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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation into)
the operations and practices of Mike)
E. Chandler, an individual doing)
business as AT YOUR SERVICE)
[TCP 10134-P])

ORIGINAL

FILED
PUBLIC UTILITIES COMMISSION
JANUARY 23, 1997
SAN FRANCISCO OFFICE
I.97-01-027

ORDER INSTITUTING INVESTIGATION

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 as authorized by the Commission, 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, to prepare written agreements with their subcarriers and to possess required waybills. These regulations further require operators to establish reasonable fitness and financial responsibility to conduct their transportation services.

Rail Safety and Carriers Division (staff) advises us that it initiated an investigation, into the business practices of Mike E. Chandler, an individual and a Charter-Party Carrier (TCP 10134-P), doing business as AT YOUR SERVICE (AYS). AYS currently provides transportation services with four limousines.

Staff documents in its declaration that AYS apparently conducted operations as a charter-party carrier prior to issuance of its permit from the Commission, failed to enroll all drivers in the DMV "Pull Notice" Program, aided and abetted violations of the Public Utilities Code by a revoked charter-party carrier and unauthorized "independent driver"; and failed to prepare written agreements with its sub-carriers.

LICENSE HISTORY

Commission records show that Mike E. Chandler, an individual doing business as At Your Service, was issued operating authority from the Commission on January 21, 1996. This Charter Party Carrier Permit was issued under number TCP 10134-P. This permit expires on January 19, 1999. It may be renewed every three years upon submission and approval of a renewal application.

THE INVESTIGATION

The staff commenced its investigation of At Your Service in August, 1996 and has concluded with the following allegations. AYS conducted operations as a charter-party carrier of passengers prior to issuance of a permit from the commission authorizing such operations, all employee drivers were not enrolled in the Department of Motor Vehicles (DMV) Pull Notice Program, and AYS engaged, aided and abetted unlawful operations by an unlicensed "independent" contractor driver. Also, AYS failed to prepare written agreements with its sub-carriers. The staff conducted an investigation after receipt of reports from the Monterey Airport Police Department (MAPD) which indicated AYS was continuing to violate provisions of the Vehicle Code, General Order 157 series and Monterey Airport Rules. The previous unlawful activities of John Titherington and Mike

Chandler in operating a limousine service continued to be of concern to the staff.

Operations Without Authority

Section 5371 of the Public Utilities Code (PUC) provides that no charter-party carrier of passengers shall engage in transportation services over any public highway in this State without first having obtained from the Commission a permit authorizing such operations. The staff's investigation disclosed that a Charter Party Carrier Permit was issued by the Commission to Mike E. Chandler dba At Your Service, Carmel on January 21, 1996 under File No. TCP 10134-P. The staff review of AYS records revealed passenger operations prior to that date in violation of Section 5371 PUC.

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 AYS was participating in the program under Requester Code Number M3700, it failed to enroll all of its drivers.

Use of "Independent Contractor" Drivers

During the course of its investigation, staff says it interviewed Mike Chandler, Co-Partner, of At Your Service. Mr. Chandler explained that AYS occasionally used the services of independent driver John Titherington for runs in a "leased" vehicle. This "independent" contract driver was under the supervision, direction and control of the operating carrier AYS. This driver was neither an employee of the permit holder, nor an independent owner-driver who held authority from the Commission

as a licensed sub-carrier as required by Parts 3.04 and 5.03 of General Order 157-C.

Aiding and Abetting Unlawful Activity

Section 5411 of the Public Utilities Code provides that every charter-party carrier of passengers who aids or abets any violation of Chapter 8 [Charter-Party Carriers' Act] of the PU Code is guilty of a misdemeanor. The staff's investigation disclosed that AYS engaged John Titherington, the former owner of AYS, as a sub-carrier during June, July and August 1996. Chandler and Titherington, as manager and owner, respectively, of At Your Service (TCP 7087-P, Revoked) Pebble Beach, had been notified by the Commission of the Suspension and subsequent revocation of Mr. Titherington's permit on March 5, 1996. Despite the revocation of Titherington's operating permit, Mr. Chandler engaged him to perform for hire passenger limousine services as an unlicensed sub-carrier. Mike Chandler has apparently violated Section 5411 of the Public Utilities Code by aiding and abetting violation of Section 5379 PUC [operations after revocation] and 5391 PUC [failure to maintain insurance on file] by his former business associate, John Titherington.

Sub-Carrier Agreements

General Order 157-C, Part 3.04 provides that: "A carrier shall not use the services of another carrier (sub-carrier) that provides the vehicle and the driver, unless the second carrier holds Commission authority as a charter-party carrier. The agreement for the use of the second carriers' vehicle(s) and driver(s) by the operating carrier shall be evidenced by a written document, and shall contain the carrier's names, TCP numbers, and the services to be provided." When staff requested a review of AYS sub-carrier agreements, Mr. Chandler advised he had not prepared written sub-carrier agreements.

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 indicates a lack of fitness and trustworthiness which the law requires from a certificate or permit holder providing passenger service.

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O R D E R

IT IS ORDERED that:

1. This investigation is to determine whether the respondent, Mike E. Chandler, an individual dba At Your Service, 425 Carmel Valley Rd., Carmel, CA 93953, has violated provisions of the Public Utilities Code [PUC] and General Order 157-C [GO 157], and the California Vehicle Code, namely:

- a. violated PU Code Section 5371 by conducting operations as a charter party carrier of passengers prior to issuance of a charter party carrier permit by the Commission on January 21, 1996 authorizing such operations;
- b. violated Public Utilities Code Sections 5381 and 5382, Part 5.02 of General Order 157-C (GO 157-C) and California Vehicle Code Section 1808.1 by failing to enroll all drivers in the DMV "Pull Notice" Program;
- c. violated PU Code Sections 5381, 5382 and Parts 3.04 and 5.03 of GO 157-C by unlawfully engaging an "independent contractor" driver who was neither a bona fide employee nor a licensed charter-party sub-carrier holding a valid permit issued by the Commission;
- d. violated PU Code Section 5411 by aiding and abetting violations of the Public Utilities Code by a charter party carrier of passengers;
- e. violated PU Code Sections 5381, 5382 and Part 3.04 of GO 157-C by failing to prepare written agreements with their sub-carriers which contain the carriers' names, TCP numbers and the services to be provided.

2. Mike E. Chandler is put on notice he may be fined to the full extent provided in the Public Utilities Code and that

his authority may be revoked because of the chronic and serious chain of misconduct alleged by the staff.

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 be heard.

4. The Rail Safety and Carriers 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 to be personally served upon the respondent, Mike E. Chandler, operating under TCP 10134-P and doing business as At Your Service (PO Box 1024 Pebble Beach, California 93953) 425 Carmel Valley Road, Carmel, California 93953.

If after due diligence staff is unable to personally serve this order, it may serve it by certified mail to the last business address of record provided the Commission by the carrier, and file a declaration describing efforts to make personal service.

This order is effective today.

Dated January 23, 1997, at San Francisco, California.

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