

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 12,192

IN THE MATTER OF:

Served October 15, 2009

VGA, INCORPORATED, WMATC Carrier)
No. 445, Investigation of Violation)
of Seating Capacity Restriction and)
Unauthorized Transfer of Assets)

Case No. MP-2009-108

ROYAL SYSTEM SERVICES CORP.,)
Trading as VGA GROUP, Investigation)
of Unauthorized Operations)

Case No. MP-2009-109

This matter is before the Commission on respondents' response to Order No. 12,109, served August 3, 2009, directing respondents to produce documents and present vehicles for inspection within thirty days.

I. BACKGROUND

Certificate of Authority No. 445 authorizes VGA, Incorporated, (VGA), to transport passengers for-hire between points in the Metropolitan District in vehicles with a manufacturer's designed seating capacity of 15 or fewer persons, including the driver.

VGA filed an annual report in 2007 listing two 47-passenger vehicles, two 25-passenger vehicles, and three 21-passenger vehicles. Commission staff noticed the discrepancy in 2008 and promptly reminded VGA that operation of the aforementioned vehicles violates the seating capacity restriction in Certificate No. 445.

VGA subsequently filed an application to remove the seating capacity restriction in Certificate No. 445. The application was conditionally approved on July 1, 2008, but the reissuance of Certificate No. 445 without a seating capacity restriction was expressly made contingent on VGA filing additional documents and passing a vehicle inspection conducted by Commission staff.¹ VGA failed to satisfy the conditions for reissuance within the time allotted, thereby voiding the Commission's approval as of December 28, 2008.²

¹ See *In re VGA Incorporated*, No. AP-08-078, Order No. 11,449 (July 1, 2008) (conditionally approving amendment of Certificate No. 445).

² See *id.* (approval of amendment void upon applicant's failure to timely satisfy conditions of reissuance).

VGA thereafter filed its 2009 annual report on February 2, 2009. The report lists the seven aforementioned vehicles seating more than fifteen persons each, plus an additional 52 passenger vehicle.

VGA filed a second application to remove the seating capacity restriction in Certificate No. 445 on February 20, 2009. That application was dismissed April 16, 2009, without prejudice for VGA's failure to comply with the Commission's application requirements.³ No further application has been forthcoming.

On April 23, 2009, Royal System Services Corp., trading as VGA Group, (Royal) filed an application for a certificate of authority. The application was rejected as incomplete. Although styled an application for a new certificate, Articles of Sale and Transfer obtained from the Maryland Department of Assessments and Taxation website⁴ indicate that VGA and Royal agreed in June of last year that VGA would transfer substantially all of its assets, including its name, vehicles, and transferable licenses, to Royal. The Articles are dated June 1, 2008, were filed with the Department on October 1, 2008, and reference a Purchase and Sales Agreement dated December 31, 2008.

Case No. MP-2009-108 was initiated in Order No. 12,109 to determine whether VGA knowingly and willfully violated the seating capacity restriction in its certificate of authority and transferred assets to Royal without Commission approval.

Case No. MP-2009-109 was initiated in Order No. 12,109 to determine whether Royal has been operating assets acquired from VGA under color of Certificate No. 445.

The order directed respondents to produce within fifteen days (1) a complete list of vehicles in their possession, custody, or control; (2) copies of the for-hire registration cards for those vehicles; and (3) a copies of the current safety inspection certificates for those vehicles. The order also gave respondents thirty days to present their vehicles for inspection and produce copies of their business records during the period beginning January 1, 2007, as to VGA, and June 1, 2008, as to Royal, and ending on the date of the order, August 3, 2009

The order further directed VGA to refrain from, and/or cease and desist from, transporting passengers for hire between points in the Metropolitan District in vehicles seating more than 15 persons, including the driver; directed Royal to refrain from, and/or cease and desist from, transporting passengers for hire between points in the Metropolitan District in any vehicles; and stipulated that Certificate No. 445 would stand suspended and be subject to revocation without further proceeding upon VGA's failure to timely comply with the order.

³ *In re VGA, Inc.*, No. AP-2009-017, Order No. 11,942 (Apr. 16, 2009).

⁴ <http://sdatcert3.resiusa.org/ucc-charter/>.

II. RESPONSE TO ORDER NO. 12,109

On August 18, VGA submitted a vehicle list and produced copies of the for-hire registration cards and safety inspection certificates for those vehicles. The list includes vehicles reported by VGA in its 2009 annual report to seat 16 or more persons.

On September 4, respondents' attorney, James S. Williford, Jr., requested a thirty day extension of time for Royal to respond and for VGA to complete its response. An additional thirty days has passed. Royal has not responded, and VGA has not presented any vehicles and has not produced the remaining required documents.

In the meantime, a review of the Commission's files has revealed that VGA has no current tariff on file with the Commission as required by Article XI, Section 14, of the Compact.

III. SUSPENSION OF AUTHORITY AND ORDER TO SHOW CAUSE

Pursuant to Order No. 12,110, Certificate No. 445 stands suspended and is subject to revocation for VGA's failure to timely comply with the order.

The Commission may suspend or revoke all or part of any certificate of authority for willful failure to comply with a provision of the Compact, an order, rule, or regulation of the Commission, or a term, condition, or limitation of the certificate.⁵

A person who knowingly and willfully violates a provision of the Compact, or a rule, regulation, requirement, or order issued under it, or a term or condition of a certificate shall be subject to a civil forfeiture of not more than \$1,000 for the first violation and not more than \$5,000 for any subsequent violation.⁶ Each day of the violation constitutes a separate violation.⁷

The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.⁸ The terms "willful" and "willfully" do not mean with evil purpose or criminal intent; rather, they describe conduct marked by intentional or careless disregard or plain indifference.⁹

VGA shall have thirty days to show cause why the Commission should not assess a civil forfeiture against VGA and/or revoke Certificate No. 445.

⁵ Compact, tit. II, art. XI, § 10(c).

⁶ Compact, tit. II, art. XIII, § 6(f)(i).

⁷ Compact, tit. II, art. XIII, § 6(f)(ii).

⁸ *In re Metro Health-Tech Servs. Inc.*, No. MP-08-057, Order No. 11,588 (Sept. 24, 2008).

⁹ *Id.*

Royal shall have thirty days to show cause why the Commission should not assess a civil forfeiture against Royal.

THEREFORE, IT IS ORDERED:

1. That Certificate of Authority No. 445 stands suspended for VGA's willful failure to comply with Order No. 12,109.

2. That VGA shall have thirty days to show cause why the Commission should not assess a civil forfeiture against VGA for knowingly and willfully violating Article XI, Section 14, of the Compact, the seating capacity restriction in Certificate of Authority No. 445, and Order No. 12,109.

3. That VGA shall have thirty days to show cause why the Commission should not revoke Certificate of Authority No. 445 for VGA's willful failure to comply with Article XI, Section 14, of the Compact, the seating capacity restriction in Certificate of Authority No. 445, and Order No. 12,109.

4. That Royal shall have thirty days to show cause why the Commission should not assess a civil forfeiture against Royal for knowingly and willfully violating Order No. 12,109.

5. That respondents may submit within 15 days from the date of this order a written request for oral hearing, specifying the grounds for the request, describing the evidence to be adduced and explaining why such evidence cannot be adduced without an oral hearing.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS CHRISTIE AND BRENNER:



William S. Morrow, Jr.
Executive Director