

# SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

## BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the matter of the Application	) Application No. B-1441,
of R&F Hobbies, Inc. dba Prince	) Supplement 1.
of the Road, Ravenna, Nebraska,	)
seeking to acquire through	) TEMPORARY AUTHORITY GRANTED
transfer, the authority granted	) SUSPENSION OF AUTHORITY
to Star Limousine, Inc., Omaha,	) CONTINUED
in Certificate B-1259.	) Entered: January 9, 2001

By the Commission:

By application filed December 6, 2000, R&F Hobbies, Inc. dba Prince of the Road (Prince of the Road or Applicant), Ravenna, Nebraska, seeks to acquire through transfer, the authority granted to Star Limousine, Inc. (Star Limo), Omaha, in Certificate B-1259 which authorizes:

### SERVICE AND TERRITORY AUTHORIZED:

Transportation of passengers in luxury type vehicles of seven passengers capacity or less and their baggage between points in Nebraska over irregular routes. RESTRICTION: Restricted against the transportation or railroad train crews and their baggage. Supplement 1: Authority as a common carrier in Nebraska intrastate commerce in the transportation of passengers by limousine between points in Nebraska over irregular routes. RESTRICTION: The transportation of railroad train crews and their baggage is not authorized.

In its application, applicant further requested that this Commission grant temporary approval to the applicant of a lease of the motor carrier properties and the certificate sought to be acquired by it. Notice of this application appeared in the Daily Record on December 11, 2000, pursuant to the Rules of Commission Procedure. Timely protests were filed against this application by Husker Cabs, Inc., Midwest Special Services, Inc., Haymarket Limousine, Old Market Limousine Co., Accent Limousine Co., Luxor Limousine Co., Total Transportation Co. and High Plains Cab.

A hearing was held on the issue of the applicant's request for temporary authority on December 28, 2000, in the Commission Library, at Lincoln, Nebraska. Appearing for the Applicant was John Boehm, 811 South 13th Street, Lincoln, Nebraska 68508. Appearing for the Protestants were: Mark Breiner, 1145 North 48th Street, Lincoln, Nebraska 68504, on behalf of Husker Cabs, Inc.; Marshall Becker, 7901 Wakely Plaza, Omaha, Nebraska 68114, on behalf of Old Market Limousine Co., Accent Limousine Co., Luxor Limousine Co., and Total Transportation Co.; Jack Shultz, 800 Lincoln Square, 121 South 13th Street, Lincoln, Nebraska 68501-2028, on behalf of Midwest Special Services, Inc.; and Elaine Waggoner, 825 M Street, Suite 209, Lincoln, Nebraska 68508, on behalf of Haymarket Limousine.

### E V I D E N C E

The applicant presented two witnesses, Jeff Kaplan, president of Star Limo; and Alvin Schroll, president of Prince of the Road.

The Protestants presented one witness, Steve Gill.

Mr. Jeff Kaplan testified that he is the owner of Star Limo. He testified that he has operated Star Limo for sixteen years. He testified that in the past year or two, on average, he has provided approximately twenty to thirty transportation runs per week. He testified that during the course of business he has operated different styles of passenger vehicles including six, eight, ten and fourteen passenger limousines. He has also operated luxury vans and sedans.

Mr. Kaplan further stated that since the Commission suspended his authority in November, he has been financially paralyzed. He testified that he had not been able to pay the claimants restitution nor fulfill any of the other conditions the Commission had imposed. Mr. Kaplan testified that he had outstanding contractual obligations which needed to be fulfilled. In particular, the applicant introduced evidence that Star Limo had ongoing contractual agreements with several high dollar commercial clients which would probably be canceled this certificate remains under suspension for much longer.

Mr. Kaplan presented evidence of "run sheets" that were still on Star Limo's books. This evidence was marked as Exhibit No. 6 and received into evidence. Mr. Kaplan testified this evidence demonstrated that six bookings were outstanding. He testified that he will be forced to make alternative arrangements for those clients like has done in the past if temporary authority is not granted. The bookings ran from approximately the December 31, 2000 through January 15, 2001. He testified that he had ten to twelve more bookings past that date which were taken before the Commission suspended his authority. However, he stated, he did not take credit card numbers for those customers and some of the notations may only be rate inquiries. Mr. Kaplan testified that he did not make alternative arrangements for all of his obligations because he was hoping that the Commission would grant approval for the sale and give Prince of the Road temporary authority.

He testified further that he had sold his limousine to Prince of the Road in preparation for the transfer of the certificate. Mr. Kaplan presented evidence of radio advertising time that was owed to Star Limo. Prince of the Road intends to purchase the advertising time as well. Finally, Mr. Kaplan testified that time was of the essence because these advertisements are set to expire which would result in a decrease of the value of the company's assets.

Upon cross examination, Mr. Kaplan testified that he had used his authority almost exclusively as a luxury limousine authority. He testified that at one time he did use one sedan and one luxury van. He further testified that almost ninety percent of his business was limited to a 50 mile radius of Douglas County. However, he stated, the limited transportation area was due to his insurance restrictions and not due to limitations of Star Limo's certificate of operating authority. Mr. Kaplan admitted that the suspension caused certain injury to his certificate and other valued assets, however, Mr. Kaplan stated that for each day under that suspension he was losing clients and that his certificate was losing value.

Next, Mr. Alvin Schroll also testified on behalf of the Prince of the Road. He testified that the applicant had made arrangements to take over the authority of Star Limo. He stated that the applicant planned on changing Star Limo's name to Prince of the Road. Mr. Schroll testified that the applicant had leased a building in Omaha, which was, in part, going to be used in its business. Mr. Schroll stated that Prince of the Road would use the building primarily as a barn in which to store his limousine.

Mr. Schroll explained that the applicant started out in the business transporting passengers to casinos and to the airport and that it had a luxury-type vehicle but that Prince of the Road felt that it wasn't nice enough to use. Mr. Schroll further testified that he thought the limousine the applicant purchased from Mr. Kaplan was nice enough to use in its limousine business.

Mr. Schroll testified that, in his opinion, the certificate held by Star Limo was losing value for each day it was under suspension. Mr. Schroll confirmed that Prince of the Road would fulfill Star Limo's outstanding contracts to the public. He also took the position that a grant of temporary authority would benefit the public because the complainants would be paid restitution from part of Mr. Kaplan's sale proceeds.

Mr. Steve Gill testified on behalf of Haymarket Limousine. He stated that he had leased a Lincoln Limousine indirectly from Prince of the Road. Mr. Gill testified that he wanted to make the Commission aware of the problems he had with Prince of the Road regarding that lease. Mr. Gill testified that in his opinion, Prince of the Road was not complying with Commission rules.

#### O P I N I O N   A N D   F I N D I N G S

The Commission considers this application for authority in light of the criteria set forth in Neb. Rev. Stat. § 75-319 (Reissue 1996). Subsection (1) of that section provides that the Commission should grant temporary authority:

{I}f it shall appear that failure to grant such temporary approval may result in destruction of or injury to such regulated motor carrier properties, and certificates or permits sought to be acquired, or interfere substantially with their future usefulness in the performance of adequate and continuous service to the public.

Under this standard, the applicant must demonstrate that a failure to grant temporary approval may result in injury to regulated motor carrier properties and certificate sought to be acquired by Prince of the Road. The Commission does not need evidence that injury to regulated motor carrier properties or certificates is certain. The Commission needs only credible evidence that some injury could result.

In the present case, the Commission agrees with the applicant's witnesses that the value of such certificate will decrease with each day it remains under suspension. Likewise, the advertisements currently owed to Star Limo and the

ongoing commercial contracts are a valuable commodity to any purchaser and could be lost entirely before the issue of permanent authority is decided. Although we are keenly aware that Star Limo's suspension was brought about by its own actions, the Commission does not want to be the cause of any further injury by curtailing Star Limo's ability to sell its certificate and assets associated with that certificate to a willing purchaser. We believe without granting this request for temporary authority, we would cause the value of that certificate and the assets owned by the certificate-holder to dissipate.

Even though a number of Protestants made appearances at the hearing to cross examine the witnesses, there was no direct testimony presented that squarely refuted the evidence presented by the applicant. Although the Protestants did present evidence in an attempt to impeach the credibility of Mr. Schroll, for the purposes of this proceeding, the Commission considers only the narrow issue of Neb. Rev. Stat. § 75-319 and does not reach the issues of fitness or public interest here. The issues made pertinent in Neb. Rev. Stat. § 75-319 should be reserved for the hearing on permanent authority. No decisive evidence was adduced at the hearing which leads us to conclude that the statutory requirements at issue here have not been met. Therefore, upon due consideration of all the evidence adduced at hearing, the Commission is of the opinion and finds that the application for temporary authority shall be approved.

Such temporary approval should be granted for ninety (90) days from the effective date of this Order pursuant to Neb. Rev. Stat. § 75-319 (Reissue 1996). The Commission further notes that a grant of temporary authority does not necessarily confer permanent operating authority upon the applicant. The latter presents an entirely different consideration for the Commission and will trigger another hearing.

Additionally, this authority will remain under suspension until the showing by documentary proof that the conditions imposed upon Star Limo in our November 8, 2000, Order, have been fulfilled. This includes restitution to the various complainants, adequate proof of insurance coverage, and complete inspections of the vehicles used under this authority.

However, because the number of complaints against Star Limo have tapered off, rather than requiring the five thousand dollar bond as set out in our November 8, 2000, Order, the Commission will now require the purchaser to hold only three thousand dollars in escrow to cover future complaints stemming from the operations of Star Limo under the direction of the former owner.

#### O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the application for approval of a lease of the motor carrier properties and certificate sought to be acquired by R&F Hobbies Inc., dba Prince of the Road be, and it is hereby granted to the applicant for ninety (90) days from the effective date of this Order as provided herein.

IT IS FURTHER ORDERED that transportation service rendered under such

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temporary authority shall be subject to the provisions of Neb. Rev. Stat. § 75-311 (Reissue 1996), and to the rules, regulations and requirements of the Commission; such grant of temporary authority and the operations thereunder shall not be admissible in evidence to establish or prove the present or future public convenience and necessity; and no renewal or extension of the period of ninety (90) days shall be granted.

IT IS FINALLY ORDERED that the certificate granted herein shall remain under suspension until the conditions imposed upon Star Limo have been met to the satisfaction of the Commission.

MADE AND ENTERED at Lincoln, Nebraska, this 9th day of January, 2001.

COMMISSIONERS CONCURRING:



//s//Frank E. Landis

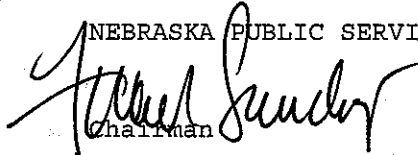
//s//Daniel G. Urwiller

COMMISSIONERS DISSENTING:

//s//Anne C. Boyle

//s//Rod Johnson

NEBRASKA PUBLIC SERVICE COMMISSION

  
Chairman

ATTEST:

  
Executive Director



*Commissioner Anne Boyle writes separately to dissent:*

I respectfully dissent from the decision reached by the majority today because I believe that the applicant in this case has not met the requirements prescribed in Neb. Rev. Stat. § 75-319(1) (Reissue 1996). This statute requires that the applicant demonstrate either, that a failure to grant such temporary approval may result in destruction of or injury to its regulated motor carrier properties and certificates, or, that a failure to grant temporary approval would interfere substantially with the future usefulness in the performance of adequate and continuous service to the public. I would find that the applicant has fallen short of demonstrating that either prong of Neb. Rev. Stat. § 75-319(1) (Reissue 1996) has been met.

From the outset, the applicant has not shown that the failure to grant temporary approval in and of itself could result in the destruction of or injury to such regulated motor carrier properties or certificates pursuant to Neb. Rev. Stat. § 75-319(1) (Reissue 1996). Rather, I believe that any injury to the certificate and properties, was precipitated by Star Limo's suspension which thereafter caused Mr. Kaplan's need to sell Star Limo's certificate and associated assets.

Likewise, I feel that the witnesses in this case provided no factual evidence showing any injury to the certificate or properties could result from this Commission denying temporary authority. To the contrary, as Mr. Kaplan admitted to at hearing, the injury to the regulated motor carrier properties and certificate was already brought upon by Star Limo's failure to comply with this Commission's Motor Carrier Rules and Regulations. Further, Mr. Schroll, president of Prince of the Road, testified at the hearing that he did not know the details of the advertising slots owed to Star Limo admitted into evidence as Exhibit No. 7. Nor could he remember the names of the major repeat commercial clients he claims would be lost to Prince of the Road should the Commission not grant temporary authority. Nor was any documentation submitted by Mr. Kaplan attesting to the authenticity of the radio commitments Mr. Kaplan testified were owed to Star Limo. The documentation provided was produced by Mr. Kaplan himself and contained no verification from the radio stations. Little or no weight should have been afforded to this evidence.

At the hearing, Mr. Kaplan testified that a denial of temporary authority would have no effect on the contractual value of Star Limo's certificate or "other regulated motor carrier properties." Mr. Kaplan testified that he would still have a valid purchase agreement at the same purchase price if the Commission did not grant temporary authority. Moreover, although the purchase agreement contained a clause permitting the parties to renegotiate the purchase price should the Commission restrict the authority, there was no such provision with respect to whether temporary authority is granted or denied. This evidence strongly indicates that there would be no loss in value between the time Prince of the Road would acquire temporary authority to the time that full authority could be granted by this Commission.

Even though Mr. Schroll testified that the certificate would decrease in value the longer it remained under suspension, he also testified that he did not intend to broaden the authority beyond its original intent. Mr. Kaplan testified that as a practical matter, he has always used Star Limo's authority to operate a luxury limousine service. Mr. Schroll testified that he intends to purchase

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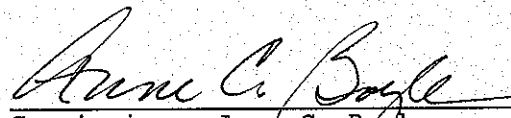
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the certificate from Mr. Kaplan so that he can use sedans as opposed to limousines for services other than the original intent of this authority. He further testified that if the Commission restricts the authority given to Star Limo to include only luxury limousine authority, he would no longer be interested in acquiring it from Mr. Kaplan. Under this analysis, Prince of the Road would essentially be getting a new certificate of authority rather than acquiring the authority given to and utilized by Star Limo prior to the transfer. Permitting Prince of the Road to use this certificate in a manner which contradicts its historical meaning circumvents the general need and necessity requirements found elsewhere in Nebraska statutes. I don't believe the Nebraska Legislature intended us to allow transportation companies to usurp the requirements of Neb. Rev. Stat. § 75-311 by using Neb. Rev. Stat. §§ 75-318 and 75-319 for purchasing motor carrier certificates and using those certificates to operate completely different transportation services.

Furthermore, this Commission is in the process of clarifying the term "limousine" in a separate proceeding to comport with its historical definition so that our criteria for granting authority is not circumvented. We should not grant such temporary authority when the applicant clearly intends to use it for purposes other than its original intent.

Nor would I find that the applicant demonstrated a denial of such request would substantially interfere with the performance of adequate and continuous service to the public. With an exception as to the contract for service on New Year's Eve, which the Commission did address at the hearing, Star Limo has arranged adequate substitute transportation for the public. The applicant did not demonstrate that the public would be unable to secure replacement transportation or that any other substantial interference would result. To the contrary, Mr. Kaplan testified that January was typically his slowest month and that it was easy to find replacement transportation to cover any bookings made prior to his suspension. Mr. Kaplan further testified that many of the persons listed in his January books had simply called to inquire about rates and had not made firm arrangements with Star Limo.

For the foregoing reasons, and upon consideration of all testimony and evidence adduced at the hearing, I would find that the applicant's request for temporary authority must be denied.

  
Commissioner Anne C. Boyle