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Decision 02-05-006 May 2, 2002

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Gorgee Enterprises, Inc., *et al.*, Complainants, vs. Aram Davtyan, an individual dba Americas Dream Limousine Service, Defendant.	Case 01-01-008 (Filed January 3, 2001)

John E. deBrauwere, Attorney at Law,
for Gorgee Enterprises, et al., complainants.
William F. Salle, Attorney at Law, for
Aram Davtyan, defendant.

OPINION PARTIALLY GRANTING COMPLAINT

Summary

We resolve the complaint filed by Gorgee Enterprises, G&S Transit, Inc., and Tri-City Transit, Inc. (Complainants) against Aram Davtyan dba America's Dream Limousine Service (Defendant).[1] We revoke Defendant's charter-party carrier permit, TCP 11497-P. Defendant must reapply by formal application to the Commission should he again choose to operate a business as a charter-party

[1] The complaint was directed to Aram Davtyan, dba Americas Dream Limousine Service. Exhibits introduced during the hearing indicate the correct name of the business is America's Dream Limousine Service.

carrier. We direct the Commission's Consumer Services Division (CSD) to determine whether the $1200 fine discussed with and agreed to by Defendant on or about March 2, 2001, has been paid. Finally, we find that the provision of the license agreements between Defendant and certain hotels, under which provision Defendant is to furnish taxi service at the hotels, is in violation of Defendant's charter-party authority. Such provisions are void *ab initio.*

Procedural Background

The Complaint alleges that Defendant does not hold authority to conduct taxi service but advertises his service under the general heading of "Taxicabs," provides immediate response to telephone requests for transportation, has entered into written contracts to provide taxi service, obtains customers by waiting at various hotels, picks up passengers who hail the driver, and conducts trips of short duration. The Complaint also alleges that Defendant prepares waybills after transportation is rendered and operates without Workers' Compensation insurance.

Complainants request that the Commission revoke Defendant's charter-party permit or in the alternative order Defendant to cease each activity complained of and prohibit Defendant from operating in the communities of Pasadena, Glendale, and Burbank. In their brief, Complainants further request that the Commission establish guidelines Commission staff can use in investigating complaints such as this one and define prearranged as ordering transportation a minimum of 6-8 hours in advance of actual need.

Defendant answers that Commission staff investigator Charles Kirksey had previously investigated these allegations and found Defendant's operations to be in substantial compliance with the Commission's rules and regulations.

After a prehearing conference (PHC) on April 12, 2001, the assigned Commissioner issued a scoping memo on May 24, 2001, confirming the

categorization of this proceeding as adjudicatory and designating the assigned administrative law judge (ALJ) as presiding officer. Hearings were held on July 31 and August 1, 2001. Complainants presented five witnesses—Andrew Craig, Scott Schaeffer, Debra Waters, Albert Matthews and Michael Anthony Dolan. Complainants also subpoenaed Commission employee Jesse Brazier to testify. Defendant presented one witness, Aram Davtyan. Concurrent briefs were submitted on October 10, 2001.

Issues in Dispute

The scoping memo identified the issue in this proceeding as whether Defendant provides taxicab transportation service in violation of General Order (GO) 157-C, sections 3.01 and 3.03. Section 3.01 requires charter-party carriers to provide transportation only on a prearranged basis. Section 3.03 provides that such carriers cannot engage in taxicab transportation service licensed and regulated by a city or county.

Factual Background

Defendant's charter-party carrier permit, TCP 11497-P, expires on January 26, 2004. Defendant entered into a purchase agreement for the sale of his business on February 7, 2001. Defendant sold the business on May 7, 2001, and is no longer operating as a charter-party carrier. On July 20, 2001, Defendant's attorney sent the assigned ALJ a letter, which enclosed Defendant's rebuttal testimony, informed the ALJ that Aram Davtyan sold America's Dream Limousine in May 2001, and requested a conference call in advance of the hearings. The ALJ did not receive that letter.

Complainants presented testimony on numerous alleged violations of Commission rules by Defendant, including 1) Defendant has advertised in the yellow pages of local telephone directories under the "Taxicab" heading; 2) Defendant provides immediate response to telephone requests for

transportation services; 3) Defendant does not prearrange service; 4) Defendant's waybills mostly lack the passenger's name and address; 5) Defendant's waybills mostly involve one-way trips for one passenger; 6) Defendant's vehicles pick up passengers who hail the driver as another passenger is being discharged; and 7) Defendant does not charge rates on a time and mileage basis.

Complainants introduced Commission documents that discussed CSD's investigation of Defendant's operations. CSD's March 2, 2001, investigation report concluded that Defendant violated Commission rules and regulations by failing to enroll drivers in the DMV pull notice program, failing to comply with a controlled substance and alcohol testing certification program and testing for drivers, failing to prearrange transportation, and failing to maintain records that reflect information pertaining to the service performed. The investigator, Charles Kirksey, discussed a $1200 fine for these violations with Defendant who agreed to pay that fine. Defendant states the Commission has never requested that he pay the fine. Staff witness Brazier's investigation concluded, however, that Defendant was acting as a charter-party carrier. The investigation report also concluded that there was no evidence that Defendant was conducting operations as a taxicab.

Both Complainants and Defendant demonstrated that Defendant had licensing agreements with several hotels, including the Burbank Hilton, the Pasadena Hilton and the Doubletree. Defendant entered into a license agreement with the Hilton Burbank Airport that provided:

> Permitted use of space: Licensee shall use the Space only to provide transportation information and maps, as well as concierge services as they arise, and to provide exclusive sales of transportation services, tour services for sightseeing tours, town car and <u>taxi service</u> and airport transfers. (Emphasis added.)

CSD's investigation did not request or review license agreements.

Discussion

We revoke Defendant's charter-party carrier permit, TCP 11497-P. Defendant must reapply to the Commission by formal application should he again choose to operate a business as a charter-party carrier. We direct CSD to determine whether the $1200 fine discussed with and agreed to by Defendant on or about March 2, 2001, has been paid. Finally, we find that Defendant entered into license agreements with various hotels to perform taxi service in violation of Defendant's charter party authority.

Defendant asserts that this complaint is moot because Defendant sold his business and stopped operating in May 2001. Defendant did not need Commission approval for the sale of his business assets. However, Defendant did not timely notify the Commission that he no longer was operating his business, the subject of this complaint. Defendant had many opportunities to notify the Commission and the Complainants of the pending sale and sale of his business. Defendant entered into a purchase agreement for the sale of America's Dream Limousine Service a little more than one month after this complaint was filed. Defendant knew he was selling his business when the PHC was held, yet he declined to inform the Commission or the Complainants that his business soon would be sold. By the time the Assigned Commissioner issued the scoping memo, which set the hearing discussed at the PHC, Defendant already had sold his business. Defendant's failure to notify the Commission and Complainants that he was no longer operating America's Dream Limousine Service until rebuttal testimony was due hampered our inquiry into these allegations against America's Dream Limousine, a business that still operates.

Complainants retained two private investigators, who investigated the practices of America's Dream Limousine after the sale occurred. As the new

owners are not parties to this proceeding, we did not hear the investigator's testimony or the testimony they rebutted.[2] We do not concur that the complaint is moot; rather, we conclude the relief we can order is limited because Defendant is no longer operating the business and the new owners are not parties to this complaint.

We cannot order Defendant to cease operations in certain cities and to cease certain activities, as requested by Complainants. At the hearings, Complainants elected to continue with their showing on this complaint, because they did not want the delay of adding an additional defendant, the new owner of America's Dream Limousine Service. In their brief, Complainants modified the relief requested and asked for guidelines for Commission staff in investigating these types of allegations. However, the scope of this proceeding is limited to Defendant's activities, and we are unable to use this adjudicatory proceeding to issue general directives to our staff or regulatees.

Because the relief we can order is limited, we need not weigh all of the evidence submitted on the operations of Defendant at the hearing. On the other hand, the license agreements that Defendant entered into with various hotels are within the scope of this proceeding, and we find that those agreements contain provisions contrary to our regulations. Those agreements permit America's Dream Limousine to perform a service for which it is not licensed, taxi service.[3]

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[2] Complainants have filed a new complaint against America's Dream Limousine, Inc., a California corporation.

[3] The license agreement also includes tour services for sightseeing tours, although Defendant's permit expressly excludes authority to provide round-trip sightseeing service. Defendant admitted he provided round-trip sightseeing services. However, whether Defendant provided unauthorized sightseeing service is not within the scope of this proceeding.

Taxi service is not within the authority of the Commission to grant. (*See* Public Utilities Code § 5353(g).) By entering into a contract to furnish taxi service after obtaining charter-party authority, Defendant violates that authority, and specifically violated Section 3.03 of GO 157-C.

Such contract provisions are void *ab initio*. However, Defendant Davtyan no longer operates as a charter-party carrier and no longer has any license agreements. Should Defendant either reacquire America's Dream Limousine or apply for a charter-party carrier permit in his own name or for any other business, Defendant must submit any license agreements to Commission staff for their review to ensure that those agreements do not include services outside the authority granted by the Commission.

Commission staff discussed with Defendant a $1200 fine for failing to comply with certain Commission rules and regulations. Although Defendant concurred in the fine, he states he never was contacted to pay that fine. We direct CSD to determine whether the fine it discussed with and was agreed to by Defendant has been submitted to him and paid.

We formally revoke Defendant's charter-party carrier permit.[4] Under Pub. Util. Code § 5378 (a)(2) the Commission may revoke a charter party carrier's operating permit for violation of any Commission order, decision, rule, regulation, direction, demand, or requirement. The violations found by CSD, the scope of the license agreements and the failure to communicate the sale of his business all demand that the Commission scrutinize any future business endeavors subject to our authority. Should Defendant elect to start another

[4] On October 24, 2001, the Commission sent an Order of Revocation for TCP 11497-P to Defendant.

business that requires a Commission permit, we need to ensure that Defendant's business operations conform to our rules and regulations. Thus we require Defendant to reapply by formal application and to state in that application that Defendant has paid all outstanding fines. We have prohibited carriers from obtaining authority for a period of time where their operations, although suspended, were found to be those of a taxicab service operating under the guise of a charter-party carrier. (City of Los Angeles v. Clayton Redfield, *et al.*, D.89-04-064, 31 CPUC 2d 520.) Here formally revoking Defendant's permit will ensure that Defendant does not operate contrary to our regulations.

Appeal

The decision of the presiding officer, ALJ Grau, was mailed on January 11, 2002. On February 6, 2002, the decision of the presiding officer was republished to correct several minor errors, which did not change the outcome of the decision. Pursuant to Rule 8.2 of the Commission's Rules of Practice and Procedure (Rules), Complainants filed an appeal of the Presiding Officer's Decision (POD) on February 8, 2002. No response to the appeal was filed.

Complainants' appeal contends the POD should have included additional findings to the effect that: (1) "some act [occurred] in furtherance of the illegal [license] agreement;" and (2) the "acts in furtherance of the illegal agreement were in fact performed from the making of the agreement until the business was sold in May, 2001." Complainants' appeal does not contest the findings of the POD and does not raise legal error. Instead, the appeal acknowledges that the relief the Commission can order is limited but contends the POD should have made further findings. Because relief ordered is inextricably linked to findings made, there is no basis to augment the findings beyond those needed to resolve the matter before us. Complainants' appeal lacks merit and is denied.

Findings of Fact

1. Defendant's charter-party carrier permit, TCP 11497-P, expires on January 26, 2004.

2. Defendant sold America's Dream Limousine Service on May 7, 2001.

3. Defendant entered into a purchase agreement for the sale of his business on February 7, 2001.

4. CSD's March 2, 2001, investigation report concluded that Defendant violated Commission rules and regulations by failing to enroll drivers in the DMV pull notice program, failing to comply with a controlled substance and alcohol testing certification program and testing for drivers, failing to prearrange transportation, and failing to maintain records that reflect information pertaining to the service performed.

5. Defendant had licensing agreements with several hotels, including the Burbank Hilton, the Pasadena Hilton, and the Doubletree.

6. Defendant entered into a license agreement with the Hilton Burbank Airport that provided that Defendant could use the hotel's space to provide taxi service.

7. Complainants' appeal has not shown the POD failed to make required findings or committed legal error.

Conclusions of Law

1. Defendant's failure to notify the Commission and Complainants that he was no longer operating America's Dream Limousine Service until rebuttal testimony was due hampered the Commission's inquiry into these allegations against America's Dream Limousine, a business that still operates.

2. Defendant entered into license agreements with various hotels to perform taxi service in violation of Defendant's charter party authority. Such provisions are void *ab initio*.

3. Defendant's charter-party carrier permit should be revoked and Defendant should reapply by formal application for any future authority in order to ensure that Defendant's business operations conform to our rules and regulations. Defendant must include in any application the verified statement that Defendant has paid all outstanding fines.

4. Complainants' appeal lacks merit and should be denied.

O R D E R

IT IS ORDERED that:

1. The complaint is granted to the extent set out in these ordering paragraphs.
2. Charter-party permit TCP 11497-P is revoked.
3. The Commission's Consumer Services Division will determine the status of the $1200 fine discussed with and agreed to by Defendant for violating Commission rules and regulations
4. Defendant must reapply by formal application for any future authority.
5. Complainants' appeal is denied.
6. This proceeding is closed.

This order is effective today.

Dated May 2, 2002, at San Francisco, California.

LORETTA M. LYNCH
President
HENRY M. DUQUE
CARL W. WOOD
GEOFFREY F. BROWN
MICHAEL R. PEEVEY
Commissioners