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Decision 98-09-057 September 17, 1998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation into the
operations and practices of Lev Gamer, an
individual doing business as JET Shuttle,

Respondent.

ORIGINAL

Investigation 96-09-003
(Filed September 4, 1996)

John A. Adefowora, for Lev Gamer, dba Jet
Shuttle, respondent.

Carol Dumond, Attorney at Law, for the Rail
Safety and Carriers Division.

OPINION

Background

On September 4, 1996, the Commission issued this Order Instituting Investigation (OII) into the operations and practices of respondent Lev Gamer, an individual doing business as Jet Shuttle, to determine whether respondent had violated the following provisions:

1. General Order (GO) 158-A, Part 5.02, and Section 1808.1 of the Vehicle Code, by failing to properly enroll and list all drivers in the Department of Motor Vehicles (DMV) Pull Notice Program.
2. Section 460.7 of the Public Utilities (PU) Code by operating with employee drivers without first having evidence of workers' compensation insurance coverage on file with the Commission.
3. Sections 1031 and 1040 of the PU Code, and GO 101-E, Part 9, by operating during a period of suspension for failure to maintain on file evidence of accident liability insurance protection.

4. GO 158-A, Part 4.01, by failing to maintain a current equipment list with the Commission.

5. GO 158-A, Part 6.02, by failing to provide maintenance records, payroll records, and a policy of workers' compensation insurance for inspection by staff.

Gamer was put on notice that he may be fined to the full extent provided by the PU Code and that his operating authority may be revoked because of the chronic and severe chain of misconduct alleged and documented by staff's declaration.

The Declaration of Investigator James H. Badgett of the Rail Safety and Carriers Division staff, alleges that:

- Gamer violated GO 158-A, Part 5.02, PU Code § 702, and Vehicle Code § 1808.1 by not fully complying with the requirements of the DMV Pull Notice Program. While Gamer and Jet Shuttle registered in the program effective March 6, 1996, no drivers were listed for this account. Subsequently, some drivers were listed, but others who drove for him were never listed.
- Gamer violated PU Code § 460.7 by operating without workers' compensation insurance, based on Badgett's interviews with a number of drivers who drove Jet Shuttle vans for Gamer.
- Gamer was suspended by the Commission from March 7 to March 18, 1996 for failure to maintain evidence of adequate Public Liability and Property Damage (PL&PD) insurance on file at the Commission. Records of Jet Shuttle indicate that operations continued during the period of suspension, in violation of PU Code §§ 702, 1031, and 1041.
- Gamer violated GO 158-A and PU Code § 702 by failing to maintain a current equipment list on file at the Commission. He operated at least three vans but listed only two in the equipment list filed at the Commission.

Gamer indicated to Badgett that the third van had operated for only a few days.

- Gamer failed to maintain and provide records for staff inspection, as required by PU Code §§ 314, 581, 582, and 702.

Hearings

A duly noticed hearing was held in Los Angeles on January 15, 1997, before an administrative law judge.

Staff presented the testimony of Investigator Badgett and Toni Crowley, who was an investigator during the period of investigation of Gamer.

Gamer represented himself, assisted by his accountant, John A. Adefowara.

Badgett

Badgett testified that both he and Toni Crowley were involved in this investigation.

Gamer's accountant informed Badgett that, once Gamer found out that he was required to enroll his drivers in the DMV Pull Notice Program, he immediately flew to Sacramento to do this; however, Gamer's trip to Sacramento actually was not until the following year. He was notified by Crowley on March 29, 1995. On March 6, 1996, he initially enrolled only Jet Shuttle, and no drivers. On March 29, 1996, a full year after being notified by Crowley, he enrolled himself and three drivers. Two other drivers were never listed.

Gamer was not able to produce any evidence of workers' compensation insurance despite several requests from Badgett.

Gamer operated during the period when the Commission had suspended his authority for failure to maintain PL&PD insurance in effect and on file at the Commission.

Gamer failed to keep a current equipment list on file at the Commission; two vans were listed, the third van was not. Gamer did not produce daily trip sheets for the third van.

Badgett produced documents to show that Gamer had sold the business.

- A document of Pacific Bell indicates that Gamer requested a name and address change for Jet Shuttle since he had sold the business to Charles Uche Mordi.
- A City of Los Angeles Department of Airports memo that discusses the transfer of authority and Special Power of Attorney for Jet Shuttle.
- A special Power of Attorney of Gamer authorizing Charles Mordi and Chinedu Oparocha to operate Jet Shuttle on his behalf dated December 5, 1996, effective December 1, 1996 and continuing until the complete and total transfer of Jet Shuttle's PUC authority has been transferred to Mordi and Oparocha.

Badgett testified that although Gamer apparently has sold or is in the process of attempting to sell his business, he has not sought approval from the Commission.

Badgett recommends that the Commission immediately revoke Gamer's operating authority due to his many violations.

Crowley

Toni Crowley is a Special Agent for Consumer Services Division. She also recommends that Gamer's authority be revoked immediately because she believes Gamer is either unwilling or unable to comply with the rules and regulations of the Commission, and because he has attempted to sell his business without Commission approval.

Crowley has had difficulty contacting Gamer as the phone number on file at the Commission is apparently for a cellular phone. Sometimes when she tried to call him, she received a message that he was out of range.

Gamer

Gamer testified that his problems with PL&PD insurance were caused by his insurance broker, Tony Willes of Right Price Insurance Agency. Gamer had legitimate insurance through the broker in 1994, but in 1995 he made a down payment of \$4,200 and received some papers from the broker, with the actual insurance papers to come from the insurance company. When he received a notice of cancellation from the insurance companies, he went back to the broker, who reassured him that he was covered and that the broker would take care of the situation. Then he received a suspension from the Commission and from the airport (LAX). He stopped operating, and again went to the broker who said he should not worry, and that the problem with insurance would be fixed.

In 1996 when he again received a suspension from the Commission he again stopped operating. As before, the insurance broker reassured him that he would take care of it. Gamer states that he thought he had PL&PD insurance through his broker even though he never received a policy. His broker said that insurance companies allowed him 90 days to make a down payment so the broker would not make the down payment, and change companies every 90 days.

Gamer finally called the State Department of Insurance and explained his problems with the broker. He was told that the broker was being investigated and had caused problems with other insurance companies.

Discussion

Gamer's testimony is unconvincing. He looks to his accountant, Adefowora, for the answers to questions, but he himself is responsible for

understanding the rules and regulations and for operating in accordance with them.

Regarding the lack of PL&PD insurance for the periods in question, Gamer testified that he had received binders with information about the companies, but no actual policies. While some of the blame for his insurance problems rests with his broker, that does not excuse operating while under suspension. Nor is it an excuse for not realizing that when one fails to pay for insurance, one cannot reasonably expect to have insurance coverage.

Gamer's credibility is also very suspect. When he first enrolled in the DMV Pull Notice Program, he enrolled no drivers, not even himself. While he claims to have flown to Sacramento the next day after being informed about the need to enroll his drivers in the program, in fact he acted only after a year, and then only after being told that he would be suspended if he did not enroll his drivers in the program.

Gamer's claim that he received both the Order of Suspension and Order of Reinstatement from the Commission in the same envelope and on the same date is suspect. These documents were initialed and dated by Gamer, yet none of the other similar documents of Jet Shuttle were initialed and dated. But even if they were received on the same date, Gamer received a notice of impending suspension 30 days in advance of suspension, and should have taken appropriate action.

More troubling is Gamer's lack of credibility regarding operations during suspension of authority. He testified that he had stopped operating upon receiving notice from the airport or the Commission. Yet staff testified that trip sheets of Jet Shuttle show that Gamer operated repeatedly during periods of suspension.

After Gamer was fined \$1,000 by the State Department of Industrial Relations for not having workers' compensation insurance, he went to the State Fund and obtained this insurance. He has not paid the fine, stating that he is waiting for a schedule for monthly payments which he at time of hearing had not yet received. Gamer did produce evidence of insurance through the State Fund for the period of March 1, 1995 to March 1, 1996, and continuing to March 1, 1997.

Gamer further testified that he really had not sold Jet Shuttle; rather he planned to incorporate and take in two partners. In responding to staff's showing, Gamer explained that he executed the Special Power of Attorney because his health was bad and he was unable to drive. However, Pacific Bell listed the reason for Jet Shuttle's requested change of name and address as Gamer stating that he had sold the business. Similarly, State Fund acknowledged a cancellation request from Gamer based on sale of the business. This was after a final notice from State Fund informing Jet Shuttle that its payroll report and payment for the period September 1, 1996 to December 1, 1996 were overdue, and that its policy would be cancelled if the report and payment were not received by January 7, 1997.

Gamer also testified that the reason he requested cancellation of his workers' compensation insurance was because his partners would be doing the driving as co-owners of Jet Shuttle. However, these people cannot be Gamer's partners without Commission authority, and such authority has not even been requested, much less granted.

Under PU Code § 1036.(b), "No certificate issued pursuant to, or rights to conduct any of the services authorized by, this article shall be sold, leased, or assigned, or otherwise transferred or encumbered, unless authorized by the commission. A filing fee of three hundred dollars (\$300) shall accompany all applications for that authorization." Clearly Gamer's failure to comply with this

basic legal requirement is yet another example of his lack of understanding and concern about rules and regulations. Gamer blames Adefowora for faulty advice, but Gamer as the certificate holder has the ultimate responsibility for compliance. An owner who does not understand the rules and regulations cannot know whether his advisor, in this case Adefowora, understands them. Gamer states that he is new to this business, yet he has been operating under Commission authority for six years. His ignorance of the legal requirements that apply to his certificate is no excuse for noncompliance.

While the rules and regulations may seem somewhat complex to Gamer, it is incumbent on a certificate holder to both understand them and abide by them.

Our obligation to protect the travelling public necessitates our revoking Gamer's operating authority with prejudice due to the many serious and continuing violations of rules and regulations.

Findings of Fact

1. Gamer holds a certificate of public convenience and necessity to operate as a passenger stage corporation.
2. Gamer has operated without PL&PD insurance from March 7, 1996 to March 13, 1996 in violation of PU Code § 1040.
3. Gamer has operated without workers' compensation insurance from October 29, 1995 to December 14, 1995, in violation of PU Code § 460.7.
4. Gamer has operated while his authority from the Commission was suspended from October 29, 1995 to December 14, 1995, and from March 7, 1996 to March 18, 1996, in violation of PU Code § 1045.
5. Gamer has not maintained adequate records and made them available for Commission inspection, in violation of PU Code §§ 314 and 582.
6. Gamer has attempted to sell or transfer his operating authority without Commission approval, in violation of PU Code § 1036(b).

7. Gamer either does not adequately understand or sufficiently care about the rules and regulations he must comply with in order to operate legally and properly.

Conclusions of Law

1. Gamer's violations of many of the requirements set forth in Article 2 of PU Code for passenger stage corporations demonstrate his lack of fitness to adequately provide passenger stage service.

2. Gamer failed to show cause why his operating authority should not be revoked.

3. Due to the violations previously noted, Gamer's operating authority should be revoked with prejudice.

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

5. This proceeding should be closed.

6. This order should be effective on the date signed.

ORDER

IT IS ORDERED that:

1. The PSC-6909 operating authority of Lev Gamer, doing business as Jet Shuttle, is revoked with prejudice against his again applying for this or similar operating authority from the Commission for a period of five years.

2. This proceeding is closed.

This order is effective today.

Dated September 17, 1998, at San Francisco, California.

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