

Decision 99-06-059 June 10, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of A & M United Group, L.L.C., a Limited Liability Company, to acquire, and Isam M. Alziq to transfer, a passenger stage certificate of public convenience and necessity and certain other assets, pursuant to Section 851, et seq., of the California Public Utilities Code.

Application 98-06-051
(Filed June 30, 1998)

Mary K. Jones, Attorney at Law, for Abdulghassem Ahmadpour, and Edward Ho, Attorney at Law, for Isam Alziq, applicants.

Carol A. Dumond, Attorney at Law, Moira Simmerson, and Mitch Matsumura, Rail Safety and Carriers Division, Enforcement Branch.

O P I N I O N

Summary

Application to transfer the passenger stage certificate of EZ Shuttle and Charter Service (EZ) denied. Certificate of EZ revoked and Isam M. Alziq (Alziq) found to have violated Rule 1 and Pub. Util. Code § 2114 by intentionally filing false verified documents with the intent to mislead the Commission. Alziq is prohibited from ever holding any interest in a business regulated by this Commission. EZ directed to file corrected Public Utilities Commission Transportation Reimbursement Account (PUCTRA) fees.

Discussion

This matter began as a routine application to transfer a passenger stage certificate for an airport shuttle operation from EZ Shuttle and Charter Service,

owned by Isam M. Alziq, to A & M United Group (Applicant), headed by Abdulghassem Ahmadpour (Ahmadpour). Alziq was to retain partial ownership until final payment, and reversion should the contract not be fulfilled. Attached to the application was a partnership agreement between Alziq and Ahmadpour. A verified protest was filed by Alziq claiming that what purported to be his signature on the application was a forgery, and that he did not wish to transfer the certificate to Applicant. A Prehearing Conference (PHC) in San Francisco on September 23, 1998 was attended by attorneys for both Applicant and Alziq, as well as the Rail Safety and Carriers Division (RSCD) of the Commission Staff. RSCD stated it was investigating the operations of EZ. Administrative Law Judge (ALJ) Sheldon Rosenthal announced (Tr. PHC 10-11) that his research disclosed a similar declaration claiming forgery was made by Alziq in a previous application to transfer the same certificate (Application (A.) 96-03-005), and that application had been dismissed for failure to have a willing buyer and seller (Decision 97-08-043). The ALJ advised the parties that he intended to take official notice of the A.96-03-005 declaration (Tr. PHC 10). The parties asked that they be permitted to file prehearing briefs on the issue of the propriety and jurisdiction of the Commission to continue processing this matter, particularly in light of a civil suit pending in Superior Court in Los Angeles involving many of the same contract issues.

In the ensuing briefs Alziq repeated his claim of forgery of his signature in the application before the Commission. He further claimed that the underlying partnership agreement accompanying the application was a substitution of the contract that he actually signed. Both of these contentions were made *under oath* in a declaration accompanying briefs filed by his counsel.

Applicant filed a declaration from the attorney who drew up the partnership agreement. The declaration stated that the agreement was signed by

Alziq and Ahmadpour in his presence. He attached a copy of the agreement signed in his office to his declaration. It was identical to the one submitted as part of the application in this proceeding.

Evidentiary hearings were scheduled for January 11, 1999. However, the civil proceedings in this matter resulted in a settlement conference at which the parties announced that they had come to an agreement. They asked that the evidentiary hearings before this Commission be taken off calendar (letter dated January 5, 1999). This was granted. (Notice dated January 7, 1999.)

As no signed agreement was received, the ALJ scheduled another PHC for February 17, 1999. On February 10, 1999, RSCD filed a motion for immediate suspension of EZ and a motion for an order for Alziq to show cause why he should not be found in contempt of the Commission for failure to disclose records, in violation of Pub. Util. Code § 582, and for various violations of General Order (GO) 158-A. At the PHC, attended by Assigned Commissioner Duque as well as the ALJ, evidentiary hearings were set for March 11-12, 1999. Alziq did not participate in the PHC nor did he file any objection to the motion of RSCD. On March 4, 1999 the Commission granted the uncontested motion of RSCD (D.99-03-024). The operating authority of EZ was immediately suspended and the order to show cause was scheduled to be considered at the previously announced hearings on March 11-12, 1999. Counsel for EZ stated that all operations ceased on March 5, 1999 (Tr. 2).

All parties appeared on March 11, 1999 and were represented by counsel. Alziq sponsored witness Mohammed Zeiq (Zeiq), his brother, who is the manager of EZ. He indicated that he took over total management of EZ in July or August, 1998 (Tr. 62). Zeiq admits to not keeping records of the type required by GO 158-A (Tr. 70, 92-95, 234), but also claims that he did not have records for the time period prior to his becoming manager (Tr. 65). He acknowledged that he is

required to give the Commission access to his records (Tr. 92). Zeiq testified that he caused some driver records to be delivered to RSCD (Tr. 69, 209), but did not give RSCD many financial records that were either on his computer or in his house. He attributed this failure to ignorance, the clutter in his house, and the stress of his life at that time (Tr. 218, 247). EZ apparently contends that this is not exemplary behavior but does not constitute contempt by Alziq.

RSCD, through the testimony of witness Barbara Santa Marina, described the efforts of RSCD to obtain information from Alziq. These include letters and FAXes, since Alziq is not living in California. (Exh. 9, Attachs. B-G.) Notes of a telephone call to Alziq in Exh. 9, Attach. D, include Alziq's statement that upon advice of an unnamed attorney he did not have to turn over any documents to RSCD (Tr. 136-137). Witness Santa Marina revealed a history of total frustration in her attempt to obtain information from Alziq, and not much better help from Zeiq, who by then was managing EZ for his brother. Pub. Util. Code § 582 and GO 158-A, Item 6.02 give the Commission and its Staff the right to inspect the records of any passenger stage carrier. It is certainly clear that there has been a flagrant and ongoing violation of Pub. Util. Code § 582 and GO 158-A, Item 6.02.

Witness Santa Marina testified that EZ has not been registered with the Department of Motor Vehicle's (DMV) Pull-Notice Program since 1996, as required by GO 158-A, Item 5.02 (Exh. 9, p. 9; Tr. 197). This program requires a filing of the names and licenses of all drivers with the DMV so that the driving history of the driver may be checked. This is an extremely important safety requirement, in that it helps prevent driving by unlicensed or unsafe drivers. Other violations of GO 158-A asserted in Exhibit 9 by RSCD and not contested by EZ include failure to report vehicles operated by EZ to the Commission, in violation of GO 158-A, Item 4.01 (Exh. 9, p. 7); hiring an illegal subcarrier, in violation of GO 158-A, Item 3.03 (Exh. 9, pp. 7-8; Tr. 194-195); and failure to post

rates in its vehicle, in violation of GO 158-A, Item 8.04 (Exh. 9, p. 11). At the hearing counsel for EZ stated that there was no objection to the revocation of EZ's operating authorities (Tr. 249).

Applicant began its affirmative case with an expert who examined exemplars of Alziq's signature and testified that the signature on the application was not a forgery. The declaration of the attorney who drew up the partnership agreement between Ahmadpour, principal of Applicant, and Alziq, the owner of EZ, was also introduced into evidence (Exh. 6). Ahmadpour testified that he holds passenger charter-party carrier authority (Tr. 342) and began managing EZ in June, 1996 (Tr. 266). He furnished RSCD many of the records of EZ that he still had in his possession (Exh. 8). Ahmadpour wishes to purchase EZ, despite the difficulty he has encountered, because EZ holds permits to operate vans into Los Angeles International Airport (LAX). These rights are particularly valuable, since no additional permits are presently being issued by LAX (Tr. 358-359). Thus, a new certificate from this Commission would not permit him to serve LAX. He also testified that EZ is a recognized name in its service area (Tr. 358).

We have previously noted that EZ has not been part of the DMV Pull-Notice Program since 1996, in direct violation of GO 158-A, Item 5.02. From mid-1996 to mid-1998 EZ was under the management of Ahmadpour. Thus, the responsibility for noncompliance must be shared by him. Ahmadpour testified that he was not aware of the Pull-Notice requirement of the Commission (Tr. 269). However, as a holder of charter-party authority (Tr. 268), he should have known of the Program, since GO 157, applicable to charter-party carriers, has the identical provisions with regard to the Program (GO 157, Item 5.02). When questioned about his familiarity with the Commission's regulations with regard to charter-party carriers Ahmadpour admitted that he receives a great deal of paper from the Commission but only reads some of it (Tr. 362-363).

Though his forthrightness is commendable, it certainly does not inspire confidence in his operation of a passenger stage certificate, even if he follows through on his promise to do better (Tr. 361).

We must also point out that at the present time there is no contract to sell EZ to Applicant, or any one else. The contract filed with the application was disputed as to authenticity and later renegotiated following a settlement conducted under the auspices of the Superior Court. By letter dated January 26, 1999 the ALJ noted that the second contract presented the following dilemma:

- "1. Assuming Mr. Alziq's contention of forgery and substitution of documents is true, we would be granting a certificate to a most unreliable applicant.
- "2. Assuming Mr. Alziq's contentions are untrue we would be permitting partial ownership of a public utility, with the possibility of reversion to total ownership, to a person of dubious reliability."

So far as this record is concerned, that second contract was never signed.

At the second PHC, counsel for Applicant described a third contract which eliminates any reversion to Alziq (PHC 23), but that contract has never been filed with the Commission and was not introduced into evidence. We do not know if the contract has been signed or what its terms might be. Witness Zeiq and counsel stated that they now have no objection to transfer of the authority from EZ to Applicant (Tr. 253, 258), but there is no contract between the parties indicating the terms of such transfer and whether these terms might be in the public interest.

The four main issues occupying the attention of the parties at the evidentiary hearings were whether Alziq should be found in contempt of the Commission, whether the suspension of operating authority of EZ should be continued, whether there was fraud and or forgery in the documents submitted

by Applicant, and whether there should be transfer of the authority from Alziq to Applicant.

There is little doubt that there was a complete failure on the part of manager Zeiq to follow the rules and regulations of this Commission, as set forth in GO 158-A. Based on what was admitted by Zeiq in his direct testimony, as well as cross-examination, and on the testimony of RSCD witness Santa Marina, practically the only compliance with this GO was by accident. For the most part this was not a specific disregard for the requirements of a carrier, but rather an attitude of unconcern after obtaining its certificate. The record is replete with instances where Zeiq admitted he had records somewhere but didn't bother to give these records to RSCD.

"Q. I want to know, Mr. Zeiq, you had these documents? You had these documents; correct?"

"A. Yes.

"Q. Was there a reason why those weren't turned over to Ms. Santa Marina?"

"A. Was no particular reason except I had a lot of things to do in my personal life, problems that affects me running the company or managing the company and keeping up the records the proper way." (Tr. 218.)

Compliance seemed to occur when it was forced on EZ, as when its certificate was automatically suspended for failure to carry Workers' Compensation insurance for its employees. This casual attitude towards compliance continued during the hearing. When material presented at the hearing by Zeiq (Exh. 12a) was shown to be erroneous (Tr. 251-252) Zeiq's response was a shrug, and:

"A. Maybe my spreadsheet did it wrong. I don't know. I mean, if I'm presenting document, how am I going to know that was wrong if I bring it myself. Maybe it was mistake. I don't know. I can correct that and pay the difference." (Tr. 252.)

Since this error resulted in an underpayment of EZ's PUCTRA fees to the Commission, we shall order Zeiq to make time to get the correct revenue figures, calculate the correct PUCTRA fees, and personally present a certified check, along with the documentation supporting this payment, to Staff.

RSCD was able to obtain some records of EZ (Exh. 8) through Ahmadpour, the principal of Applicant and manager of EZ from mid-1996 to mid-1998. Why these records remained in his hands after he left management was never explained on the record.

Owner Alziq's attitude towards release of his documents for inspection by the Commission's Staff takes on another hue. As shown in Exhibit 9, his reaction to requests was at first agreeable, without producing any documents. Then it became nasty and bellicose, as shown in his outright refusal based on "advice" from an unnamed attorney. All arrangements subsequently made for the production of documents, either by Zeiq, his manager, or by his attorney in the present hearing were either nonproductive or ignored (Exh. 9). We have no difficulty concluding that Alziq engaged in a deliberate process of deception and evasion of his duty to present records to the Commission or its representatives, as required by Pub. Util. Code § 582. The question is whether this is action that merits only revocation, or is a basis for contempt, with the possible sanctions of fines (Pine Mtn. Wtr. Co. (1981) D.93498) or even incarceration (In re Victor (1934) 220 Cal 729).

Counsel for RSCD stated that RSCD would not press for penalties against Alziq, but did wish to continue seeking a finding of contempt (Tr. 249-250). This

statement was made after counsel for Alziq and EZ stated that he would not oppose a revocation of the certificate of EZ (Tr. 249-250, 258).

We certainly are not bound by RSCD's recommendation that there should be a finding of contempt without a penalty for that action. After making such a finding, the consequences for the action are within our discretion, even if not advocated by RSCD. Similarly we could decide that the actions of EZ merited revocation of the certificate, whether or not EZ agreed to this result, without ruling on contempt. Considering all of the evidence in this case, including the fact that Alziq is no longer a resident of California, we believe that taking steps to assure that Alziq can never again be a holder of operating authority from this Commission is sufficient. We will not make a finding of contempt. This is not a conclusion that the evidence was insufficient to make such a finding.

In response to a specific question from the ALJ, counsel for EZ stated he does not contest continuation of the suspension of operations of EZ, as ordered in D.99-03-024 (Tr. 162). As a result, all passenger authority of EZ has remained suspended (D.99-03-060).

Our next issue is that raised by Alziq – the possibility of forgery and fraudulent substitution of a contract in the application. This was an accusation made in its original protest to the application. After the first PHC, wherein the ALJ reminded the parties of Rule 1 of the Commission's Rules of Practice and Procedure concerning the obligation of parties not to mislead the Commission, and Pub. Util. Code § 2114 indicating that filing knowingly false statements was a felony subjecting the utility to a fine of up to \$500,000 (PHC 10-11), Alziq repeated these statements in a verified declaration attached to a prehearing brief (Declaration, pp. 2-3, dated November 4, 1998).

At the hearing the only witness on the subject was an expert documents examiner who testified that in her opinion the signature of Alziq on the

application was genuine (Tr. 21-22). No evidence was offered to contradict that expert opinion. Similarly no evidence was offered to contradict the declaration of the attorney who drew up the partnership agreement signed by Alziq and Ahmadpour (Exh. 6). That declaration states that the document submitted with the application was signed in the attorney's office by Alziq and Ahmadpour. Instead, Alziq made inflammatory charges from out of state without offering any proof. We find this to be a clear violation of Rule 1 and Pub. Util. Code § 2114 . Alziq's charges of fraud and forgery will be disregarded. Staff is directed to consult with the appropriate district attorney concerning felony charges under Pub. Util. Code § 2114.

Finally we come to the issue of whether to transfer the certificate of EZ to Applicant. We do not have to decide whether Applicant or its principal, Ahmadpour, are worthy transferees. We cannot grant the application because there is no existing contract between Applicant and Alziq, the present holder of the certificate (Tr. 256). Thus the application is fatally defective (Rule 35). Even if it could be found that the original contract included with the application was binding between the parties we would not grant the application because, as stated in the ALJ's letter of January 26, 1999, it includes Alziq retaining an interest in EZ until final payment by Applicant and the possibility of the carrier and its certificate of public convenience and necessity reverting to Alziq should there be a default by Applicant. We do not intend to tolerate the possibility of any future interest by Alziq in any entity regulated by this Commission.

While not conceding that the application would otherwise have been granted, we must regretfully state that Alziq, through tactics that are dishonest and reprehensible, has managed to defeat the application in this proceeding. Rule 1 and Pub. Util Code § 2114 have been flagrantly violated. We can and shall take steps to see that he can never be in a position to repeat this travesty. We

shall order the revocation of the passenger stage and charter-party authority of Alziq. Furthermore, we shall order that Alziq shall never again be permitted to hold any interest in any business regulated by this Commission. We shall direct our Staff to examine Commission records of passenger stage and charter-party carriers. If they discover that he does holds an interest in such a business, whether as a principal, a lender, a fiduciary, or in any other capacity, Staff shall seek an order to show cause why that business' authority should not be immediately suspended until Alziq is removed.

In Resolution ALJ 176-2996 dated July 2, 1998, the Commission preliminarily categorized this application as ratesetting and preliminarily determined that a hearing was not necessary. In his Assigned Commissioner's Scoping Memo, dated October 6, 1998, Commissioner Duque confirmed the ratesetting designation, named ALJ Rosenthal the principal hearing officer, and ruled that a hearing was necessary.

At the conclusion of the evidentiary hearing on March 12, 1999, the parties indicated an interest in obtaining a decision at the earliest possible time. In furtherance of that goal they waived briefs (Tr. 379). They also waived the 30-day review of the principal hearing officer's proposed decision otherwise required by Pub. Util. Code § 311(d) (Tr. 378 - 380).

Findings of Fact

1. Applicant, through its principal Ahmadpour, filed to purchase EZ, a passenger stage operating as an airport shuttle.
2. EZ is owned by Alziq.
3. Alziq filed a verified protest to the application, claiming that his signature on the application was forged. Alziq had previously made this same claim in A.96-03-005.

4. In a verified declaration Alziq also claimed that a contract submitted with the application contains his actual signature, but that the contract is not the one he signed.

5. A civil suit between Ahmadpour and Alziq is presently before the Superior Court in Los Angeles.

6. At a settlement conference in the Superior Court action the parties agreed on a new contract of sale, but did not submit a completed contract to the Commission.

7. At the PHC of February 17, 1999, counsel for Ahmadpour represented that there was a third contract negotiated between the parties, but this was never presented to the Commission and whether it was signed or what it contains are not in this record.

8. RSCD was unable to obtain records of EZ and filed a motion asking that the operating authority of EZ be suspended.

9. The motion for suspension of EZ's passenger operations was not contested. EZ's operating authority was suspended as of March 4, 1999 (D.99-03-024).

10. At the evidentiary hearing, EZ admitted that it did not keep proper records.

11. EZ's payment of PUCTRA fees, as stated at the hearing, was proven to be understated.

12. RSCD provided evidence that EZ repeatedly refused to present records to the Commission Staff, either by denying that it had a duty to do so or failing to be present at prearranged meetings.

13. RSCD provided evidence that EZ has not participated in the Pull-Notice Program of DMV since 1996, though it was operating during this time.

14. RSCD provided evidence that EZ operated a vehicle not listed with the Commission.

15. RSCD provided evidence that EZ hired an illegal subcarrier.
16. EZ did not offer evidence that contradicted the evidence of RSCD.
17. Some records of EZ still in the possession of Ahmadpour were delivered to RSCD by Ahmadpour.
18. An expert documents examiner testified that Alziq's signature on the application was genuine.
19. Alziq offered no evidence in support of his verified allegation of forgery.
20. The attorney who created the partnership agreement between Alziq and Ahmadpour stated by declaration that the document submitted as Exh. 6 was signed by Alziq and Ahmadpour in his office. This document is identical to the one submitted with the application.
21. Alziq offered no evidence in support of his verified declaration that the partnership agreement presented in the application was not the one signed by Alziq and Ahmadpour.
22. Ahmadpour managed EZ from June, 1996 to July 1998.
23. At the time that Ahmadpour managed EZ, there were admitted violations of GO 158-A.
24. Ahmadpour holds charter-party authority from the Commission but admitted that he does not read much of the material that is sent to him by the Commission and does not know the regulations by which he must run his business.
25. The only signed contract presently before the Commission provides for Alziq to retain some ownership of EZ until final payment and a reversion of the certificate of public convenience and necessity to Alziq should there be a default in any of the conditions of sale.

Conclusions of Law

1. The application to transfer the certificate of public convenience and necessity must be denied because there is not an acceptable contract of sale between the Applicant and Alziq.
2. EZ violated Pub. Util. Code § 582 and GO 158-A, Item 602, by failing to produce documents and records in response to repeated requests of the Commission Staff.
3. EZ violated GO 158-A, Item 5.02, by failing to enroll drivers in the Pull-Notice Program of DMV.
4. EZ violated GO 158-A, Item 3.03, by hiring an illegal subcarrier.
5. EZ violated GO 158-A, Item 4.01, by failing to report vehicles used in its operation to the Commission.
6. EZ violated GO 158-A, Item 8.04, by failing to post rates in its vehicle.
7. Alziq's unsubstantiated allegations of forgery and fraud, without any attempt to prove these charges, must be taken as a willful submission of a verified statement knowing that it is false, in violation of Pub. Util. Code § 2114.
8. Alziq's unsubstantiated allegations of forgery and fraud, without any attempt to prove these charges, must be taken as an attempt to mislead the Commission by an artifice or false statement of fact, in violation of Rule 1.
9. Alziq's prior assertion of forgery of his signature in A.96-03-005, involving the purported sale of the same certificate of public convenience and necessity, casts further doubt on Alziq's veracity.
10. Rather than pursuing contempt charges against Alziq, we conclude that all operating authority held by Alziq should be immediately revoked. We further conclude that Alziq should never again be permitted to have any pecuniary interest in any business regulated by this Commission. If it should be discovered that Alziq holds or attempts to hold an interest in such business, whether as a

principal, a lender, a fiduciary, or in any other capacity, staff should be directed to seek an immediate suspension of that operating authority until Alziq's relationship is terminated.

11. Staff should be directed to discuss felony charges under Pub. Util. Code § 2114 with the appropriate district attorney.

12. Zeiq should recalculate EZ's PUCTRA fees and personally present the corrected fees, with documented back-up, to the Commission Staff.

O R D E R

IT IS ORDERED that:

1. The operating authority of EZ Shuttle and Charter Service (EZ) is revoked.
2. Isam M. Alziq (Alziq) having violated Pub. Util. Code § 2114 and Rule 1 of the Commission's Rules of Practice and Procedure is hereby barred from ever holding any pecuniary interest in a business regulated by this Commission. This includes interest as a principal, lender, fiduciary, or in any other capacity.
3. Staff is directed to search the records of passenger stage and charter-party carriers. If they have reason to suspect that Alziq holds an interest in any such carrier they are to bring an immediate request for an order to show cause why said carrier's operating authority should not be immediately suspended until such time as Alziq's interest is removed.
4. The application of A & M United Group to acquire the operating authority of EZ is denied.
5. Zeiq shall recalculate EZ's Public Utilities Commission Transportation Reimbursement Account (PUCTRA) fees and personally bring a certified check for the correct amount to the Commission Staff along with supporting data to verify these fees. This shall be accomplished within 30 days of the effective date of this decision.

6. Staff shall consult with the appropriate district attorney with regards to felony charges pursuant to Pub. Util. Code § 2114.

7. Application 98-06-051 is closed.

This order is effective today.

Dated June 10, 1999, at San Francisco, California.

RICHARD A. BILAS

President

HENRY M. DUQUE

JOSIAH L. NEEPER

LORETTA M. LYNCH

JOEL Z. HYATT

Commissioners