commented on their maintenance record keeping. Kohsari stated that, at each of the CHP airport checkup inspections, regularly 10 to 20 shuttle vans of different carriers are found to have cracked welds on the steering box mounts; it being a common problem with Dodge vans. If a crack is found, the company is cited, the cracks are rewelded, and after awhile they crack again.

***D. Use of Nonemployee Drivers Not Holding Charter-Party Authority***

Staff's fourth listed complaint in its December 1, 1995 petition to consolidate the investigation and the application was an allegation that between close of the January 4, 1995 hearing and December 1, 1995, Universal operated with nonemployee drivers who also did not hold charter-party authority. At the hearing, staff offered no direct evidence of its own on this allegation, relying upon cross-examination of Kohsari for its evidence. The evidence adduced in this cross-examination was that, until early in 1993, Universal had a number of drivers, all employees. After Kohsari and Pakzadian gained control late in 1993, having exchanged most of their vans for this sole control status, assertedly Universal no longer had "employees" and as owner-drivers Kohsari and Pakzadian did what driving there was with the vans remaining. In December of 1994, Universal again took on drivers. But these drivers, not wanting to pay taxes, did not want to be on a payroll, wanting a commission arrangement." Accordingly, from December of 1994 through January of 1996, Universal compensated its drivers basically on a percentage basis. The company told the drivers where to go, furnished the vehicles and insurance, and the drivers turned in from 35 to 50% of their collections."

Beginning February of 1996, because the Commission assertedly had a policy against independent contractor drivers, Universal implemented its present payroll program, despite the fact that some drivers quit because of it. Under this plan (the Champion Program), the company furnishes the vans, dispatching, liability/property damage and workers' compensation insurance, maintenance, and fuel. On a weekly basis the drivers turn in their receipts, and the company deducts FICA and State Disability payments based on these receipts. The driver is paid the

---

" Kohsari testified, without rebuttal, that it is common practice in the shuttle business that drivers do not want to be on payroll.

" Kohsari stated the drivers repeatedly were asked to get charter-party authority. Some reportedly got it but never furnished any verification. Those five drivers have since left.

remainder less the 25 to 30% of the gross retained by the company. Drivers are responsible for their own income taxes. The company states it remits these withholdings and its share to the federal and state authorities.

***E. Operating While Suspended for "Failure To Maintain Adequate Insurance"***

Late in 1995, when notified of the approaching expiration of Universal's public liability and property damage (PL/PD) insurance, staff erroneously entered information into its computer that both the PL/PD and workers' compensation would expire. Thirty days before the PL/PD expiration date of January 19, 1996, Universal was warned that operating authority would be suspended as of that date for "failure to maintain adequate insurance." And on January 19, 1996 a suspension order was mailed to Universal.

Actually, Universal had compensation coverage in effect August 1995-August 1996. But Staff Investigator Crowley on January 19, 1996 wrote the LAX that the Commission had suspended Universal's operating authority for failure to maintain compensation insurance.

Concurrently Kohsari was in close contact with Investigator Badgett, who warned Kohsari of possible penalties if Universal operated without insurance coverage. On January 17, 1996 Kohsari initiated steps with insurance Agent Willis of the Right Price Agency for insurance renewal. Thereafter, Kohsari assertedly had been assured that coverage had been obtained, and he was provided a copy of a PL 914 form (unsigned) purporting to show coverage with Empire Fire and Marine Insurance Co. (Empire) through Coastal Brokers, and dated January 23, 1996. But alerted by Badgett about other carriers having problems with Agent Willis, Kohsari checked further and learned that all was not as it appeared.<sup>15</sup> Kohsari then obtained Empire coverage through another agent who provided a copy of a signed PL 914 dated January 25, 1996.

---

<sup>15</sup> Assertedly, Kohsari had discovered that Willis' license to sell insurance had expired in July of 1995.



The suspension to operate was lifted as of January 26, 1996, memorialized by a mailed notice dated February 1, 1996.

Before notifying the airport of Universal's reinstatement, Badgett made certain that Kohsari had reenrolled Universal (as of January 26, 1996) in the DMV's Pull Notice Program with seven drivers listed.

Earlier, on January 22, 1996, Badgett had received a vehicle activity report from LAX derived from the airport's transponder system revealing that Universal's vans 1028 and 1029 had made three drop-offs during the January 20-21 period of the suspension. Kohsari told Badgett he knew nothing of these drop-offs but would look into it. On January 25, 1996, another airport vehicle activity report revealed Universal vans 1028 and 1029 had made another three drop offs in the January 22-24 period, and Jones reported that Universal van 1021 dropped off a passenger on January 25, 1996. Van 1021 was a "moratorium vehicle" at the airport," and was not eligible to pick up, but could drop off passengers. Jones had questioned the driver who said Pakzadian had dispatched him to make the drop-off on a referral from another shuttle carrier (Coast Shuttle).

## Discussion

### *A. Transfer of Ownership and/or Control Without Authority*

PU Code § 854(a) provides that no person shall acquire or control, directly or indirectly, any California public utility without prior authorization from this Commission to do so, and that any acquisition or control obtained without such prior authorization by the Commission is void and of no effect.

---

" In an effort to limit the number of vans at the airport soliciting fares on pickup, the airport had limited a company to use of no more vans than operated during a 30-day period in 1995; vans beyond the authorized number were termed "moratorium vehicles" and could drop off, but not pick up passengers.

PU Code § 1036(b) provides that no passenger stage certificate or rights under the certificate to conduct service shall be sold, leased, or assigned, or otherwise transferred or encumbered, unless authorized by the Commission.

The concern of the Commission in authorizing a transfer of ownership or of control of a passenger stage carrier is that the public interest be protected. Passenger stage operations directly impact the traveling public, and none more so than shuttle van operations." Before authorizing transfer or control changes, the Commission must be satisfied that the proposed transferee is financially responsible, experienced, safety conscious, and will adhere to the rules and regulations of the Commission and local public entities involved.

In the present proceedings, Universal is a corporation. A corporation is a legal entity, created in accordance with statutes, that is separate and distinct from the persons who own its stock and from those who manage it. Statutes centralize control of a corporation in a board of directors. The shareholder owners of the corporation have virtually no power over management decisions except insofar as they can select and remove the directors. The ownership of a corporation is divided into shares which can be freely transferred.

#### 1. The Melvin Transfer of 40%

Recently acquired information indicates that Melvin, the ostensible owner of all shares of Universal's stock when the corporation was certified in

---

" In *Charter Sedan Service v. National Executive Services, Inc.* (1969) 70 CPUC 158, the Commission reviewed limousine (van) passenger fare service to and from airports "somewhat differently" than the conventional bus type operations, and found that such type service (today known as "shuttle" service) would qualify as passenger stage operations, notwithstanding the "between fixed termini or over a regular route" language of PU Code § 226.

Today, passenger stage shuttle operations are provided within the area authorized by the certificate at prescribed posted rates, and the service is offered to the public as a whole, unlike charter-party service under which a vehicle is "chartered" or engaged by an individual party for his exclusive use for that trip at negotiated rates.

1989, as to 40% of his holdings either initially was, or became a "front man" for Moatazedi, Bostajani, and Vallone. The corporate entity "Universal" was not merged or acquired, nor was control transferred; there was merely a transfer of 40% of Universal's stock. Accordingly, as there was no merger, acquisition, nor transfer of control, no prior authorization for the transfer of 40% interest was required pursuant to the provisions of PU Code § 854(a). And, as the passenger stage certificate held by Universal, and the rights to conduct any of the services authorized by the certificate, were not sold, leased or assigned, or otherwise transferred or encumbered, no authorization under the provisions of PU Code § 1036(b) was required from the Commission.

## **2. The Melvin et al. 40% Settlement Transfer to Hajmoradi**

Similarly, the lawsuit settlement settling the Melvin-Moatazedi, Bostajani, and Vallone 40% interest to Hajmoradi under provisions of either PU Code §§ 854 or 1036(b) did not require Commission authorization.

## **3. The April 10, 1990 Melvin Sale of 60%**

However, the April 10, 1990 Melvin sale of 60% of his Universal shares to Kohsari, Pakzadian, and Alishahi requires a different conclusion. While the corporate entity that is Universal was not merged or acquired by a single person, firm, copartnership, or corporation, the control and management of the entity shifted from Melvin (or his gray eminence) to Kohsari, Pakzadian, and Alishahi. That as to some undefined corporate matters, a 75% vote was needed does not change the conclusion. The purchasers of the 60% share interest also assumed operational control and management, thereby invoking the requirement of a prior authorization from the Commission pursuant to the requirements of PU Code § 854(a). And while the certificate of public convenience and necessity was not sold, leased or assigned, or otherwise transferred or encumbered, the right to conduct the passenger stage services authorized under the certificate effectively passed from Melvin's interest to Kohsari, Pakzadian, and Alishahi, thereby also involving a requirement pursuant to PU Code § 1036(b) for Commission approval.

Further, it appears that Melvin's attorney, Neimand, recognized that an application would be required. Neimand had drafted the initial April 10, 1990 "Stock Purchase Agreement," and repeatedly revised it until mid-1991 before the final version was achieved, back-dated to April 10, 1990, and signed by Melvin, Kohsari, Pakzadian, and Alishahi. And on November 11, 1991, Neimand tried to file an application to obtain Commission authorization. For reasons lost over time, the application was not accepted. (See fn. 4.) Neimand was Melvin's attorney and clearly Kohsari, Pakzadian, and Alishahi deferred to their former boss and his lawyer on legal matters, although from 1990 to early 1993, the three ran the shuttle operation. During Kohsari's conversations with staff personnel on various other problems during 1992, a question was raised about a transfer application. Kohsari showed Hall a copy of Neimand's November 1991 allegedly rejected application, although he knew no details. Staff attempted to contact attorney Neimand on the matter, but Neimand never returned their calls. At some point staff urged Kohsari to file again to regularize the transfer, but as late as June 1993, Commission records continued to show Melvin as sole owner-operator of Universal.

Pursuant to provisions of PU Code § 2110, failure to have complied may have rendered Melvin, Kohsari, Pakzadian, and Alishahi each open to prosecution on misdemeanor charges with respect to the April 10, 1990 transaction."

#### **4. The Hajimoradi-Alishahi Takeover In 1993**

In 1993, Hajimoradi, now joined by Alishahi, formed a new majority interest, and took control. For the same reasons enumerated above, this

---

" PU Code § 2110 provides, inter alia, that any officer, agent, or employee of a public utility, who fails to comply with any part of Part 1 of the Public Utilities Act, or who aids, or abets a public utility in a violation or noncompliance where no penalty has otherwise been provided, is guilty of a misdemeanor and is punishable by a fine not exceeding \$1,000, or one year in county jail, or both.

transfer of operational control required the prior authorization of the Commission pursuant to provisions of PU Code §§ 854(a) and 1036(b). Again, failure to have complied may have rendered Hajimoradi and the three present respondents to I.94-10-014 each open to prosecution on misdemeanor charges under PU Code § 2110.

**5. The Hajimoradi-Alishahi October 1993 Sale to Kohsari and Pakzadian**

By October 1993, differences were resolved and Hajimoradi and Alishahi sold their interests in Universal to Kohsari and Pakzadian, the latter becoming sole owners and taking control of Universal. This transfer of operational control also required prior Commission authorization under both PU Code §§ 854(a) and 1036(b), and the failure of each to have complied served to render each guilty of another misdemeanor under PU Code § 2110 pursuant to this transaction.

**A.95-11-014**

Following October of 1993 (the most recent transfer of control done without Commission authorization), and until the November 1995 filing of the present A.95-11-014 (after the unsuccessful settlement negotiations following the January 1995 hearing of I.94-10-014), despite ample opportunity and awareness of the need for an order from the Commission to regularize the tangled web of control transfers, respondents continued to operate without making an effort to comply with PU Code §§ 854(a) and 1036(b).

***B. Failure at All Times to be Enrolled in DMV Pull Notice Program***

Section 5.02 of GO 158 requires that every passenger stage corporation be enrolled in the DMV Pull Notice Program. As of January 1993 Universal was not enrolled. Questioned by staff, Kohsari admitted that he was not aware of the program, but immediately took steps to become enrolled, and enrollment was accomplished March 22, 1993. Enrollment was maintained until June 29, 1994, when it was canceled for nonpayment, not to be renewed until December 16, 1994. Kohsari explained this nonenrollment period in 1994 as one not requiring enrollment because only he and Pakzadian were driving; and because, as owners, they did not need to participate.

However, Vehicle Code § 1801(e) and (l) require that owners and employers who drive vehicles such as shuttle vans shall be enrolled. And as of December 9, 1994, seven days prior to Universal's application for reinstatement, four other drivers for Universal were not enrolled. As of September 1995 eight Universal drivers at the airport were not enrolled. Finally, in the January 1996 period during which Universal operated several vans during a suspension period, the drivers were not enrolled. It was not until January 26, 1996, as the consequence of staff insistence, that Universal was reenrolled with seven drivers. At the time of the February 1996 hearing, Universal was enrolled.

The periods of operation while not enrolled in the program constituted violations of § 5.02 of GO 158 and § 1801 of the Vehicle Code.

#### **C. Wilful Filing of a False PUCTRA Report**

PU Code § 1033.5(c)(2) provides penalties where "good cause" indicates a "knowing and wilful filing of a false report which understates revenues and fees." The record evidences filings in the period at issue that varied substantially upwards and downwards as to revenue. For the 1991 PUCTRA filing, Kohsari admitted that he reported \$100,000 as gross income, a "guesstimate" as the company's accountant was withholding the records. Prior records submitted by staff were inconclusive as to any general level of income reported, but not out of line to the extent any conclusion can be drawn to support culpability to any significant degree. A finding of a false report wilfully understating revenues cannot be sustained.

#### **D. Failure to Provide Records on Demand**

PU Code §§ 581 and 582 require production upon demand of "all tabulations, computations, and all other information required..." Staff investigators stated they repeatedly asked for Universal's federal and state income tax reports from both Kohsari and his accountant, Kenneth Kirk. Kohsari could not comply as the accountant was holding these reports hostage; the accountant did not return staff's repeated phone calls. In California, with certain exceptions taxpayers are privileged to withhold disclosure of their federal and state income tax returns and the information

contained therein. This is a complex and unsettled area of the law which we are not prepared to address on this record.

***E. Failure to Post Tariff Rates In Vehicles***

Section 8.04 of GO 158 requires that carriers serving an airport shall conspicuously display tariff information in each vehicle. During a January 1993 inspection, staff observed several vans parked at Universal's office and none had tariff rates posted. At the time Universal operated 14 vans. And in October of 1992, at the airport Universal vans were not in compliance. At the initial January 1995 hearing, Kohsari produced photos showing vans, some with older yellow rate sheets and some with later dated white rate sheets on the side windows. Kohsari, when questioned by the ALJ, stated the yellow ones were left from mid-1993. The weight of the evidence is that before mid-1993, at least some vans did not display tariff rate sheets, a violation of the GO.

***F. Operations During a Period of Revocation or Suspension of Authority***

PU Code § 1040 makes it unlawful to operate without a carrier having in force accident liability insurance. Prior to 1996, Universal's operating certificate was revoked or suspended twice for asserted failure to comply. The first revocation was from January 6, 1992 through February 18, 1992, and Kohsari conceded that Universal operated during the period because in fact it had the requisite insurance in force all the time. Staff acted to revoke when it received a December 1, 1991 TL 676 form from Universal's insurance broker, and the form had a typo, listing the insured as "Universal Transit Systems" rather than "Universal Transit Systems, Inc." After being alerted by the revocation, Kohsari inquired of the insurance company and a corrected TL 676 was sent to the Commission. Technically, Universal should not have operated, but aware it all along had the requisite coverage, and facing financial losses if it complied, operating is understandable. Staff, aware of the typographical error reasonably thereafter corrected, should not have cited Universal's operation during this period as a reason to take punitive action.

On September 1, 1993, after prior notice, Universal's operating authority was again suspended because its liability coverage had been canceled. Coverage was obtained from York Insurance Co. on September 20, 1993 and notice faxed to the Commission. Staff was also told this by Alishahi on September 23, 1993, and staff confirmed this with the broker on September 24, 1993. It appears that the suspension was lifted on September 30, 1993. But on September 23, 1993 in a "sting" operation, a Universal van transported three Commission personnel to the airport while suspension was in force, even though Universal had obtained coverage on September 20, 1993. Here again, technically Universal should not have operated, but aware it again had the requisite coverage required under PU Code § 1040, it did operate.

However, more seriously, airport transponder reports show that Universal van 1023 operated repeatedly between September 1 and 17, 1993, as well as on September 21 and 26, 1993. Operation in the September 1 and 17, 1993 period of unquestioned lack of coverage was in violation of PU Code §§ 702 and 1040, with no color of compliance whatsoever. However, it appears that this was the period during which Hajimoradi and Alishahi had control of Universal, and Kohsari and Pakzadian were relegated to subordinate-employee roles. It was Alishahi who informed staff on September 23, 1993 that coverage had again been obtained, apparently as of September 20, 1993 with notice having been faxed to the Commission. Thus the operations on September 21 and 26, 1993 appear to have been under some color of compliance, thereby rendering these later operations a technical violation of the suspension order; a violation only because the Commission had not yet gotten around to lifting the suspension order.

As of January 19, 1996, Universal's operating authority was suspended again for failure to maintain PL/PD insurance. It was not until January 25 that an appropriately signed and valid PL 914 form was faxed to the Commission and suspension lifted on the next day (January 26, 1996). But the evidence shows that Universal vans operated in the January 20-21, 1996, and January 22-24, 1996 periods, and again on January 25, 1996, all with no color of right whatsoever (except possibly for



the January 25, 1996 drop off at the airport), as there was no appropriate insurance. These operations were a clear violation of PU Code §§ 702 and 1040

***G. Failure to Maintain Workers' Compensation Insurance***

At the hearing staff conceded that it had erred in its earlier conclusion that Universal did not have compensation coverage on September 23, 1993. When Nora Vinocour operated Universal van 1023 in the "sting" operation, Universal's workers' compensation insurance was in effect. The State Fund coverage did not expire until May 1, 1994. Therefore, PU Code § 460.7 was not violated.

***H. Van Overloading***

Section 1.06 of GO 158 provides that every passenger stage corporation and its drivers shall comply with provisions of the California Vehicle Code. While a staff investigator stated that on September 13, 1995 he observed an apparent overloading of a Universal van at LAX, we are directed to no Vehicle Code provision that may have been violated, and staff did not address the issue either in its closing or reply briefs after submission. No other such incidents are alleged and no proofs offered.

***I. Use of Mechanically Unsafe Vehicles***

The nature of the deficiencies found during a CHP spot inspection on four of Universal's vans at LAX September 20, 1995 were such as could occur to any vehicle between scheduled maintenance checks without the operator being aware. With a single exception, the deficiencies were corrected on the spot. The exception, a cracked weld used to add additional security to the bolts attaching the steering box to the vehicle, resulted in a tow to a repair facility where the weld was redone.

The single instance of a spot check alone, considering the nature of the deficiencies found, cannot serve to substantiate finding a "consistent" unsafe posture or attitude on the part of respondents as would warrant disciplinary action or a fine pursuant to PU Code § 1033.5(c)(1).

***J. Drivers not Employees or Holders of TCP Authority***

Our predecessor, the Railroad Commission, long ago determined that the public interest would not be served by employment of drivers with their

compensation on a percentage depending upon gross receipts per trip or over any period of time, and prohibited the practice (*Re Practices and Methods of Transportation Companies* (1918) 15 CRC 587). Section 5.03 of GO 158 in furtherance of this determination provides that drivers for passenger stage carriers shall be either employees of the carrier, employees of a subcarrier, or independent owner-drivers holding charter-party carrier authority and operating as a subcarrier.

The evidence on the Universal practice is that between June of 1994 and February of 1996, the carrier used drivers loosely characterized as "independent contractors" to operate the carrier-owned vans, with the carrier providing fuel, maintenance, and the requisite insurance. But these drivers, while enrolled in the Pull Notice Program, were not "employees," and also did not have charter-party authority nor held formal written subcarrier agreements. Uncontroverted was Kohsari's testimony that the practice is a common one in the shuttle industry. Since February of 1996 Universal has switched to a new "employee-like" plan that handles drivers' compensation more conventionally. Staff provided no evidence on this current treatment. The prior practice, even if "common" in the shuttle bus industry, was not in accord with Commission policy, nor did it comply with the listed requirements of § 5.03 of GO 158. While none of the drivers held TCP authority, it is also clear that none were "independent owner-drivers" who held their own charter-party carrier authority and operated as subcarriers. Universal has modified its compensation program as a result of this investigation. While the Commission concedes that there apparently has been in the shuttle industry some confusion and lack of adherence to the provisions of GO 158 limiting the use of non-employee drivers to the requirements stated in the GO, particularly on the part of small operators such as Universal, the Commission is disturbed by the apparent continued failure to comply, and herewith states its intention to excuse no further non-compliance, whether from ignorance, confusion, or attempts to circumvent or evade the provisions of GO 158. In the present instance, the situation has been corrected, and under the circumstances then applicable, we conclude that a warning should suffice not to repeat the June 1994 to July 1995 practice.

### **Summary**

Weighing all the evidence presented, we have categorized the alleged violations, acts, and omissions into three groupings; no violations, technical violations, and significant violations. In accord with our prior discussion of the evidence, each staff allegation is classed accordingly in the following:

#### ***No Violation***

The Melvin 40% ownership transfer of stock to Moatazedi, Bostajani, and Vallone, and thence to Hajimoradi did not violate either PU Code § 854(a) or § 1036(b).

As Universal had workers' compensation coverage in effect on September 23, 1993 when Vinocour drove Universal's van 1023, there was no violation of PU Code § 460.7.

Kohsari's failure to produce staff-requested income tax returns did not violate PU Code §§ 581 and 582.

#### ***Technical Violations***

Kohsari's "guesstimate" of revenues in his 1991 PUCTRA report, considering the unavailability of his records; was in the ballpark compared to the period reports, was an attempt to comply; and was not shown to have wilfully understated revenue even though he misunderstood "Gross and Net." The obvious round number he reported indicates no guile as it clearly invited questions. At most a warning is indicated.

That, as the record indicates, several vans out of the Universal fleet in October 1992 and January 1993 were found not to have rate sheets posted, merits a reprimand. As reason dictates, at any given moment such rate sheets could be missing for many obvious causes.

Universal's operation between January 6 and February 18, 1992, after it received revocation notice based on a "typo" error in its carrier's notice to the Commission of coverage (where the insurance company transferred coverage to another company), while Universal knew it had coverage in force, was a technical violation for which a warning should suffice.

Similarly, on September 23, 1993, Universal had obtained coverage from York Insurance Co. as of September 20, 1993 (with notice faxed to the Commission), and as staff had notice on September 23, 1993 (but did not lift suspension until September 30, 1993), Universal's operation on September 23, 1993 was a technical violation for which a warning should suffice.

An apparent van overload on a single instance on September 3, 1995 could well be violation of a Vehicle Code provision; but the absence of reference to any such code section cannot support more than warning to the carrier. It does not require finding violation of § 1.06 of GO 158.

A single spot check of four vans at the airport September 20, 1995 with one van towed because of a recurrent defect common to that model vehicle, and two others released after on the spot repair, amounts to no more than a technical violation. No violation of PU Code § 1033.7 as of § 1.06 of GO 158 was shown, nor was it shown that Universal operates mechanically unsafe vehicles as a consistent failure to maintain (PU Code § 1033.5(c)(i)).

Universal's use, between June 1994 and February 1996, of nonemployee drivers without TCP authority to operate its van on its face appears to constitute violation of § 5.03 of GO 158 as well as established Commission policy. However, given the circumstances the Commission in this instance will consider it a technical violation that is not to be repeated.

### ***Significant Violations***

#### **The Unauthorized Transfers**

The April 10, 1990 transfer of control to Kohsari, Pakzadian, and Alishahi was engineered by Melvin and carried out by his attorney Neimand. Although the three operated the service, it is clear they relied upon Neimand and Melvin, and the former's information that an application had been submitted and rejected by the Commission for unknown reasons, but apparently as being unnecessary. While most of the responsibility can be laid to Melvin, some rests with the three. Although versed in daily shuttle operation, as former driver-employees they were novices at corporate

management and control matters. While legally it could be said that all three, Kohsari, Pakzadian, and Alishahi, may have under provisions of PU Code § 856 opened each to prosecution of misdemeanor charges, they may be excused for their part, at that point in time, for their failure to have obtained prior Commission authorization for a transfer.

But in late 1992 or early 1993, Kohsari was told by Commission investigators that a formalization of the 1990 transfer was required. Whether he ever told Pakzadian or Alishahi of this is not known. However, through most of 1993 Kohsari and Pakzadian were thoroughly engaged in a struggle with Hajimoradi and Alishahi (after the latter jumped ship) over both possession and control of Universal, and it was not until October 1993 that Kohsari and Pakzadian obtained sole possession of all stock and operational control of Universal, at the cost of most of the corporation's vans. Thereafter it was a protracted effort to rebuild the shuttle operation, and it is understandable that initially there would be a lack of diligence in attending to the matter. But no action was taken for a year, and it was only after L94-10-014 was issued in October 1994 that legal assistance was engaged. Such a delay offers little room for mitigation. The two continued operating the shuttle service despite staff's clear instruction to Kohsari that formal Commission authorization was necessary. The provisions of PU Code § 1031 were clearly violated and the violation cannot be ignored. For the delay 1993-1994, a penalty fine of \$1,000 each should be imposed upon Kohsari and Pakzadian pursuant to provisions of PU Code § 2110.

After L94-10-014 issued in October 1994, it is understandable that Kohsari and Pakzadian could have concluded that the prior attempted transfers would all be addressed and resolved in that proceeding. Indeed, one of the provisions of the proposed but ultimately unsuccessful settlement being negotiated by their attorney and staff was to have been a filing to regularize the transfers to them. As the settlement failed, their attorney filed A.95-11-014.

Unfortunately, it appears that the statute of limitations precludes any penalty action to be brought against Hajimoradi for his role in the nefarious seizure of control of Universal together with Alishahi in 1993, and the subsequent sale of their interest and control to Kohsari and Pakzadian the same year. Obviously, Hajimoradi,

the then general manager of L.A. Express, another certificated shuttle operation, was the eminence grise between these violations of PU Code § 1031. But Hajimoradi was not listed as a respondent to the I.94-10-014 proceeding, and did not otherwise appear.

While Alishahi, a named respondent to the I.94-10-014 proceeding, did not appear, he has not been associated with Universal since late 1993. Although he was the dispatcher, it appears that he was merely a dupe of Hajimoradi in the 1993 transfers, and that no benefit can result from further proceedings against him.

#### **The Pull Notice Violations**

Koshari's professed ignorance of the DMV Pull Notice Program before March of 1993 explains Universal's failure to enroll in the program, but does not excuse that failure. Ignorance of the law does not diminish the fact that a violation occurred. However, given the carrier's prompt enrollment after notification of this requirement, we will not impose any penalty for this occurrence.

But subsequent lapses in enrollment cannot be excused in this manner. In the June 1994-December 16, 1994 period, where it was asserted that for the most part only owner-drivers Kohsari and Pakzadian drove, this interpretation of the requirements was wrong and in clear violation of § 1801 (e) and (l) of the Vehicle Code. Further as to this period, the corporation, as of December 9, 1994, employed four other drivers when the carrier was not enrolled, in violation of § 5.02 of GO 158. In September of 1995, eight drivers were not enrolled while driving for Universal at the airport. In January of 1996, at a time when Universal's operating authority was suspended, but the carrier operated while not enrolled in the Pull Notice Program until January 25, 1996, § 5.02 of GO 158 was violated.

The failure of Universal to consistently maintain enrollment reflects either a lack of appreciation of the serious purpose of the Pull Notice Program, or a careless neglect of the corporation's obligations under the law. Repeatedly, staff has either reminded Universal to reenroll or conditioned lifting a suspension upon compliance. Remedies are found in PU Code § 1033.5 to address the problem. While revocation or suspension under the circumstances is an option, the alternative of a fine

should insure future compliance. For this intermittent disregard, the Commission should impose a fine of \$1,500 upon Universal.

#### **Operating During Periods of Suspension or Revocation**

The record shows that Universal, while its operating authority was in suspension for lack of appropriate insurance, nonetheless operated van 1023 numerous times between September 1 and 17, 1993; all in violation of PU Code §§ 702 and 1040. For these transgressions the carrier's operating authority could be revoked pursuant to PU Code § 1033.5, or in the alternative, a fine not to exceed \$5,000 could be imposed. Since a corporation can act only through its officers and agents, an order against a corporation binds all persons who act for the corporation in the transaction of the business and have knowledge of the order (*Kalenkamp vs. Superior Court* (1940) 16 C. 2<sup>nd</sup> 696). However, during this portion of September 1993, Kohsari and Pakzadian did not control operations, being relegated to performing only in subordinate roles as employees during the Hajimoradi-Alishahi takeover. While PU Code § 1033.5 provides that "the Commission may impose upon the holder a fine...", we do not believe it would be equitable to impose a substantial fine under these circumstances upon the present holders for the sins of predecessors. While the roles of Kohsari and Pakzadian were subordinate, the record indicates that they did participate in the operations, and were aware of the suspension order. Accordingly, the Commission should limit the fine being imposed on Universal to \$500 for disregard of the suspension order of September 1993.

The record also discloses that subsequently in 1996, when Kohsari and Pakzadian obtained sole control, Universal again operated vans 1028 and 1029 between January 19 and 24, 1996, when its operating authority was again in suspension for lack of appropriate insurance. These latter transgressions were deliberate as Kohsari knew he was not to operate and conceded such at the hearing. At least two vans serviced the airport departure level on January 22, 1996, making three trips. Therefore, the Commission should impose a fine upon Universal of \$1,500 for these three proven violations of PU Code §§ 702 and 1040.

**Conclusions - 1.94-10-014 and A.95-11-014**

Essentially, what captioned A.95-11-014 seeks to do is to obtain present authorization for Kohsari and Pakzadian to take over and hereafter hold the passenger stage certificated operating authority granted by D.89-07-047 in 1989 as well as the charter-party permit authority granted in 1991 to Carl Melvin, putting aside or ignoring Kohsari's and Pakzadian's participation in the attempted, but unauthorized and therefore void, transfers involving ownership and/or control during the intervening years.

On the other hand, staff contends that the record over these intervening years establishes a pattern of inability to responsibly control and manage the affairs of a shuttle bus company, as well as an inability or unwillingness to comply with safety and maintenance of insurance requirements. Accordingly, under 1.94-10-014 staff asks that the Commission revoke the operating authorities held by Universal, and deny A.95-11-014 which seeks Commission authorization to transfer the operating authorities issued to Melvin to Kohsari and Pakzadian.

After issuance of operating authority, the Commission has authority to exercise continuing oversight jurisdiction of a carrier's fitness to continue to operate, and where appropriate, after notice and hearing, for good cause the Commission may revoke, alter, or amend operating rights or certificates. Or, as an alternative, the Commission may impose upon the holder a fine not to exceed \$5,000.

Except as explicitly required in subsection (c)(2), neither knowledge nor specific intent are required in order to establish good cause to revoke a certificate under PU Code § 1033.5. The Commission has, however, long considered intent as a factor in deciding whether to revoke a regulated entity's license. "While intent is not an element in determining whether noncompliance with Commission orders has resulted in a violation of the Code, in admeasuring the penalty to be imposed once a violation has been found, the Commission does consider the question of willfulness with respect to the stringency of the penalty to be assessed." (*Progressive Transportation Co.* (1961) 58 CPUC 462.) In some contexts, where the adverse impacts on the public interest have been insignificant or relatively minor, the Commission has not favored revocation of



certificate authority unless there has been some voluntary act of defiance of statutes or Commission orders. (See *Leonard A. Kinzel* (1967) 66 CPUC 816.) In other instances, where applicable provisions of the PU Code require no such showing of specific intent and where public interests have been more significantly or more broadly impacted, the Commission has suspended and revoked licenses without proof of intent. See, for example, *Communications TeleSystems International*, D.97-05-089, and R.97-08-001 / I.97-08-002 in which the Commission recently announced a policy of "zero tolerance" for business strategies such as slamming that are abusive of consumer protection rules. Herein, while certain of their failures to act, comply or conform were serious, and for these respondents Kohsari and Pakzadian should suffer the consequences, most others were not. Some are ascribable to ignorance or uncertainty of the requirements, pressures of events not entirely within the ability of respondents to control financial problems, and limited business acumen. Consequently, the Commission does not conclude that these failures constitute such a pattern, inability, or deliberate refusal to conform as to warrant revocation of the operating authorities.

While the Commission does not condone the untutored participation of Kohsari and Pakzadian in accomplishing the various unlawful transfers, or their failure once they became manager-owner and assumed responsibility for the shuttle enterprise to fully comply with operating safety and insurance obligations, it does recognize that the two were essentially trying to bootstrap themselves out of mere driver status to entrepreneur status, and that the undertaking presented legal, financial, and knowledge obstacles along the way exceeding their competence. However, to a substantial degree they have learned and have tried to comply. They now provide a viable shuttle operation with benefit to the traveling public. We believe they should be given reasonable additional opportunity to operate in full compliance with statutes, Commission orders, etc. If they fail, the operating authority can be revoked. Accordingly, the application to transfer the operating authorities held under Melvin will be transferred to Kohsari and Pakzadian, subject to payment of the transfer fee provided for by PU Code § 1036(b).

**Comments on the Proposed Decision of the Administrative Law Judge**

As provided by PU Code 311, the Proposed Decision of ALJ Weiss was served on the parties to this proceeding. Only the Rail Safety and Carrier Division's Passenger Enforcement Branch (Branch), successor to the Safety and Enforcement Division submitted comment.

Branch correctly noted that the total amount of all the fines is \$5,500, not \$4,500 as stated on line 11, second full paragraph, on page 31. That correction has been made.

Branch also noted that Ordering Paragraphs 1 and 2 should further make Universal's operating authorities subject to payment of the stated fines. An additional sentence has been added to each Ordering Paragraph to reflect this requirement.

Branch further would delete Finding of Fact 19 in the view that the 1986 addition of Sections c(1) and (2) to PU Code § 1033.5 superseded the "voluntary act in defiance of our statutes, commission orders, etc." standard of *Kinzel* (supra). We do not agree that the thrust of the 1986 addition goes that far or that we should abandon *Kinzel*. The addition of 1033.5(c)(1) and (2), respectively, provide for "consistent failures to maintain vehicles in a safe operating condition and in compliance with the Vehicle Code and with regulations contained in Title 13 ...", and for "knowingly and willful filing of a false report which understates revenues and fees." While no specific intent is required under subsection (c)(1) to justify revocation where there has been a consistent failure to maintain vehicles in a safe operating condition, the Commission nevertheless retains discretion to consider the degree of intent or culpability in determining the severity of the sanction to be assessed. (See *Progressive Transportation Co.*, supra.)

**Findings of Fact**

1. Universal, a California corporation, holds a passenger stage certificate and a charter-party permit issued, respectively, in 1989 and 1991.
2. Recent information indicates that Melvin, the owner of record of 100% of Universal's stock, was or became at a time unknown, the "front" as to 40% of this stock which was apparently held by American Transportation, but actually owned by Moatazedi, Bostajani, and Vallone who owned American Transportation.

3. In a transaction initiated in 1990, but repeatedly revised until mid-1991 and then backdated to April 10, 1990, without prior Commission authorization Melvin sold his 60% of Universal stock to Universal drivers, Kohsari, Pakzadian, and Alishahi, 20% to each, and these three became the nominal officers of the corporation and operated the shuttle service, although assertedly subject (as to some unspecified decisions) to a 75% stock vote.

4. In May of 1993, as the result of a settlement in a lawsuit involving three transportation companies and their principals, including American Transportation, Melvin's putative 40% interest in Universal was vested in Hajimoradi, general manager of L.A. Express, a competitor shuttle service to Universal, and Melvin drops out of any interest in Universal.

5. By summer of 1993, Hajimoradi now joined by Alishahi, with the latter's 20% of interest, without Commission authorization, pooled their aggregate 60% of Universal stock, and progressively assumed control and operations of Universal, taking the records which thereafter disappeared, and leaving Kohsari and Pakzadian as impotent functionaries.

6. After negotiations, by early October of 1993, again without Commission authorization, Kohsari and Pakzadian, in exchange for title to almost all of Universal's shuttle vans, acquired 100% of Universal stock, and thereafter have together owned and operated Universal's shuttle service; Hajimoradi and Alishahi dropping out of any interest in Universal.

7. The Commission's Docket Office has no record of an application to transfer assertedly filed in 1991 for Melvin, Kohsari, Pakzadian, and Alishahi by Melvin's attorney, Neimand; an application reportedly "rejected for some technical reason."

8. Staff interest centered on Universal's operations early in 1992 when Kohsari visited the Commission regarding various problems and resulted in a staff investigation begun in February of 1993 and a report issued in December of 1993, citing alleged violations involving: certificate and permit transfer without authority; the DMV Pull

Notice Program; false PUCTRA report; posted tariffs; operating during authority revocation; and failure to produce records on demand.

9. In October of 1994 the Commission issued I.94-10-014 adding two additional violations: failing to maintain compensation insurance and employing drivers while insurance was not in effect. The OII was accompanied by a show cause order to Kohsari, Pakzadian, and Alishahi.

10. Following a January 1995 hearing with Kohsari and Pakzadian represented, but no appearance by Alishahi, a settlement attempt fell through.

11. On November 13, 1995, Kohsari and Pakzadian filed A.95-11-014 seeking to normalize the various prior unauthorized transfers so as to result in vesting the certificate and permit in Kohsari and Pakzadian.

12. On December 1, 1995 staff protested the November 13, 1995 application and asked for hearing asserting further violations involving the DMV Pull Notice Program; van overloading, unsafe vehicles; and use of drivers not in compliance with § 5.03 of GO 158.

13. Both I.94-10-014 and A.95-11-014 were reassigned to ALJ Weiss after ALJ Lemke's retirement, and consolidated for further hearing.

14. Hearing was held February 20, 1996 on consolidated proceedings, and the matters were submitted on May 13, 1996.

15. On the evidence the Commission categorizes the alleged violations, acts, and omissions into three groupings: no violations, technical violations meriting warnings; and significant violations that should carry fines.

16. The no violations include the Melvin 40% stock transfer to Moatazedi, Bostajani, and Vallone, and thence to Hajimoradi; Universal's operation on September 23, 1993; and Universal's failure to provide income tax returns as requested by staff.

17. Technical violations meriting warnings include the guesstimate of the PUCTRA reports; failure between October of 1992 and January of 1993 to have tariff sheets in all vans; operation between January 6, 1992 and February 18, 1992 during a suspension caused by a typo error on the transferred insurer's notice to the Commission; operation on September 23, 1993 during suspension when staff had knowledge of insurance

reinstatement; van overloading noticed on a single occasion; the September 20, 1995 spot check mechanical problems that were not a consistent failure of maintenance; and use of drivers between January 1994 and February 1996 without TCP authorities.

18. Significant personal violations of the PU Code indicating personal fines for Kohsari and Pakzadian under PU Code § 2110 include their repeated delay in filing with the Commission to regularize their prior acquisition of both ownership of the corporate stock and control of Universal, and their participation in operations during the September 1993 period when not in full control, and while Universal's operating authority was suspended. Significant carrier violations of the PU Code indicating corporate fines in lieu of revocation of authorities under PU Code § 1033.5 include the Pull Notice violations after June of 1994, and operations January 19 through 24, 1996 while Universal's operating authority was suspended.

19. The Commission does not find that failures to act, comply, or conform by Kohsari and Pakzadian as set forth in the opinion constitute such a pattern, inability, or deliberate refusal to conform as would require a revocation or suspension of Universal's operating authorities.

20. Subject to payment of the transfer fee provided for by PU Code § 1036(b), the passenger stage and charter-party authorities to operate held by Universal should be transferred to and henceforth vested in Kohsari and Pakzadian as owners of 100% of Universal's stock in control of the shuttle operations.

21. Kohsari and Pakzadian should be warned that any serious further transgressions of the PU Code provisions, other laws, or Commission orders may result in additional fines, suspension, or possible revocation of operating authorities.

#### **Conclusions of Law**

1. Neither the transfer by Melvin of 40% of Universal stock to American transportation (i.e., Moatazedi, Bostajani, and Vallone), nor the subsequent transfer of these shares as the result of a lawsuit settlement to Hajimoradi (being transferees of less than 50% of shares outstanding and a transfer of stock but not control) required

Commission authorization, and neither transaction violated PU Code §§ 854(a) or 1036(b).

2. Melvin's unauthorized sale and transfer of 60% of Universal's stock to Kohsari, Pakzadian, and Alishahi transferred the majority stock interest and control, and was in violation of PU Code §§ 854(a) and 1036(b), and as officers and employees of Universal failing to comply with provisions of the PU Code, may have rendered each of them open to prosecution on misdemeanor charges pursuant to provisions of PU Code § 2110.

3. By pooling their aggregate 60% of Universal's stock and taking control of the utility without prior Commission authorization, Hajimoradi and Alishahi acted in violation of PU Code §§ 854(a) and 1036(b), and opened themselves to prosecution of misdemeanor charges pursuant to provisions of PU Code § 2110, and subject to appropriate fines.

4. Hajimoradi and Alishahi's unauthorized sale and transfer of their combined 60% majority stock interest and control to Kohsari and Pakzadian were acts on the part of all four participants in personal violation of PU Code §§ 854(a) and 1036(b), and acts making each of the four open to prosecution on misdemeanor charges pursuant to provisions of PU Code § 2110.

5. It does not appear to be cost effective to pursue actions against Melvin, Hajimoradi, or Alishahi. Neither Melvin nor Hajimoradi were named respondents to the OII, and Alishahi's role was minor.

6. The Commission has discretion for good cause to suspend, revoke, alter, or amend operating authorities, or in the alternative to impose a fine for violations upon the carrier, and to punish by a fine or imprisonment, or both, the utility officers, agents, or employees who violate or aid and abet in violations or failures to comply with provisions of the PU Code or Commission orders.

7. While the record fails to sustain some of the offenses charged in the OII, it does serve to establish a number of technical or minor violations of the PU Code or Commission orders for which a warning may suffice; there were also significant

violations ascribable to either officers or employees of the utility or to the utility carrier, and in these latter instances fines should be imposed.

8. Universal, Kohsari, and Pakzadian should be directed to cease and desist from violating provisions of the PU Code and/or the orders and rules of the Commission.

9. In its entirety the record does not disclose such a pattern, inability, or deliberate refusal to comply or inability to conform as would require revocation of Universal's operating authorities.

10. The passenger stage certificate and the charter-party permit held by Universal should be transferred to Kohsari and Pakzadian subject to payment of the transfer fees provided for by PU Code § 1036(b).

## O R D E R

IT IS ORDERED that:

1. Mohammad A. Kohsari (Kohsari) and Mohamad Bagher Pakzadian (Pakzadian) shall each pay a fine of \$1,000 to this Commission pursuant to Public Utilities (PU) Code § 2110 on or before the 60<sup>th</sup> day after the effective date of this order. Each shall pay interest at the rate of 7% per annum on his fine; such interest is to commence upon the day the payment of the fine is delinquent. If these fines are both not paid on or before the 60<sup>th</sup> day after the effective date of this order, the transfer of the passenger stage certificate and the charter party permit of Universal Transit Systems, Inc. (Universal), a California corporation doing business as Airway Shuttle, as authorized in Ordering Paragraph 3 shall be deemed revoked.

2. Universal shall pay fines in the aggregate amount of \$3,500 to this Commission pursuant to PU Code § 1033.5 on or before the 60<sup>th</sup> day after the effective date of this order. Universal shall pay interest at the rate of 7% per annum on the fine; such interest is to commence upon the day the payment of the fine is delinquent. If these fines are both not paid on or before the 60<sup>th</sup> day after the effective date of this order, the transfer of the passenger stage certificate and the charter party permit of Universal as authorized in Ordering Paragraph 3 shall be deemed revoked.

3. The passenger stage certificate and the charter-party permit of Universal is as of the effective date of this order transferred to Kohsari and Pakzadian subject to payment to this Commission of the transfer fees provided for by PU Code § 1036(b); if such transfer fees are not paid before the 30<sup>th</sup> day after the effective date of this order, the transfer of the operating authorities shall be canceled and the operating authorities shall be deemed revoked.

4. Universal, Kohsari, and Pakzadian shall cease and desist from further violations of PU Code sections and/or Commission orders or rules.

5. The Executive Director of the Commission is directed to cause personal service of this order to be made upon Kohsari, Pakzadian, and Universal and to cause service by mail of this order to be made to Fariborz Alishahi.

6. Investigation 94-10-014 and Application 95-11-014 are closed.

This order becomes effective 30 days from today.

Dated December 16, 1997, at San Francisco, California.

P. GREGORY CONLON  
President  
JESSIE J. KNIGHT, JR.  
HENRY M. DUQUE  
JOSIAH L. NEEPER  
RICHARD A. BILAS  
Commissioners