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Decision 98-04-007 April 9, 1998

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation into the Operations of Kenneth Bola Obatusin, an individual, doing business as Airport Ride.

I.94-05-040
(Filed May 25, 1994)

Kenneth Bola Obatusin, for himself, respondent.
Cleveland W. Lee, Attorney at Law, and
Bobbie Santa Marina, for Rail Safety and
Carriers Division.

OPINION

Summary

Order revoking passenger stage authority of Kenneth Bola Obatusin, dba Airport Ride.

Discussion

This proceeding began with an Order Instituting Investigation (OII) issued on May 25, 1994. The purpose of the investigation was to determine whether Kenneth Bola Obatusin (respondent), doing business as Airport Ride, had violated various parts of the Public Utilities (PU) Code, the Business and Professions Code, the regulations of the Los Angeles International Airport (LAX), and the General Orders (GO) of this Commission.

Respondent holds a passenger stage certificate (PSC 5828) from this Commission permitting him to operate an on-call shuttle bus service to various airports in the Los Angeles area. He was first granted authority on March 14, 1990, by Decision (D.) 90-03-011, operating under the name of Shuttle Trak.

At a hearing in this matter held on January 25, 1995, a tentative settlement was reached between the Commission Staff (Staff) and respondent. This was

later committed to writing, signed by the parties, and filed with the Commission on December 22, 1995. On December 27, 1995, Staff filed a motion to have the Commission adopt the settlement. Subsequently, the Staff orally notified the then Administrative Law Judge (ALJ) that it intended to move to withdraw the Stipulation for Settlement and request evidentiary hearings. This motion was filed on November 15, 1996. Respondent did not oppose the motion, which was granted by the present ALJ, Sheldon Rosenthal, on December 16, 1996. By D.97-10-067, the Commission amended the OII to include additional and continuing violations of the codes, regulations, and general orders originally charged, as well as violations of the Vehicle Code. The formal file for this proceedings shows that the amended OII was personally served on respondent on October 30, 1997, and that the notice of hearing was personally served on November 20, 1997.

A public hearing was held at the Commission Courtroom in Los Angeles, California, on December 4, 1997. It was scheduled to commence at 9:30 a.m. Staff was present, but respondent was not. At 10:00 a.m. with respondent still not present, the ALJ commenced the hearing. Respondent arrived at 10:15 a.m. He was not represented by counsel. The ALJ advised respondent of the nature of the proceedings and the possible results if the Commission adopted the recommendations of the Staff. (Tr. 16.) Respondent indicated he was aware of the circumstances and participated in the proceedings for the remainder of the day.

A further hearing was agreed by all parties for 10:00 a.m. on December 8, 1997. It began at the scheduled time without the presence of respondent. Respondent arrived at 10:15 a.m. claiming illness. (Tr. 168.) In response to questions from the ALJ, respondent stated that he was presently experiencing financial difficulties, was currently under suspension, and was not

operating his shuttle service. (Tr. 169-170.) Further questions obtained respondent's assent to revocation of his current operating authorities. The ALJ explained that such revocation would require an application for a completely new passenger stage certificate should he wish to reenter the business. This would be different from merely a filing for reinstatement of the old certificate. He would have to meet all the standards for a new certificate, including good moral character. Respondent agreed to this resolution of the current matter. (Tr. 170-171.) He then left the hearing room and did not return. (Tr. 172, 262.)

Staff continued presenting its case without the presence of Mr. Obatusin. At 3:24 p.m. the matter was submitted. In Exhibit 1, pages 7-13, Staff witness Vaisa summarized the basis for the charge that respondent engaged operators who owned their own vehicles, were not employees, and did not have independent operating authority. This is a violation of GO 158, Parts 4.07 and 5.03, which requires drivers to be carrier employees or hold charter-party authority. It is also a violation of Rule III, B, 14-15 of the City of Los Angeles, Department of Airports, governing operation of commercial vehicles at LAX. In addition, Staff called Mr. Behrman, a former driver for respondent. Mr. Behrman testified that he owned his own vehicle, (Tr. 23-24) that he drove for respondent during 1993-1995, (Tr. 23) that he never received a paycheck from respondent (Tr. 38), and that he did not regularly report the number of fares or the amount of fares to respondent. (Tr. 40.) Based on his conversations with other drivers at that time, Mr. Behrman stated that the other drivers did not receive paychecks, operated their own vehicles, and did not regularly report fares to respondent. (Tr. 25, 27, 39-40.)

Drivers would be billed by respondent for vehicle insurance, (Tr. 30.) "lease" payments (Tr. 25-26.) and for charges incurred in circling LAX. (Tr. 28.) Lease payments were for receiving dispatch notices to pick up passengers. All

expenses for maintaining the vehicles were paid by the driver, who was the owner of the vehicle. (Tr. 26.) Similarly, all gasoline, oil, and maintenance expenses were those of the driver. (Tr. 34.) Drivers would also pay their own Worker's Compensation Insurance fees (Tr. 31) and cargo insurance. (Tr. 39.) As a further indication of lack of employee status, Mr. Behrman submitted his 1994 federal tax information return (Form 1096) showing compensation as a nonemployee. (Exhibit 14.) He never received a payroll check or a W-2 form. (Tr. 35.)

Witness Vaisa's Exhibit 1, pp. 13-14, also summarizes the facts supporting the charge that the correct PU Commission Transportation Reimbursement Account (PUCTRA) fees, under PU Code §§ 401-410, were not reported to the Commission. This is supported by the ledgers of respondent contained in Exhibit 1, as well as the testimony of witness Behrman, who testified that drivers, including himself, did not regularly report the number of passengers transported and the fares collected from these passengers. (Tr. 41, 107.) It is further supplemented by testimony of witness Santa Marina. (Tr. 228-230.) This charge alone could support revocation of respondent's operating authority (PU Code § 1033.5 (c)(2).)

Exhibit 1, page 16, sponsored by Witness Vaisa, contains statements of Staff investigators that they examined five vehicles of respondent on a specific date. None of these vehicles contained posted rates of respondent as required by GO 158, Part 8.04.

Exhibit 1, page 147, contains a copy of a declaration from the Department of Motor Vehicles (DMV) that Shuttle Trak LA, the former name of respondent's business, was not enrolled in DMV's Pull-Notice program. This is a program mandated by the Legislature to alert employers of drivers of the past driving problems that prospective and current drivers have had, as well as to update

employers of current problems. Participation in the program is mandatory. (Vehicle Code 1808.1.) Exhibit 4, page 196, sponsored by Staff witness Santa Marina, shows Shuttle Trak's receipts for each month of 1993. It indicates that there were receipts for the months of January, February, and March of that year and fees for that quarter paid to this Commission. Thus there was operation without participation in the Pull-Notice program in violation of Vehicle Code 1808.1 in 1993.

Problems with the Pull Notice program persisted. Exhibit 4, page 362, contains a letter dated January 1, 1996 from respondent to witness Santa Marina. That letter lists six drivers of respondent as of January 6, 1996. Respondent told witness Santa Marina that all six of the drivers were enrolled in the Pull-Notice program. (Exhibit 4, page 12.) Documentation received from the DMV reveals only two of those six drivers were enrolled in the DMV's "pull-notice program" as of February 2, 1996. (Exhibit 4, page 358.) The other four employees as of that date were not listed. In fact, there had been no additions or subtractions from the list originally sent to the DMV in mid-1993. (Exhibit 4, page 12.)

Exhibit 5, page 64, sponsored by Staff witness Santa Marina, includes a declaration from DMV showing that respondent's enrollment was closed on January 31, 1996 for unclaimed mail. Exhibit 11 shows that no drivers were enrolled as of September 12, 1997, (Tr. 239) and for an 18-month period prior to September 12, 1997. (Tr. 241.) Exhibit 5 demonstrates multiple instances of operations by respondent during 1997, despite lack of participation in the Pull-Notice program. These include records of LAX (pages 26-54) and of respondent. (Pages 60-62.)

Pursuant to GO 104-A, all utilities are required to file annual reports with the Commission. Exhibit 4, page 22, indicates that as of January 30, 1996, the only annual report received from Airport Ride was for 1992.

Exhibit 1, page 168, also shows that the rules of LAX require that drivers of shuttle vehicles at the airport must be bona fide employees of the operator. Testimony of witness Behrman amply reveals a lack of employment of that witness by respondent. He also testified to lack of employment of other drivers operating under the Airport Ride business. This is a violation of GO 158, Part 3.01.

Witness Behrman testified to the fact that he did not always charge the published rate while driving for Airport Ride. (Tr. 41-42.) He also testified that other drivers for Airport Ride did the same thing and that this was of no concern to respondent. This is a violation of PU Code § 494. Further testimony on this subject was presented by witness Vaisa (Tr. 187-188), referring to page 184 of Exhibit 1.

As far back as 1991 respondent operated Shuttle Trak while under suspension by this Commission. (Exhibit 1, pages 134-142.) Exhibit 17, sponsored by Staff witness Santa Marina gives a history of the suspensions of Shuttle Trak and Airport Ride, as reported on the Commission's TMIS Reports. It also displays the instances during these suspensions that operations were conducted, based on reports from LAX. Exhibit 17 shows that respondent transported passengers during a suspension period in 1991, during three suspension periods in 1992, during two periods of suspension in 1994, during four periods of suspension in 1995, during five periods of suspension in 1996, and during at least one suspension period in 1997. Exhibit 17 indicates that Airport Ride has been under suspension since November 10, 1997, for failure to have public liability insurance. (Tr. 249.) Yet, Exhibit 19, which contains vehicle activity reports as compiled by LAX shows entrances and departures by Airport Ride during November and December of 1997. This should be contrasted with the statement of respondent at the December 8, 1997 hearing that he understood

that he was under suspension and that he was not operating. (Tr. 169.) Clearly the orders of suspension issued by this Commission have produced little effect on respondent.

Judicial review of Commission decisions is governed by Division 1, Part 1, Chapter 9, Article 3 of the PU Code. The appropriate court for judicial review is dependent on the nature of the proceeding. This is an enforcement proceeding brought by the Commission against Kenneth Bola Obatusin, doing business as Airport Ride, and so this decision is issued in an "adjudicatory proceeding" as defined in § 1757.1.

Findings of Fact

1. Respondent has been operating an on-call passenger stage corporation under authority from this Commission since 1991.
2. During this period he has been placed under suspension many times for failure to have insurance on file, failure to pay PUCTRA fees, and during periods of suspension, respondent has continued to operate.
3. Respondent is currently under suspension for failure to have insurance on file with this Commission.
4. In open hearing respondent stated to the ALJ that he understood that he was under suspension, that he did not presently have the financial resources to obtain insurance and to operate his business and that he was not operating.
5. Reports from LAX indicate that respondent was operating during December of 1997, contrary to his statements to the ALJ.
6. Respondent has operated since 1996 without participation in the DMV Pull-Notice program.
7. Respondent has not complied with the rules and regulations of LAX.
8. Respondent has permitted his drivers to charge other than the published fare.

9. Respondent has permitted vehicles operating under the name of Airport Ride to conduct business without displaying the authorized tariff rates.

Conclusions of Law

1. Respondent has repeatedly violated PU Code § 1040 and GO 101-E pertaining to insurance coverage for passenger stage carriers.

2. Respondent has repeatedly operated his passenger stage service while under suspension by this Commission, in violation of PU Code § 1045.

3. Respondent has repeatedly operated under his passenger stage authority without participating in the DMV Pull-Notice program, in violation of Vehicle Code § 1808.1.

4. Respondent has not enforced collection of tariff rates by his drivers, in violation of PU Code § 494.

5. Respondent has consistently operated with nonemployees who do not have independent operating authority, in violation of the rules of LAX (Exhibit 1, page 168) and GO 158.

6. Respondent has consistently failed to post tariff rates in vehicles operating under his passenger stage certificate, in violation of GO 158.

7. Respondent has failed to file annual reports, as required by GO 104.

8. Respondent has filed false statements of operating revenue for determination of PUCTRA fees mandated by PU Code §§ 4041-410.

9. Respondent has displayed disregard for the statutes of the State of California and the rules and regulations of this Commission.

10. Respondent's operating authority should be revoked.

11. This is an enforcement proceeding, and so this decision is issued in an "adjudicatory proceeding" as defined in PU Code § 1757.1.

O R D E R

IT IS ORDERED that:

1. The present operating authority of Kenneth Bola Obatusin (respondent) is permanently revoked.
2. Should respondent wish to reenter the business of passenger transportation he must file a completely new application, rather than file for a renewal of the authority revoked by this decision.
3. The Commission Staff shall notify the Los Angeles International Airport that respondent has no authority from this Commission to operate passenger stage or any other type of service.
4. Investigation 94-05-040 is closed.

This order is effective today.

Dated April 9, 1998, at San Francisco, California.

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