

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ-304
Administrative Law Judge Division

RESOLUTION

RESOLUTION ALJ-304. Resolves the Appeal from Revocation of MUH, Inc. (dba Five Star Tours) Charter-Party Carrier Permit (File PSG 9783, Case No. PSG 3746).

SUMMARY

This Resolution grants the appeal from revocation of MUH, Inc. doing business as Five Star Tours (Five Star or MUH) Charter-Party Carrier Permit, issued on March 28, 2014, by the California Public Utilities Commission's Safety and Enforcement Division (SED) pursuant to its authority under Pub. Util. Code § 5387(c) and Resolution TL-19099. By letter dated March 28, 2014, SED permanently revoked MUH authority to operate under Pub. Util. Code § 5387(c)(1)(E) on claims that MUH knowingly employed a driver without the required certificate to drive a school bus, in violation of California Vehicle Code (CVC) § 12517(b).¹ SED issued the revocation predicated upon a report from the California Highway Patrol's Enforcement and Planning Division (CHP) dated April 24, 2013, but subsequently determined to proceed under CVC § 12517(a).

At the appeal hearing, neither the CHP nor the SED demonstrated that Five Star improperly drove a school bus at the time of the CHP citation. Specifically, by law the vehicles used for the charters at issue were not school buses as defined by CVC § 545(d). Because the charters giving rise to the revocation did not involve school buses, there can

¹ CVC § 12517(b) provides that: "A person may not operate a school pupil activity bus unless that person has in his or her immediate possession a valid driver's license for the appropriate class of vehicle to be driven endorsed for passenger transportation. When transporting one or more pupils at or below the 12th-grade level to or from public or private school activities, the person shall also have in his or her immediate possession a certificate issued by the department to permit the operation of school pupil activity buses."

be no violation of CVC § 12517(a).² Therefore, we find that the revocation was erroneously issued. As the basis for the revocation by SED was erroneous, it is hereby rescinded. However, because Five Star and its counsel introduced contradictory and apparently falsified evidence in the proceeding, we affirm the Administrative Law Judge's ruling granting sanctions for Rule 1 violations.³

BACKGROUND

The California Public Utilities Commission (Commission) regulates charter-party carriers of passengers primarily pursuant to the Passenger Charter-Party Carriers' Act (Pub. Util. Code § 5351, et seq.). Under Pub. Util. Code § 5387(c)(1)(E), a charter-party carrier shall have its authority to operate permanently revoked by the Commission if it commits any of several enumerated acts.⁴ Driving either a school bus or pupil activity bus without the appropriate class vehicle endorsement is a violation of CVC § 12517(a) or § 12517(b) (respectively), and grounds for license revocation under Pub. Util. Code § 5387(c)(1)(E).

Resolution TL-19099 provides the current procedural framework for permanent revocation of a charter-party carrier's operating authority pursuant to Pub. Util. Code § 5387 et seq.⁵

² Because SED dropped its claim that CVC § 12517(b) was violated before hearings, this Resolution does not address the question or merits of allegations related to CVC § 12517(b).

³ All references to rules are to the California Public Utilities Commission Rules of Practice and Procedure unless otherwise noted.

⁴ Pub.Util. Code § 5387(c)(1) provides that a charter-party carrier shall have its authority to operate as a charter-party carrier permanently revoked by the commission or be permanently barred from receiving a permit or certificate from the commission where it: . .

(E) Knowingly employs a bus driver who does not have ...the required certificate to drive a bus.

⁵ Pub. Util. Code § 5387.3 provides:

(a) A charter-party carrier described in subdivision (c) of Section 5387, that has received a notice of ...revocation of its permit to operate, may submit to the commission, within 15 days after the mailing of the notice, a written request for a hearing. The charter-party carrier shall furnish a copy of the request to the Department of the California Highway Patrol at the same time that it makes its request for a hearing.

(b) Upon receipt by the commission of the hearing request, the commission shall hold a hearing within a reasonable time, not to exceed 21 days, and may appoint a hearing officer to conduct the hearing. At the

REVOCAATION

By letter dated March 28, 2014, SED revoked Five Star's charter-party carrier permit. SED's letter stated that the revocation was based upon a report dated April 24, 2013, from the CHP's Boarder Division Motor Carrier Safety Unit. In addition to violations that are not the subject of this appeal, the CHP report found that Five Star "allowed, or permitted the operation of a bus by a driver who did not possess the required certificate" in violation of CVC § 12517(b). Specifically, the CHP found that on January 19, 2013 and January 26, of 2013, Five Star provided charter services to passengers going to Disneyland. These passengers were picked up from and dropped off at Point Loma High School in San Diego.⁶ On January 31, 2013, Five Star provided charter services to passengers going to the Museum of Tolerance. These passengers were picked up and dropped off at Lincoln Middle School in Oceanside, California.⁷ In both instances a School Pupil Activity Bus (SPAB) certified bus was used, driven by Ms. Arce-Soto. The CHP found that the transportation Five Star provided on January 19, 26, and 31, 2013, utilized a driver that was not certified to drive a SPAB.⁸

APPEAL

Five Star filed a timely appeal of SED's March 28, 2014 revocation letter and the Commission granted the request for an appeal hearing. On April 28, 2014, at the start of the scheduled one day hearing, SED informed the court that, rather than base the revocation on claims that Five Star improperly operated a SPAB in violation of CVC § 12517(b), the revocation was now based on claims that Five Star improperly operated a school bus in violation of CVC § 12517(a). SED acknowledged that Five Star had only been informed that the revocation was being based on a different code section the Saturday (two days) before the hearing.

hearing, the burden of proof is on the charter-party carrier to prove that it was not in violation of subdivision (c) of Section 5387.

(c) The revocation of the permit to operate may only be rescinded by the hearing officer if the charter-party carrier proves that it was not in violation of subdivision (c) of Section 5387, and that the basis of the revocation resulted from factual error.

⁶ SED Exh. 2 at 13.

⁷ SED Exh. 2 at 10.

⁸ CVC § 12517(a) provides that: "A person may not operate a school bus while transporting pupils unless that person has in his or her immediate possession a valid driver's license for the appropriate class of vehicle to be driven endorsed for school bus and passenger transportation." (Emphasis added.) The revocation of Five Star's charter party permit was originally made under Pub. Util. Code § 5387(c)(1)(E) on allegations that Five Star violated CVC § 12517(b).

To ensure due process and provide Five Star the opportunity to fully respond to SED's allegation, a second hearing day was scheduled to give Five Star the opportunity to present additional evidence and witnesses, and further cross-examine SED's witnesses. The parties agreed to have the second day of hearings on June 12, 2014. Five Star and SED appeared as parties on both hearing days.

The burden of proof in an Appeal from Revocation is on the charter-party carrier to prove that it was not in violation of subdivision (c) of Section 5387. (Pub. Util. Code § 5387.3(b).) The revocation of the permit to operate may only be rescinded if the charter-party carrier proves that it was not in violation of subdivision (c) of Section 5387 and that the basis of the revocation resulted from a factual error. (Pub. Util. Code § 5387.3(c).)

RESOLUTION OF THE APPEAL

Due Process

Five Star first objects to the revocation on due process grounds. Five Star argues that the fundamental requirement of due process, notice reasonably calculated under the circumstances to apprise interested parties of the pendency of the action and afford them an opportunity to present objections, was lacking in this proceeding. While Five Star is correct that the March 28, 2014, revocation letter failed to put it on notice that SED was pursuing a CVC § 12517(a) violation, Five Star fails to acknowledge that it was subsequently provided more than 40 days to respond to the new allegations.⁹ As this additional time provided Five Star ample opportunity to add or alter its presentation, we find no deprivation of due process occurred.

Violation of Pub. Util. Code § 5387(c)(1)(E)

Five Star next claims that a revocation under Section 5387(c)(1)(E) may only take place if it "knowingly" employed a bus driver without the required certificate to drive a bus and that it had no such knowledge. Five Star notes that when Arce-Soto began working for Five Star in 2008 she had a California commercial driver's license with a school bus certificate that expired on May 14, 2012. According to Five Star's general manager (Mr. Hernandez), in May 2012, when her certificate was set to expire, Arce-Soto presented Five Star with a new certificate that had school bus and SPAB

⁹ 40 days is twice the amount of time allowed by Pub. Util. Code § 5387(c)(1)(E) between the filing of the Notice of Appeal and the start of hearings.

endorsements,¹⁰ and Five Star only learned that this certificate was not valid after the trips at issue.¹¹

SED disputes Five Star's claim that it did not know Arce-Soto lacked the requisite endorsements. According to SED, the April 24, 2013 CHP inspection of Five Star revealed that Five Star was put on notice that Arce-Soto did not have the appropriate certificate to transport students to and from school activities prior to the January 2013 charters. Specifically, SED exhibits show that on July 17, 2010, December 10, 2010, November 19, 2011, and November 24, 2011, the California Department of Motor Vehicles sent Employer Pull-Notices to Five Star indicating that Ms. Arce-Soto's school bus endorsement and school bus certificate were about to or had expired.

While Five Star acknowledges receipt of the aforementioned Employer Pull-Notices, it argues that these documents contained conflicting and confusing information. Specifically, Five Star notes that the "MISC" box on the September 2010 Employer Pull-Notice report for Arce-Soto states "Passenger Transportation Endorsement ... School Bus Endorsement ... School Bus Cert Exp 05/14/12 ..." which SED's CHP witness testified means Arce-Soto's commercial, school bus certificate, and endorsement were valid until May 2012.¹² Five Star asserts that, in spite of the fact that "SCH/REV" began appearing on the Pull-Notice on December 27, 2010, in a box labeled "Department Action," its belief that Arce-Soto had the correct endorsements was justified by the on-going "Passenger Transportation Endorsement" notation in the MISC box.¹³

Though Five Star is correct that the post-December 2010 Employer Pull-Notices which state SCH/REV also state that Arce-Soto has a "Passenger Transportation Endorsement," Five Star fails to acknowledge that in contrast to prior notices the post December 2010 Employer Pull-Notices do not state that Arce-Soto has a school bus endorsement and/or school bus certificate. Thus, rather than the internal inconsistency alleged by Five Star, the post-December 2010 Employer Pull-Notices make clear that while Arce-Soto held the passenger transportation endorsement required to drive

¹⁰ Tr. at 129:16-28, 130:1-28, 131:1-19.

¹¹ Tr. 94:1-9, 97:20-23, 138:13-16 and MUH Exh. 1 at 3 and 6.

¹² Five Star Opening Brief at 4-5, citing SED Exh. 2 at 23, Tr. at 14:25-28, and 15:1-27.

¹³ This notation appears to indicate that Arce-Soto's school bus certification was revoked. If Five Star was unclear on the meaning of the notation it was obliged to seek clarification through the DMV Pull-Notice program.

general charter buses, she no longer held the endorsements and certification required to drive a school bus (or SPAB).¹⁴

CVC § 12517(a)

Five Star next claims that it did not violate Pub. Util. Code § 5387(c)(1)(E) because the charters giving rise to the revocation did not involve a school bus as required by CVC § 12517(a). Specifically, Five Star notes that while driving a school bus without the appropriate class of vehicle endorsement is a violation of CVC § 12517(a), SPABs are specifically exempted from the definition of a school bus provided by CVC § 545.

SED attempts to counter this argument on claims that CVC § 545 broadly provides that a school bus is motor vehicle ... used ... for the transportation of any school pupil at or below the 12th grade level to or from a public or private school or to or from public or private school activities. While Five Star submitted documents and provided testimony suggesting that the charter did not relate to public or private school activities, serious questions have been raised about the validity of these documents and statements.¹⁵ In light of the questionable evidence proffered by Five Star, we instead look to the plain language of CVC § 545(d) to resolve this issue.

CVC § 545(d) unequivocally exempts SPABs from CVC § 545's definition of a school bus. Specifically, while CVC § 545 defines a "school bus" as "a motor vehicle ... used ... for the transportation of any school pupil at or below the 12th grade level to or from a public or private school, or to or from public or private school activities," CVC § 545(d) specifically provides that an SPAB is not a school bus.¹⁶ SED's CHP witness agrees with the conclusion that a SPAB is never a school bus and a school bus is never a SPAB¹⁷ and the parties have stipulated that the buses used on the trips in question were SPAB-certified by the CHP and had valid SPAB certificates.

¹⁴ Nor are we persuaded by Five Star's claim that the fact that it wasn't previously cited by the CHP for these violations is evidence that the Employer Pull-Notice form is so confusing that not even the CHP understands it.

¹⁵ These questions are fully set forth and addressed in the Administrative Law Judge's Ruling on Motion for Sanctions for Violation of Rule 1.1 which we now affirm.

¹⁶ In addition, CVC § 546 provides that, "[a] 'school pupil activity bus' is any motor vehicle, other than a school bus, operated by a common carrier"

¹⁷ SED witness Weaver at Tr. 61:18-23 and 75:28, and see Resolution ALJ-288, 2013 Cal. PUC Lexis 214, 11-12 (April 18, 2013).

Therefore, as a matter of law, the vehicles are not and were not school buses. Since CVC § 12517(a), under which this revocation was brought, only applies to school buses, we must conclude that the revocation was the result of factual error.

SAFETY

The Commission has broad authority to regulate charter-party carriers, particularly with regard to safety concerns. (*See*, for example, Pub. Util. Code §§ 451, 5382, and 5387.) We are mindful that the statutory scheme under which the revocation in this case arises is intended to secure the safety of charter-party carrier passengers.

CONCLUSION

Based on the evidence presented at the appeal hearing we conclude that MUH did not knowingly permit or authorize the driving of a motor vehicle by a driver who did not possess the appropriate class driver's license while operating a school bus as alleged because the charters at issue did not utilize a school bus within the meaning of CVC § 545. Consequently, we find no violation of Pub. Util. Code § 5387(c)(1)(E) occurred and the revocation was erroneous. Therefore the revocation is rescinded.

COMMENTS

Pub. Util. Code § 311(g)(1) requires that a draft resolution be served on all parties, and be subject to a public review and comment period of 30 days or more, prior to a vote of the Commission on the resolution. Appellant's comments were received and considered on January 26, 2015.

FINDINGS

1. The April 24, 2013 CHP report claimed a driver was used on a school activity trip who did not possess a driver's license with the required certificate.
2. SED originally revoked Appellant's charter-party carrier permit based on claims that MUH improperly used a driver on a school activity trip who did not possess a driver's license with the required certificate in violation of CVC § 12517(b).
3. MUH filed a timely appeal of SED's April 24, 2014 revocation letter.
4. SED subsequently withdrew its original charge and revoked MUH's charter-party carrier permit based on claims that MUH improperly operated a school bus in violation of CVC § 12517(a).
5. MUH was given more than 40 additional days to respond to SED's decision to proceed with revocation under CVC § 12517(a).

6. The buses used on the charters at issue were SPAB certified by the CHP and had valid SPAB certificates.

CONCLUSIONS OF LAW

1. Pub. Util. Code § 5387(c)(1)(E) requires permanent revocation of a charter-party carrier's operating authority if the carrier knowingly employs a bus driver who does not have the required certificate to drive a bus.

2. Pub. Util. Code § 5387(c)(1)(E) requires permanent revocation of a charter-party carrier's operating authority if the carrier knowingly employs a bus driver who does not have the required certificate to drive a school bus.

3. The Administrative Law Judge's Ruling on Motion for Sanctions for Violation of Rule 1 is just and appropriate.

4. Pursuant to CVC § 545 a SPAB is not a school bus and a school bus is not a SPAB.

5. SED erred in revoking MUH's operating authority for operating a school bus without the requisite license because the transport at issue did not involve a school bus within the meaning of CVC § 545.

6. MUH met its burden of proof and showed that the revocation of its authority was based on factual error.

7. This Resolution is consistent with the Commission's continuing safety oversight and enforcement in regulation of this charter-party carrier.

8. This resolution does not address the merits of any claims related to CVC § 12517(b).

THEREFORE, IT IS ORDERED that:

1. The revocation of MUH, Inc. (dba Five Star Tours) charter-party carrier permit (PSG-9783, Case No. PSG 3746) is rescinded. It is hereby reinstated.

2. The Administrative Law Judge's Ruling on Motion for Sanctions for Violation of Rule 1 is affirmed.

3. Consistent with the Administrative Law Judge's Ruling on Motion for Sanctions for Violation of Rule 1, MUH, Inc. (dba Five Star Tours) must pay a fine of \$8,952 by check or money order payable to the California Public Utilities Commission and mailed or delivered to the Commission's Fiscal Office at 505 Van Ness Avenue, Room 3000, San Francisco, CA 94102, within 30 days of the effective date of the Resolution issued in this proceeding.

4. Consistent with the Administrative Law Judge's Ruling on Motion for Sanctions for Violation of Rule 1, Chauvel & Glatt, LLP (Counsel for Five Star Tours) must pay a fine of \$4,476 by check or money order payable to the California Public Utilities Commission and mailed or delivered to the Commission's Fiscal Office at 505 Van Ness Avenue, Room 3000, San Francisco, CA 94102, within 30 days of the effective date of the Resolution issued in this proceeding.

This resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on _____, the following Commissioners voting favorably thereon:

TIMOTHY J. SULLIVAN
Executive Director