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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation and)
Order To Show Cause into whether)
the Charter-Party Carrier Permit)
of Steven Margetts, Douglas Margetts)
and Shannon Wilber, a partnership)
(respondent), doing business as)
AAA PENINSULA TRANSPORTATION,)
AIRPORT EXECUTIVE LIMOUSINE,)
WESTBROOK ASSOCIATES should not be)
revoked. (TCP 9012-P))

FILED
PUBLIC UTILITIES COMMISSION
MAY 22, 1996
SAN FRANCISCO OFFICE
1.96-05-037

ORIGINAL

ORDER INSTITUTING INVESTIGATION REQUIRING THE
PARTNERSHIP OPERATING AAA PENINSULA TRANSPORTATION
ET AL TO SHOW CAUSE WHY THEIR CHARTER-PARTY
CARRIER PERMIT SHOULD NOT BE REVOKED

The California Public Utilities Commission (Commission), pursuant to the California Constitution, Article XII, by Public Utilities Code Section 1031 et seq., 5351 et seq., General Order (G.O.) 158, the Charter-Party Carriers Act (Public Utilities Code Section 5351 et seq.), and General Order 157-C, regulates carriers of passengers on the public highways. These statutes and regulations require charter-party carriers, among other things, to maintain adequate proof of workers' compensation insurance, to conduct charter-party passenger carrier operations only on a prearranged basis, to engage only licensed drivers, to enroll all drivers in the DMV "Pull Notice" Program, to comply with airport rules, to engage only licensed sub-carriers and to possess required waybills. These regulations further require operators to establish reasonable fitness and financial responsibility to conduct their transportation services.

Safety and Enforcement Division (staff) advises us that it initiated an investigation, through the declaration supporting the issuance of this investigatory proceeding's order

to show cause, into the business practices of Steven Margetts, Douglas Margetts and Shannon Wilber, a partnership, and a Charter-Party Carrier (TCP 9012-P), doing business as AAA Peninsula Transportation, Airport Executive Limousine, Westbrook Associates (AAA). AAA currently provides transportation services with two sedans and four vans.

Documents with staff's declaration show that AAA apparently failed to enroll all drivers in the DMV "Pull Notice" Program, engaged a driver whose drivers license had expired; engaged unauthorized "independent drivers"; failed to comply with the rules of an airport; permitted its authority and TCP number to be used by another; allowed its drivers to solicit for passengers at Monterey Airport and without possessing waybills.

LICENSE HISTORY

Commission records show that Steven Margetts, Douglas Margetts, and Shannon Wilber, a partnership doing business as AAA Peninsula Transportation, Airport Executive Limousine and Westbrook Associates, was issued operating authority from the Commission on March 18, 1994. This Charter Party Carrier Permit was issued under number TCP 9012-P. This permit expires on March 18, 1997. It may be renewed every three years upon submission and approval of a renewal application. License Section records reveal this permit was suspended effective February 23, 1996 and reinstated on February 29, 1996 because of the carrier's failure to maintain adequate public liability and property damage insurance on file with the Commission. On March 18, 1996 this permit was again suspended and later reinstated on April 10, 1996. This suspension was caused by the failure of AAA to return the annual bus inspection report. On April 1, 1996 the Commission's License Section received a Notice of Cancellation of AAA's liability insurance, Policy No. CAOL00840, from the National Casualty Company. The policy was cancelled effective May 3, 1996.

THE INVESTIGATION

The staff commenced its investigation of AAA Peninsula Transportation in September, 1995. AAA did not have workers' compensation insurance on file with the Commission while engaging employees, all employee drivers were not enrolled in the Department of Motor Vehicles (DMV) Pull Notice Program and one driver was working when his driver's license had expired. The staff conducted an investigation after receipt of reports from the Monterey Airport Police Department (MAPD) which indicated AAA Peninsula transportation was violating provisions of the Vehicle Code, General Order 157 series and Monterey Airport Rules.

Failure To Comply With Pull Notice Program

Paragraph 5.02 of General Order 157-C and California Vehicle Code (CVC) Section 1808.1 require charter party carriers to enroll in the Pull Notice Program of the DMV. The staff's investigation disclosed that although AAA was participating in the program under Requester Code Number 00962, they failed to enroll all of their drivers.

Use of "Independent Contractor" Drivers

During the course of its investigation, staff says it interviewed Doug Margetts, Co-Partner, of AAA Peninsula Transportation. Mr. Margetts explained that AAA drivers were "independent" drivers paid on a flat or hourly basis. He provided staff with driver pay records and cancelled checks which confirmed these drivers were paid hourly or on a flat rate basis with no deductions taken for payroll taxes, social security and other employment taxes. The "independent" drivers were under the supervision, direction and control of the operating carrier AAA. The drivers of AAA were neither employees of the permit holder, nor independent owner-drivers who held authority from the

Commission as licensed sub-carriers and paid on a mileage basis as required by Rule 5.03 of General Order 157-C.

Failure To Have On File With The Commission a Certificate Of Workers' Compensation Insurance Coverage

Under Section 5378.1 of the Public Utilities Code, every charter-party carrier shall file with the Commission either a certificate of worker's compensation coverage for its employees, a certificate of consent to self-insure, or a statement that its charter-party operations do not employ any person in any manner so as to become subject to the worker's compensation laws of the state. The staff's investigation shows that Steven Margetts, Douglas R. Margetts, and Shannon Wilber certified on August 4, 1994 to the Commission that they did not have employees. However, AAA employed drivers without maintaining on file a certificate of worker's compensation insurance, in violation of Public Utilities Code Section 5378.1.

Unauthorized Use of Operating Authority

General Order 157-B, Part 4.08 provides that: "A carrier shall not knowingly permit its operating authority or its TCP number(s) to be used by others." In late June 1995, the Monterey Airport Police observed Edward Engquist conducting passenger operations at that facility in his vehicle. The vehicle displayed the TCP number of AAA. Mr. Doug Margetts explained AAA leased the vehicle from Ed and Linda Engquist until they obtained their own permit from the Commission.

Airport Passenger Service On A Prearranged Basis

Pursuant to Public Utilities Code Section 5360.5, "Charter-party carriers of passengers shall operate on a prearranged basis at airports within this state." The staff received reports from Monterey Airport Police that the carrier,

or its agents, solicited and provided transportation service other than on a prearranged basis as required by General Order 157-C, Part 3.01, a violation of Section 5360.5.

Failure To Comply With Airport Authority Regulations

Rule 3.02 of General Order 157 requires passenger carriers to comply with all applicable Airport Authority regulations. Monterey Airport Rules prohibit passenger carriers conducting operations at the airport from soliciting business from passengers.

Use Of Driver Whose Driver's License Expired And Failure To Comply With Waybill Requirements

Rule 5.01 of General Order 157 provides that: "Every driver of a charter-party vehicle shall be licensed as required under the California Vehicle Code (CVC) and shall comply with the driver provisions of the Motor Carrier Safety Sections of Title 13 of the California Code of Regulations." Section 1808.1(c) CVC provides that the employer shall verify that each employee's driver's license has not been suspended or revoked. Staff received a second report from the Monterey Airport Police Department. (MAPD) On March 6, 1996 MAPD Officer Lt. Akins requested AAA driver Michael P. Earle show his drivers license and waybill. Earle did not have a waybill in his possession and his California drivers license had expired due to his failure to appear on a traffic citation.

DISCUSSION

After the issuance of a charter-party carrier of passengers permit, the Commission exercises continuing oversight of a carrier's fitness to operate. Public Utilities Code Section 5378 authorizes the Commission at any time for good cause to suspend or revoke the certificate or permit upon notice to the

holder and opportunity to be heard. Sections 5381 and 5382 give the Commission the authority in its regulatory jurisdiction to prescribe rules for the performance of any charter-party carrier.

In App. of Walter Hoffman (1976) 80 Cal.P.U.C. 117, we said:

" . . . 'reasonable fitness' connotes more than mere adequacy or sufficiency in training appropriate technical and vocation aspects of the service to be rendered. It also includes an element of moral trustworthiness, reliance, and dependability. The standards must be based on the interests of the public and distinguished from the interests of the applicant to demonstrate that he is reasonably fit to be entrusted with a renewal of Commission authority."

We find the allegations made by the staff against this passenger carrier very serious. Should we find the allegations brought by the Staff to be true, we believe that this carrier's pattern of conduct shows a fundamental lack of fitness and trustworthiness which the law requires from a certificate or permit holder providing passenger service.

O R D E R

IT IS ORDERED that:

1. There is substantial evidence to support a finding that respondent, Steven Margetts, Douglas Margetts and Shannon Wilber, partners doing business as AAA Peninsula Transportation, Airport Executive Limousine, Westbrook Associates, 257 Central Avenue #4, Pacific Grove, CA 93950, may have:

a. Violated Public Utilities Code Sections 5381 and 5382, Part 5.02 of General Order 157-B (GO 157-B) and California Vehicle Code Section 1808.1 by failing to enroll all drivers in the DMV "Pull Notice" Program;

b. Violated PU Code Sections 5381, 5382 and Part 5.03 of GO 157-B by unlawfully engaging "independent contractor" drivers who are neither bona fide employees nor licensed charter-party sub-carriers;

c. Violated PU Code Section 5378.1 by employing drivers without a certificate of workers' compensation insurance on file and in effect with the Commission;

d. Violated PU Code Sections 5381, 5382 and Part 4.08 of GO 157-B by knowingly permitting their operating authority and TCP number to be used by another;

e. Violated PU Code Sections 5381, 5382 and Parts 3.01 and 3.02 of GO 157-C by soliciting business and failing to possess a waybill in violation of airport rules; and

f. Violated PU Code Sections 5381 and 5382, Part 5.01 of General Order 157-C and California Vehicle Code Section 1808.1 by employing a driver to perform for hire passenger operations whose driver's license had expired.

2. Steven Margetts, Douglas Margetts and Shannon Wilber are put on notice that unless they can show cause to the contrary, their operating authority can be revoked because of the serious chain of misconduct documented in the staff's declaration.

3. A public hearing on this matter shall be held before an Administrative Law Judge at a time and place to be determined, at which time the respondent may appear and show cause why their charter-party carrier permit should not be revoked.

4. The Safety and Enforcement Division staff, if it elects to do so, may present additional evidence beyond that described in its declaration supporting this order, either by testimony or through documentation, but it should provide a copy of any supplemental testimony/evidence to the respondent at least 10 days before the hearing.

5. The Executive Director is directed to cause a copy of this order and staff's declaration to be personally served upon at least one of the general partners operating under TCP 9012-P and doing business as AAA Peninsula Transportation, Airport Executive Limousine, Westbrook Associates, 257 Central Avenue #4 (P.O. Box 52183) Pacific Grove, CA 93950.

This order is effective today.

Dated May 22, 1996, at San Francisco, California.

DANIEL WM. FESSLER
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners

President P. Gregory Conlon
being necessarily absent,
did not participate.