

ORIGINAL

BEFORE

THE PENNSYLVANI PUBLIC UTILITY COMMISSION

In re: A-00108292 James Danielewicz, t/d/b/a Limousine for Less For the right to transport, as a common carrier, persons, in limousine service, between points in the borough of Stroudsburg, Monroe County, and within an airline distance of sixty statute miles of the limits thereof. Further hearing.

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CERTIFIED ORIGINAL

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Stenographic report of hearing held in the First Floor Hearing Room, State Office Building, Scranton, Pennsylvania

Tuesday,
May 16, 1989
at 10:00 a.m.

BEFORE

RICHARD LOVENWIRTH, ADMINISTRATIVE LAW JUDGE

- - - - -

APPEARANCES:

SALVATORE VITO, ESQUIRE
45 North Seventh Street
Stroudsburg, Pennsylvania 18360
Appearing on behalf of the Applicant

MARK JENNINGS, ESQUIRE
303 Tenth Street
Honesdale, Pennsylvania 18431
Appearing on behalf of the Protestant Pocono
Limousine Service

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POCONO LIMOUSINE:

DIRECT

CROSS

REDIRECT

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Albert Gino

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1 JUDGE LOVENWIRTH: Good morning. We'll now commence
2 a further hearing concerning the application of James
3 Danielewicz at A-00108292.

4 My review of the transcript from March the 17th,
5 1989 reveals that the parties had agreed that the Applicant
6 could call one additional witness with certain -- who will
7 testify within certain constraints as agreed upon by the
8 parties.

9 I have before me the appearance sheet indicating
10 that here on behalf of the Applicant is Salvatore Vito,
11 Esquire. Good morning, Mr. Vito.

12 MR. VITO: Good morning, Your Honor.

13 JUDGE LOVENWIRTH: On behalf of Pocono Limousine,
14 one of the Protestants, is its attorney, Mark S. Jennings,
15 Esquire. Good morning, Mr. Jennings.

16 MR. JENNINGS: Good morning, Judge.

17 JUDGE LOVENWIRTH: All right. Mr. Mulcahey is the
18 attorney of record on behalf of the other Protestant, to
19 wit; the House Scene, Inc., trading and doing business as
20 Top Hat Chauffeured Limousine Service.

21 Mr. Mulcahey did call me yesterday and he indicated
22 that he thought that perhaps he would be unable to
23 attend -- well, not that he would be unable, but that he
24 would be not in attendance this morning because of some
25 agreement that he had reached with the attorney for the

1 Applicant which appertained to testimony which would have
2 been presented by the said Applicant or rather by the said
3 Protestant, the House Scene, Inc., had the Protestant been
4 here. Is that right, Mr. Vito?

5 MR. VITO: That's correct, Your Honor.

6 JUDGE LOVENWIRTH: Tell us exactly what --

7 MR. VITO: In essence, it was that we would agree
8 and stipulate that the House Scene, Inc. was presently an
9 Applicant for rights in Monroe County and the House Scene,
10 Inc. would stipulate that Mr. Wolfington's testimony would
11 be that of a shipper witness, that he would use the service
12 in the community; use our service, that is. He would
13 essentially stipulate to Wolfington's testimony as a
14 shipper witness.

15 JUDGE LOVENWIRTH: That Mr. Wolfington -- and you
16 can identify him for the record in more detail -- but he
17 would say that he would use the Applicant's services if the
18 Applicant was granted a certificate?

19 MR. VITO: That's correct, Your Honor.

20 JUDGE LOVENWIRTH: And did you say something else,
21 that he would also stipulate that the said witness would
22 say something else?

23 MR. VITO: Wolfington would -- we would request that
24 Wolfington just state that he felt that there would be a
25 need for it in the community.

1 JUDGE LOVENWIRTH: For the services of the
2 Applicant?

3 MR. VITO: Correct.

4 JUDGE LOVENWIRTH: So he said he would stipulate to
5 two things, and that you, as part of the agreement, would
6 stipulate as to the rights of the said Protestant?

7 MR. VITO: Well, that the -- he has made application
8 for rights in Monroe County. Presently it's my
9 understanding that Top Hat has rights in surrounding
10 counties but not specifically Monroe.

11 JUDGE LOVENWIRTH: And was part of the agreement
12 that you would stipulate as to what rights he has in those
13 other counties?

14 MR. VITO: Essentially that he's made application
15 for rights in Monroe County. That was the extent of our
16 stipulation.

17 JUDGE LOVENWIRTH: That was the extent of the
18 stipulation?

19 MR. VITO: Yes. He's pending -- his application is
20 pending for rights in Monroe County.

21 JUDGE LOVENWIRTH: All right. Okay. Is there a
22 quid pro quo here? You only agree to his stipulation in
23 consideration of his agreement?

24 MR. VITO: That's correct, Your Honor.

25 JUDGE LOVENWIRTH: How do you fit in with all this,

1 Mr. Jennings? I don't think you have any standing to
2 object to Mr. Mulcahey's witnesses that he would present on
3 behalf of the House Scene, Inc. so I won't ask you about
4 that. But how about the stipulation concerning that
5 witness, Mr. Worthington, or something like that, who will
6 be identified?

7 MR. JENNINGS: Mr. Wolfington?

8 JUDGE LOVENWIRTH: Mr. Wolfington.

9 MR. JENNINGS: We do not stipulate to that, Your
10 Honor.

11 JUDGE LOVENWIRTH: Well, then how are you going to
12 get his testimony in? You can't bifurcate the case and
13 say, well, we'll let it in as far as Mr. Mulcahey is
14 concerned, but we are not going to let it in as far as Mr.
15 Jennings is concerned. You can't do that. It's one case,
16 one Applicant's case. You won't stipulate. Do you object?

17 MR. JENNINGS: Yes. I object.

18 JUDGE LOVENWIRTH: I can't allow that. We'll go off
19 the record for a minute.

20 (A brief discussion was held off the record.)

21 JUDGE LOVENWIRTH: While we were off the record, it
22 was agreed that because Mr. Vito was under some sort of a
23 misapprehension, that I would let in that stipulation and
24 let that testimony of Mr. Wolfington -- whose name, I
25 believe, is spelled W-o-l-f-i-n-g-t-o-n. What's his first

1 name?

2 MR. VITO: Christopher.

3 JUDGE LOVENWIRTH: Because he was under
4 misapprehension that I would let in the stipulation that he
5 recited on the record concerning Mr. Christopher
6 Wolfington, notwithstanding the objection of the Protestant
7 Pocono Limousine, and because I told them off the record
8 that I couldn't do that and wouldn't, it's been decided
9 pursuant to my suggestion -- and I don't think there's any
10 objection, but if there is, the parties will be given an
11 opportunity to raise that objection -- that Mr. Vito may
12 present on behalf of the Applicant that witness' testimony
13 only telephonically, and that that would be done within the
14 next week so as not to conflict with the schedules of any
15 of the parties, because Mr. Jennings explained he has a
16 long vacation coming up at the end of next week, I think,
17 or something like that.

18 MR. JENNINGS: Yes, Your Honor.

19 JUDGE LOVENWIRTH: So that's what we are going to
20 do. And the testimonies -- the witness' testimony will not
21 involve anything other than what was placed on the record
22 at the last time, at the last hearing, on March 17th.

23 This witness didn't appear. We waited for him and
24 then 1:00 which was -- although the Applicant finished his
25 case at 11:30 -- according to the transcript and I think

1 that also coincides with my recollection -- we waited until
2 1:00. We took an early luncheon recess and we took an hour
3 and a half for lunch, which is not my practice. I usually
4 take less time. And then the witness still wasn't here at
5 1:00, so we adjourned.

6 So that witness, Mr. Wolfington, can testify
7 telephonically and that's the way we'll do it, because he
8 didn't get on last time and he's not here today and part of
9 the reason that he's not here today is the reasons I just
10 went into. The attorney for the Applicant was under some
11 sort of a misapprehension.

12 All right. So that being the case, there's only one
13 thing more to do today and that is to first of all, accept
14 the stipulation of the parties, that is to say, a
15 stipulation by and between the Applicant and Protestant,
16 The House Scene, Inc. concerning the testimony of their
17 witness which would have been presented as explained a few
18 moments ago on the record by Mr. Vito. So that's part of
19 the record. We have heard from that Protestant. We will
20 hear no further evidence from that Protestant. And then
21 there's another Protestant here, Pocono Limousine,
22 represented by Mr. Jennings. Are you prepared to present
23 your case, Mr. Jennings?

24 MR. JENNINGS: Yes, Judge.

25 JUDGE LOVENWIRTH: All right. Please call a witness

1 A. Approximately six and a half to seven years.

2 Q. And when you were originally employed, was there
3 a different ownership at that time?

4 A. Yes, there was.

5 Q. And you've been there continuously since these
6 two owners?

7 A. Yes.

8 Q. Since the transition to the new owners?

9 JUDGE LOVENWIRTH: What is Pocono Limousine? Is
10 that a corporation?

11 THE WITNESS: It's a corporation serving the Pocono
12 area with limousine service.

13 JUDGE LOVENWIRTH: Yeah, but it's a corporation?

14 THE WITNESS: Corporation.

15 BY MR. JENNINGS:

16 Q. And have you been authorized by the Protestant
17 Pocono Limousine Service to appear to protest this
18 particular application?

19 A. Yes, I have.

20 JUDGE LOVENWIRTH: Was it always a corporation?
21 Under both owners was it always a corporation?

22 THE WITNESS: Yes, I believe so.

23 BY MR. JENNINGS:

24 Q. Does the Protestant have limousine authority --
25 Public Utility Commission limousine authority -- in the

1 Commonwealth of Pennsylvania?

2 A. No, not that I know of.

3 Q. Limousine service?

4 A. Limousine service, yes.

5 Q. In any portion of the Commonwealth?

6 A. The Protestant?

7 Q. Yes.

8 A. Oh, I'm sorry. Yes, we do.

9 Q. And what would that area be?

10 A. Monroe County.

11 Q. And are you familiar with the equipment of
12 Pocono Limousine Service with regard to the limousine
13 portion of your business?

14 A. Yes.

15 Q. And just to clarify the record, are there any
16 other certificates which Pocono Limousine Service holds
17 before the Public Utility Commission?

18 A. We also serve with service of mini vans and
19 sedans.

20 Q. And would that be in paratransit as well?

21 A. Yes.

22 Q. With regard to just the limousine service, are
23 you familiar with the vehicles that Pocono Limousine
24 Service maintains for the limousine service?

25 A. Yes.

1 Q. What vehicles are they, if you recall?

2 A. As far as the limousine itself?

3 Q. Yes.

4 A. We own four Cadillac stretches, 1984's.

5 JUDGE LOVENWIRTH: Stretches, is that what you said?

6 THE WITNESS: Limousines, yes.

7 BY MR. JENNINGS:

8 Q. This would be a stretch limousine. Is that
9 correct?

10 A. Yes.

11 Q. And have you purchased or in the process of
12 purchasing any additional limousines for the business?

13 A. We have just purchased a new -- well, a 1986
14 Lincoln limousine.

15 Q. And is that also a stretch limousine?

16 A. Yes, it is.

17 Q. Do you also have employees employed in the
18 limousine service?

19 A. Yes, we do.

20 Q. And how many in the limousine service, if you
21 know?

22 A. Approximately that drive the limousines, six to
23 seven.

24 Q. And Mr. Gino, is there a time of the year when
25 the limousine services are more active, more busy, than

1 other times of the year?

2 A. Usually the months of May, June, and July are
3 the busiest for the limousines themselves.

4 Q. In your experience of six years in this
5 business, why is that so?

6 A. Because usually May, June, and July is wedding
7 and prom season, so you have a lot more demand for the
8 limousines in those months versus the others because
9 usually proms aren't before May and weddings, people
10 usually wait until May, June, and July for the weather to
11 become more decent.

12 Q. And Mr. Gino, do you know at this particular
13 time whether Pocono Limousine Service in the limousine
14 portion of your business is able to handle the Monroe
15 County needs at this time?

16 A. Yes. I feel we are.

17 Q. Are you turning away any business?

18 A. Occasionally just during the prom season and
19 this year, one date in particular which is May 27th for the
20 one prom we had to turn away maybe three or four people.

21 Q. And other than that?

22 A. Other than that, we have been able to
23 accommodate everyone.

24 Q. Are you familiar also with the general finances
25 of the company?

1 A. Very briefly, not in depth.

2 Q. Do you know whether the company is in a healthy
3 financial position at this time?

4 A. I feel we are.

5 Q. Do you know whether the company is planning on
6 purchasing any additional vehicles other than the ones you
7 just mentioned during the 1989 year?

8 A. There is a possibility. I had heard talking --

9 MR. VITO: Objection. It's speculation.

10 JUDGE LOVENWIRTH: Sustained. He said he doesn't
11 know. That's in effect what he said. It's a possibility.

12 BY MR. JENNINGS:

13 Q. Where is -- what is the general maintenance
14 procedure for the limousine vehicles?

15 A. Well, the vehicles are maintained daily. After
16 every run, they do come back and they are checked over
17 thoroughly by a mechanic and they have a regular
18 maintenance schedule as far as oil changes, lubrication,
19 and any time there is a problem, if someone brings up a
20 problem, the vehicle is tended to.

21 Q. Who is responsible for bringing up any problems
22 with the vehicles?

23 MR. VITO: Objection, Your Honor. We don't --

24 JUDGE LOVENWIRTH: What grounds?

25 MR. VITO: We don't have a time frame for any of

1 this and I don't know if it's particularly relevant.

2 JUDGE LOVENWIRTH: I'm not sustaining your
3 objection, in that you presented a witness a couple months
4 ago that said that that particular Protestant was providing
5 inadequate service because of lack of maintenance.

6 MR. VITO: That's correct, Your Honor, but the mere
7 fact that he's testifying to a maintenance procedure is not
8 necessarily relevant to a particular instance of
9 non-maintenance. There's no direct relationship there.

10 JUDGE LOVENWIRTH: Objection overruled.

11 BY MR. JENNINGS:

12 Q. So what is the maintenance procedure then?

13 A. As I said, if there's a problem with it, a
14 vehicle, the driver would notify someone in the office and
15 the problem would be addressed accordingly, depending on
16 what it was.

17 Q. How does the notification take place?

18 A. Either verbally if we are in the office or the
19 driver would deal with it over the phone if someone has a
20 problem with the vehicle or we are notified as soon as
21 possible, but the vehicle will not go on the road. And
22 we'll notify the proper person being what it is, depending
23 on how major it is. We do have a mechanic that does work
24 on cars.

25 Q. So you have an on-site mechanic?

1 A. Right.

2 Q. The facility that you maintain, what does it
3 look like, if you can describe it?

4 A. The garage itself?

5 Q. Yes.

6 A. It's a large two-bay garage. Actually it's a
7 four-bay garage that we share with another company and the
8 limousines are all kept indoors and they have equipment
9 there to work on vehicles, as far as minor repairs that can
10 be done there.

11 JUDGE LOVENWIRTH: What does your mechanic do for a
12 living if nobody complains?

13 THE WITNESS: The mechanic that we have is a -- he
14 works part-time for us. He has another full-time job.

15 JUDGE LOVENWIRTH: So if nobody complains, he has --

16 THE WITNESS: No, we have someone that does do
17 regularly scheduled maintenance on the vehicles. He does
18 check the vehicles and any problems that he may find, then
19 are addressed.

20 BY MR. JENNINGS:

21 Q. When the limousines go out in the morning, is --
22 on a run, not necessarily in the morning. Is there an
23 inspection at that time as well?

24 A. The drivers usually do just look over the car and
25 check it out. They don't just hop in it and go. They'll

1 start it and run it. If there's a problem, then we're
2 notified. But usually when a car comes back from a run
3 it's checked over as far as fueling, oil checks, and just
4 any visible damage to anything.

5 Q. What happens if there is a problem with the
6 vehicle that comes up kind of just before a run? What do
7 you do in that event?

8 A. What we'll do is we'll try to repair that
9 vehicle as quickly as possible. If that vehicle cannot be
10 repaired for a specific run, we'll try to accommodate with
11 another vehicle. But we'll always notify the party
12 involved.

13 Q. Mr. Gino, were you there when Nathan Oliver was
14 employed by the company?

15 A. Yes, I was.

16 Q. Do you know what an Applicant must go through to
17 become a driver for the company?

18 A. Well, as far as the procedures, the first part
19 is to fill out an application.

20 Q. What's essentially on the application?

21 A. It asks for all the basic information, your
22 name, address, and any driving information as far as
23 traffic convictions, violations, and licensing information,
24 what driver's license you would hold. It asks for the
25 state, the driver's number, and what classification license

1 it is that you do hold.

2 Q. Do you recall Mr. Nathan Oliver's application
3 with the company?

4 A. Yes, I do.

5 Q. Do you recall what state he indicated he was
6 licensed to drive in?

7 A. New York.

8 MR. VITO: Objection.

9 JUDGE LOVENWIRTH: What grounds?

10 MR. VITO: What's the relevancy to this proceeding?

11 JUDGE LOVENWIRTH: Well, right now, I don't know
12 what the relevancy is. It may not appear relevant. It may
13 not be germane at all. On the other hand, the witness said
14 that he served his relationship -- part of that
15 relationship -- with that Protestant for the following
16 reason. They have a right to come in -- well, that isn't
17 the reason. It's another reason. So let's wait and see.
18 I don't know. So I'll overruled your objection for now.

19 BY MR. JENNINGS:

20 Q. Okay. Mr. Gino, you indicated that it was a New
21 York license that Mr. Nathan had put -- I'm sorry -- Mr.
22 Oliver had put on his application. Is that correct?

23 A. Yes.

24 Q. Do you recall whether there were -- how did Mr.
25 Oliver work out as a driver with the company?

1 A. At the beginning, there was no problem. Nathan
2 was fine. We all got along with no problems.

3 MR. VITO: Your Honor, not to be obstructive, but he
4 testified that his capacity was most recently that of
5 office manager. And if at the time that Mr. Oliver was
6 employed, he wasn't acting in such a capacity, I would like
7 to know how he can make statements that pertain to a
8 managerial position. I don't think he has an adequate
9 foundation, first of all, to demonstrate his competency to
10 make the statement that was made.

11 JUDGE LOVENWIRTH: Yeah. I don't know. I sustain
12 your objection. I don't think any foundation has been laid
13 as to what this witness did for the company at the time Mr.
14 Oliver was employed. So I'll sustain the objection for
15 now.

16 BY MR. JENNINGS:

17 Q. Mr. Gino, directing your attention to the spring
18 and summer of 1988, were you at that time working with the
19 Applicant -- I'm sorry -- with the Pocono Limousine
20 Service?

21 A. Yes, I was.

22 Q. And in what capacity?

23 A. I was assistant office manager.

24 Q. And at that time as assistant office manager,
25 what were your duties?

1 A. Dispatching, making schedules for each day,
2 payroll, handling reservations that would come in over the
3 phone, things like that. General office duties.

4 Q. And as such, were you involved with the drivers
5 of the limousines at that particular point in time?

6 A. Yes.

7 Q. And what did you have to do with the drivers at
8 that time?

9 A. We set up schedules, corresponded with the
10 drivers as far as what their schedules were for a given
11 day, any problems they had on the road, any problems
12 scheduling. That was the direct access with the drivers.

13 Q. Were you their supervisor at that time?

14 A. As a dispatcher or assistant, yes.

15 Q. And in this capacity then, are you familiar with
16 Nathan Oliver?

17 A. Yes.

18 Q. And are you familiar with his employment with
19 the company during the spring and summer of 1988?

20 A. Yes.

21 Q. Okay. Now, I ask you again, how did that
22 employment go with Mr. Oliver at that time?

23 MR. VITO: Your Honor, again I'm going to renew my
24 objection. His testimony was that he was his supervisor as
25 a dispatcher in that capacity.

1 JUDGE LOVENWIRTH: Overruled.

2 THE WITNESS: As I said before, to start out, Nathan
3 was fine. Everyone got along. There were no problems. As
4 time went on, there were minor problems as far as lateness,
5 excuses for being late, and other problems that crept up.

6 BY MR. JENNINGS:

7 Q. I would like to direct your attention
8 specifically to June 23rd, 1988. Do you recall receiving a
9 call from the state police of Stockertown?

10 A. Yes, I do.

11 Q. Would you relate that incident for us, please?

12 A. On that date, I was in the office working alone.
13 I believe it was a Sunday afternoon. And I received a
14 phone call from a secretary, I believe it was, at the
15 Stockertown Police Barracks. She identified herself and
16 advised me that one of our drivers --

17 MR. VITO: Objection. It's hearsay. I can't cross
18 examine the telephone conversation.

19 JUDGE LOVENWIRTH: Well, does this fall into the
20 exception of the hearsay rule, Mr. Jennings?

21 MR. JENNINGS: Judge, I don't know that it falls
22 into any of the exceptions quite honestly, but this is
23 simply to fill in the gap as to where Mr. Oliver was. I
24 could ask him without having to do it, I suppose, what did
25 you do; where did you go after the phone call.

1 JUDGE LOVENWIRTH: I think that's what you're going
2 to have to do.

3 BY MR. JENNINGS:

4 Q. After you got this phone call, where did you go?

5 A. I had forwarded the phones to the answering
6 service and I had to go down to Stockertown to the police
7 barracks.

8 Q. And who did you find there?

9 A. Nathan.

10 Q. And did you have any conversation with Nathan at
11 that time?

12 A. At first -- when I walked in, no, I did not.

13 Q. During the day later on, did you have a
14 conversation with him?

15 A. Driving back to the office, yes.

16 Q. How did you get -- where is the office where you
17 received --

18 A. Our office is located off of Route 940 in Pocono
19 Summit.

20 Q. And how far is Stockertown?

21 A. Approximately 35 to 40 minute drive.

22 Q. How did you get from your office to Stockertown?

23 A. I had another driver that was scheduled to go
24 out on a run that had been in the office to drive me down
25 because I also had to pick up the vehicle.

1 Q. Who was up at the office to man --

2 A. There was no one there. I had to forward the
3 calls to our answering service.

4 Q. Now, was Mr. Oliver under your employ that day?

5 A. Yes.

6 Q. And what was he supposed to be doing that day?

7 A. He was scheduled to make a pick up at the
8 Allentown airport.

9 Q. And did that, in fact, occur?

10 A. No, it did not; not with Nathan as the driver,
11 no.

12 Q. You get down to the Stockertown Police Barracks.
13 You indicated Mr. Oliver was there. What, if any,
14 conversation ensued between you and Mr. Oliver?

15 A. That did not happen until the way back -- on the
16 way back to our office. There wasn't too much conversation
17 other than I recall just going over what had happened and
18 Nathan advised me that he would have to take a couple days
19 off to go to New York to clear up some things with his
20 license.

21 Q. Well, what happened? What had happened?

22 A. I was advised when I got to the state police
23 barracks --

24 MR. VITO: Objection.

25 JUDGE LOVENWIRTH: I'm going to sustain the

1 objection because the witness already explained it. We
2 didn't learn anything from this witness at the police
3 station. So what he was advised has to be from some other
4 party so I have to sustain the objection.

5 BY MR. JENNINGS:

6 Q. In your ride back from Stockertown, who drove?

7 A. I did.

8 Q. Why was that?

9 A. Nathan was not able to drive because of his
10 license.

11 MR. VITO: Objection. He's stating a legal
12 conclusion. We don't know that to be a fact.

13 JUDGE LOVENWIRTH: Sustained.

14 BY MR. JENNINGS:

15 Q. Did you have a conversation with Mr. Oliver
16 during that drive back?

17 A. Yes.

18 Q. What was the essence of that conversation?

19 A. Just what had happened briefly. We did not get
20 into conversation. There wasn't too much talk because
21 feelings were not --

22 JUDGE LOVENWIRTH: Well, what did Mr. Oliver tell
23 you? That's the question.

24 THE WITNESS: Yes. Okay. He was stopped for
25 speeding on Route 33. And when he was pulled over, the

1 officer had asked for his license and something was checked
2 with his license. Evidently it was suspended.

3 MR. VITO: Objection.

4 JUDGE LOVENWIRTH: Is that what the witness told
5 you, that his license was suspended? Just answer the
6 question, Mr. Gino.

7 THE WITNESS: Yes.

8 JUDGE LOVENWIRTH: Is that what he told you? Did he
9 tell you that his license was suspended?

10 THE WITNESS: That I recall, yes.

11 JUDGE LOVENWIRTH: You recall him telling you that?

12 MR. VITO: Objection.

13 JUDGE LOVENWIRTH: Overruled.

14 BY MR. JENNINGS:

15 Q. Mr. Gino, was there some -- where was the
16 vehicle that Mr. Oliver was supposed to drive to the
17 Allentown Airport? Where was that located? .

18 A. It was about a mile before the Stockertown Exit
19 on Route 33 going south.

20 Q. How did that vehicle eventually end up back at
21 your facilities?

22 A. Yes, it did. Before I went to the state police
23 barracks in Stockertown, I was dropped off, picked up the
24 vehicle, and then drove to the Stockertown Barracks.

25 Q. And is that where you picked up Mr. Oliver?

1 A. Yes, I did.

2 Q. And you drove him back?

3 A. Yes.

4 Q. Now, after that, was he scheduled for any runs
5 immediately after this point in time?

6 A. I don't recall if he was scheduled for any
7 immediate runs.

8 Q. Did you know whether he would be able to fulfill
9 that duty given what he had told you?

10 A. No. I know if he did have runs, he didn't do
11 them.

12 JUDGE LOVENWIRTH: I didn't hear you. You knew if
13 he did have --

14 THE WITNESS: I was not sure -- I don't recall if he
15 had any runs after that.

16 BY MR. JENNINGS:

17 Q. I assume -- where was Mr. Oliver supposed to be
18 going that day?

19 A. To the Allentown --

20 JUDGE LOVENWIRTH: Allentown Airport.

21 BY MR. JENNINGS:

22 Q. And what was the purpose of that?

23 A. To pick up a couple that was coming into the
24 airport to go to one of the local Pocono resorts.

25 Q. And was that run eventually made?

1 A. It was completed by another driver, although
2 they were picked up late.

3 Q. Mr. Gino, do you know whether the Applicant has
4 been cited for any illegal moves in the Monroe County area
5 during the last month?

6 MR. VITO: Objection.

7 JUDGE LOVENWIRTH: Well, what difference does it
8 make, Mr. Jennings, whether they have been cited 20 times
9 within the last month? What bearing does that have on this
10 case?

11 I assume by cited, you mean that some legal
12 authority such as the Pennsylvania Public Utility
13 Commission has issued -- or some police authority -- has
14 issued them a citation for violation of the Motor Vehicle
15 Code or violation of the Public Utility Code or something
16 like that. What difference does it make?

17 MR. JENNINGS: Judge, I think it goes to the
18 Applicant's fitness.

19 JUDGE LOVENWIRTH: Why does it go to his fitness if
20 he's charged? That doesn't mean he's guilty.

21 MR. JENNINGS: That is correct, Your Honor, but --

22 JUDGE LOVENWIRTH: Sustained. You asked him if he
23 has been cited. I have to sustain the objection to that
24 question.

25 BY MR. JENNINGS:

1 Q. Do you know whether there's been a complaint
2 upon Commission motion issued to the Applicant within the
3 last month?

4 A. Yes.

5 MR. VITO: Objection.

6 JUDGE LOVENWIRTH: I have to sustain it. This is a
7 non-certificated Applicant. Doesn't have any authority.
8 And he doesn't have the burden of proving his innocence
9 under the Public Utility Code. I have to sustain that
10 objection.

11 Now, you asked within the last month. You asked him
12 within the last month. That couldn't possibly be the
13 proper question in order to tap the veracity of Mr.
14 Danielewicz because he hasn't testified within the last
15 month. I just want you to understand that. I thought
16 about that also.

17 MR. JENNINGS: Although that might be true, Your
18 Honor, I think that the record is going to show that there
19 has been at least one illegal move and that pre-dates the
20 Applicant's testimony at the last hearing.

21 JUDGE LOVENWIRTH: Nobody has addressed that to me
22 at this point.

23 MR. JENNINGS: That's what we were attempting to do,
24 Your Honor.

25 JUDGE LOVENWIRTH: You said within the last month.

1 I sustain that objection, unless you have evidence that
2 they paid a fine or was found as complaint was sustained or
3 whatever, I sustain the objection.

4 MR. JENNINGS: Thank you, Your Honor. I have no
5 further questions.

6 JUDGE LOVENWIRTH: You may cross examine the
7 witness.

8 MR. VITO: Thank you.

9 CROSS EXAMINATION

10 BY MR. VITO:

11 Q. Sir, how well acquainted are you with the books
12 and record of Pocono Limousine?

13 JUDGE LOVENWIRTH: Excuse me for one moment. Can
14 you think of a reason why it's relevant?

15 MR. JENNINGS: Your Honor, I was going to just ask
16 Your Honor to take judicial notice of the fact that a
17 complaint has been recently filed. I don't know whether an
18 answer has been made. This has all come down since our
19 last hearing. I could cross examine Mr. Danielewicz about
20 it.

21 JUDGE LOVENWIRTH: How does this in any way rebut
22 something Mr. Danielewicz said? The reason I'm bringing
23 this up again is I don't remember everything he said.

24 MR. JENNINGS: It was my recollection, Your Honor,
25 that I asked him specifically on cross examine at the last

1 hearing --

2 JUDGE LOVENWIRTH: What is March 17th.

3 MR. JENNINGS: -- as to whether they had been making
4 any illegal runs and he indicated, no, as I recall. And he
5 also indicated that no Commission complaints have been
6 filed against him other than one that was filed in 1986 as
7 I recall.

8 JUDGE LOVENWIRTH: So this couldn't rebut that
9 testimony?

10 MR. JENNINGS: I believe the statement regarding
11 complaint upon Commission motion, it could not. That's
12 correct. But the substance of the complaint deals with
13 alleged illegal moves which occurred prior to Mr.
14 Danielewicz' testimony.

15 JUDGE LOVENWIRTH: And was he asked by you or by Mr.
16 Mulcahey or by his own counsel anything about that?

17 MR. JENNINGS: I asked him directly whether they had
18 been providing any illegal moves.

19 JUDGE LOVENWIRTH: Yeah, but this doesn't -- and he
20 said no. That might still be the answer.

21 MR. JENNINGS: That's correct, Your Honor.

22 JUDGE LOVENWIRTH: All right. But did you ask him
23 if he had been investigated by the Commission's Office of
24 Safety and Compliance?

25 MR. JENNINGS: I don't recall that I did, Judge.

1 JUDGE LOVENWIRTH: All right. I have to sustain the
2 objection. You can cross examine.

3 MR. VITO: Thank you, Your Honor.

4 BY MR. VITO:

5 Q. Sir, are you familiar with the books and records
6 of Pocono Limousine Service?

7 A. Some records, yes.

8 Q. To what extent?

9 A. As far as the reservations and the dealings of
10 the reservations.

11 Q. How about their financial fitness?

12 A. Not personally, no, I don't think.

13 MR. JENNINGS: Your Honor, I would object. We are
14 not producing testimony regarding financial fitness. We
15 don't have that burden.

16 JUDGE LOVENWIRTH: What was the question?

17 MR. VITO: He testified as to what his opinion was
18 as to the financial --

19 JUDGE LOVENWIRTH: You asked him, Mr. Jennings, if
20 the Protestant was in good shape. He said, yeah, I think
21 so. Quite frankly, that doesn't mean a thing to me. But
22 nonetheless, you did ask him that question. I have to
23 overrule the objection.

24 BY MR. VITO:

25 Q. So you really don't know what their financial --

1 A. My personal opinion is --

2 Q. Well, your personal opinion -- but is it based
3 on books and records or just your own --

4 A. Just my viewing.

5 Q. So you really don't know what their financial
6 fitness is at this point?

7 A. No.

8 Q. You don't know if they're in the black or in the
9 red, so to speak?

10 A. No, not personally; just what my opinion is.

11 Q. Okay. When did you become office manager?

12 A. Within the last month.

13 Q. Within the last month?

14 A. Yes.

15 Q. And prior to that, you were working there in
16 what capacity?

17 A. As an assistant office manager.

18 Q. What was the difference between your discharge
19 of duties as an assistant manager versus a manager?

20 A. As far as more responsibility, I handled more of
21 the burden as far as the scheduling, the payroll, any
22 problems that do come up customer-related or
23 driver-related.

24 Q. And you didn't do that before?

25 A. Not to the same extent as the person that was

1 there before, no. They would have the ultimate say what
2 went on or what the answers were. I could approach that
3 other person with a problem and that was --

4 Q. Who was responsible for the employees?

5 A. At that time?

6 Q. Yeah, for their hiring, firing?

7 A. The owner was ultimately in charge of that.

8 Q. So neither you nor the office manager?

9 A. We could give our opinions -- not our opinions,
10 but I mean, our feelings of what to do, express our
11 concerns.

12 Q. Well, who hired and fired people?

13 A. Ultimately the owner would do that.

14 Q. Now, you mentioned Mr. Oliver's driving down
15 through Allentown. Do you know if he had any other runs
16 prior to that day?

17 A. Yes, he did.

18 Q. And do you know exactly what time that run was
19 over with, prior to the time he went to Allentown?

20 A. I don't know.

21 Q. So you don't know if he was speeding -- if he
22 was speeding, you don't know whether he was speeding
23 because he was in a rush to get to the airport; do you?

24 A. I don't recall, no.

25 Q. Now, at the time that this occurred when you

1 received your phone call, what steps did you take after you
2 received your phone call, advising you that Nathan was
3 detained?

4 A. At the police barracks in Stockertown?

5 Q. Yes.

6 A. I immediately got someone to cover his run that
7 he could not do.

8 Q. And that would be no different than any other
9 time when a car broke down; would it not?

10 A. Correct.

11 Q. Thank you. Now, with respect to vehicle
12 maintenance, you testified that as a matter of routine,
13 there's a methodology that's employed or a plan that's
14 employed?

15 A. Yes.

16 Q. And that's -- is that a theoretical plan or is
17 that a plan in fact?

18 A. Well, there is a set procedure; I mean, a
19 certain time. The cars are checked.

20 Q. But that doesn't necessarily mean that that
21 procedure is always adhered to.

22 MR. JENNINGS: Your Honor, I'd like the witness to
23 answer the question.

24 MR. VITO: I'm sorry. Withdraw my second question.

25 BY MR. VITO:

1 Q. Go ahead.

2 A. With regards to certain procedure?

3 Q. Exactly.

4 A. Yes. The maintenance would check the oil, any
5 oil changes would be done regularly. The cars would be
6 checked over regularly. Any problems or work would be
7 taken care of.

8 Q. That's as it's supposed to work, according to
9 your intended plan? Is that correct?

10 A. Yes.

11 Q. Now, you don't know whether that plan is adhered
12 to at all times; do you?

13 A. I am not a hundred percent sure, but I am almost
14 positive it is. We do have records.

15 Q. Well, how about in the years that Nathan worked
16 there?

17 A. There were maintenance schedules, yes.

18 Q. Do you know if there are any maintenance
19 problems?

20 A. There were regular problems, nothing that was
21 not addressed, no.

22 Q. Addressed before or after they manifested
23 themselves?

24 A. Well, if it was something that was not known
25 before and we were notified, it was taken care of. If it

1 was a problem known before, it was also taken care of.

2 Q. Are you saying there were no problems with
3 vehicles breaking down or poor maintenance of vehicles?

4 A. No. Naturally, the vehicles -- there may have
5 been breakdowns, but they were unexpected. I mean nothing
6 is expected.

7 Q. How about putting air in the tires? Were you
8 aware of that incident that was testified to earlier in
9 this proceeding?

10 A. No, I don't recall.

11 Q. You don't know anything about it?

12 A. As far as putting air in the tires?

13 Q. Yeah, as far as operating vehicles with
14 under-inflated tires?

15 A. No, I don't recall any of that.

16 Q. Okay. How about recaps? Do you ever use recaps
17 on your vehicles?

18 A. No, we don't.

19 Q. To your knowledge?

20 A. I'm sure we do not.

21 Q. You're sure you do not. How is it that you know
22 that recaps aren't used?

23 A. Well, because I have seen the tires that are
24 purchased. We always purchase new tires.

25 Q. Since you were there?

1 A. Since I've been there.

2 Q. You're sure of that?

3 A. I've never seen recapped tires purchased.

4 Q. Do you know the difference between a new tire
5 and a recap?

6 A. Yes.

7 Q. What's the difference?

8 A. As far as how they make them?

9 Q. No. As far as you being able to identify them?

10 A. On the recap, you can see the seal between where
11 the tire is capped on.

12 Q. And did you personally go and inspect the tires
13 put on the vehicles at that time?

14 A. I did not, no.

15 Q. So you really don't know what was put on; do
16 you?

17 A. No, other than the fact that I've seen the cars
18 while they were getting new tires put on.

19 Q. You have seen new ones?

20 A. I've seen new tires.

21 MR. VITO: Thank you. That's all I have.

22 JUDGE LOVENWIRTH: Any redirect?

23 MR. JENNINGS: Yes.

24 REDIRECT EXAMINATION

25 BY MR. JENNINGS:

1 Q. I realize you're not an accountant, but before
2 coming here today, did you have an opportunity to review
3 some of the financial records of the company?

4 A. Somewhat, yes.

5 Q. Do you know whether the company is operating
6 under a profit?

7 A. I believe we are, yes.

8 MR. JENNINGS: I have nothing further.

9 JUDGE LOVENWIRTH: Anything else of this witness?

10 MR. VITO: That's all I have.

11 JUDGE LOVENWIRTH: Having heard all the testimony of
12 this witness, I sustain the objection to the question about
13 the application where a witness -- and any answer
14 thereto -- that the witness explained he put on the
15 application that he had a New York driver's license.

16 There was nothing that followed that to make that
17 relevant. What he put on the application has nothing to do
18 with this case, so I sustain the objection to that
19 question. All right. You may step down, Mr. Gino. Thank
20 you.

21 MR. JENNINGS: Thank you, Judge. We have nothing
22 further.

23 JUDGE LOVENWIRTH: Do you have any rebuttal
24 testimony?

25 MR. VITO: No, Your Honor.

1 JUDGE LOVENWIRTH: All right. This is what we're
2 going to do. We'll take no additional evidence today,
3 however, before you go, let me get on the phone and see
4 what I can arrange in Harrisburg with schedules for that
5 short telephonic hearing. Okay?

6 Now, that could take about 20 minutes to half an
7 hour because, you see, Harrisburg has to look at not only
8 my schedule -- and they know more about my schedule than I
9 do. By the time I get notice of a hearing, I've already
10 been scheduled for a week or so. However, they also have
11 to check with the Court Reporters. So why don't we take a
12 20 minute break and then returning, accepting, however,
13 that as far as Ms. Feaser is concerned, we don't have to do
14 anything else on the record this morning. So we stand
15 adjourned.

16
17 (Whereupon, at 10:50 a.m., the hearing was
18 adjourned.)
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I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me during the hearing of the with cause, and that this is a true and correct transcript of the same.

Michele L. Feaser
MICHELE L. FEASER
COURT REPORTER

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