



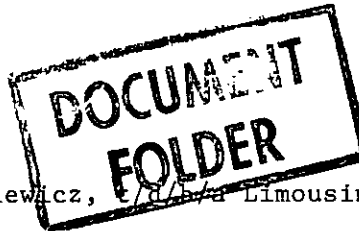
COMMONWEALTH OF PENNSYLVANIA
 PENNSYLVANIA PUBLIC UTILITY COMMISSION
 P. O. BOX 3265, HARRISBURG, Pa. 17120

ISSUED: January 25, 1990

Salvatore P.J. Vito, Esquire
 45 North Seventh Street
 Stroudsburg, PA 18360

IN REPLY PLEASE
 REFER TO OUR FILE

A-00108292



Application of James Danielewicz, ~~et al~~ Limousines for Less

TO WHOM IT MAY CONCERN:

Enclosed is a copy of the Initial Decision of Administrative Law Judge Richard M. Loverwirth. This decision is being issued and mailed to all parties on the above specified date.

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 twenty (20) days of the issuance date of this letter. 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)) or on the date deposited with an overnight express package delivery service (52 Pa. Code 1.11(a)(2), (b)). If your exceptions are sent by mail, please use the address shown at the top of this letter. A copy of your exceptions must also be served on each party of record. 52 Pa. Code §1.56(b) cannot be used to extend the prescribed period for the filing of Exceptions/Reply Exceptions.

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 twenty (20) 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 Lovenwirth/Office of ALJ/Bureau of Trans./Law Bureau/Mr. Bramson/OSA/Chairman/
 Commissioners

fao

Encls.
 Certified Mail
 Receipt Requested

Very truly yours,

Allison K. Turner
 Chief Administrative Law Judge

SIMILAR LETTER LIST ATTACHED.

Similar letter list.

A-00108292

Richard T. Mulcahey, Jr., Esquire
Schubert, Bellwood, Mallon, Walheim
1400 Two Penn Center Plaza
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Barnett Satinsky, Esquire
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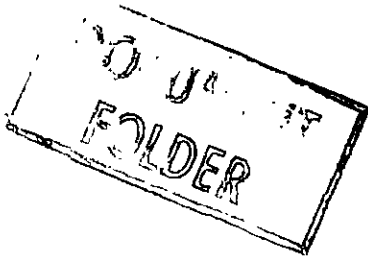
Mark S. Jennings, Esquire
Jennings and Hamill
303 Tenth Street
Honesdale, PA 18431

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of James Danielewicz, : A-00108292
t/d/b/a Limousines for Less, for the :
right to begin to transport, as a :
common carrier, by motor vehicle, :
persons, in limousine service, :
between points in the borough of :
Stroudsburg, Monroe County, and :
within an airline distance of :
sixty (60) statute miles of the :
limits thereof. :

INITIAL DECISION

Before
Richard M. Lovenwirth
Administrative Law Judge



I. History of the Proceedings

On March 2, 1988, an Application for a Certificate of Public Convenience was filed by James Danielewicz, t/d/b/a Limousines for Less (hereinafter "Applicant"), wherein a Certificate of Public Convenience was sought so as to enable Applicant:

"To transport, as a common carrier, by motor vehicle, persons, in limousine service, between points in the borough of Stroudsburg, Monroe County, and within an airline distance of sixty (60) statute miles of the limits thereof."

The said Application was resubmitted by Applicant on July 23, 1988.

The last date for the filing of Protests was set by the Commission for September 12, 1988.

Notice of the filing of the Application and of the last date to file Protests was advertised in the following periodicals: in the Pennsylvania Bulletin on August 28, 1988; in the Morning Call, a newspaper of general circulation in Lehigh County, on August 30, 1988; in the Philadelphia Inquirer on August 29, 1988; in the Scranton Times on August 29, 1988; in the Pocono Record (located in Stroudsburg, Pennsylvania) on August 29, 1988; and in the Reading-Eagle Times on August 29, 1988.

Thereafter, Protests were filed by the following Protestants: on September 2, 1988 by The House Scene, Inc. (hereinafter "The House Scene"); on September 9, 1988 by Pocono Limousine Service, Inc. (hereinafter "Pocono Limousine" or "Pocono"); and on September 13, 1988 by James Mitsos, t/d/b/a Elegant Limousine Service (which last-mentioned Protest was thereafter withdrawn on December 9, 1988).

Hearings were convened on January 17, 1989, March 17, 1989, May 16, 1989 (all at the State Office Building, Scranton, Pennsylvania) and on May 23, 1989 (which latter hearing was convened telephonically). The transcripts of testimony consist of 201 typewritten pages. No exhibits were moved into the record. After the conclusion of the evidentiary hearings, the parties submitted briefs for our consideration.

II. Summary of Testimony

Applicant's Case

James Danielewicz testified. Limousines For Less is a luxury car service serving the states of Pennsylvania, New York and New Jersey as a provider of interstate transportation (N.T. 15). Said business has been operated by the witness for the past three years pursuant to authority received by him from the Interstate Commerce Commission (hereinafter "ICC") (N.T. 15). In said business, the witness operates three motor vehicles, to wit: a 1985 Lincoln stretch limousine, a 1985 Lincoln Town Car and a 1984 Cadillac Sedan DeVille (N.T. 16). Formerly, the witness operated a tire retreading service known as Stroudsburg Tire Service; and prior thereto, the witness was a member of the United States Armed Forces (N.T. 16). Applicant's present business involves the transportation of persons to Newark Airport, New York City, Kennedy Airport, LaGuardia Airport, and Atlantic City (N.T. 17). The witness transports persons to the Newark Airport about two or three times per day on the average (N.T. 18). The witness has received requests to perform transportation between points in Pennsylvania (N.T. 18). Most of Applicant's clientele are corporate executives and people going on vacation (N.T. 19, 20). Applicant's interstate transportation business operates twenty-four hours a day, and if granted

intrastate rights it would continue those hours of operation (N.T. 20). Concerning requests for intrastate service, as many as ten or fifteen calls a week are received, all of which are turned down because of lack of rights (N.T. 20). The witness owns real estate (N.T. 20, 21). Concerning the requests for intrastate service, most of them are requests for transportation to the Allentown Airport, and some of them are requests to the Scranton Airport; and there are also a few requests which have been received on occasion from people who want to go touring in the Poconos without any definite destination (N.T. 21, 22). The witness explained that the Pocono Mountains is a growing area, with a lot of people moving in from New York, New Jersey and Connecticut (N.T. 22). The witness explained that some of the requests for service received were from resorts in the Poconos, including four resorts in the Poconos owned by Caesars World, which had called Applicant in order to request transportation service from the airport in Allentown to the hotels (N.T. 23). Additionally, the witness indicated that occasionally he has received calls from private industry looking for service into "the airports" (N.T. 23). The witness indicated that in addition to calls received from Caesars World concerning requests for transportation from the Allentown Airport to their four hotels, similar calls were also received from Mount Airy Lodge and from Strickland Lodge (N.T. 24, 25). All of the said resorts are in

Monroe County (N.T. 24, 25). Other resorts which have called for intrastate service include Pocono Manor and The Fernwood, all in Monroe County (N.T. 25). The witness explained that concerning the requests for intrastate service, some weeks he gets two or three calls and other weeks he does not get any calls (N.T. 26). The witness indicated that all the resorts which he described are within sixty miles of Stroudsburg (N.T. 27). Concerning the interstate transportation services provided by Applicant, he provides them for such corporate clients as AT&T, M&M, Nabisco, Picketon & Arsenal, and other smaller companies (N.T. 27). Some of these companies have requested a need for intrastate services in the Monroe County area (N.T. 27). There have not been very many such intrastate transportation requests from corporate accounts, however, since they have preferred to fly out of Newark (N.T. 28).

On cross-examination, the witness testified: The Applicant is an individual proprietorship (N.T. 29). The witness does not recall whether or not Applicant filed a fictitious name registration (N.T. 29). The witness identified the docket number of Applicant's authority before the ICC as MC197034; and stated that the authority was granted by the ICC over two years ago (N.T. 30). The witness was formerly employed by Pocono Limo as a driver for about ten months in the fall of 1986 (N.T. 30). The witness indicated that Applicant has complied with all the

requirements of the ICC (N.T. 32). The witness kept no diary or other written record of requests for intrastate service, excepting for a period of about two months (N.T. 32, 33). When such requests for intrastate service were made, the witness would explain to the requestor either that Applicant did not have authority or that Applicant did not have a car available, and the said requestor would be referred to a local taxi company named Tica Taxi (N.T. 33). The witness failed to refer the callers to another limousine service (N.T. 33, 34). The 1985 Lincoln stretch has a bar and television, and said vehicle is leased from GMAC (N.T. 34). At the expiration of the lease term, Applicant has an option to purchase the said vehicle (N.T. 34). The other vehicles are owned by the witness (N.T. 35, 36). The 1985 Lincoln Town Car was purchased in late 1987 from Ray Price Motors in Stroudsburg, Pennsylvania, and said vehicle was purchased for \$13,000, and it has an encumbrance against it in the approximate amount of \$7,000 (N.T. 35, 36). The 1982 Cadillac Sedan DeVille was purchased around 1985, and there is no encumbrance on said vehicle (N.T. 36, 37). That vehicle, however, is wrecked, and is not used by Applicant in its interstate transportation business (N.T. 37). Applicant has provided intrastate transportation service on one occasion around the end of 1986 or the beginning of 1987, as a result of which a Complaint proceeding was instituted by the Pennsylvania Public Utility Commission,

resulting in a fine having been paid to the P.U.C. in the sum of \$250 (N.T. 38, 39). The witness takes most of the calls for Applicant, the phone being in the said witness's house (N.T. 40). The witness did not bring any written records with him concerning his request testimony (N.T. 40).

On redirect examination, the witness testified: Applicant pays \$1,042 per month pursuant to the lease on the stretch limousine, and on the Lincoln Town Car the monthly payment is \$400 per month (N.T. 43). The witness referred persons who requested intrastate service to a taxicab company because the equipment of that taxicab company was the same as Pocono Limo's equipment (N.T. 44).

On recross examination, the witness testified: The witness does not know the precise authority held by Tica Taxi (N.T. 45). The witness does not know if Tica Taxi performed any of the transportation services for which Applicant was contacted (N.T. 45).

On redirect examination, the witness testified: Applicant's gross income last year was about \$70,000, but the witness does not know what the net income is because the tax return has not yet been filed (N.T. 48). The witness lives at 315 Clarmont Avenue, Stroudsburg, Pennsylvania, where he operates his limousine business (N.T. 49). The witness, along with his wife, owns a house worth approximately \$200,000 (N.T. 49, 50).

The value of the 1985 Lincoln Town Car is over \$10,000, and the stretch limousine is worth around \$20,000 (N.T. 50). Concerning the stretch limousine, it is encumbered in the amount of about \$13,000; and because of the buy-up option to Applicant concerning the 1985 Lincoln Town Car, Applicant has about \$5,000 equity in that latter vehicle (N.T. 51). Applicant maintains insurance on said vehicles (N.T. 51, 52).

On recross examination, the witness testified: There is a \$50,000 mortgage against the home which the witness jointly owns with his wife (N.T. 52, 53). The witness has not registered the fictitious name of "Limousines for Less" with the Commonwealth of Pennsylvania, Department of State, and he does not know whether he was required to do so prior to the operation by him of the interstate transportation business under that name (N.T. 101). The witness was not sure whether or not a tariff was filed for his business with the I.C.C. (N.T. 103). The witness explained that his I.C.C. transportation business consists solely of transportation to the airports in New Jersey and New York (N.T. 105). The witness further explained that he performs intrastate transportation services in New Jersey, and that he "leases" his vehicles to individuals for trips between points in Pennsylvania (N.T. 107). Concerning his "leasing" business in Pennsylvania, he stated that he leases his vehicles, and then he recommends drivers to the "lessees" of his vehicles (N.T. 108).

The witness described the individuals whom he recommends to the "lessees" as drivers, and explained that they are not professional chauffeurs and that none of the said recommended drivers are employed by Applicant (N.T. 109-111). The witness stated that he does not collect sales tax on the "leased" vehicles (N.T. 115-116). The witness said that his rental fees for the vehicles are based on a minimum of three hours rental, without mileage, which results in a base price of \$105.00 (N.T. 117). Concerning his prior testimony of "requests for service", the witness explained that he has no written records of any of the requests for service (N.T. 120). The witness is aware of one complaint, only, which was instituted upon Commission motion, and which resulted in him paying a fine for providing illegal transportation (N.T. 121).

Nathan Oliver testified: He is currently a limousine chauffeur employed by Applicant (N.T. 55-56). Previously, the witness worked for several other transportation companies, including Pocono Limousine Service (from March through May, 1988) (N.T. 57-59). The witness explained that Pocono Limousine's equipment was old, run-down, and unsafe (N.T. 59). The witness related an incident wherein he was driving a limousine for Pocono Limousine, intrastate, when the tread came off of a tire (N.T. 62-64). The witness explained that he examined the said tire and observed that it was a recapped tire (N.T. 64).

On cross-examination, the witness stated that he had some experience as an automobile mechanic in that he formerly operated a garage in New York for five years (N.T. 127). The witness described an incident when he was operating a mini-van on Interstate Route 80 which was veering from lane to lane, which resulted in complaints from the passengers. The witness slowed down below the speed limit in order to avoid the veering, and he immediately relayed this incident to the owner of Pocono Limousine, Mr. Woods. Mr. Woods later informed the witness that the veering was caused by improper inflation of the tires: one side of the vehicle was inflated at 70 pounds and the other side at 26 pounds (N.T. 64-65). The witness explained that while he worked for Pocono Limousine, the scheduling and routing was irregular. For example, the witness stated, on one occasion he was to pick up a party in Allentown at 1 A. M., and he was also to pick up another passenger in the limousine at 6 A. M., which allowed him inadequate time for sleep (N.T. 71). The witness described another occasion when due to miss-scheduling, a group of people scheduled for transportation for a 6 A. M. flight had, instead, been scheduled to be picked up by the witness at 6 P. M.; as a result of which he received a call in the early morning hours advising him to take the people immediately to the Kennedy Airport. Due to this miss-scheduling, the people missed their flight (N.T. 71). The witness described still another occasion

(while he was employed by Pocono Limousine) when he was requested by a resort manager to provide transportation for passengers, but that, because he was "overbooked", he could not fulfill the function (N.T. 73). Indeed, the witness said that while employed at Pocono Limousine, about 25 per cent of the time the witness was overbooked, i.e., he was not given enough time to get from one point to another at the times he was scheduled (N.T. 73). The witness explained that oftentimes the limousines for Pocono Limousine were used as taxicabs, i.e., they were used simultaneously on a non-exclusive basis by people who were not picked up at the same place who were billed individually, and had different destinations (N.T. 75, 76, 78, 79). Pocono Limousine's equipment was described by the witness as being equipment which was not operating well, or not operating at all. For example, the witness stated that on more than one occasion the VCR was not in operation, the cassette deck would not be operational, and, in one vehicle, there was no air-conditioning (N.T. 80). The witness always brought to the attention of his employer the malfunctioning or non-existent equipment, but no improvements were made (N.T. 80).

Hazel Cavanaugh testified: She resides at 300 Clermont Avenue, Stroudsburg, Pennsylvania, where she has resided for nineteen years (N.T. 132). She has never used limousine service, but whenever the witness and her husband have to fly out of

Allentown Airport, they would have to find someone to take them to the airport (N.T. 132). If the Applicant were to receive a certificate, she would utilize his services for that purpose (N.T. 132). Had there been a limousine service near her home, she would have used limousine service in the past (N.T. 132, 133).

On cross-examination, the witness testified: She does not know if there is any "airport transfer service" between the Allentown Airport and Stroudsburg (N.T. 133), 134). Were there an airport transfer service, she might possibly use it after checking concerning the rates (N.T. 134). The witness has no particular preference as of type of motor vehicle for her transportation needs to the airport (N.T. 134). Heretofore, the witness's son would take her to the airport, but he is now too busy (N.T. 135). The witness's son lives about twelve miles from the witness's home (N.T. 135). The witness and her husband go to the airport about once or twice per year (N.T. 135). The witness has not yet gone to the airport in 1989 and has no present plans to do so during the remainder of the year (N.T. 135). The witness used the Applicant's vehicles for purposes of coming to the instant hearing and for purposes of coming to a previous hearing concerning this Application proceeding, but has never used the Applicant's services (N.T. 136). If there was another limousine carrier in the Stroudsburg area who had vehicles

comparable to the Applicant's, the witness would be opposed to using them for her transportation needs to the airport because she would prefer to use Mr. Danielewicz's services because she knows him (N.T. 136, 137). She does not know what rates he would charge to take her to the airport, but even if his rates were higher than those of Pocono Limousine, she would still prefer to use him (N.T. 137).

Beth Stevens testified: She has used Applicant's services last year in order to transport her sister from Stroudsburg to the Newark Airport (N.T. 139). She was very satisfied with the services in that the driver was courteous, and because the witness's sister was in a wheelchair, the driver saw to it that she was delivered right to the area where she could get assistance (N.T. 139, 140). The luggage was handled very nicely, as well (N.T. 140). The witness and her husband usually fly out of Allentown about twice a year, and the witness would like to use Applicant's services for that purpose (N.T. 140).

On cross-examination, the witness testified: Presently, she gets to the Allentown Airport by transportation provided by friends or relatives; the witness's husband won't leave his automobile at the said airport (N.T. 140, 141). The witness never inquired if there was any shuttle service to the airport, but she explained that she would not want a van in that she likes comfort and that consequently she would prefer a

limousine or a town car (N.T. 141). The witness would object to sharing a car with strangers (N.T. 141). The witness's husband is retired (N.T. 141). In 1989, the witness and her husband were planning a trip to Florida (N.T. 142). The witness does not know if the Applicant would charge her for a trip to the Allentown Airport, a distance of 30 to 35 miles (N.T. 142). The witness explained that the trip to the Allentown Airport from Stroudsburg is about three-fourths of an hour (N.T. 143). The witness had asked the Applicant to provide intrastate service for her grandson's prom, but he refused because he lacked the rights to do so (N.T. 143). The witness is aware of the limousine service of Pocono Limousine, but she never asked for their rates to take her to the Allentown Airport (N.T. 143).

Khris M. Wolfington testified: The witness is familiar with Applicant's transportation services because on several occasions he has entertained clients in a Pocono resort house which the witness owns, most of said clients being in northern Jersey and in New York, and Applicant has been hired by the witness to pick these clients up at their homes and to transport them to the Pocono Mountains for a weekend of relaxation (N.T. 191). On another occasion, the witness engaged Applicant to pick him up in New York and to drive the witness home in Pennsylvania (N.T. 191, 192). The witness was very impressed with the Applicant's services and that the luggage was handled well, the

bar is always stocked with snacks, and the drivers are always courteous and friendly (N.T. 192). The witness intends to continue using Applicant's services interstate in the future (N.T. 192). The witness explained that during the summer months, he has used Applicant's services about twice per month, and during the winter months less frequently (N.T. 192).

On cross-examination, the witness testified: His Pocono Mountain address is "Pocono Manor, Pennsylvania" (N.T. 193). The witness's permanent address is 34 Wentworth Lane, Rosemont, Pennsylvania (N.T. 193). The witness uses another limousine service when the point of destination or the point of departure is not northern Pennsylvania, and the other limousine service he uses is Carey Limousine Service (N.T. 194). The witness is in the financial services business and the name of his company is "Midlantic Company" (N.T. 194, 195). The witness does not have any clients presently in northeast Pennsylvania (N.T. 196). The witness has never had a need to engage a limousine service for purposes of providing intrastate transportation between points in northeastern Pennsylvania (N.T. 196).

Protestants' Cases

A. CASE PRESENTED BY POCONO LIMOUSINE

Albert James Gino testified: He is office manager for Pocono Limousine Service (Pocono) and has been so employed for

approximately seven years (N.T. 156, 157). Pocono is a corporation (N.T. 157). The witness has been authorized by Pocono to appear in protest of the application (N.T. 157). Pocono has authority issued to it by the Pennsylvania Public Utility Commission enabling it to transport, in limousine service, persons, in the Monroe County area (N.T. 158). Pocono is also certificated to serve the public with transportation upon mini-vans and sedans in para-transit (N.T. 158). Concerning its limousine service, Pocono owns four Cadillac stretches, all 1984s (N.T. 159). Moreover, it has just purchased a 1986 Lincoln limousine (N.T. 159). There are six to seven drivers employed by Pocono in its limousine service (N.T. 159). Usually, the months of May through July are the busiest, because those months are wedding months and prom season months, all of which create a larger demand for limousines (N.T. 160). Pocono is able to handle the limousine demand in Monroe County (N.T. 160). Only occasionally, during the prom season, does it turn away business (N.T. 160). The maintenance procedure utilized by Pocono includes daily maintenance, consisting of a thorough checkover by a mechanic, and includes regular maintenance schedules, including oil changes and lubrications (N.T. 161). Additionally, if there is a problem which has been experienced by a driver, it is immediately taken care of (N.T. 162). Pocono utilizes an on-site mechanic who works part-time, only (N.T. 162, 163). Pocono's

facilities include a two-bay garage (N.T. 163). On one occasion on June 23, 1988, Nathan Oliver told the witness that his license had been suspended (N.T. 172).

On cross-examination, the witness testified: He is not familiar with Pocono's books and records, and any opinion he has as to Pocono's financial fitness is based upon other information, only (N.T. 179). The witness just became office manager of Pocono within the last month, and prior to that he was working as assistant office manager (N.T. 179). At all times at Pocono, only the owner (not the office manager or the assistant office manager) did the hiring and firing (N.T. 180). The witness does not recall any incidents with under-inflated tires and the witness is sure that Pocono does not use recapped tires (N.T. 183).

B. TOP HAT CHAUFFEURED LIMOUSINE SERVICE'S CASE

By stipulation, it was agreed that Top Hat has applied for rights to transport persons in limousine service in Monroe County (N.T. 152). Moreover, it was stipulated that Top Hat presently possesses a certificate of public convenience enabling it to transport persons in limousine service between points in the counties of Carbon, Lehigh, Monroe, Northampton, Pike, Schuylkill and Wayne, and from points in said counties to points in Pennsylvania, and return, subject to certain conditions set

forth on Exhibit "A" of its Protest filed in the instant case (N.T. 152, 197, 198, 199).

III. Findings of Fact

1. Applicant is James Danielewicz, trading and doing business as Limousines for Less, and Applicant is a common carrier by motor vehicle which possesses a license from the Interstate Commerce Commission to transport persons between points in the states of Pennsylvania, New York and New Jersey; the Applicant's I.C.C. License Number being MC197034 (N.T. 15, 30). Applicant does not possess a certificate of public convenience issued to him by the Pennsylvania Public Utility Commission enabling him to provide intrastate transportation for compensation (N.T. 33). Applicant's place of business is situate at 315 Clarmont Avenue, Stroudsburg, Pennsylvania (N.T. 49).

2. On March 2, 1988, Applicant filed an Application with this Commission (resubmitted on July 23, 1988) wherein a certificate of public convenience was sought so as to enable Applicant:

To transport, as a common carrier, by motor vehicle, persons, in limousine service, between points in the borough of Stroudsburg, Monroe County, and within an airline distance of sixty (60) statute miles of the limits thereof.

3. Applicant presented no financial statements as evidence. However, he testified that Applicant leases a 1985 Lincoln stretch car (which is worth approximately \$20,000) (N.T. 50) with a bar and television, and that Applicant has an option to purchase said vehicle upon the expiration of the lease with GMAC (N.T. 34). Because of the buy-out option on the 1985 Lincoln Town Car, Applicant has about \$5,000 equity in said vehicle (N.T. 51). Also, Applicant owns a 1985 Lincoln Town Car (purchased for \$13,000 in late 1987) which has an encumbrance against it in the approximate amount of \$7,000 (N.T. 35, 36). The said 1985 Lincoln Town Car is worth approximately \$10,000 (N.T. 50). And, Applicant owns a 1982 Sedan DeVille (purchased around 1985) which is owned free of encumbrance, but which is a wrecked vehicle not utilized for interstate transportation (N.T. 36, 37). Applicant pays approximately \$1,042.00 per month on the lease concerning the stretch limo, and makes a \$400.00 monthly payment concerning the owned Lincoln Town Car (N.T. 43). In 1988, Applicant grossed \$70,000 in its interstate transportation business, but the expenses for said year were not known to the Applicant, his tax return not having been filed on the dates he testified (January 17, 1989 and March 17, 1989) (N.T. 48). Nothing additional was proven concerning the financial condition of Applicant or of the assets owned by him; excepting, however,

that he also owns assets with his wife as tenants by the entireties.

4. Applicant has been operating his luxury limousine interstate transportation business for approximately three years (N.T. 15).

5. Applicant's present business primarily involves the transportation of persons to Newark Airport, New York City, Kennedy Airport, LaGuardia Airport, and Atlantic City (N.T. 17). Applicant transports persons to the Newark Airport approximately two or three times per day on the average (N.T. 18). While the points of origin for such trips were not described by Applicant, other witnesses indicate that said point of origin is the Stroudsburg, Pennsylvania area (N.T. 139, 191). While Applicant testified as to requests for intrastate service which he received, no evidence was presented as to written records which were kept of said request testimony, and said description of requests for intrastate service were vague in that they failed to include specific dates of request, names of requestors, and the points of origin and destination of each requested intrastate trip (excepting, however, the Applicant testified that generally speaking the requests are for transportation to the Allentown Airport or to the Scranton Airport, with a few requests for people who wish to go touring in the Poconos without any definite destination (N.T. 21, 22). Said testimony being uncorroborated

by written records, and said testimony lacking specificity, no Findings of Fact are made concerning same (N.T. 32, 33, 40).

6. Applicant was formerly employed by Pocono Limousine (a Protestant in this case) as a driver for about ten months in the fall of 1986 (N.T. 30).

7. On one occasion at the end of 1986 or the beginning of 1987, Applicant provided unlawful intrastate transportation service which resulted in said Applicant paying a fine to this Commission in the sum of \$250.00 (N.T. 38, 39).

8. Applicant has failed to register the fictitious name of "Limousines for Less" with the Commonwealth of Pennsylvania, Department of State (N.T. 101).

9. Applicant leases his vehicles to individuals who wish to transport themselves between points in Pennsylvania (N.T. 107). Concerning his "leasing" business, he recommends drivers to the "lessees" of his vehicles (N.T. 108), none of whom are professional chauffeurs and none of whom are employed by Applicant (N.T. 109, 111).

10. Nathan Oliver is employed by Applicant as a chauffeur, and Mr. Oliver has extensive experience as a limousine chauffeur (N.T. 55-59).

11. Helen Cavanaugh, Stroudsburg, Pennsylvania, has needs to use transportation service from her home to the Allentown Airport (N.T. 132, 133). The witness's said needs

occur about once or twice per year (N.T. 135). The witness has driven in the Applicant's limousine (for trips to and from the hearings concerning the instant application proceeding), and she likes the transportation (N.T. 136, 137).

12. Beth Stevens has utilized Applicant's transportation services from Stroudsburg to the Newark Airport (N.T. 139). The Applicant's services were satisfactory in that the driver was courteous. The passenger was Ms. Stevens' sister, who was in a wheelchair; the driver having delivered her right to the area where she could get assistance (N.T. 139, 140). The luggage was handled very nicely, as well (N.T. 140). Beth Stevens and her husband usually fly out of the Allentown Airport about twice a year, and Beth Stevens would like to use Applicant's services for transportation from Stroudsburg to the Allentown Airport (N.T. 140). Beth Stevens would not like to share a ride with strangers (as with an airport shuttle service), and she would not like the "discomfort" of riding in a van (N.T. 141). Beth Stevens had asked the Applicant to provide intrastate service for her grandson's prom, but he refused to do so because he lacked intrastate authority (N.T. 143).

13. Khris M. Wolfington has used Applicant's interstate limousine service on several occasions as part of his practice of entertaining clients, i.e., he has on previous occasions engaged Applicant to pick clients up in northern Jersey and New York and

bring them back to his mountain home in the Pocono Mountains for a weekend of relaxation (N.T. 191). On one occasion, Mr. Wolfington engaged Applicant to pick him up in New York and drive him to his home in Rosemont, Pennsylvania (N.T. 191, 192, 193). Mr. Wolfington has been very impressed with Applicant's services in that the luggage was handled well, the bar was always stocked with snacks, and the drivers were always courteous and friendly (N.T. 192). This witness has never had a need to engage a limousine service for purposes of providing intrastate transportation between points in northeastern Pennsylvania (N.T. 196). Mr. Wolfington does not presently have any clients in northeastern Pennsylvania (N.T. 196).

IV. Discussion

Before receiving authority to transport persons or property between points in Pennsylvania, one must first obtain a certificate of public convenience from the Pennsylvania Public Utility Commission. Section 1103 of the Public Utility Code (66 Pa. C.S.A. Section 1103) states:

"...A certificate of public convenience shall be granted by order of the commission, only if the commission shall find or determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public...."

Pursuant to this statutory authority, the Commission has put into effect its regulations applicable to burden of proof and evidentiary criteria affecting the issuance of certificates of public convenience to motor carriers. That regulation appears at 52 Pa. Code Section 41.14. the Commission's interpretation of the statute and regulation mentioned above appears in a case entitled Re Richard L. Kinard, Inc., 58 Pa. P.U.C. 548 (1984). As stated in that decision, an Applicant for a certificate of public convenience to transport persons or property now has the burden of establishing (1) that the Applicant is fit to provide the proposed service; and (2) there is a public need for that service, and that said transportation service will be responsive to a useful public purpose. Although the Commission eliminated the Applicant's burden to prove inadequacy of existing service to show "responsiveness to a useful public purpose", it did include alternatives to inadequacy, including those enumerated by the Commission at page 551 of its decision reported in the Pa. P.U.C. Reporter. Hence, in our view, an Applicant may elect to establish inadequacy or alternatives to inadequacy under the regulations and case law.

If the Applicant meets his burden of proof, as above outlined, he is entitled to a certificate of public convenience unless it is affirmatively shown "that the entry of a new carrier into the field would endanger or impair the operations of

existing common carriers to such an extent that, on balance, the granting of authority would be contrary to the public interest" (52 Pa. Code Section 41.14(c)); if a Protestant comes forward with evidence which makes such an affirmative showing, then the burden returns to Applicant concerning this issue of competition being in the public interest.

Needs Testimony

The only needs testimony we have discerned from the record concerns a public need for limousine transportation service from the Stroudsburg area to the Allentown Airport. Helen Cavanaugh described her need to use limousine transportation service from her home in Stroudsburg to the Allentown Airport once or twice per year (N.T. 132, 133, 135). Likewise, Beth Stevens has a need for limousine transportation from Stroudsburg to the Allentown Airport about twice per year, and she would like to use Applicant's services for that purpose (N.T. 140). Other "needs" testimony does not appear anywhere on the instant record.

While Applicant testified as to requests for intrastate service which he received, no evidence was presented as to written records which were kept of such service requests, and said description of requests for intrastate service was vague in that they failed to include specific dates of requests; names,

addresses and phone numbers of requestors; and the points of origin and destination of each requested intrastate trip (excepting, however, that Applicant testified that generally speaking the requests were for transportation to the Allentown Airport or to the Scranton Airport, with a few requests for people who wished to go touring in the Poconos without any definite destination) (N.T. 21, 22). Said "service request" testimony being uncorroborated by written records and said testimony lacking specificity, no Findings of Fact have been made by us concerning same (N.T. 32, 33, 40). See 52 Pennsylvania Code Section 3.382.

Additionally, there was testimony given by Beth Stevens that she had asked Applicant to provide intrastate service to her grandson's prom, but that said Applicant refused to provide the service because he lacked intrastate authority (N.T. 143). This testimony, however, failed to specify requested points of origin and destination, and, accordingly, it is merely probative of the fact that there is public need for limousine service somewhere in the area of Stroudsburg, Pennsylvania, to an unknown point of destination.

Thus, having concluded that the only public need which was demonstrated upon the instant record was that from the Stroudsburg area to the Allentown Airport, we shall limit our grant of authority to said points of origin and destination; and

then only if we have concluded that Applicant has met his burden of proof as to the questions of "responsiveness to a useful public purpose" and "fitness".

Responsiveness to a Useful Public Purpose

This Commission has set forth the proposition that a common carrier with interstate authority may meet its burden of proving that its requested intrastate authority is responsive to a useful public purpose in that it complements its I.C.C. authority. See Application of Kinard, supra. Applicant has done precisely that in the instant case. He is presently a common carrier by motor vehicle which possesses a license from the Interstate Commerce Commission to transport persons between points in the states of Pennsylvania, New York and New Jersey; his I.C.C. License Number being MC197034 (N.T. 15, 30). His place of business is situate in Stroudsburg, Pennsylvania (N.T. 49) and he has been engaged in the interstate transportation business for approximately three years (N.T. 15). His present business primarily involves the transportation of persons from Stroudsburg, Pennsylvania to the Newark Airport, New York City, Kennedy Airport, LaGuardia Airport, and Atlantic City (N.T. 17). He transports persons to the Newark Airport approximately two or three times per day on the average (N.T. 18). He presented two witnesses who have extensively utilized his interstate limousine

service from the Monroe County area to North Jersey and New York, to wit: Beth Stevens (N.T. 139) and Khris M. Wolfington (N.T. 191-193).

Technical Fitness

We quickly conclude that Applicant contains the requisite technical fitness to receive a certificate of public convenience. He is an I.C.C. provider of interstate limousine transportation, and has been for approximately three years (N.T. 15, 30). Said Applicant was formerly employed by Protestant Pocono Limousine as a driver for about ten months in the fall of 1986 (N.T. 30). Thus, this Applicant has an excess of four years of experience as a provider of limousine transportation service. Moreover, he employs one Nathan Oliver as a chauffeur, and Mr. Oliver's extensive experience as a limousine chauffeur is impressive (N.T. 55-59). This Applicant had three witnesses attest to the excellence of his limousine transportation service, to wit: Helen Cavanaugh (N.T. 136, 137); Beth Stevens (N.T. 139, 140); and Khris M. Wolfington (N.T. 192). Said Applicant already has in place two motor vehicles which will enable him to provide the limousine service (a 1985 Lincoln Stretch Car and a 1985 Lincoln Town Car) (N.T. 50).

Financial Fitness

Applicant presented no financial statements as evidence. However, he testified that Applicant leases a 1985 Lincoln stretch car (which is worth approximately \$20,000) (N.T. 50) with a bar and television, and that Applicant has an option to purchase said vehicle upon the expiration of the lease with GMAC (N.T. 34). Because of the buy-out option on the 1985 Lincoln Town Car, Applicant has about \$5,000 equity in said vehicle (N.T. 51). Also, Applicant owns a 1985 Lincoln Town Car (purchased for \$13,000 in late 1987) which has an encumbrance against it in the approximate amount of \$7,000 (N.T. 35, 36). The said 1985 Lincoln Town Car is worth approximately \$10,000 (N.T. 50). And, Applicant owns a 1982 Sedan DeVille (purchased around 1985) which is owned free of encumbrance, but which is a wrecked vehicle not utilized for interstate transportation (N.T. 36, 37). Applicant pays approximately \$1,042.00 per month on the lease concerning the stretch limo, and makes a \$400.00 monthly payment concerning the owned Lincoln Town Car (N.T. 43). In 1988, Applicant grossed \$70,000 in its interstate transportation business, but the expenses for said year were not known to the Applicant, his tax return not having been filed on the dates he testified (January 17, 1989 and March 17, 1989) (N.T. 48). Nothing additional was proven concerning the financial condition of Applicant or of the assets owned by him; excepting, however,

that he also owns assets with his wife as tenants by the entireties.

Protestants persuasively argue that such evidence is insufficient to enable the Applicant to meet his burden of proving that he possesses the requisite financial fitness. In an ordinary case we would agree. In the instant matter, however, this Applicant is already operating a limousine service interstate with Stroudsburg, Pennsylvania as the point of origin or the point of destination. Also, he has already proven his financial fitness to the Interstate Commerce Commission. Therefore, we have concluded that sufficient proof of financial fitness has been presented to us so as to justify a finding that Applicant is financially fit to provide intrastate transportation service with Stroudsburg, Pennsylvania and the Allentown Airport¹ as the points of origin and destination. The language used in the initial decision dated July 28, 1989 in Application of AAA Moving and Storage Co., A-00106910, Folder 1, Amendment A.² at pages 38 and 39, is applicable to the instant case:

¹The Allentown/Bethlehem/Easton Airport has been consistently referred to as the Allentown Airport by the witnesses in the instant case, one of the witnesses having explained that the distance between Stroudsburg and the Allentown Airport is about thirty to thirty-five miles, and is a trip of approximately three-fourths of an hour in duration (N.T. 142, 143).

²The Commission's opinion and order disposing of Exceptions filed to the initial decision has not yet been entered.

"...We have concluded, however, that...it will be entitled to a certificate of public convenience enabling it to provide additional common carriage in the Wilkes-Barre area, since the record before us reveals that it is already providing interstate common carriage in said territory, and that, therefore, Applicant's financial ability to provide intrastate service within said restricted territory is already in place. Indeed, as stated by our colleague, Administrative Law Judge Christianson, the granting of intrastate authority in territories where interstate authority is in place may actually enhance an Applicant's financial fitness by permitting 'carrier efficiency'. See page 27 of Initial Decision dated 1/5/84, Application of Richard L. Kinard, Inc., A-00095829, F. 1, Am-D, adopted by the Commission at 58 Pa. P.U.C. 548 (1984)."

Applicant's Propensity to Operate Lawfully

On one occasion at the end of 1986 or the beginning of 1987, Applicant provided unlawful intrastate transportation service which resulted in said Applicant paying a fine to this Commission in the sum of \$250.00 (N.T. 38, 39). We have not been convinced by this one isolated incident of unlawful transportation, however, that this Applicant lacks the propensity to operate lawfully.

Will the Entry of a New Carrier Endanger or Impair the Operations of Existing Common Carriers so as to be Contrary to the Public Interest?

Protestant "The House Scene" has made no endeavor to meet its burden of going forward with the evidence under 52 Pennsylvania Code Section 41.14(c) in order to prove an adverse impact upon existing carriers which will affect the public interest. Said Protestant presented no testimony.

Pocono Limousine, which presented its office manager as a witness, also failed to show an adverse impact upon Pocono Limousine. Its said sole witness was not familiar with Pocono Limousine's books or records, and any opinion which the said witness had as to Pocono Limousine's financial fitness was based upon other information, only (N.T. 179).

Thus, we quickly and confidently conclude that an adverse public impact has not been shown by either Protestant.

Conclusions of Law

1. The Commission has jurisdiction over the parties to this controversy and to the subject matter thereof.

2. Applicant has failed to met its burden of proving that it is financially fit to serve the public with motor vehicle common carriage in the expanded area in which it seeks. However, it has met its said burden to serve the public by the providing of limousine service with the points of destination and origin being the Stroudsburg, Pennsylvania area and the Allentown/Bethlehem/Easton Airport; said Applicant already

lawfully providing interstate common carriage authority issued to it by the Interstate Commerce Commission wherein Stroudsburg, Pennsylvania is the point of origin and/or the point of destination.

3. Applicant has shown that there is a public need for common carriage authority to provide limousine service from the Stroudsburg, Pennsylvania area to the Allentown/Bethlehem/Easton Airport, and vice versa, and that the said transportation services are responsive to a useful public purpose.

4. Applicant has shown that it is technically fit to perform the common carriage service mentioned in the next preceding Conclusion of Law.

5. Protestants have failed in their endeavor to show that the entry of a new carrier into the field will endanger or impair the operations of existing common carriers to such an extent that, on balance, the granting of authority would be contrary to the public interest.

VI. Order

THEREFORE,

IT IS ORDERED:

1. That the Application of James Danielewicz, t/d/b/a Limousines for Less, at A-00108292 be and is hereby approved, in part, and that a certificate be issued granting the following right:

To transport, as a common carrier, by motor vehicle, persons, in limousine service, from points in the borough of Stroudsburg, Monroe County, Pennsylvania, and from points within an airline distance of ten (10) statute miles of the limits of the said Borough of Stroudsburg, to the Allentown/Bethlehem/Easton Airport, and vice versa.

2. That the Applicant shall not engage in any transportation granted herein until it shall have filed with the Commonwealth of Pennsylvania, Secretary of State, a fictitious name registration authorizing it to do business as "Limousines for Less", and until it shall have complied with the requirements of the Pennsylvania Public Utility Code and the rules and regulations of this Commission relative to the filing of insurance and the filing and acceptance of a tariff establishing just and reasonable rates.

3. That the certificate holder shall comply with all the provisions of the Public Utility Code as now existing or as may be hereafter amended, and with all pertinent regulations of this Commission now in effect, or as may hereafter be prescribed by the Commission. Failure to comply shall be sufficient cause to suspend, revoke or rescind the rights and privileges conferred by the certificate.

4. That the authority granted herein, to the extent that it duplicates authority now held by or subsequently granted to the Applicant, shall not be construed as conferring more than one operating right.

5. That, in the event the Applicant has not, on or before 60 days from the date of service of this order, complied with the requirements set forth herein, the Application shall be dismissed without further proceeding.

Date:

January 12, 1990

Richard M. Lovenwirth
RICHARD M. LOVENWIRTH
Administrative Law Judge

2/8

Case Identification:

A-00108292; Application of James
Danielewicz, t/d/b/a Limousines
for Less

Initial Decision By:

ALJ Richard M. Lovenwirth

Deadline for Return to OSA:

February 8, 1990

This decision has not been reviewed by OSA.

DOCKETED
FEB 16 1990

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I want full Commission review of this decision.

Commissioner

Date

I do not want full Commission review of this decision.

Bill Sharkey
Commissioner

1-30-90
Date

ACT 294

Case Identification: A-00108292; Application of James
Danielewicz, t/d/b/a Limousines
for Less

Initial Decision By: ALJ Richard M. Lovenwirth

Deadline for Return to OSA: February 8, 1990

This decision has not been reviewed by OSA.

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I want full Commission review of this decision.

Commissioner

Date

I do not want full Commission review of this decision.

Wm H. Smith

Commissioner

2-8-90

Date

ACT 294

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A-00108292; Application of James
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Initial Decision By:

ALJ Richard M. Lovenwirth

Deadline for Return to OSA:

February 8, 1990

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Commissioner

Date

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X Joseph Pluchis, Jr.
Commissioner

1/31/90
Date

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Commissioner

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Commissioner

Date

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Commissioner

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