

Decision 03-02-008 February 13, 2003

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

San Gabriel Transit, Inc., a California corporation,
dba City Cab Company,

Complainant,

vs.

Titan Capital Corp., dba Valley Cab & Valley
Transportation Car & Limousine Service; East
Valley Transportation, LLC; West Valley
Transportation, LLC; Avetik Sarkissian, an
individual; Brad Gunches, an individual; and
DOES 1-25, inclusive,

Defendants.

Case 01-10-012
(Filed October 10, 2001)

John E. deBrauwere, Attorney at Law, for
San Gabriel Transit, Inc., dba City Cab Co.,
complainant.

Andrew P. Altholz, Attorney at Law, for East
Valley Transportation, West Valley
Transportation, et al., defendants.

**OPINION RESOLVING COMPLAINT AGAINST
CHARTER-PARTY CARRIER**

1. Summary

This decision finds that there have been incidents in violation of
defendants' charter-party carrier authority and orders that such practices cease.

However, this decision also finds that the violations were infrequent or not consequential, and that complainant has failed to meet its burden of showing that defendants operate as “bandit taxis.” Accordingly, while we grant the complaint insofar as it asks a cease and desist order as to certain practices of defendants, we deny the complaint’s request that defendants’ charter-party carrier authority be revoked.

2. Background

Complainant in this case is San Gabriel Transit, Inc. (San Gabriel), doing business as City Cab Company (City Cab). City Cab is licensed by municipalities to perform taxicab service in Los Angeles, Burbank, Glendale and Pasadena. Defendant Titan Capital Corp. (Titan) is the now-defunct predecessor of the two operating charter-party carriers, East Valley Transportation, LLC (East Valley) and West Valley Transportation, LLC (West Valley). The Commission granted charter- party carrier authority to both East Valley (TCP-14425-P¹) and to West Valley (TCP-14426-P) effective July 24, 2001. Collectively, the two companies are known as “Valley Transportation.”

Titan operated Valley Cab Company in the San Fernando Valley area for 14 years until December 31, 2000, when its franchise was revoked. Titan then sought and obtained charter-party carrier authority from this Commission. It removed the top lights, meters, signs and other taxi markings from its former taxicabs and converted the vehicles for charter service. Titan’s authority was

¹ The initials “TCP” mean Transportation Charter-Party. The TCP number assigned by the Commission to a carrier’s authority must be displayed on all vehicles operated by the charter party carrier.

voluntarily suspended in July 2001. All of its vehicles were acquired by East Valley.

The complaint alleges that East Valley and West Valley were formed by the principals of Titan and are providing taxi-like services under the guise of charter-party carriers. Specifically, City Cab alleges that East Valley and West Valley advertised in the taxi section of the Yellow Pages, used the former Valley Cab telephone number to receive calls, picked up passengers from the streets rather than through prearrangement, lacked proper insurance, accepted city vouchers intended for use with taxicabs, and made primarily short-duration, short-distance trips.

On March 7, 2002, Commissioner Brown issued a Scoping Memo in this case, identifying the following issues for hearing:

- (1) Are the defendants operating as taxicabs under the guise of charter-party authority in violation of Pub. Util. Code §§ 5351, *et al.*?
- (2) Are defendants violating General Order (G.O.) 157-C?

A hearing was conducted on July 11 and 12, 2002, in Los Angeles, at which time the Commission heard from 14 witnesses and received 26 exhibits into evidence. Briefing by the parties was completed on October 10, 2002, at which time the case was deemed submitted for Commission decision. The statutory deadline for resolution of the matter has been extended by Commission order to February 28, 2003.

3. Discussion

As a preliminary matter, we take official notice that the Commission on August 8, 2002, issued Order Instituting Rulemaking (R.) 02-08-002 to consider revisions to G.O. 157-C, which governs charter-party carriers of passengers. The rulemaking responds in part to complaints from taxi operators and local taxicab

regulators that a number of charter-party carriers are conducting taxi-like services under the guise of charter-party authority. We expect that a number of issues raised by City Cab in this complaint will be explored more fully in the rulemaking proceeding. Meanwhile, however, we will consider and set forth our resolution of the allegations raised by City Cab in this case based on the evidence adduced in two days of hearing and on the regulations as they now exist.

3.1 Management and Control

Much of complainant's case deals with management and control of East Valley and West Valley. When Titan lost its Valley Cab Company franchise, it reorganized as a charter-party carrier under permit number TCP-13964-P. Principals of Titan were Lloyd Conway, George Piedra, and Ivik Sarkisian.² In March 2001, Piedra and Sarkisian were active in organizing East Valley and West Valley as limited liability companies, drivers for which were designated as member/owners rather than employees. Titan then surrendered its TCP authority, and both East Valley and West Valley began operations under the fictitious business name of Valley Transportation. At hearing, Piedra testified that he owned another company, Zelda Enterprises, Inc. (Zelda), and that in October 2001, Zelda was asked to take over management and control of East Valley and West Valley. East Valley operated, converted, and repainted Chevrolet Caprice cabs formerly operated by Titan, while West Valley operated Lincoln Towncars, at least two of which were acquired from Zelda.

While it is not entirely clear, complainant appears to allege that Titan at all relevant times continued to control East Valley and West Valley, and that the

² Sarkisian currently is the subject of a Commission order revoking the operating authority of another company that he operates, Silver Car and Limousine Service, LLC.

charter authority of all three entities should be revoked for alleged violations discussed below. However, the evidence at hearing showed that Titan's TCP permit was voluntarily suspended on July 24, 2001, that the company went out of business at that time, and that its operating authority was revoked on May 31, 2002, for nonpayment of annual fees. The evidence also shows that East Valley and West Valley were duly formed as limited liability companies on March 28, 2001, and that they separately obtained charter-party authority from the Commission to operate under "P" permits.

While some of the same principals and many of the drivers have been involved with all of these organizations, there is nothing to show that the organizational structures themselves are in violation of the law or Commission regulations.³ The request that Titan's authority be revoked is moot, since the company ceased operations in mid-2001 and its operating authority was revoked in 2002.

3.2 Advertising in Yellow Pages

Complainant introduced evidence showing that Valley Transportation in 2001 advertised its charter-party service in the "taxicab" section of Pacific Bell Yellow Pages in San Fernando Valley. The advertisement in question, however, was in two parts, with one section devoted to an independent new taxicab service (Valley Cab) in Santa Monica, and the other section devoted to the services of East and West Valley Transportation. The charter-party portion of the advertisement stated in prominent type that the service was "Not a Taxi Cab

³ The complaint alleged that neither East Valley nor West Valley had filed for the fictitious business name of "Valley Transportation" under Bus. & Prof. Code § 17910. That filing has since taken place, and the "Valley Transportation" designation was noted in the TCP filings with the Commission.

Company” and that rates were “10% Less Than Taxi Cab Service.” Defendants’ witnesses testified that Valley Cab split the cost of the advertisement with Valley Transportation. They also testified that, based on the recommendation of their consultant, no such advertisements were placed in the taxicab section of the Yellow Pages in 2002.

Advertising under the heading of “taxicabs” in the Yellow Pages is not a violation of any Commission regulation. However, we have held in previous cases that such advertising supports an inference of taxi operations. (*Babaeian Transportation Company v. Southern California Transit* (1992) 45 CPUC2d 85.) The inference here is rebutted in part by the printed declaration that the Valley Transportation service is for car and limousine service, not for taxicab service. Without more, the limited advertising in this case does not support the allegation of unlawful taxi operation.

3.3 Prearranged Transportation

Two private investigators retained by complainant testified that they had called the Valley Transportation number to request a “taxi,” and that cars were dispatched in response. In one instance, the first investigator riding in a charter car was greeted at her destination by the second investigator, who then engaged the car for another trip without prearrangement.

Section 3.03 of G.O. 157-C prohibits charter-party carriers from engaging in taxicab transportation service. Section 3.01 of G.O. 157-C requires that charter-party carriers “shall provide transportation only on a prearranged basis,” and that the transportation be done pursuant to a waybill.

Tim Messer, a consultant retained by Zelda in 2001 to review regulatory compliance of East Valley and West Valley, testified that dispatchers are instructed to tell callers requesting a taxi that the Valley organizations are car and limousine services, not taxicabs. He also testified that drivers are required to

sign a declaration prohibiting them from picking up passengers unless the transportation has been prearranged.

We note that the Commission's new rulemaking, R.02-08-002, focuses particularly on the definition of "prearranged transportation," citing complaints that the existing definition is not limited to a time period and does not specifically prohibit solicitation of passengers. Pub. Util. Code § 5360.5(b) defines "prearranged basis" as transportation "arranged with the carrier by the passenger, or a representative of the passenger, either by written contract or telephone."

The evidence before us shows one instance of transportation without prearrangement and three instances of responses to requests for a "taxi." One of the investigators testified that when she approached another East Valley vehicle for a ride, she was told that she would have to call a dispatcher and arrange the transportation. Our order today requires defendants to cease and desist from accepting orders for transportation without prearrangement, and requires disclosure in responses to "taxi" requests, but we find the evidence insufficient to warrant revocation.

3.4 Workers' Compensation Insurance

Pub. Util. Code § 5378.1 requires, among other things, that every charter-party carrier file with the Commission a certificate of workers' compensation coverage for its employees issued by an admitted insurer. Zelda has filed such a certificate for the "administrative employees" who serve Valley Transportation. Neither East Valley nor West Valley has filed such a certificate for its drivers on grounds that, as limited liability companies, drivers are "member/owners" who contract with Zelda for the services of administrative employees. (Corp. Code § 17003.) According to testimony of three of the drivers, they pay a monthly fee to one of the Valley companies and this entitles them to drive the charter-party

cars, collect fares, and share in profits. The un rebutted testimony of an accountant called by defendants was that the organizations have been correctly established as limited liability companies. Complainant on brief challenges the designation of drivers as anything other than employees, but it presents no evidence to establish an employee/employer relationship. While we agree that the limited liability structure appears strained here, we have no evidence that would permit us to find non-compliance with Pub. Util. Code § 5378.1.

3.5 Length of Trips, Waybills, Taxicab Vouchers

Witness Debbie Waters, operations manager for San Gabriel, testified that she examined some 2,250 trip records on waybills of East Valley and West Valley filed at the Commission's offices. She testified that about 85% of the trips appeared to be relatively short one-way trips involving one person only, indicating taxi-like operation. She introduced copies of waybill trips that showed payment on six trips by senior citizen vouchers redeemable by franchised taxicabs in Los Angeles. Two trips showed the notation "fetal diagnostics delivery," a medical pickup and delivery service not authorized for charter-party carriage.⁴ The taxicab administrator for the City of Los Angeles confirmed that the senior citizen vouchers are redeemable only by franchised taxicab companies and bus companies.

Defendants' consultant Messer acknowledged that East Valley and West Valley drivers have accepted the senior vouchers. He stated that when hospitals with client accounts call for service, they sometimes do not make it clear that the

⁴ Jurisdiction over motor carriers of property, other than household goods, rests with the Department of Motor Vehicles pursuant to the Motor Carriers of Property Permit Act (Vehicle Code § 34600, *et seq.*).

passenger will use a restricted senior voucher. Messer said that he has called clients to tell them that charter-party carriers cannot accept the vouchers. When such vouchers are picked up by drivers, Messer said that they are stamped “void” and returned to the issuing city agency. Messer did not testify as to the fetal diagnostics deliveries.

Defendants do not deny that a high percentage of their calls are relatively short, one-way trips, but they argue that no law or regulation sets distance limitations for charter-party carriers. Contending that a “P” permit is virtually identical (except for transfer privileges) to a “Class B” charter-party designation, they argue that there are no distance restrictions in the Code.⁵ Complainant contends that short-distance trips give rise to an inference of taxi-like operations when combined with other persuasive evidence. (*Babaeian Transportation, supra*, 43 CPUC2d at 89.)

Our order today requires defendants to cease and desist from accepting prohibited voucher coupons or prohibited medical shipments for transportation. We find that complainants have failed to show a violation based solely on the predominantly short, one-way trips operated by defendants.

3.6 Valley Cab Phone Listing

Scott Schaffer, vice president of City Cab, demonstrated on the stand during hearing that when he dialed 411 on the telephone, asked for Van Nuys information, and asked for the number of “Valley Cab,” the recorded response was an 818 number for Valley Transportation. Schaffer testified that the fact that the information listing is still available after revocation of the Valley Cab

⁵ But note Pub. Util. Code § 5371.2, limiting Class B charter-party carriers to a radius of 125 miles from a home terminal designated by the carrier.

franchise on December 31, 2000, is evidence that East Valley and West Valley still operate like taxi services.

Defendants' consultant testified that he has been trying for months to have Pacific Bell delete the 411 listing for Valley Cab, but he has been told that other companies maintain the database for such numbers, and he has been unsuccessful in having the listing removed.

Our order today requires defendants to have the Valley Cab listing removed from the 411 service and, until it is removed, to arrange to answer calls that ask for Valley Cab by announcing that Valley Cab service is no longer available and offering to give the caller the telephone number of a local taxicab company.

3.7 Trips Within a Single City

Waters' examination of Valley Transportation trip records shows a majority of trips within a single city, a practice that complainant maintains is not authorized by Pub. Util. Code § 5353(a), which provides that charter-party regulations do not apply to "[t]ransportation service rendered wholly within the corporate limits of a single city or city and county and licensed or regulated by ordinance." Unlike taxicab services, however, Valley Transportation is not licensed or regulated by local ordinances, and its operations appear to be permissible under Pub. Util. Code § 5353.5, which permits in-city transportation service by "limousine[s] for hire."

Valley Transportation's consultant, Messer, testified that he conferred with the Commission's staff on whether his clients could transport passengers within a city's limits. He noted that class B charter-party carriers are authorized by § 5371.2 to provide transportation within a radius of 125 miles from a home terminal. On brief, defendants argue that there are no within-city restrictions in the statutes or general order governing charter-party carriers operating with a

“P” permit. Complainant agrees that no “P” permit distance restrictions apply. We conclude that complainant has failed to show that Valley Transportation’s in-city service is a violation of charter-party requirements.

3.8 Other Allegations, Summary

Complainant alleges a number of other violations, including lack of livery plates prior to September 2001, use of taxi terminology like “no show” on trip sheets, and unauthorized transfer of assets by Zelda. The drivers’ use of terms common in taxi service is not surprising, since most of the drivers are former taxi drivers. The evidence shows that the absence of livery plates on some vehicles was corrected, and that the transfer of assets was made with appropriate filings to the Commission and other state agencies.

In summary, complainant’s evidence taken as a whole shows that East Valley and West Valley are engaged in transportation services that in some respects resemble that of taxicabs. What complainant has not shown by a preponderance of the evidence is that East Valley and West Valley have violated charter-party regulations to an extent that requires revocation of their permits. Unlike other carriers with which we have dealt, the defendants here have shown that they retained a consultant, revised their waybills, instructed their drivers and dispatchers, conferred frequently with Commission staff, and made other efforts to comply with the letter of the charter-party carrier rules. To the extent those rules need modification to better distinguish charter-party service from taxicab service, complainant and other parties have the opportunity to make their views known in the rulemaking proceeding (R.02-08-002) that is now in progress.

4. Conclusion

Based on the evidence as a whole, we find that East Valley and West Valley have violated their charter-party carrier authority in some instances, and

our order today requires that they immediately cease and desist from these practices. However, we also find that complainant has not met its burden of proof in showing that the violations occurred with such frequency or consequence as to require revocation of the charter-party permits of East Valley and West Valley.

5. Appeal of Presiding Officer's Decision

Both complainant and defendants appeal elements of the Presiding Officer's Decision.

Complainant argues that (1) defendants' drivers are not "managers" and therefore are not excluded from workers' compensation requirements, and (2) defendants are barred from operating within a single city because they do not operate limousines.⁶ The preponderance of evidence does not support these allegations. Unrebutted testimony establishes that defendants operate as a limited liability company and that drivers collectively participate in management decisions. In arguing that defendants do not operate limousines, complainant overlooks the definition of "limousine" in Pub. Util. Code § 5371.4(h) as "any luxury sedan, of either standard or extended length, with a seating capacity of not more than nine passengers including the driver." Lincoln Towncars operated by defendants appear to meet this definition.

Defendants appeal three findings in the Presiding Officer's Decision. First, they contend that they have, since hearing, obtained a Department of Motor

⁶ Complainant moves to strike defendants' appeal and its response to complainant's appeal on grounds that those documents were filed by an attorney who has not previously entered an appearance in this case. While we agree that defendants should have filed a notice of substitution of attorney, our rules do not specifically require such a filing. On that basis, we deny the motion to strike.

Vehicles permit to transport medical packages, and such transportation should be deemed lawful. Second, they argue that advertising in the taxicab section of the Yellow Pages as an inference of wrongdoing was fully rebutted at hearing, rather than “rebutted in part.” Finally, they ask that the discussion of pending rulemaking on charter-party carrier rules clarify that the Commission has not at this time determined that changes in the rules are necessary.

As to the first contention, our decision requires defendants to cease and desist from “[a]ccepting prohibited medical shipments for transportation” (emphasis added). If such transportation is not prohibited by Commission rule or other state law, then it is not affected by our order. Charter-party advertising in the taxicab section of the Yellow Pages is not a violation of Commission rules, but it does support an inference of unlawful taxi operation when combined with other acts. The conclusion that the inference is rebutted in part in this case is correct. Finally, we believe that the decision is clear that the question of whether changes to charter-party rules are necessary or not is best left to the rulemaking in R.02-08-002.

We find no merit in the appeals of complainant and defendants of the stated elements of the Presiding Officer’s Decision. The appeals are denied.

6. Assignment of Proceeding

Geoffrey F. Brown is the Assigned Commissioner and Glen Walker is the assigned ALJ in this proceeding.

Findings of Fact

1. Complainant operates City Cab, which is licensed to perform taxicab service in Los Angeles, Burbank, Glendale and Pasadena.
2. Titan operated Valley Cab Company until December 31, 2000, when its franchise was revoked.

3. Titan obtained charter-party authority from this Commission, but it surrendered its charter permit in July 2001 and went out of business.

4. Principals of Titan were active in organizing East Valley and West Valley as limited liability companies in March 2001.

5. Valley Transportation and an independent taxicab company jointly shared an advertisement under the taxicab section of the Yellow Pages in 2001.

6. Private investigators cited one instance in which an investigator engaged a Valley Transportation car without prearrangement.

7. Neither East Valley nor West Valley has filed a certificate of workers' compensation for drivers on grounds that its drivers are not "employees."

8. Valley Transportation on at least six occasions accepted senior citizen vouchers redeemable by franchised taxicabs in Los Angeles.

9. Defendants state that senior vouchers were accepted in error and were stamped "void" and returned to the issuing city agency.

10. The 411 information service has a listing for "Valley Cab" that connects to Valley Transportation.

11. Defendants state they have sought for months to cancel the 411 listing for "Valley Cab."

12. A majority of Valley Transportation trips take place within a single city.

13. Defendants since 2001 have retained a consultant to advise them on complying with charter-party carrier regulations.

Conclusions of Law

1. The organizational structures of Titan, East Valley and West Valley are not in violation of the law or Commission regulations.

2. Advertising under the heading of "taxicabs" in the Yellow Pages supports an inference of taxi operations.

3. Transportation on a charter-party carrier must be prearranged either by written contract or telephone.

4. The Commission should order East Valley and West Valley to cease and desist from accepting city transportation vouchers not authorized for charter-party transportation.

5. The Commission should order East Valley and West Valley to cease and desist from accepting prohibited medical shipments for transportation.

6. The Commission should order East Valley and West Valley to cease and desist from transporting passengers who have not prearranged the transportation either in writing or by telephone.

7. The Commission should order East Valley and West Valley to cease and desist from advertising in such a manner as to suggest that they provide taxicab service.

8. East Valley and West Valley should be directed to remove the Valley Cab listing from the 411 telephone information service and, until such removal, to respond to any call asking for Valley Cab or taxicab service by announcing that Valley Cab service is no longer available and offering to provide the caller with a telephone number of a local taxicab company.

9. The complaint should be granted to the extent that it asks for an order directing defendants to cease and desist from certain taxi-like practices; in all other respects, the complaint should be denied.

10. Today's order should be made effective immediately to provide appropriate direction to defendants for bringing their operations into compliance with law.

11. Appeals by complainant and by defendants should be denied.

O R D E R

IT IS ORDERED that:

1. The complaint of San Gabriel Transit, Inc., dba City Cab Company, is granted to the extent that it requests an order by this Commission that East Valley Transportation, LLC (East Valley) and West Valley Transportation, LLC (West Valley) cease and desist from specified taxi-like practices; in all other respects, the complaint is denied.
2. East Valley and West Valley are directed to cease and desist from:
 - a. Accepting taxicab vouchers for transportation;
 - b. Transporting passengers who have not prearranged the transportation;
 - c. Advertising in such a manner as to suggest that they provide taxicab service;
 - d. Accepting prohibited medical shipments for transportation.
3. East Valley and West Valley are directed to remove the Valley Cab listing from the 411 telephone information service and, until such removal is effective, to respond to any call asking for Valley Cab or cab service by announcing that Valley Cab service is no longer available and offering to provide the caller with a telephone number of a local taxicab company.
4. The appeals of this decision are denied.
5. Case 01-10-012 is closed.

This order is effective today.

Dated February 13, 2003, at San Francisco, California.

MICHAEL R. PEEVEY
President
CARL W. WOOD
LORETTA M. LYNCH

GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners