

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application) APPLICATION NO. B-1587
of Empire Holdings, LLC, Omaha,)
Nebraska, seeking to acquire) DENIED
through transfer, the authority)
granted to Embassy Limousine,)
Inc., in Certificate B-1392.) Entered: November 5, 2002

BY THE COMMISSION:

By application filed May 24, 2002, Empire Holdings, LLC, Omaha, Nebraska, seeks to acquire the authority of Embassy Limousine, Inc., Certificate B-1392, which authorizes transportation of:

Passengers and their baggage by luxury sedan limousines between points in Washington, Sarpy, Douglas and Cass counties. Supp. 1: Passengers and their baggage by luxury sedan, limousine, and passenger vans between points in Nebraska. RESTRICTION: The transportation of railroad train crews and their baggage is not authorized. The use of rate meters is not authorized.

Notice of the application was published in The Daily Record, Omaha, Nebraska, on May 31, 2002.

Protests were timely filed by Embassy Limousine, Inc., the purported transferee; and by Omaha Limousine, Inc., by and through its attorney Patrick Sullivan.

A hearing was held in this matter on October 10, 2002, at 10:00 am in the Commission Hearing Room, Lincoln, Nebraska.

E V I D E N C E

Mr. Ron Abboud testified first on behalf of the Applicant. Mr. Abboud testified that he is the owner of Empire Holdings, LLC. He testified that he has acquired an interest in Embassy Limousine through a written assignment of interest from Platinum Builders, Inc. (Platinum Builders), which was attached to the application (Ex. 3). He further testified that Platinum Builders has a judgment against Embassy Limousine as shown in Exhibit 3. Exhibit 3 includes what appears to be an Order for Default Judgment in Douglas County District Court, entered December 28, 2001, by District Court Judge Mary Likes.

Mr. Abboud further testified that a UCC Financing Statement filed in Iowa entitles him to the certificate of Embassy

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Limousine. The financing statement, which was attached to the application as part of Exhibit 3, identifies Embassy Limousine, Inc., as the debtor and Platinum Builders, Inc., as the secured party. The financing statement provides in part,

This financing statement covers the following collateral: All assets of the debtor including, but not limited to, all certificates, licenses, permits, etc., that have been issued to the debtor by the Nebraska Public Service Commission....

Mr. Abboud further testified that Exhibit 4-3 shows that the original co-owners of Embassy Limousine were Gary Vecchio and Clarence Randy Smith, and that Mr. Vecchio and Rufus Todd Jones jointly purchased the stock of Clarence Randy Smith.

Upon cross-examination by counsel for protestant Omaha Limousine, Mr. Abboud testified that he is not an attorney. He testified that his application was on behalf of Empire Holdings, LLC, and himself as an individual. He further testified that he did not object to the publication of the application as one for Empire Holdings, LLC, without reference to Ron Abboud individually.

Protestant Omaha Limousine objected to Mr. Abboud representing Empire Holdings, on the basis that Mr. Abboud is not an attorney and thus not entitled to conduct examination of witnesses under the Rules of Commission Procedure. The Commission reserved ruling on this objection.

Mr. Clarence Randy Smith testified next on behalf of the applicant. Mr. Smith testified that he was a stockholder in Embassy Limousine, and that Exhibit 4-3 shows that he sold his stock to Rufus Todd Jones.

Mr. Gary Vecchio testified as a protestant. Mr. Vecchio is the current owner of Embassy Limousine. Mr. Vecchio testified that Rufus Todd Jones was an investor in Embassy Limousine, but not a shareholder. He testified that Mr. Jones is in a federal penitentiary. Mr. Vecchio explained that Mr. Jones signed an agreement to borrow money from Mr. Steve Abboud of Platinum Builders, and that Mr. Jones indicated on the agreement that he was the President of Embassy Limousine. Mr. Vecchio further testified that Mr. Jones was never an officer of Embassy Limousine.

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

Transfer of a certificate of public convenience and necessity and other properties of a regulated motor carrier is governed by Neb. Rev. Stat. § 75-318. After notice and hearing:

If...the commission finds that the transaction proposed will be consistent with the public interest and does not unduly restrict competition and that the applicant is fit, willing, and able to properly perform the proposed service, it may enter an order approving and authorizing such consolidation, merger, purchase, lease, operating contract, or acquisition of control of the properties, or any part thereof, or certificates or permits of the whole, or any part thereof, upon such terms and conditions as it deems just and reasonable.

Thus, there are two factors that the Commission must consider in its analysis: (1) whether the proposed transaction is consistent with the public interest and does not unduly restrict competition; and (2) whether the applicant is fit to properly perform the proposed service.

The Commission finds that it should overrule the objection of Omaha Limousine, and allow into evidence the testimony elicited by Mr. Abboud, giving such evidence the weight it deserves.

In evaluating whether the proposed transaction is consistent with the public interest, the Commission finds that it is not in the public interest to transfer a certificate of authority that does not or would not clearly belong to the applicant. As discussed below, there is no evidence to indicate that the applicant has a legal interest in the certificate of authority.

The Order for Default Judgment from Douglas County District Court (Ex. 3), upon which applicant bases his claim in part, shows Platinum Builders as plaintiff, and Embassy Limousine and Todd Jones as defendants. The ordering clause of the judgment reads (*emphasis added*):

IT IS THEREFORE ORDERED BY THE COURT: That judgment is hereby entered against the *Defendant, Rufus Todd Jones*, in the sum of \$69,825.00, together with future interest accruing at 6% per annum, and Court costs.

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The above clause only mentions defendant Rufus Todd Jones, and does not reference Embassy Limousine. No other clause in that order mentions a judgment against Embassy Limousine.

Not only is the judgment against a different party, but a judgment alone does not entitle the Applicant to Embassy Limousine's certificate of authority. The judgment is for a monetary amount, and does not provide for seizure of assets or garnishment of the debtor. Even if the judgment was against Embassy Limousine rather than Rufus Todd Jones, simply seizing the assets of the corporation is not the proper method to collect the judgment. See Danbom v. Danbom, et al., 273 N.W.2d 502, 132 Neb. 858 (1937).

Furthermore, while the judgment is against Rufus Todd Jones, the UCC security interest is against Embassy Limousine. There is no evidence that the two are connected, or that the UCC security interest entitles the secured party to seize the identified assets without further direction from a court of law. The UCC financing statement, if legally valid, may create a security interest in the certificate of authority, but it alone, or even coupled with a judgment against Rufus Todd Jones, does not convey the certificate of authority to the secured party.

Applicant also asserts that the stock purchase agreement between Rufus Todd Jones and Gary Vecchio as buyers, and Clarence Randy Smith as the seller, supports his claim to the certificate. This agreement was never approved by the Public Service Commission. Approval is required by Neb. Rev. Stat. § 75-320, which provides in part:

No transfer, assignment, or sale of stock or change of stock ownership or any interest therein which will directly or indirectly result in a transfer, assignment, sale, or change in the control of the corporation holding a certificate or permit. . . will be effective or valid, unless the carrier or person seeking to acquire control of the corporation ... obtains approval of the commission under such rules and regulations as the commission may prescribe.

No such approval was ever sought by Embassy Limousine, nor was it given by the Commission. Thus, the stock purchase agreement does not constitute a valid stock transfer in any form to Rufus Todd Jones.

For the reasons delineated and discussed above, the Commission does not have sufficient evidence to find that the applicant is legally entitled to Embassy Limousine's certificate

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of authority. It is certainly not in the public interest to transfer a certificate that does not and would not be legally owned by the transferee. Because the public interest criterion is not met, there is no need for the Commission to further consider whether the applicant is fit.

For the foregoing reasons, the Commission finds that the application should be denied.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the application of Empire Holdings, LLC, be and is hereby denied.

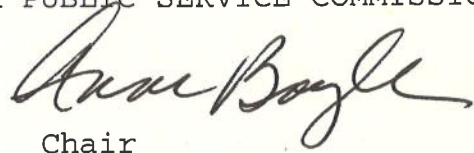
MADE AND ENTERED at Lincoln, Nebraska, this 5th day of November, 2002.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:



//s//Anne C. Boyle



Chair

ATTEST:



Executive Director