

Decision 98-09-076

September 17, 1998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation into why the Passenger Stage Corporation Certificate and the Charter-Party Carrier Certificate [PSG 8939] issued to North Shuttle Service, Inc. (respondent), doing business as Yellow Airport Express should not be revoked.

ORIGINAL

Investigation 97-01-028
(Filed January 23, 1997)

In the Matter of the Application of Eugene Yen for Authority to Control North Shuttle Service, Inc., dba Yellow Airport Express, pursuant to Section 854 of the Public Utilities Code.

Application 97-04-002
(Filed April 1, 1997)

ORDER DENYING REHEARING OF DECISION 98-05-019

An application for rehearing of Decision (D.) 98-05-019 was filed by North Shuttle Service, Inc. (North Shuttle). In D.98-05-019 we found that respondents North Shuttle and Martin B. Smith (Smith) have committed numerous violations of the Public Utilities Code and of the Commission's general orders (GOs) that pertain to regulated carrier operations. Based upon these findings, and the nature and extent of the violations, we determined that the operating authority held by North Shuttle should be revoked and that Smith should be prohibited from participating substantively, by ownership, management, or control, in regulated passenger operations for a period of one year from the date of our order. We reaffirmed our policy, established in *Re Royya's Transportation, Inc., dba Express Airport Shuttle* [D.94-11-021] (1994) 57 Cal. P.U.C.2d 289 (Royya's). When the appropriate remedy for violations committed by a passenger carrier is revocation of that carrier's operating authority, the Commission will not waive such

revocation and instead permit another party to purchase the operating authority or acquire control of and operate the carrier, even if the purchasing or acquiring party would be qualified to conduct such operations and correct such violations in the future. As stated in *Royya's*, if a carrier operates in a manner that justifies revocation of its authority, the carrier should not be able to avoid the consequences of its conduct through the expediency of transferring the authority to another operator. Pursuant to this policy, the application of Eugene Yen and North Shuttle for authority to transfer control of North Shuttle to Eugene Yen was dismissed as moot. As stated in D.98-05-019 at page 35, any prospective purchaser may purchase all assets except the operating authority and apply for a Certificate of Public Convenience and Necessity (CPCN) in its own name.

We have reviewed the arguments raised by North Shuttle in its Application for Rehearing. We have also reviewed the arguments in the Response of the Consumer Services Division to the Application for Rehearing. We find that no legal or factual error has been shown. Contrary to the assertions of North Shuttle, we find that there is substantial evidence in the record to support our conclusion that North Shuttle and Smith committed violations, including the following: failure to maintain evidence of liability insurance on file with the Commission; failure to enroll all drivers in the Department of Motor Vehicle's "pull notice" program; employment of drivers with suspended or expired drivers' licenses; poor compliance with airport safety and traffic rules; failure to maintain proof of workers' compensation insurance; operating during suspension and after revocation of authorities; failure to respond to some written complaints; failure to assess tariff rates; failure to include PSC and TCP numbers in advertisements; failure to maintain adequate records; failure to adequately manage drivers (as evidenced by two separate assaults by North Shuttle drivers).

We reject North Shuttle's claim that the staff of the Public Utilities Commission unfairly targeted North Shuttle for investigation. The record reveals

that after staff commenced its investigation, it continued to unearth evidence of violations, which warranted further and more detailed scrutiny of North Shuttle's operations.

We find no inconsistency in our application of Commission policy and standards. The evidence of violations is so substantial as to warrant revocation of North Shuttle's operating authority. Our order to prohibit the transfer of North Shuttle's operating authority to Eugene Yen is consistent with the policy stated in *Royya's, supra*.

We reject North Shuttle's claim that it should be permitted to reopen the record to introduce evidence of its alleged current compliance with governing laws and regulations. Even if North Shuttle has achieved compliance with governing laws and regulations, such fact would not be material to the Commission's consideration of violations by North Shuttle during the period reviewed in this investigation. We reject Applicant's claim of legal error.

No further discussion is required of North Shuttle's allegations of error. Accordingly, upon reviewing each and every allegation of error raised we conclude that sufficient grounds for rehearing of D.98-05-019 have not been shown.

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THEREFORE, IT IS ORDERED that the application for rehearing of D.98-05-019 filed by North Shuttle Service, Inc. is denied. With such denial, the stay of D.98-05-019 which was extended by D.98-07-106 is hereby terminated.

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