

Decision 99-10-071 October 21, 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 conveyance 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)

ORDER DENYING REHEARING OF
DECISION NO. 99-06-059

In this application for rehearing A & M United Group, LLC. (A&M) contends that Decision (D.) 99-06-059 (the Decision) contains legal error because it is not supported by proposed new evidence submitted in unauthorized comments to the proposed decision. The Decision denied A&M's application to acquire the passenger stage certificate of EZ Shuttle and Charter Service (EZ) and revoked EZ's certificate. It also prohibited Isam M. Alziq (Alziq) from holding any interest in a CPUC regulated business because of violations of Rule 1 of the Commission's Rules of Practice and Procedure and of Public Utilities Code Sec. 2114.

In June 1996, Alziq, the owner of EZ's certificate, arranged for management of EZ's operations to be performed by Abdulghassem Ahmadpour (Ahmadpour), who also holds charter-party carrier authority. In July or August, 1998 management was taken over by Mohammed Zeiq (Zeiq), Alziq's brother. Ahmadpour and Alziq apparently agreed to execute a partnership agreement in which the certificate would be transferred to Ahmadpour. In June 1998 Ahmadpour filed this application to transfer EZ's passenger stage authority from Alziq

in accordance with the partnership agreement purportedly signed by both persons. Under the agreement Alziq was to retain partial ownership until final payment and reversion of ownership in the event that the contract was not fulfilled.

After the filing of the application, Alziq changed his mind about the agreement and filed a verified protest, in which he stated that he did not want to transfer the certificate and that his signature on the application was a forgery.

Shortly before the scheduled prehearing conference the Rail Safety and Carriers Division (RSCD) filed a motion requesting the immediate suspension of EZ's authority and for an order for Alziq to show cause why he should not be found in contempt for failure to disclose records in violation of Public Utilities Code Sec. 582, and for various violations of General Order (GO) No. 158-A. This motion was uncontested. As a result we suspended EZ's operating authority in D.99-03-024.

At the public hearing, RSCD staff testimony revealed a history of total frustration in securing required information and records from Alziq and Zeiq in violation of both Public Utilities Code Sec. 582 and GO No. 158-A. In addition, RSCD showed that EZ had not registered with the Dept. of Motor Vehicle's Pull Notice Program since 1996; had failed to report vehicles operated by EZ; had hired an illegal subcarrier; had failed to post rates; and had failed to pay the correct amount of PUCTRA fees as a result of the failure to maintain accurate operating records. Alziq did not dispute these allegations and he had no objection to the revocation of EZ's operating authority (TR. 248-50). As for violations during the 1996-98 time period that Ahmadpour was managing EZ, and also operating under his own charter party authority, Ahmadpour admitted that although he receives a large amount of paper from the Commission he reads only some of it; and he claimed ignorance of the Pull Notice Program (TR. 269, 362-363).

The Decision concluded that the only signed contract admitted into evidence provided that Alziq would retain some ownership interest in EZ with reversion of the certificate to him if Ahmadpour defaulted in any of the conditions of the sale. As a result, the Decision denied the transfer on the ground that such a contract was not acceptable or in the

public interest, given the demonstrated violations by both applicant Ahmadpour and Alziq. In addition, because Alziq had filed unsubstantiated allegations of forgery and fraud, without making any effort to prove these charges, by means of the willful submission of a verified statement knowing it was false, the Decision concluded that he violated Public Utilities Code Sec. 2114 and Rule 1. Accordingly, the Decision concluded that he should not ever be permitted to have a pecuniary interest in any business regulated by the Commission.

A&M's application for rehearing contends that the Decision errs in its conclusion that the only contract before the Commission is the one filed with the original application. This contention is based on the fact that after issuance of the Administrative Law Judge's (ALJ) proposed decision Ahmadpour noticed and held a meeting of the two members (shareholders) of A&M at which the conditional reversionary interest of Alziq was rescinded. This information was submitted in A&M's unauthorized comments to the proposed decision with a request that the minutes of the A&M meeting dated June 1, 1999, which state that Alziq is removed from any management position in A&M and that he is prohibited from having any ownership interest in A&M,, be admitted into evidence.

After these comments were filed, the ALJ issued a ruling stating that since all parties to the proceeding waived the right to file both briefs and comments to the proposed decision, the unauthorized comments would be rejected unless the other parties filed their written consent to accept them. No consents were filed, and the proffered document was not admitted in evidence.

A&M's sole argument on rehearing asserts that the Decision errs because there is a new contract between A&M and Alziq, and therefore the Decision is based on an outdated, erroneous finding of fact and conclusion of law relating to the original contract attached to the application. However, this is not correct, since the Decision is based on the evidence in the record. Furthermore, there is no legal error in the ALJ's ruling providing notice to the other parties of the unexpected and unauthorized comments, and also providing them the opportunity to consent to the filing of the comments. Due process required nothing

less. It would have been clear legal error to have accepted such comments after the filing of comments had been waived without allowing the other parties the opportunity to be heard.

Moreover, A&M's attempt to correct in its comments deficiencies stated in the proposed decision by filing new evidentiary material is an obvious violation of Rule 77.3 of the Commission's Rules of Practice and Procedure (Scope of Comments) which states, inter alia:

“New factual information, untested by cross-examination, shall not be included in comments and shall not be relied on as the basis for assertions made in post publication comments..”
(emphasis added)

Accordingly, the attempt by A&M to include information to establish the elimination of Alziq from the proposed new operation was properly rejected.

A&M cites two Commission decisions in support of its application: Prometheus Development Co. v. Calif. Water Service Co. (1993) 50 CPUC 2d 729; and Re Regulation of Cellular Radiotelephone Utilities (1993) 49 CPUC 2d 443. Neither is applicable to the situation involved here. Each decision merely provides that the Commission, when it considers applications for rehearing, may consider further arguments or new information in its discretion, and that it is not required to grant rehearing unless the applicant for rehearing specifically demonstrates that the decision contains legal error. In the current proceeding A&M has not demonstrated any legal error. The Decision is based on the evidence in the record, and given the substantial and unrefuted evidence of the conduct of Ahmadpour while managing EZ, and of Alziq while operating EZ with his brother, both denial of the application to transfer and the revocation of EZ's authority is appropriate.

A&M also included in its application for rehearing a request for oral argument. We deny this request as there is no reason for further argument to be heard in this proceeding.

IT IS THEREFORE ORDERED that

1. Rehearing of D.99-06-059 is denied.
2. Application No. 98-06-051 is closed.

This order is effective today.

Dated October 21, 1999 at San Francisco, California

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
JOEL Z. HYATT
CARL W. WOOD
Commissioners