

Decision 01-07-013 July 12, 2001

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations and practices of Frank M. Quenga, an individual doing business as Hafa Adai (PSG 8894-B), to determine whether he has violated the laws, rules and regulations governing the manner in which charter-party carriers conduct operations and whether Frank M. Quenga is no longer fit to continue to conduct passenger transportation service.

Investigation 00-11-054
(Filed November 21, 2000)

OPINION REVOKING AUTHORITY

Eldon M. Johnson, Attorney at Law, for Respondent.
Cleveland Lee, Attorney at Law, for Consumer Services
Division of the Commission Staff.

Summary

The charter-party carrier of passengers authority of Frank M. Quenga, dba Hafa Adai (PSG 8894-B), is revoked.

Background

The California Public Utilities Commission (Commission) instituted this investigation on November 21, 2000 to determine if respondent Frank M. Quenga (Quenga) had violated provisions of the California Public Utilities Code and the Commission's General Order 157-C in any of the following manners:

- "a. Respondent violated Pub. Util. Code § 5379 by operating after the revocation of his Commission authority;
[18 counts, Enedina K. Lopez Investigative Report dated

March 31, 2000, pp. 5-7, Attachments 5-6; August 3, 1999 – October 28, 1999.]

- "b. Respondent violated Commission General Order 157-C, Part 5.01 by engaging a driver to drive a bus with a non-valid commercial driver's license;
[4 counts, Enedina K. Lopez Investigative Report dated March 31, 2000, pp. 9-12, Attachments 5, 6, and 9; July 14, 1999 – October 27, 1999.]
- "c. Respondent violated Commission General Order 157-C, Part 5.02 and California Vehicle Code § 1808.1 by failing to enroll all drivers in the Department of Motor Vehicles Pull Notice Program;
[Enedina K. Lopez Investigative Report dated March 31, 2000, pp. 9-15, Attachments 5, 6, 8, 9, 12, 13; June – October 1999.]
- "d. Respondent violated Pub. Util. Code § 5374(a)(2) and Commission General Order 157-C, Part 10 by failing to enroll all drivers in a drug testing certification program and by failing to comply with alcohol and controlled substance testing certification program requirements;
[Enedina K. Lopez Investigative Report dated June 28, 2000, p. 4, Attachment 1 and p. 5, Attachment 2; April 21, 1998 – June 20, 2000.]
- "e. Respondent violated Pub. Util. Code § 5378.1 by engaging drivers without maintaining evidence of workers' compensation insurance on file with the Commission;
[Enedina K. Lopez Investigative Report dated March 31, 2000, pp. 9-16, Attachments 5, 6, 12, 13; June – December 1999.]
- "f. Respondent violated Commission General Order 157-C, Part 4.01 by failing to report all equipment to the Commission;
[Enedina K. Lopez Investigative Report dated March 31, 2000, pp. 16-19, Attachments 14-18; June – October 1999.]
- "g. Respondent violated Pub. Util. Code § 423 by failing to report all gross operating revenue and failing to pay all fees to the Commission as required;
[1 count, Enedina K. Lopez Investigative Report dated

March 31, 2000, p. 20, Attachments 7, 19; January 1, 1999 – December 31, 1999.]

- "h. Respondent violated Commission General Order 157-C, Part 3.04 by using the services of a sub-carrier that did not hold active authority from the Commission; [5 counts, Enedina K. Lopez Investigative Report dated June 28, 2000, pp. 8-10, Attachments 9-11; September 21, 1999 – October 22, 1999.]
- "i. Respondent violated Commission General Order 157-C, Part 3.04 by failing to document sub-carrier agreements as required; [4 counts, Enedina K. Lopez Investigative Report dated March 31, 2000, p. 21, Attachment 20; August – October 1999.]
- "j. Respondent violated Pub. Util. Code § 3902 by failing to register with the Commission his interstate authority as required; [1 count, Enedina K. Lopez Investigative Report dated March 31, 2000, pp. 21-22, Attachments 2, 5; August – October 1999.]
- "k. Respondent violated Pub. Util. Code § 5389 by failing to produce records requested by a Commission employee; [Enedina K. Lopez Investigative Report dated June 28, 2000, pp. 6-7, Attachments 5-8; October 26, 1999 to November 18, 1999 and March 31, 2000 to June 6, 2000.]
- "l. Respondent should be fined up to \$5,000 per violation of the Pub. Util. Code under Pub. Util. Code §§ 5378(b) and 5415.
- "m. Respondent is unfit to conduct charter-party passenger transportation service and whether his charter-party carrier certificate should be suspended or revoked pursuant to Pub. Util. Code § 5378(a)."

On January 2, 2001, Quenga filed an initial response to the Order Instituting Investigation (OII) showing that Quenga has satisfactorily passed annual safety inspections of the California Highway Patrol (CHP), that Quenga has hired a private company to review his operations, and that he is currently in

compliance with the law relating to drivers' records and testing for controlled substances and enrollment of his drivers in the Pull-Notice Program of the California Department of Motor Vehicles (DMV). Accompanying this filing were many records from the DMV and CHP supporting his claim of compliance. On January 11, 2001, Quenga filed additional documents indicating his workers' compensation insurance was now current and that an outstanding traffic citation was now cleared by payment. On January 26, 2001, Quenga filed proposed testimony in which he admitted the allegations in the OII, as duplicated in the first paragraph of this order. This proposed testimony became Exhibit (Exh.) 1 in the proceeding.

The Commission has categorized this enforcement proceeding as adjudicatory; ALJ Sheldon Rosenthal is the presiding officer.

Hearing

A hearing was held in San Francisco on February 6, 2001, at which time the Consumer Services Division (CSD) put on testimony and exhibits relating to the admitted violations and additional violations of the same type since issuance of the OII. Quenga's operating authority is currently under suspension. (Tr. 44)

As an affirmative defense, Quenga called witness Zincke, a representative of the consulting firm hired to assist Quenga in getting into compliance with the laws and requirements of the various agencies of the State. This witness testified to the work he had done with Quenga and stressed Quenga's need for continued guidance in meeting these requirements. (Exh. 1) Zincke characterized Quenga's compliance problems as "minor infractions." (Exh. 1) On questioning by the ALJ, Zincke agreed that driving without a valid driver's license and driving while under suspension by this Commission were not "minor infractions." (Tr. 120-121) Zincke testified that Quenga is now in compliance

with the various regulations regarding safety and that Quenga agreed to retain a consultant to ensure that he does not regress. (Exh. 1)

Quenga also assumed the witness stand and admitted that he had not followed the rules and regulations of the Commission, the CHP, and the DMV. (Tr. 142) He stated that he was confused by the amount of the paperwork and did not understand all that was required of him. (Exh. 1) He stressed that he had passed all of the vehicle inspections of the CHP. He also said that he needs his charter-party license, since in-state work accounts for approximately 40% of his business. (Tr. 128) In response to a prepared question he stated: "As the owner of this company, I promise to follow to the absolute best of my ability, all Laws, Rules, Regulations and Orders of the Commission and the CHP, if Charter Authority is restored to HAFA ADAI." (Exh. 1, p. 5)

Since the allegations of the OII were admitted there is no question that the violations as alleged were committed. A CSD witness testified that this included 18 instances where Quenga operated after revocation of his authority (Tr. 94); four instances of using drivers who did not have valid commercial licenses (Tr. 94); and continuing violations of many of the other allegations. (Tr. 94-97) Likewise, there is no question that these violations provide grounds to revoke the operating authority granted by this Commission. The only question is whether there is sufficient mitigation to warrant a lesser penalty. Quenga gave every appearance of taking to heart the seriousness of the offenses that he had committed. His assurance that he would continue to hire a consultant to help him live up to his new commitment offers some comfort in this regard.

Detracting from this comfort is Quenga's admission that to the date of the hearing he had not taken a drug test for which he had previously failed to appear. (Tr. 137)

Post-Hearing Filings

In response to a *subpoena duces tecum* from CSD, Quenga arrived at the hearing with several boxes of records. These were unsorted and unlabeled. It was impossible for CSD to evaluate these records at the hearing. CSD was permitted to file a declaration no later than February 20, 2001, disclosing violations of the type listed in the OII that might have occurred since issuance of the OII. Quenga was given until March 2, 2001 to comment on CSD's filing. The parties waived briefs (TR. 161). The matter was submitted on the date of Quenga's Comments.

CSD's filing of February 20, 2001 includes trip tickets of Hafa Adai containing four instances where Quenga is shown as driver of a bus subsequent to the issuance of the OII in this case. During this period his commercial driver's license was in suspension. This is allegation Item 1.b) of the OII.

The declaration and supporting documents show that Quenga used the services of a sub-carrier who did not have authority from this Commission after having been served with the OII. This is allegation Item 1.h) of the OII.

The declaration and supporting documents show that Quenga operated while his charter-party authority was in suspension. While this is not directly in line with Item 1.a) of the OII (operating while his authority was revoked), it is sufficiently analogous to merit our attention.

The March 1, 2001 Response of Quenga does not refute these allegations. It does not assert correction of any of the continuing violations contained in the OII. It correctly states that the matters in CSD's filing occurred prior to the evidentiary hearing of February 6, 2001. Thus these matters cannot impeach Quenga's contrition expressed at the hearing.

The continuing violations of the laws of the state and the regulations of this Commission after receipt of the OII but before the hearing speak louder than the pious claims of remorse made by Quenga on the witness stand. The instances cited by CSD in the February 20, 2001 declaration occurred after formal notice through the OII that such activities were not permitted. They occurred during and after the time that the consultant hired by Quenga had given him advice. Quenga is either unwilling or unable to take advice or follow rules. Such a carrier cannot be permitted to retain authority from this Commission.

Appeal of Presiding Officer's Decision

A Presiding Officer's Decision was mailed on May 21, 2001. Quenga filed timely Appeal to the Presiding Officer's Decision. The sole purpose is to request that the two-year period during which Quenga cannot seek new authority from this Commission commence on January 4, 2001, the date Quenga alleges his suspension started, rather than the effective date of this decision. This relief is sought on the basis of Quenga's 20 years of service in the United States Marine Corp. and the fact that he is no longer a young man. In his Appeal, Quenga does not dispute any of the violations noted in the Presiding Officer's Decision. Given the many serious violations admitted by Quenga, we are not moved by this request for consideration. We also note that Quenga's misconduct continued well past the issuance of OII, and that Quenga's long military service does not establish his current fitness. Protection of the public is our primary concern. If Quenga is to reapply for authority, he must be convinced that we will not tolerate the type of activity in which he engaged prior to this order. Under these circumstances, we affirm that Quenga should be barred for a full two years from the effective date of today's decision from seeking new authority.

Findings of Fact

1. Quenga holds authority as a charter-party carrier of passengers (PSG 8894-B).
2. Quenga's authority is currently under suspension.
3. Quenga has admitted all of the allegations in this OII.
4. Since issuance of the OII (November 21, 2000), Quenga has operated without a valid commercial driver's license.
5. Since the issuance of this OII, Quenga has employed a sub-carrier not licensed by this Commission.
6. Since the issuance of this OII, Quenga has operated under a suspended charter-party authority.
7. At the time of the hearing (February 6, 2001), Quenga had still not reported for a drug test.
8. Quenga's appeal of the Presiding Officer's Decision provides no sound basis for softening the sanctions imposed in today's decision.

Conclusions of Law

1. Violations of Pub. Util. Code §§ 5379, 5374(a)(2), 5378.1, 423, 3902, and 5389; California Vehicle Code § 1808.1; and the Commission's General Order 157-C, Parts 3.04, 4.01, 5.01, 5.02, and 10, as admitted by Quenga, are sufficient to revoke his charter-party authority under Pub. Util. Code § 5378(a).
2. The additional violations of some of these same provisions after notification in the OII that this conduct was wrong is convincing evidence that Quenga has not reformed.
3. Quenga's operating authority from this Commission should be revoked.
4. Since that authority is currently under suspension, immediate revocation will not harm Quenga.

5. Because of the gross nature of these violations and Quenga's apparent unwillingness to change his ways, Quenga should not be permitted to reapply for any authority from this Commission for a period of two years after the date of this decision.

6. If Quenga should apply for authority after two years he must first demonstrate that he has paid any fees still outstanding from the admitted violations of Item 1.g) of this OII, and any other activities for which fees are owing but not paid.

O R D E R

IT IS ORDERED that:

1. The operating authority of Frank M. Quenga (Quenga), dba Hafa Adai, (PSG 8894-B) is revoked.

2. Quenga may not apply for new authority for two years after the date of this decision.

3. In any application for authority from this Commission, Quenga must demonstrate that all outstanding fees owed to the Commission have been satisfied.

4. Quenga's appeal of the Presiding Officer's Decision is denied.

5. This proceeding is closed.

This order is effective today.

Dated July 12, 2001, at San Francisco, California.

LORETTA M. LYNCH
President
HENRY M. DUQUE
RICHARD A. BILAS
CARL W. WOOD

GEOFFREY F. BROWN
Commissioners