

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the Order Instituting Investigation into the operations and practices of Bill Dennis and Gloria Dennis a Partnership doing business as Tour Designs,
Respondents.

FILED
PUBLIC UTILITIES COMMISSION
MAY 8, 2003
SAN FRANCISCO OFFICE
L03-05-011

ORDER INSTITUTING INVESTIGATION WHETHER TOUR DESIGNS
RENEWAL APPLICATION FOR OPERATING AUTHORITY
SHOULD NOT BE DENIED

The California Public Utilities Commission [Commission or CPUC] regulates intrastate passenger carrier transportation operations on the public highways pursuant to the California Constitution, (Article XII), by Public Utilities (PU) Code Sections 1031 et seq., the Passenger Charter-Party Carriers' Act (Public Utilities Code Sections 5351, et seq.), and Commission General Orders [G.O.'s] 101-E, 115-F, 157-C, 158-A, and others. These statutes and regulations require passenger carriers, among other things, to maintain proof of adequate public liability and property damage (PL & PD) insurance, and workers' compensation insurance; to maintain accurate records, to timely respond to consumer complaints and to operate and maintain their passenger vehicles, buses in a safe operating condition. These regulations further require that charter-party carriers obey the provisions of the California Vehicle Code (CVC), participate in the Department of Motor Vehicles (DMV) "Pull Notice Program", ensure that only properly qualified, licensed, and rested drivers are authorized to operate its buses, and comply fully with safety regulations contained in Title 13 of the California Code of Regulations (13 CCR). Further, these regulations require charter passenger carriers to establish reasonable fitness and financial responsibility to conduct their passenger transportation services.

The Consumer Protection and Safety Division (CPSD or Staff) advises us it initiated an investigation into the business and operational practices of Bill Dennis and Gloria Dennis, a partnership doing business as (dba) Tour Designs (TCP 12910-B). Tour Designs currently operates as a Class B charter-party carrier. The Class B charter-party carrier certificate formerly held by Tour Designs expired effective November 19, 2002. A renewal application was filed on November 12, 2002, and was denied by the Commission on January 7, 2003.

Staff alleges Respondent Tour Designs continued to conduct unlawful operations after expiration and denial of its certificate, failed to ensure accuracy of its drivers' log entries, failed to comply with the DMV Pull Notice Program, advertised passenger charter service without authority, and failed to comply with safety regulations. Staff further alleges Tour Designs falsified information on a CHP inspection report and failed to remove its TCP number from all buses upon termination of its certificate. Staff's investigation of these and other serious violations will be documented in its declaration(s) which will be served on the respondents, the assigned Administrative Law Judge, the California Highway Patrol (CHP), and any other interested parties or governmental entities.

I. LICENSE HISTORY

On November 19, 1999, Bill M. Dennis and Gloria Dennis, a Partnership doing business as (dba) Tour Designs, was issued a Class B Charter-Party Certificate. Passenger charter-party authority may be renewed on a triennial basis upon submission and approval of a renewal application. The carrier filed a renewal application upon expiration of its operating authority. The Class B Charter party Certificate expired November 19, 2002. On January 7, 2003, the Renewal Application was denied by the License Section based upon a recommendation from the California Highway Patrol. Public Utilities Code Section 5378.6 requires that the Commission deny an application for renewal of a permit upon receipt of a written recommendation from the CHP that the

renewal application be denied. A denial letter from the License Section dated January 7, 2003 so advised the carrier. Commission License Section records show the operating authority of Tour Designs was suspended twice for failure to maintain evidence of workers' compensation insurance on file with the Commission (June 14, 2000 to July 3, 2000 and October 1-2, 2001). Tour Designs was also briefly suspended, October 25-29, 2001, for failure to maintain evidence of public liability and property damage (PL & PD) insurance coverage on file with the Commission. On December 5, 2002 the current PL & PD certificate of insurance was filed and recorded by the Commission.

II. THE INVESTIGATION

The following summarizes Tour Designs alleged violations:

A. Operations After Expiration of Certificate

PU Code Section 5379 provides that "no passenger charter-party carrier shall operate over any public highway in this State without a valid certificate or permit in force from the Commission authorizing such operations." The staff's investigation disclosed the Class B Charter Party Certificate of Tour Designs expired November 19, 2002. Tour Designs' records, California Highway Patrol (CHP) records, and other records indicate Tour Designs continues to operate after its operating certificate expired in violation of PU Code 5379. For example, on April 3 and 4, 2003 the California Highway Patrol observed Tour Designs conducting passenger operations and prepared observation reports. Misdemeanor complaints alleging unlawful charter operations by Tour Designs have been filed with the courts in Fresno and Tulare Counties.

B. Falsification of Driver Records

Rule 5.01 of General Order (GO) 157-C provides: "Every driver of a charter party vehicle shall be licensed as required under the California Vehicle Code and shall comply with the driver provisions of the Motor Carrier Safety Section of Title 13 of the California Code of Regulations" (13 CCR). State and federal regulations limit the number of hours a driver may drive and be on duty before a rest period is required. The

State Regulations are found in 13 CCR, Chapter 2, and the Federal Regulations are found in Part 395, Title 49, Code of Federal Regulations (49 CFR). A driver's log must be used to record all of the driver's hours. Section 34500.1 of the California Vehicle Code (CVC) provides that the CHP shall regulate the safe operation of tour buses.

On November 7, 2002, the CHP conducted a terminal inspection of Tour Designs' Tulare Terminal. The CHP's terminal inspection program is designed to determine a motor carrier's overall compliance with State laws and regulations. Among other violations, the CHP Safety Compliance Report noted Tour Designs allowed or required a driver to drive after being on duty for 15 hours, in violation of 13 CCR Section 1212.5(1)(b). In addition, Tour Designs allowed or required its drivers to submit falsified driver logs, a violation of 13 CCR Section 1234(a).

C. Failure To Enroll Drivers in DMV Pull Notice Program

Pursuant to General Order 157-C, Part 5.02, every passenger charter-party carrier must enroll its drivers into the California Department of Motor Vehicles' (DMV) Pull Notice Program, pursuant to CVC Section 1808.1. This program tracks and monitors the driver license status of an employee/driver and reports to the employer if the driver's driving privilege has been suspended or revoked. The investigation, and CHP terminal inspection, revealed Tour Designs apparently failed to enroll seven (7) of its drivers in the DMV Pull Notice Program.

D. Falsification of CHP Inspection Report

The investigation revealed Tour Designs altered the date on a CHP inspection report dated November 26, 2001, indicating its terminal was rated as "Satisfactory". The report was altered to show a more current date of November 8, 2002 and was submitted to the carrier's insurance company in an attempt to mislead the insurance company that Tour Designs' current terminal rating from CHP was "satisfactory". To the contrary, at that time, the CHP Carrier Inspection Report, dated November 7, 2002, showed an "Unsatisfactory" rating.

E. Illegal Display of P.U.C. Identification

Pursuant to Public Utilities Code Section 5385, and Part 4.08 of General Order 157-C, immediately upon revocation or termination of any permit or certificate, the TCP number for the permit or certificate shall be removed from all vehicles. Staff's investigation disclosed Tour Designs failed to remove TCP numbers displayed on all its buses after expiration of its passenger operating authority.

F. Temporary Restraining Order, Injunction, Case 03-204714 Tulare County

Pursuant to Public Utilities Code Section 5414.5, "when the executive director of the commission determines that any charter-party carrier of passengers, or any officer, director, or agent of any charter-party carrier of passengers, has engaged in, is engaged in, or is about to engage in, any acts or practices of this chapter, or any order, decision, rule, regulation, direction, demand, or requirement issued under this chapter, the executive director may make application to the superior court for an order enjoining those acts or practices or for an order directing compliance."

On April 9, 2003, Plaintiff State of California (Public Utilities Commission) filed a Complaint For Temporary Restraining Order, Preliminary Injunction, and Actions For Recovery of Civil Penalties (Pursuant to Public Utilities Code Sections 5371, 5413, 5414, 5416, 5415.5, 5417, 5415, 5418), against Defendants Bill Mitchell Dennis, Gloria Maria Dennis, dba Tour Designs, a Partnership. On April 9, 2003 the Superior Court, County of Tulare, granted an order to show cause for a preliminary injunction and granted a Temporary Restraining Order. The Court scheduled a further hearing for April 29, 2003. The Order of the Court restrained and enjoined the Defendants from any and all of the following acts:

1. Operating directly or indirectly as a charter-party carrier within the State of California until such time they have been granted a permit duly issued by the California Public Utilities Commission;

2. Soliciting, advertising, or otherwise holding themselves out as a licensed charter-party carrier, authorized to conduct or carry out such business activities anywhere within the State of California;
3. Entering into contracts with any persons or entities to transport passengers for hire to and from points within the State of California;
4. Misrepresenting their status as a licensed charter-party carrier to existing and/or prospective customers;
5. Stating, implying, directly or indirectly, that they have or are about to be issued a charter-party carrier permit from the California Public Utilities Commission;
6. Operating any buses, vehicles, or equipment designed to carry passengers for hire to and from points within the State of California;
7. Directly or indirectly accepting payments, soliciting payments, accepting credit cards, billing for account receivables, and/or selling tickets for the purposes of carrying passengers for hire to and from points within the State of California;
8. Displaying on any vehicles, buses, or equipment, designed to carry passengers for hire their permit, permit number, or any indicia of licensed status during periods when defendants charter-party carrier permit is expired, revoked, or suspended;
9. Directly or indirectly engaging in any act(s), business, or activities that violate any provision of the Public Utilities Code and/or the "Passenger Charter-party Carriers Act";
10. Engaging in any act(s), business, or activities that violate any rules, orders, regulations, or decisions of the California Public Utilities Commission

In its regulatory and enforcement capacity, the Commission has authority to commence civil actions in the courts of competent jurisdiction to enjoin violations of the laws of the State of California within its jurisdiction.

CPSD's investigation specifically allege over 96 violations of the Public Utilities Code, the California Vehicle Code, Title 13 of the California Code of Regulations, General Order 157-C, and other Commission rules and regulations. The nature of these offenses, their counts, and the resulting potential fines include the following:

1. Conducting operations as a charter-party carrier of passengers after expiration of its certificate. CPSD alleges 83 violations of Public Utilities Code Section 5379, each offense involving a \$1,000 fine, which would result in a total potential penalty of \$83,000;
2. Failing to ensure accuracy of entries in its drivers' logbooks and permitting falsification of driver records. CPSD alleges 1 violation of Public Utilities Code Section 5381, 13 CCR Section 1234(a) and General Order 157-C, Part 5.01, subject to a \$1,000 fine;
3. Allowing or requiring a driver to drive after being on duty for 15 hours. CPSD alleges one (1) violation of Public Utilities Code Section 5381, 13 CCR Section 1212.5(1)(b), CVC Section 1808.1, and General Order 157-C, Part 5.01, subject to a \$1,000 fine;
4. Failing to enroll all drivers in the DMV Pull Notice Program. CPSD alleges 7 violations of Public Utilities Code Section 5381, CVC Section 1808.1, and General Order 157-C, Part 5.02, each offense subject to a \$1,000 fine;
5. Falsifying information, by altering the date on a prior year CHP terminal inspection report and submitting to an insurance company in an attempt to mislead the insurance company as to Tour Designs' current CHP terminal rating. The CHP Carrier Inspection Report dated November 7, 2002, indicated an "Unsatisfactory" Rating. The CHP may recommend denial of a passenger charter-party carrier application for operating authority from the

Commission pursuant to Public Utilities Code Section 5378.6. CPSD alleges a violation of Public Utilities Code Section 5381, General Order 157-C, Parts 4.02, 5.02 and 6.01, each offense is subject to a \$1,000 fine, resulting in a total potential penalty of \$3,000. These violations raise fitness issues as described in Public Utilities Code Sections 5374 and 5375;

6. Failing to remove its TCP number from all vehicles upon termination of its certificate. CPSD alleges a violation of Public Utilities Code Section 5385, and General Order 157-C, Part 4.08, resulting in a potential fine of \$1,000.

If the record of evidence produced at an administrative hearing proves these or any other allegations, the Respondents would be subject to fines, restitution of investigative costs, revocation, and/or denial with prejudice of their application for a charter-party carrier certificate.

III. FITNESS, SECTIONS 5374, 5375 PUC

A. Discussion

After approving carrier's operating authority, the Commission exercises continuing oversight of the carrier's fitness. Public Utilities Code Section 5378 authorizes the Commission to "cancel", "suspend", or "revoke" a certificate or permit for failure of the carrier to comply with any of the provisions of the "Passenger Charter-Party Carriers' Act" or with any order, rule, or regulation of the Commission, failure of a carrier to perform reasonable service, including repeated violations of the Vehicle Code or of regulations contained in Title 13 of the California Code of Regulations relative to motor carrier safety. Section 5381 gives the Commission power to establish rules for the performance of any service of the character furnished or supplied by passenger charter party carriers. Paragraph (a), Section 5374 of the Public Utilities Code (PUC) provides: "Before a permit is issued or renewed, the Commission shall require the applicant to

establish reasonable fitness and financial responsibility to initiate and conduct or continue to conduct the proposed or existing transportation services.” Similarly, PUC Section 5375 further provides, in part:

“The Commission may, with or without a hearing, issue or refuse to issue a permit or certificate.” “If the Commission finds that public convenience and necessity require the proposed transportation service and that the applicant possess satisfactory fitness and financial responsibility to initiate and conduct the proposed transportation services, and will faithfully comply with rules and regulations adopted by the Commission, it shall issue the permit or certificate to conduct the requested operations, or may issue it for the partial exercise of the privilege sought, and may attach to the permit or certificate such terms and conditions as, in its judgment, are required in the public interest; . .”.

This Commission’s mission in regulating passenger charter-party carriers is to ensure that transportation services provided to the public are conducted in a safe and dependable manner. To ensure that only safe and qualified drivers provide passenger service to our citizens, it is vital that all charter-party carriers fully comply with the DMV’s Pull Notice Program and safety regulations contained in Title 13 CCR. These regulations require that carriers monitor the performance of their drivers. In addition, carriers are required to ensure driver logs prepared by their drivers are accurate and in compliance with applicable safety regulations. Safety regulations in 13 CCR require drivers to accurately record in their logbook all their duty and off duty status times. Falsification of such logs and requiring drivers to drive in excess of maximum duty hours without adequate rest are serious safety violations. Along with impairment from drugs or alcohol, driver fatigue is a significant additional contributing factor to highway accidents.

Very serious allegations have been made by staff against this passenger charter-party carrier. There appears sufficient cause to find that Tour Designs has failed to comply with applicable safety regulations and has continued to conduct operations after expiration of its operating authority. These allegations, if found to be true, indicate

Tour Designs lacks the fitness and trustworthiness that we expect from a charter certificate holder providing passenger service. 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, competency, or adaptability to the appropriate technical and vocational 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, and the burden rests with the applicant to demonstrate that he is reasonably fit to be entrusted with a renewal of Commission authority.”

In the past, we have directed staff to inform us of any unsafe carrier operations so that we may take immediate action(s) necessary to protect public safety. We have previously revoked the permits or certificates of passenger carriers for repeated violations of the Vehicle Code and Title 13 of the California Code of Regulations. We took such action in Decision 93-09-004 [50CPUC2d 613,625.], when we revoked American Transportation Enterprises’ certificate of public convenience and necessity for repeated violations of the safety provisions of the Vehicle Code. Similarly, in Decision 94-11-021 [57CPUC2d 289, 299.], we found Respondent, Royya’s Transportation, Inc., demonstrated a disregard of safety rules and ordered its certificate revoked. The apparent decision of this operator to continue passenger operations for an extended period after termination of its authority, along with significant safety violations, lead us to conclude that this carrier represents a possible threat to public safety.

Accordingly, today’s order will direct staff to deny Tour Designs administrative request for renewal of respondents’ operating authority. Under these circumstances, renewal can only be granted upon the order of the Commission after considering a petition from the respondents as well as the results of the staff’s investigation and recommendation(s). Likewise, we will require the respondents to file,

under penalty of perjury, evidence that all of their drivers are enrolled in the DMV Pull Notice Program. These are prudent measures for us to order in view of the compliance problems and serious nature of the alleged violations.

IT IS ORDERED that:

1. An investigation on the Commission's own motion is instituted into the operations and practices of the respondents, Bill Dennis and Gloria Dennis, a partnership doing business as Tour Designs.

2. If the Respondents request it within 30 days after receiving this order, a public evidentiary hearing on this matter shall be held before an assigned Administrative Law Judge (ALJ) at a time and date as scheduled at the prehearing conference. At the evidentiary hearing, the respondents will have an opportunity to present evidence and may contest the staff's allegations that Tour Designs has:

- a) Violated Public Utilities Code (PUC) section 5379 by conducting passenger charter party operations after termination of its Class B Charter Party Certificate (TCP 12910-B);
- b) Violated PUC section 5381, 13 CCR section 1234(a), and General Order 157-C, Part 5.01, by permitting falsification of driver records;
- c) Violated PUC section 5381, 13 CCR section 1212.5(1)(b), and General Order 157-C, Part 5.01, by allowing or requiring a driver to drive after being on duty for 15 hours;
- d) Violated PUC section 5381, CVC section 1808.1, and General Order 157-C, Part 5.02, by failing to enroll all drivers in the DMV Pull Notice Program;
- e) Violated PUC sections 5374, 5375, 5378.1, 5381, and General Order 157-C, Parts 4.02, Safety Requirements Before Operation, 5.02, Driver Record, 6.01, Charter Party Records, by falsifying or altering information contained in its CHP Terminal Inspection Report;
- f) Violated PUC section 5385, and General Order 157-C, Part 4.08, by failing to immediately remove its TCP number from all vehicles upon termination of its Certificate.

3. The Respondents are placed on notice of, but not limited to, the following:

- They may be fined to the extent provided in PUC sections 5411 through 5420, for each and every violation described in this Order and adjudged as proven at an evidentiary hearing;
- They may be ordered to repay investigation costs of approximately \$ _____, or more;
- The renewal application of Class B Certificate No. TCP 12910-B may be denied with prejudice pursuant to PUC Section 5378, and/or;
- Any subsequent application by Respondents may be denied based upon the outcome of this proceeding, pursuant to PUC Sections 5374 and 5375.

4. During the pendency of this investigation, the following individuals and persons are ordered to immediately cease and desist from violating any provision of the Passenger Charter-Party Carriers' Act ¹ or any pertinent Commission rules and regulations, e.g. General Order 157-C, safety regulations in the California Vehicle Code, and Title 13 of the California Code of Regulations.

- Bill Dennis and Gloria Dennis, a partnership dba Tour Designs

5. The Consumer Protection and Safety Division may present additional evidence beyond that described in the declaration issued with this order (which comprises the staff's direct prepared testimony) either by testimony or through documentation, bearing on the operations and practices of the respondents. The additional evidence may show whether any or all of the Respondents continue to engage in improper conduct after the issuance of this Order, or after issuance of a Temporary Restraining Order, Injunction or such other orders of the Superior Court of the Tulare County. Such additional evidence may be offered to show whether improper carrier conduct continued after the issuance of this order. Such evidence if offered would have significant bearing on the

¹ See California Public Utilities Code Division 2, Chapter 8, Section 5351 et seq.

type and level of sanctions the Commission may deem appropriate. At a Prehearing Conference, or as otherwise directed by the assigned Administrative Law Judge, the Respondents shall advise CPSD how many witnesses whom they wish to cross examine at the evidentiary hearing.

6. Scoping Information: This paragraph suffices for the “preliminary scoping memo” required by Rule 6(c). This enforcement proceeding is adjudicatory. Absent settlement between staff and respondents pursuant to Rule 51 et seq., this matter will be set for an evidentiary hearing. A hearing may also be held to determine whether any proposed settlement is in the public interest or to answer questions from the ALJ or the assigned Commissioner about the terms and conditions of any proposed settlement.

7. If necessary and appropriate, an evidentiary hearing may be held and the assigned ALJ may convene a Prehearing Conference to schedule a time and/or a place for such hearing. A Prehearing Conference will be scheduled and held within 40 days or as soon as practicable thereafter. Objections to the Order may be filed but must be confined to jurisdictional issues which could nullify any eventual Commission decision on the merits.

The Executive Director shall cause a copy of this order and the staff declaration to be personally served upon Respondents, Bill Dennis and Gloria Dennis dba Tour Designs, 1003 Prosperity Avenue, Tulare, CA 93274.

This order is effective today.

Dated May 8, 2003, at San Francisco, California

MICHAEL R. PEEVEY
President
CARL W. WOOD
LORETTA M. LYNCH
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners