

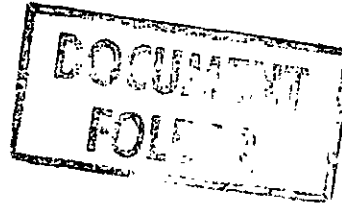


COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P. O. BOX 3265, HARRISBURG, Pa. 17120
June 9, 1986

IN REPLY PLEASE
REFER TO OUR FILE

A-00106805

Herbert R. Nurick, Esquire
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108



Application of Allied Coordinated Transportation Services, Inc.

TO WHOM IT MAY CONCERN:

Enclosed is a copy of the Initial Decision of Administrative Law Judge Edward R. Casey.

If you do not agree with any part of this Decision, you may send written comments (called Exceptions) to the Commission. Specifically, an original and nine (9) copies of your signed exceptions MUST BE FILED WITH THE SECRETARY OF THE COMMISSION IN ROOM B-18, NORTH OFFICE BUILDING, NORTH STREET AND COMMONWEALTH AVENUE, HARRISBURG, PA OR MAILED TO P.O. BOX 3265, HARRISBURG, PA 17120, within fifteen (15) days of the date of this letter. This exception period is fixed by statute. The signed exceptions will be deemed filed on the date actually received by the Secretary of the Commission or on the date deposited in the mail as shown on U.S. Postal Service Form 3817 certificate of mailing attached to the cover of the original document (52 Pa. Code §1.11(a)). If your exceptions are sent by mail, please use the address shown at the top of this letter. A copy of your exceptions must be served on each party of record and to the Administrative Law Judge whose address is Pennsylvania Public Utility Commission, P.O. Box 3265, Harrisburg, Pennsylvania 17120.

If you receive exceptions from other parties, you may submit written replies to those exceptions in the manner described above within ten (10) days of the date that the exceptions are due.

Exceptions and reply exceptions shall obey 52 Pa. Code 5.533 and 5.535 particularly the 40 page limit for exceptions and the 25 page limit for replies to exceptions. Exceptions should clearly be labeled as "EXCEPTIONS OF (Name of Party) - (protestant, complainant, staff, etc)".

If no exceptions are received within fifteen (15) days, the decision of the Administrative Law Judge may become final without further Commission action. You will receive written notification if this occurs.

cc: ALJ Casey/Office of ALJ/Bureau of Transportation/Law Bureau/Mr. Bramson/
OSA/Chairman/Commissioners

fao

Encls.

Certified Mail

Receipt Requested

Very truly yours,

William H. Smith

William H. Smith

Chief Administrative Law Judge

Similar letters to: Refer to Computer list attached.

0001
ALLIED COORDINATED TRANSP. SERV., INC.
SUITE 2, COLONIAL BUILDING
44 SOUTH BEAVER STREET
NEW CASTLE PA 16101
SELF

0002
HERBERT R NURICK ESQ
100 PINE STREET
P O BOX 1166
HARRISBURG PA 17108
APPLICANT

0003
NORMAN J BARILLA ESQ
SUITE 356
FIRST NATIONAL BANK BUILDING
NEW CASTLE PA 16101
NEW CASTLE AREA TRANSIT AUTH. PROTESANT

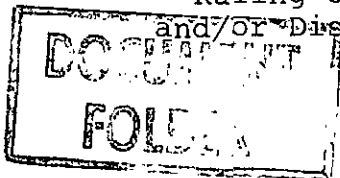
0004
JOHN A PILLAR ESQ
SUITE 700
312 BOULEVARD OF THE ALLIES
PITTSBURGH PA 15222
FRANK S SFARA JR PROTESTANT

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

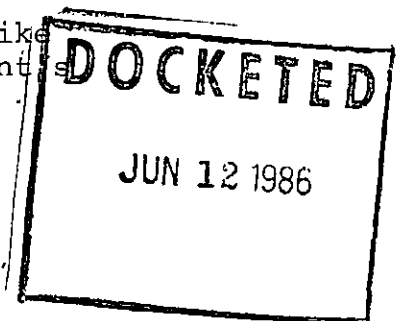
Application of Allied :
Coordinated Transportation : A-00106805
Services, Inc. :

INITIAL DECISION

Ruling on Applicant's Motions to Strike
and/or Dismiss Protests and a Protestants
Reply Thereto



Before
Edward R. Casey
Administrative Law Judge



By an application filed with the Commission on March 3, 1986, Allied Coordinated Transportation Services, Inc. (hereinafter "Applicant") seeks a broker's license evidencing the Commission's approval of the beginning of the right and privilege to operate as a broker, for the transportation of persons, between points in the County of Lawrence, and from points in said county to points in Pennsylvania and vice versa.

Section 2501 of the Public Utility Code, 66 Pa. C.S.A. §2501(b) defines the term "broker" as follows:

"Any person or corporation not included in the term "motor carrier" and not a bona fide employee or agent of any such carrier, or group of such carriers, who or which, as principal or agent, sells or offers

for sale any transportation by a motor carrier, or the furnishing, providing, or procuring facilities therefor, or negotiates for, or holds out by solicitation, advertisement, or otherwise, as one who sells, provides, furnishes, contracts, or arranges for such transportation, or the furnishing, providing, or procuring of facilities therefore, other than as a motor carrier directly or jointly or by arrangement with another motor carrier, and who does not assume custody as a carrier".

Two formal protests of record have been filed against this application within the allowable time period specified for the receipt of such protests.

Frank S. Sfara, Jr., t/d/b/a/ Sfara Sales and Service, (hereinafter "Sfara"), a certificated motor carrier which holds group and party, special excursions and tours or sight-seeing trip authority in the same identical area where applicant seeks broker authority, filed one of those protests.

The second protest (letter of April 3, 1986) was filed by the New Castle Area Transit Authority, by its Solicitor, but that formal protest was recently withdrawn by a follow-up letter from the Authority's Solicitor which was dated May 19, 1986 and docketed at the Commission on May 23, 1986. As a consequence, we will not have to issue a ruling concerning Applicant's objection to this particular protest on the grounds that it was technically defective and not in conformance with the pertinent P.U.C. Rules of Practice and Procedure as set forth under 52 Pa. Code §5.101 sub(a), (2) and (3).

That matter has now been rendered moot as a result of New Castle Area Transportation Authority's withdrawal of protest and therefore the merits of that protest, or the relative lack thereof, will not receive any attention or consideration in this ruling.

As far as Sfara's formal protest is concerned, it runs counter to well-settled case law which remains in full force and effect at this Commission. The Applicant seeks a brokers license only, while Sfara provides group and party, special excursion and tour or sight-seeing bus transportation services which it apparently solicits and books directly through its own sales representatives.

In its Reply to Applicant's Motion to Strike and/or Dismiss Protests, Sfara makes some oblique reference to the fact that Applicant is affiliated with Allied Human Services, Inc., a Pennsylvania non-profit corporation which provides paratransit-type services to the elderly and the handicapped through the use of public or government-supplied funds.

Assuming all of the allegations as set forth under Sfara's responsive pleading to be true, this protestant has failed to state a valid basis for the allowance of its formal protest. Sfara is not authorized to solicit or place transportation business in the same manner as a "broker", even though it

can sell and accept trip bookings on its own behalf in its capacity as a certificated common carrier of passengers in and out of the Lawrence County area. Likewise, Sfara does not hold "paratransit" authority with this Commission so it is not only unable to duplicate Applicant's proposed authority as a "broker", but it also cannot provide the same kind of transportation service that is now being provided by Allied Human Services, Inc., the purported parent or affiliate of the Applicant.

Applicant's Motion to Strike and/or Dismiss Protests is supported by ample citation of case precedents which bear directly on the issue presently under consideration. We don't intend to repeat those citations herein because Sfara's counsel of record is a specialist in transportation utility law and is as "current" as most P.U.C. Administrative Law Judges concerning the import and impact of those P.U.C. and Pennsylvania Appellate Court decisions.

Finally, Sfara finds it necessary to fall back on the usual averment common to most formal transportation application protests; i.e., that Applicant's entry into the field will result in a diversion of traffic away from the protestant and other existing certificated common carriers of passengers serving the Lawrence County area.

We do not think that position or caveat is even relevant here for reasons already discussed and, furthermore, if Allied Human Services, Inc. limits its operations to paratransit service for senior citizens and the handicapped, is it not reasonable to assume that the present applicant, in its future capacity as a transportation broker, might not have occasion to refer some business to Sfara involving groups of persons who have the ability to pay a fare for an excursion bus trip to various points of interest and under conditions in which Allied Human Services, Inc. is not in a position to provide service for one reason or another?

Although we will not sit in judgment over this particular application proceeding, our initial impression of the application was that it represents a step toward progress as well as an attempt to advance the public interest which should not be impeded or impaired by the filing of frivolous, groundless protests.

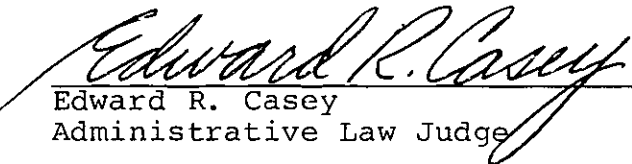
Accordingly, we will issue the following directive in the above-captioned application proceeding:

THEREFORE,

IT IS ORDERED:

1. That Applicant's Motion to Strike and/or Dismiss Protests be and is hereby granted and Sfara's Reply to that Motion is hereby rejected and denied.

2. That in view of the fact that Sfara's formal protest to this application has been summarily dismissed, the application is being returned to the Office of the Secretary of the P.U.C. for prompt referral to the P.U.C. Bureau of Transportation for further processing under the modified procedure, pursuant to the policy enunciated under Director of Operations Alford's memorandum of March 31, 1986; which policy became effective on May 1, 1986.


Edward R. Casey
Administrative Law Judge

Dated: May 30, 1986.

PS Form 3811, July 1983 447-845

SENDER: Complete items 1, 2, 3 and 4.
 Put your address in the "RETURN TO" space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for service(s) requested.

1. Show to whom, date and address of delivery.

2. Restricted Delivery. *A106805 I.D.*

3. Article Addressed to:
John d. Peller, Esq.

4. Type of Service: <input type="checkbox"/> Registered <input type="checkbox"/> Certified <input type="checkbox"/> Express Mail	<input type="checkbox"/> Insured <input type="checkbox"/> COD	Article Number <i>44356</i>
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Always obtain signature of addressee or agent and **DATE DELIVERED.**

5. Signature - Addressee
X

6. Signature - Agent
J. Peller

7. Date of Delivery
JUN 11 1986

8. Addressee's Address (ONLY if requested and fee paid)

DOMESTIC RETURN RECEIPT

PS Form 3811, July 1983 447-845

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 Put your address in the "RETURN TO" space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for service(s) requested.

1. Show to whom, date and address of delivery.

2. Restricted Delivery. *A106805 I.D.*

3. Article Addressed to:
Norman J. Barilla, Esq.

4. Type of Service: <input type="checkbox"/> Registered <input type="checkbox"/> Certified <input type="checkbox"/> Express Mail	<input type="checkbox"/> Insured <input checked="" type="checkbox"/> COD	Article Number <i>44355</i>
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Always obtain signature of addressee or agent and **DATE DELIVERED.**

5. Signature - Addressee
X

6. Signature - Agent
Susan LeClair

7. Date of Delivery
JUN 10 1986

8. Addressee's Address (ONLY if requested and fee paid)

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 Put your address in the "RETURN TO" space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for service(s) requested.

1. Show to whom, date and address of delivery.

2. Restricted Delivery. *A106805 I.D.*

3. Article Addressed to:
Herbert R. Merick

4. Type of Service: <input type="checkbox"/> Registered <input type="checkbox"/> Certified <input type="checkbox"/> Express Mail	<input type="checkbox"/> Insured <input type="checkbox"/> COD	Article Number <i>44354</i>
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Always obtain signature of addressee or agent and **DATE DELIVERED.**

5. Signature - Addressee
X

6. Signature - Agent
X J. Peller

7. Date of Delivery
JUN 10 1986

8. Addressee's Address (ONLY if requested and fee paid)

DOMESTIC RETURN RECEIPT

6/23

ACT 294

Case Identification: A-00106805; Application of Allied Coordinated Transportation Services, Inc.

Initial Decision by: ALJ Edward R. Casey

Date Issued for Exceptions: June ⁹~~12~~, 1986

ALJ Recommendation: The ALJ granted Applicant's Motion to Strike and/or Dismiss the Protest of Sfara Sales.

DOCKETED
JUN 25 1986

* * * *

I want full Commission review of this decision.

Commissioner

DOCUMENT
FOLDER
DATE

I do not want full Commission review of this decision.

WRS

Commissioner

6/23/86

DATE

6/23

ACT 294

Case Identification: A-00106805; Application of Allied Coordinated Transportation Services, Inc.

Initial Decision by: ALJ Edward R. Casey

Date Issued for Exceptions: June ⁹12, 1986

ALJ Recommendation: The ALJ granted Applicant's Motion to Strike and/or Dismiss the Protest of Sfara Sales.

* * * *

I want full Commission review of this decision.

Commissioner

DATE

I do not want full Commission review of this decision.



Commissioner

6-23-86
DATE

6/23

ACT 294

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* * * *

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Commissioner

DATE

I do not want full Commission review of this decision.

Siida P. Salofers

Commissioner

6-23-86

DATE