

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of City Lights, LLC, for the :
right to begin to transport, by motor :
vehicle, persons in limousine service, :
(1) between points in Allegheny County, :
and from points in said county, to points :
in Pennsylvania, and return; (2) between :
points in the counties of Beaver, Butler, :
Fayette, Lawrence, Mercer, Washington, :
and Westmoreland, and from points in :
said counties, to points in Pennsylvania, :
and return. :

Docket No. A-00119028

RECEIVED
2002 NOV -5 PM 1:21
SECRETARY'S BUREAU

DOCKETED
NOV 21 2002

DOCUMENT
FOLDER

INTERIM ORDER
DENYING MOTION FOR
PARTIAL DISMISSAL OF A PROTEST

Background

City Lights, LLC ("Applicant") filed an application with this Commission on June 13, 2002 seeking the authority specified in the caption of this case. Notice of this application was published in the *Pennsylvania Bulletin* on August 10, 2002. Protests to this application were due to be filed on or before September 3, 2002. See, 52 Pa. Code §3.381(d).

Star Limousine Service, Inc., Kirk Livery, Inc., Snow White Dove Limousine, Inc., System of Service, Inc., t/d/b/a Fantasy Limo Leasing, Red Rose Limousine Service, Inc., Airport Limousine Service, Inc., t/d/b/a Airport Limousine Service and Embassy Coach, Terry J. Kovach, t/d/b/a Vogue Limousines, and Gold Cross Limousine of Pa., Inc. (collectively the "Protestants") all filed protests to this application. On September 20, 2002, the Applicant replied to these protests and filed a motion for

partial dismissal of the protest of Airport Limousine Service and Embassy Coach. This Protestant replied to the motion on October 17, 2002.

Discussion

City Lights moves to dismiss that part of the protest, wherein Airport Limousine alleges the Applicant is underinsured, is fiscally unfit, has an improper maintenance program, and does not have appropriate personnel to conduct its business (¶¶ 6-13 of the Protest). City Lights argues 52 Pa. Code §3.381 only permits a protest to raise the effect of the application on the protestant, *i.e.*, destructive competition and/or adverse impact. Since it has already provided the Commission with evidence of its fitness with its original application, City Lights claims that portion of the protest of Airport Limousine raising these issues should be dismissed. Since City Lights misconstrues the applicable law, its motion must be denied.

An applicant, who proposes to offer, render, furnish or supply intrastate carriage service to the public for compensation within this Commonwealth, must obtain a certificate of public convenience from this Commission. 66 Pa. C.S. §§102, 1101-1103. The Commission will grant a certificate of public convenience, "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." 66 Pa. C.S. §1103(a). The evidentiary criteria the Commission uses in deciding whether to grant an application seeking motor common carrier authority are set forth in Section 41.14 of its regulations, 52 Pa. Code §41.14, which states:

- (a) An applicant seeking motor common carrier authority has a burden of demonstrating that approval of the application will serve a useful public purpose, responsive to a public demand or need.

(b) An applicant seeking motor common carrier authority has the burden of demonstrating that it possesses the technical and financial ability to provide the proposed service, and, in addition, authority may be withheld if the record demonstrates that the applicant lacks a propensity to operate safely and legally.

(c) The Commission will grant motor common carrier authority commensurate with the demonstrated public need unless it is established that the entry of a new carrier into the field would endanger or impair the operations of existing common carriers to an extent that, on balance, the granting of authority would be contrary to the public interest.

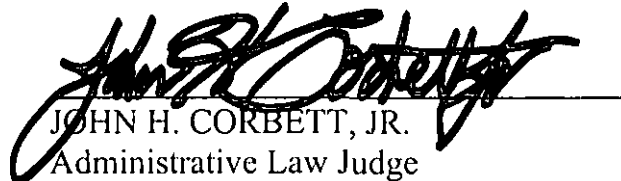
(Emphasis added).

Thus, subsections (a) and (b) of Section 41.14 clearly place on the Applicant the burden of proving its proposed service will serve a useful public purpose, responsive to a public need or demand, and that it is financially and technically fit to provide the proposed service. *See also, Elite Industries, Inc., et al. v. Pa. P.U.C.*, 793 A.2d 160 (Pa. Cmwlth. 2002), *allocatur* granted October 23, 2002 at 2002 Pa. LEXIS 2213.

THEREFORE,
IT IS ORDERED:

That the motion of City Lights, LLC for partial dismissal of the protest of Airport Limousine Service and Embassy Coach is hereby denied.

Dated: October 31, 2002


JOHN H. CORBETT, JR.
Administrative Law Judge