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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)
Passenger Stage Certificate of)
Khalil Homeidan, Farahat Abdelmalek,)
Edward Chernyak and Fira Chernyak, a)
partnership doing business as)
AIRTRANS EXPRESS [PSC 6369] should)
not be revoked.)

ORIGINAL
FILED
PUBLIC UTILITIES COMMISSION
OCTOBER 25, 1996
SAN FRANCISCO OFFICE
I.96-10-034

ORDER INSTITUTING INVESTIGATION AND ORDER TO
SHOW CAUSE WHY AIRTRANS EXPRESS OPERATING
AUTHORITY SHOULD NOT BE SUSPENDED OR 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 passenger stage carriers, among other things, to maintain adequate proof of public liability and property damage insurance, workers' compensation insurance, to operate and maintain their passenger vehicles in safe operating condition. These regulations further require that operators obey provisions of the California Vehicle such as rules pertaining to drivers hours of service, that they participate in the Department of Motor Vehicles (DMV) "Pull Notice Program", comply with airport regulations, and ensure that only bona fide employees or qualified Commission licensed subcarriers are authorized to operate the shuttle vans.

Rail Safety/Carriers Division (staff) advises us that it has investigated allegations of continued unlawful business practices of Khalil Homeidan, Farahat Abdelmalek, Edward Chernyak

and Fira Chernyak, a partnership doing business as Airtrans Express (Airtrans)¹ at Los Angeles International Airport (LAX).² Staff's investigation and its conclusions are in the declaration summarizing its investigation, which will be served on the respondents with this order. Staff's investigation was initiated as a follow up inquiry into allegations that Airtrans Express was continuing to operate unlawfully with non-employee "independent" drivers at LAX, a violation of General Order 158-A,³ LAX rules and a violation of its probation with the Commission. In Decision (D.) 95-01-034, we directed staff to initiate an investigation and bring the matter back before us if it was found that Airtrans did not comply with the provisions of GO 158-A and conduct its operations safely as specified in the terms of probation.

Airtrans Express, the partnership [PSC 6369] was granted authority by the Commission to conduct airport shuttle

1. Airtrans Express is a four way partnership of Khalil Homeidan, Abdelmalek Farahat, Edward Chernyak and Fira Chernyak. Usama Al Bostani sold his interest to Edward and Fira Chernyak. An application by Usama Al Bostani to sell his interest in the passenger stage certificate to this partnership is pending in A.95-11-036 filed November 22, 1995. [PSC 10238]

2. The acronym "LAX" is used to refer to both the airport itself and the airport's governing body.

3. GO 158-A and (to a lesser extent) GO 157-C contain the principal Commission rules applicable to the airport ride-share industry. The original versions of these GOs were adopted in Decision (D.) 89-01-028, 33 CPUC2d 5 (1989). The successive revisions to these GOs, designated by the letter after the number, do not change the substance in any way material to this proceeding. For convenience, we will refer generally to the versions now in effect, i.e., GO 158-A and GO 157-C. This practice seems less confusing than citing the version contemporaneously in effect as of the various events discussed herein.

service as a Passenger Stage Corporation (PSC) in Decision 90-06-004 dated June 6, 1990. One of the partners, Usama Al Bostani, sold his interest in Airtrans to Edward and Fira Chernyak. An application to transfer interest in the PSC to this partnership is pending.

APPLICATION 95-11-036 FILED NOVEMBER 22, 1995

Usama Al Bostani has filed an Application to sell his partnership interest in AITRANS EXPRESS, PSC 6369 to Khalil Homeidan, Farahat F. Abdelmalek, Edward Chernyak and Fira Chernyak, a partnership doing business as Airtrans Express. Staff believes this application, if granted by the Commission, would endorse and allow the practices of Airtrans to continue, albeit under the new partnership entity. In these circumstances the application should be held in abeyance pending Commission review of the issues raised in this investigation.

On January 11, 1995 an agreement was executed memorializing Edward Chernyak's purchase of one third of Usama Al Bostani's interest in Airtrans Express. On March 1, 1995, Fira Chernyak decided to purchase the remaining partnership interest of Mr. Bostani. References to Airtrans herein which pertain to 1995 events relate to this partnership which is currently and has been operating the company since March 1995.

Airtrans operates fifteen vans and has fifteen drivers and two dispatchers who provide "on-call" common carrier airport shuttle passenger service. This "on-call" shuttle service, has been authorized by the Commission to provide service to points between Los Angeles, Ventura and Orange Counties on the one hand and the LAX, Burbank (BUR), Ontario (ONT), John Wayne (SNA) and Long Beach (LGB) Airports, and Los Angeles and Long Beach Harbors on the other hand. The staff's investigation disclosed Airtrans is also operating beyond the scope of its Commission authority by serving San Bernardino and Riverside Counties from Ontario Airport.

BACKGROUND

On September 1, 1993, we ordered an investigation (I 93-09-003) into the business practices of Airtrans. A staff investigation revealed that Airtrans violated several sections of the California Vehicle Code (CVC), Business and Professions Code, Public Utilities Code (PUC) and General Order 158 by failing to enroll in the DMV Pull Notice Program (Section 1808.1 CVC), engaged illegal "independent contractor" drivers who were neither bona fide employees nor licensed passenger carriers, under reported regulatory fees to the Commission and failed to post rates in its vans.

On January 24, 1995 we accepted a settlement of these issues in Decision (D.) 95-01-034, in which we approved a Settlement Agreement between Airtrans and staff. In this agreement, Airtrans pledged, among other things, to immediately enroll in the DMV Driver Pull Notice Program and to cancel all its "Pre-Franchise Agreements" which it entered into with its "independent" drivers, to comply with provisions of the Public Utilities Code and General Order 158, and to operate its airport shuttle business in a safe manner. The Settlement Agreement provided that Airtrans Express serve a two year probation, that its operating authority be suspended for three months (90 days), with actual suspension stayed, subject to Airtrans observing the requirements of the Settlement Agreement, and that it pay a fine of \$ 7,000 to the Commission in ten monthly installments.

A subsequent investigation commenced by staff in 1995 disclosed that Airtrans failed to comply with terms of the Settlement Agreement set forth in Decision 95-01-034. Airtrans has continued to lease equipment to independent drivers who were not bona fide employees and who did not hold valid authority from this Commission. Airtrans failed to enroll ten such drivers into the DMV Pull Notice Program, as proscribed by Section 1808.1 CVC. In addition to the failure to comply with the terms of probation as specified by this Commission, the staff's investigation

disclosed additional violations of the California Vehicle Code and Public Utilities Code. Staff alleges Airtrans has conducted operations beyond the scope of its authority, has failed to transfer its certificate to reflect the change in the partnership to the current ownership and has allowed its drivers to violate hours of service limits set forth in Vehicle Code Section 21702(a) CVC. These and other violations are documented and alleged in a declaration prepared by Investigator Michael Nakasone of the S&E staff, Passenger Enforcement Section, Los Angeles. At a hearing, staff will offer its declarations, witnesses and other evidence to support its allegations.

THE INVESTIGATION

The following summarizes violations by Airtrans Express, as alleged by staff in a declaration.

Violation Of Limitation on Driver's Hours (Public Safety)

Pursuant to Vehicle Code Section 21702(a) "(n)o person shall drive upon any highway any vehicle designed or used for transporting persons for compensation for more than 10 consecutive hours nor for more than 10 hours spread over a total of 15 consecutive hours." Also, pursuant to Part 5.03 of GO 158, "[e]very driver of a vehicle shall be the certificate holder or under the complete supervision, direction and control of the [PSC] operating carrier . . ." Staff interviews with three Airtrans Express drivers disclosed they provided passenger services for 16 or sometimes more hours a work shift.

Drivers Not Enrolled In DMV Pull Notice Program (Public Safety)

Staff alleges that a number of Airtran's driver/sub-carriers were not enrolled in the DMV Pull Notice Program. Pursuant to General Order 158-A, Part 1.06, every passenger stage

corporation and their drivers shall comply with the provisions of the California Vehicle Code. Also, pursuant to General Order 157-C, Part 5.02, all charter-party carriers shall enroll in the Pull Notice Program of the Department of Motor Vehicles as defined in Vehicle Code Section 1808.1. This important safety program tracks and monitors the driver license status of drivers and ensures a process whereby unfit drivers are made known to the carrier so that they may cease driving -- a basic protection for both passengers and the driving public. Besides the basic requirement for anyone driving a passenger carrying van to be enrolled in the program, Airtrans expressly promised the Commission in the settlement adopted by D.95-01-034 to comply with the DMV Pull Notice Program. Staff alleges that Airtrans failed to enroll all of its drivers in the program and basically violated the Commission order in D.95-01-034.

Failure To Post a Schedule of Rates in Vehicle

An examination of three of the carrier's vans at the Ontario Airport holding lot by staff revealed the carrier did not post rates in each vehicle used in airport service as required by Rule 8.04 of General Order 158-A. The drivers stated there are too many rates for the area served and rates were not posted as required. Airtrans agreed in the settlement adopted by D.95-01-034 that it would maintain a schedule of all its rates and post representative fares in all of its vehicles.

Use of "Independent" Drivers

During the course of its investigation, staff says it interviewed eleven Airtrans drivers. The drivers at LAX paid Airtrans a lease fee of \$ 135 per day for use of the van. Drivers working at Ontario Airport paid Airtrans a lease fee of \$90. Drivers retain all revenue earned in excess of these daily lease fees. This lease arrangement was verbal and not reduced to

writing. Drivers were instructed to explain to CPUC staff that they were paid on a 23 percent "commission basis". As was the practice noted in the prior investigation of Airtrans (I.93-09-003 filed September 1, 1993), W-2 Forms issued to drivers by Airtrans do not accurately reflect revenue earned. Payroll checks are not "real" and are cashed by drivers who then turn this cash back over to the company. All drivers are paid on a lease basis and not according to the payroll ledgers. The dollar amounts shown on these payroll checks does not reflect the actual amount of revenue earned by the driver in for-hire passenger transportation. In the settlement adopted in D.95-01-034 Airtrans agreed ". . . to treat all such drivers as employees and to observe all F.I.C.A., withholdings and other employee entitlements required by law and airport regulations. Airtrans will bear the cost of premiums applicable to workers' compensation insurance for all employee drivers without deduction from employee compensation for such coverage, as required by law." "Airtrans will comply with the provisions of General Order 158, including the requirement that it utilize only bona fide employees or licensed charter party carriers in the performance of its passenger stage operations." However, in spite of its promise to the Commission to cease and desist these practices, it appears Airtrans has continued to utilize a lease arrangement scheme and false payroll records to disguise the number of Airtrans drivers, their earnings and their status as employees. Revenues earned by independent drivers was paid in cash and not accurately reported on waybills submitted back to Airtrans Express.

Failure To Comply With Airport Authority Regulations

The City of Los Angeles, Department of Airports, has extensive regulations governing commercial vehicles transporting passengers. These rules provide that passenger carrier drivers must be bona-fide employees. "Lease" drivers and owner-operators

may not conduct operations at the airport. Airtrans engages drivers who are not bona-fide employees in violation of airport rules. As noted above, the staff alleges Airtrans has made extensive use of "independent drivers" operating under a fee/lease arrangement. Airtrans appears to have attempted to conceal the true status of its drivers as independent owner-operators thru the device of fraudulent "payroll checks" issued. These checks purported to show these drivers were bona-fide employees of Airtrans. However, the checks were later cashed with funds remitted back over to the company.

Filing a False Report Which Understates Revenues

During this second investigation staff reviewed Airtrans waybills and compared these documents with LAX Airport Vehicle Activity Detail Reports for the month of September, 1995. Once again the LAX Vehicle Activity report indicates more extensive operations than shown on the waybills. The number of passengers reported was not consistent. Staff believes Airtrans has filed a false report which understates revenues and fees in violation of Section 1033.5 of the Public Utilities Code.

Operations Beyond Scope Of Authority

Sections 702 and 1031 PUC provide that no passenger stage corporation shall operate over any public highway in this State without a certificate from the Commission declaring that public convenience and necessity require such operation. Any operations conducted beyond the scope of authority granted by the Commission would constitute a violation of these statutes. The certificate granted by the Commission to Airtrans in D.90-06-004 does not provide for operations into San Bernardino, Riverside and San Diego Counties from the Ontario Airport. Staff says it interviewed Airtrans owners, drivers and reviewed carrier

waybills which confirmed service has been performed into these counties from Ontario Airport.

Ownership Transfer Without Commission Approval

Staff says its investigation disclosed Airtrans Express is now a four way partnership with new partners Edward and Fira Chernyak joining existing partners, Khalil Homeidan and Farahat Abdelmalek. Former partner Usama Al Bostani sold his interest to the Chernyaks and the new partnership became effective March 1, 1995. The passenger stage certificate held by Airtrans Express has not been transferred by the Commission to the current partnership which is operating this business.

DISCUSSION

After the issuance of a certificate of public convenience and necessity, the Commission exercises continuing oversight of a carrier's fitness to operate, especially when the carrier has been placed on probation by this Commission. Public Utilities Code Section 1033.5(a) authorizes the Commission for good cause to suspend or revoke the certificate upon notice to the holder and opportunity to be heard. Sections 702, 5381 and 5382 give the Commission the authority in its regulatory jurisdiction to prescribe rules for the performance of any passenger 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."

PU Code Section 1033, gives the Commission the authority in its regulatory jurisdiction to prescribe rules for the performance of any passenger stage carrier. In Regulation of Passenger Carrier Services (1989) 33 Cal.P.U.C. 2d, D.89-10-028 we said:

"Given the airport congested conditions, we cannot ignore carriers operating on airport property who persist in violating airport authority regulations established to address congestion, such as stop restrictions, loading and unloading zones, parking regulations. Such carriers do not serve the public interest by adding to passenger service delays and creating unsafe traffic conditions at the airports. We consider this area one in which we should wait the enforcement of airport regulations. Therefore, where airport authorities are unable to correct such behavior by their internal enforcement procedures, these carriers should be reported to our TD Compliance and Enforcement Branch for investigation of violations of GO 157, Section 3.02 and GO 158, Section 3.01," relating to unlawful airport operations.

Staff has demonstrated good cause to believe that Airtrans Express may be violating a number of regulations and laws, and we will afford Airtrans Express an opportunity to defend itself against these allegations by presenting evidence on the matter. However, if staff's allegations prove to be true, Airtrans express should fully expect that its operating authority could be either revoked for what appears to be a continuing pattern of operating in an unlawful manner, or suspended for a length of time sufficient for the carrier to fully reform the character, structure and business relations of its operations a credible plan to assure any resumed operations would be conducted in full compliance with laws and regulations, and under

conditions where any continuing violations would result in immediate cessation of operations.

This is the second enforcement effort we have undertaken concerning Airtrans Express. We are concerned about the continuing nature of the alleged violations, and want priority given to moving forward to adjudicate this matter in a timely fashion.

O R D E R

IT IS ORDERED that:

1. An investigation on the Commission's own motion is instituted into the operations of Khaili Homeidan, Farahat F. Abdelmalek, Edward Chernyak and Fire Chernyak, a partnership doing business as Airtrans Express (Airtrans) holding a certificate of public convenience and necessity as a passenger stage corporation and Usama Al Bosani, an individual, the former partner in Airtrans Express. Both Airtrans Express and Bostani are respondents. I.93-09-003 is reopened and consolidated with this new investigatory compliance with D.95-01-034.

2. There is good cause shown in the staff's declaration to believe that Airtrans Express and Bostani have violated the following laws and regulations which are applicable to their operations:

- a. General Order 158-A, Part 1.06, by failing to ensure that all drivers or subcarriers are enrolled in the DMV Pull Notice Program as required by Vehicle Code Section 1808.1;
- b. General Order 158-A, Parts 1.06 and 5.03, by allowing drivers to transport persons for compensation for more than 10 hours spread over a total of 15 consecutive hours, which is prohibited by Vehicle Code Section 21702(a);

- c. PU Code Sections 702, 5381 and Part 5.03 of General Order 158 and Business and Professions Code Section 17200 et. seq., by unlawfully engaging "independent" drivers who were neither bona fide employees nor licensed passenger sub-carriers;
- d. PU Code Section 1033.5 by filing a false report which understates revenues and fees;
- e. General Order 158-A, Part 3.01, by failing to obey airport rules and regulations, relating to use of non-employee drivers at LAX;
- f. PU Code Sections 702, 5381 and Part 8.04 of General Order 158-A, by failing to post a schedule of rates in its vehicles; and
- g. PU Code Section 1031, by conducting operations beyond the scope of its certificate and failing to obtain Commission approval prior to a transfer of ownership.

These violations are alleged in staff's declaration summarizing its investigation and findings.

3. The respondents may appear and show cause why Airtrans Express operating authority should not be revoked in light of the alleged continuing pattern of violations. If the allegations advanced by staff are substantiated at future hearings, there will be ample cause to revoke or suspend the operating authority of Airtrans Express.

4. The Rail Safety and Carriers Division staff, if it elects to do so, may present additional evidence beyond that described in its declarations supporting this order, either by testimony or through documentation. The declaration supporting this order shall be filed with this order in this proceeding's formal file, and shall also be provided to the respondents: when this order is served on them.

5. This investigatory proceeding shall have reopened I.93-09-003 consolidated with it and heard on a common evidentiary record, and the respondents' degree of compliance with orders entered in I.93-09-003 shall be addressed.

6. Related matter, A.95-11-036, shall be held in abeyance pending a final outcome in this investigatory proceeding. The assigned Administrative Law Judge may consolidate the proceeding. If there is good cause and it will further efficiency in the administration of justice.

A prehearing conference may be held before an Administrative Law Judge at a time and place to be announced.

In view of the serious nature of the alleged violations and the resulting economic disruption which has apparently been spawned within the community of LAX shuttle service carriers, we want our Administrative Law Judge Division to expedite hearings on this matter. A copy of this order and the staff's declaration shall be mailed to John E. deBrauwere, Attorney at Law, 14001 Ventura Blvd. Sherman Oaks, CA 91423, Counsel for Respondent Airtrans Express.

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The Executive Director is directed to cause a certified copy of this order and the supporting staff declaration to be personally served upon respondents:

Khalil Homeidan, Farahat Abdelmalek,
Edward Chernyak and Fira Chernyak dba
AIRTRANS EXPRESS
9100 South Sepulveda Blvd. #104
Los Angeles, CA 90003

Usama Al Bostani dba
AIRPORT EXPRESS SHUTTLE
323 N. Montebello St. Suite B
Montebello, CA 90640

This order is effective the date and time that it is served on the above respondents.

Dated October 25, 1996, at Sacramento, California.

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

Commissioner Daniel Wm. Fessler,
being necessarily absent, did not
participate.