

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

Yellow Cab Co., Checker Cab Co., Happy)	FORMAL COMPLAINT NO. FC-1204
Cab., and Airport Transportation Co.,)	
)	
Complainants,)	COMPLAINT SUSTAINED
vs.)	AND
)	ORDER
BIJK Enterprises, Inc.,)	TO
Omaha, Nebraska,)	CEASE AND DESIST
)	
Defendant.)	ENTERED: December 2, 1986

APPEARANCES: For the Complainants:
 Marshall D. Becker, Esq.
 1400 First National Center
 Omaha, Nebraska 68102

For the Defendant:
 Robert M. Zuber, Esq.
 646 Commercial Federal Tower
 2120 S. 72nd St.
 Omaha, Nebraska 68124

BY THE COMMISSION:

OPINION AND FINDINGS

By complaint filed June 24, 1986, Yellow Cab Co., Checker Cab Co., Happy Cab Co., Airport Transportation Co., allege that BIJK Enterprises, Inc., operated its services before its certificate was issued and that it operated beyond the scope of its authority.

The complainants called six witnesses to testify against the defendant.

William Isenberger testified: He is president of BIJK Enterprises, Inc. He is one of five stockholders. He received a permit in the week before the hearing. The permit authorizes transportation of passengers and their baggage, and articles from retail stores for delivery within a 50-mile radius of Omaha for Marriott Hotel, Reagan Buick, Quality Lincoln Mercury and Borsheim Jewelry. He is also associated with Limousines, Inc., as manager and chauffeur. Limousines, Inc., is a certificated carrier with authority to transport passengers within a 50-mile radius of Millard Airport. He believes he can pick someone up anywhere in the city and take them anywhere in the city under the authority of Limousines, Inc. He is doing that now. Separate books and records are kept for Limousines, Inc. He reports to Thomas B. Williams, who is the owner of Limousines, Inc. He operates three pieces of equipment for BIJK, two 1986 Buick LeSabre station wagons and a 1985 Chevrolet van. Under Limousines Inc., he operates three Cadillacs. Occasionally those are used in BIJK. When he uses the Limousines, Inc., equipment BIJK pays for it by the hour at \$19.00 per hour. The drivers for BIJK are Richard Jennings, Janice Knowlton, and Lloyd Jennings. George Anderson is an ex-employee of Limousines, Inc., Charles Evans is a driver for Limousines, Inc. Isenberger Enterprises is a nonexistent company. A receipt from a trip that says Isenberger Enterprises on it actually is for Limousines Inc. To his knowledge no receipts have ever been given saying BIJK. A receipt in Exhibit 3 showing "September 24, 1986, receipt, taxi, BIJK, Charles Evans," surprises him. BIJK did not perform that transpor-

FC-1204

Page Two

tation nor issue the receipt. He would be surprised by other receipts that would say BIKJ. In BIKJ Enterprises records destinations shown as "Q", "R", "M" stand for Quality Lincoln Mercury, Reagan Buick, and Marriott Hotel respectively. Borsheim's pays for its deliveries and transportation of the owner. The phone number of BIKJ is 342-5580. The phone number for Limousines, Inc., is 342-1919. 342-5580 is his own phone number. The BIKJ rates on file with the Commission are based on a per passenger, or per day, or per box basis.

Vickie Lynn Gradbowski testified: She works for Sky Harbor Air Service. She has been there for eight years as a receptionist. As part of her duties she arranges transportation for customers who come into the airport and want to leave there. She does not schedule transportation into the airport. She has a list of carriers she calls which includes Happy Cab., Isenberger's, and Old Market Limousine. To obtain service from Mr. Isenberger she calls 342-5580. The phone is answered Isenberger's. Service from Isenberger's was arranged through the general manager in May or June. Isenberger's always furnishes a limousine. She has not heard of BIKJ or Limousines, Inc., before the hearing. When she first began doing business with Isenberger's, a Happy Cab answered the call. When a limousine began showing up instead of taxicabs, she was told it was a new service.

Christie L. Isenberger testified: She primarily works for her husband in one of his three businesses. The phone number at her house is 342-5580. She always answers the phone Isenberger's. There is another line into her house used for referrals from Limousines Inc.

Terry L. Brown Testified: He is assistant manager in charge of investigations, of Pinkerton's Inc., an international investigative security firm. Lois Feddersen at Happy Cab hired his firm to conduct a testing and/or a surveillance operation to gather information about the activities of BIKJ, particularly in reference to the kinds of rides it was offering. He made a phone call to a number provided by Mrs. Feddersen. The phone was answered "Isenbergers". He asked if that was also BIKJ and the answer was yes. He was not informed Limousines Inc., was providing service. Exhibit 3 is Pinkerton's reports in the case investigated for Mrs. Feddersen. There was no indication that Limousines, Inc., performed the service. Exhibit 11 shows the report of his own investigation. On the morning of the hearing he ordered a limousine to pick him up at the Xerox building he asked the driver if this was a car from BIKJ and the driver said "yep". The driver was Charles Evans. He was given a copy of BIKJ's authority on September 11 by Mrs. Feddersen. The assignment given to Pinkerton's was to verify that BIKJ was operating outside of the scope of the authority granted by the Public Service Commission. Four persons were involved in the investigation. The approach was to pose as paying customers and ride the service. Surveillance was also used. He checked out the number given to him and it was listed to Bill or William Isenberger. He determined that the vehicle in which he rode was licensed to Limousines, Inc., and the Public Service Commission plate on it was issued to Limousines, Inc. One of his investigators went to the Marriott and called the BIKJ number and asked for a vehicle. He determined that two station wagons used by BIKJ were registered to BIKJ. Another van was licensed through Reagan leasing. None of the Cadillac limousines were identified as a BIKJ vehicle. The driver always confirmed service was provided by BIKJ.

FC-1204

Page Three

Carl Boyer testified: He is employed by Pinkerton's, Inc. He is the investigator whose initials are C.W.B.

Karl E. Momsen testified: He is associated with Hunt Transportation, Inc. He was asked by his employer to attempt to secure a taxicab or personal transportation service from BIKJ. He called 342-5580. He took several trips by calling that number and getting a vehicle supplied. Exhibits 14, 15, and 16 are copies of his reports. The rides were taken between September 8, and September 16, 1986. The driver placed no restriction on the service he requested.

The defendant recalled Mr. Isenberger to testify in his behalf as follows: BIKJ Enterprises does not transport passengers other than what its authority permits. BIKJ does utilize vehicles belonging to Limousines, Inc., but only for trips between the Marriott, Quality, Reagan or Borsheims. Exhibit 2 shows that the authority of BIKJ Enterprises reads as follows:

Passengers and their baggage and articles from retail stores for delivery between points within a 50-mile radius of Omaha over irregular routes under continuing contracts with Borsheims Jewelery, tony's, and waoli Lincoln-Mercury and Marriott Hotel. (Exhibit 2)

Most of the evidence gathered by Pinkerton's did not conclusively show that the transportation arranged for by calling Mr. Isenberger was provided by BIKJ. Most of the evidence is consistent with Mr. Isenberger's testimony that Limousines, Inc., was providing the service, except in the instance of the September 24, 1986 ride arranged by Mr. Boyer. Mr. Boyer obtained a receipt which indicates that the driver considered that the operating company in that instance was BIKJ. The receipt number 33672 appended to the Pinkerton report shows that Charley Evans noted "BIKJ" on the receipt. The receipt also indicated it was a taxi service that was provided.

There is apparently no dispute that BIKJ was operating its authority before it obtained its permit. Mr. Isenberger himself testified that he had received the BIKJ Enterprises permit a week before the hearing. Complainants allege that the defendant was operating illegally without benefit of a certificate of public convenience and necessity. It is true that when the order granting the defendant's permit was entered the Commission ordered the defendant not to operate until its insurance was on file, its fees were paid and a permit was issued; however, the defendant had filed evidence of insurance, paid its fees and satisfied the interlocutory requirements and had been given verbal authorization to operate even though the clerical procedure of physically producing the permit had not been completed. Under these circumstances the operation of its service by defendant before receiving its permit will not be considered a significant violation.

The evidence conclusively shows that Limousines, Inc., has been, under Mr. Isenberger's management, operating outside its authority. Its authority does not authorize transportation between points in Omaha. Its authority is restricted to transportation between Millard Airport and only points within a 50-mile radius of the Millard Airport. Limousines, Inc., however, is not a defendant to this complaint and its violations will have to be taken up in a separate proceeding.

FC-1204

Page Four

From the evidence adduced, and being fully informed in the premises, the Commission is of the opinion and finds that the complaint should be sustained, and BIJK Enterprises, Inc., should be ordered to cease and desist from operating outside the authority granted by this Commission.

O R D E R

IT IS THEREFORE, ORDERED, by the Nebraska Public Service Commission that Formal Complaint No. FC-1204 filed by Yellow Cab Co., Checker Cab Co., Happy Cab, and Airport Transportation Company against BIJK Enterprises, Inc., be, and it is hereby, sustained.

IT IS FURTHER ORDERED that BIJK Enterprises Inc., be, and it is hereby, ordered to cease and desist from operation outside its authority.

MADE AND ENTERED at Lincoln, Nebraska this 2nd day of December, 1986.


NEBRASKA PUBLIC SERVICE COMMISSION


Chairman

ATTEST:


Executive Secretary

COMMISSIONERS CONCURRING:


//s//Bob Brayton
//s//James F. Munnelly
//s//Eric Rasmussen
//s//Harold D. Simpson