

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 12,443

IN THE MATTER OF:

Served June 15, 2010

Application of JET TOURS USA, INC.,)
for Expansive Amendment of)
Certificate No. 315)

Case No. AP-2009-130

JET TOURS USA, INC., WMATC No. 315,)
Investigation of Violation of)
Seating Capacity Restriction)

Case No. MP-2009-110

This matter is before the Commission on the response of Jet Tours USA, Inc., (Jet Tours), to Order No. 12,187, served October 8, 2009, in Case No. MP-2009-110, directing Jet Tours to show cause why the Commission should not assess a civil forfeiture and/or revoke Certificate No. 315.

This matter also is before the Commission on the application of Jet Tours filed December 14, 2009, in Case No. AP-2009-130 to remove the seating capacity restriction from Certificate No. 315.

I. HISTORY OF CERTIFICATE NO. 315

Jet Tours first applied for WMATC operating authority in October 1994 during the course of a Commission investigation into possible violations of the Compact by Jet Tours. The Commission concluded that Jet Tours had operated without authority in the past but determined that the record supported a finding of fitness provided that Jet Tours pay a civil forfeiture of \$1,000.¹ Jet Tours paid the forfeiture, and Certificate No. 315 was issued on October 17, 1995.

Jet Tours held WMATC Certificate No. 315 from October 17, 1995, to February 21, 2002, when it was revoked in Order No. 6551 for Jet Tours' willful failure to comply with the insurance provisions of the Compact and regulations thereunder.² Order No. 6551 directed Jet Tours to surrender Certificate No. 315 to the Commission and file a notarized affidavit verifying removal of the markings placed on its vehicle(s) pursuant to Commission Regulation No. 61.

Jet Tours later filed an application on August 6, 2002, to reinstate Certificate No. 315. The Commission denied the application on the grounds that Jet Tours had failed to verify removal of the vehicle markings and failed to explain why the vehicle list filed with

¹ *In re Jet Tours USA, Inc.*, No. AP-94-50, Order No. 4649 (Aug. 22, 1995).

² *In re Jet Tours USA, Inc.*, No. MP-02-06, Order No. 6551 (Feb. 21, 2002).

the application listed only one of two vehicles Jet Tours reported in its annual reports for 2000 and 2001.³

Jet Tours reapplied for reinstatement on November 15, 2002. The application included an affidavit verifying the removal of vehicle markings in May 2002 and accounting for the whereabouts of both vehicles reported in Jet Tours' WMATC annual reports for 2000 and 2001. The application was approved on March 6, 2003, in Order No. 7078,⁴ and Certificate No. 315 was reissued on April 18, 2003.

Certificate No. 315 was suspended three times thereafter, once each in 2004, 2005, and 2006 for violations of the Commission's insurance requirements.⁵

II. INITIATION OF CURRENT INVESTIGATION

Certificate No. 315 states that it is "RESTRICTED TO (1) operations conducted according to the named carrier's applicable tariff on file with the Commission and (2) transportation in vehicles with a manufacturer's designed seating capacity of 15 or fewer persons, including the driver."

In 2007, Jet Tours filed an annual report listing two 56-passenger buses. Commission staff noticed the discrepancy in 2008 when Jet Tours filed its annual report for 2008 with four 56-passenger buses on it. Staff promptly reminded Jet Tours that operation of 56-passenger buses violates the seating capacity restriction in Certificate No. 315.

Jet Tours subsequently filed an application to remove the seating capacity restriction. The application was conditionally approved on June 10, 2008, but the reissuance of Certificate No. 315 without a seating capacity restriction was expressly made contingent on Jet Tours filing additional documents and passing a vehicle inspection conducted by Commission staff.⁶ Jet Tours failed to satisfy the conditions for reissuance within the time allotted, thereby voiding the Commission's approval as of December 7, 2008.⁷

Jet Tours thereafter filed its 2009 annual report on January 26, 2009. The report lists the four aforementioned 56-passenger vehicles, plus an additional 52-passenger vehicle.

³ *In re Jet Tours USA, Inc.*, No. AP-02-94, Order No. 6878 (Oct. 30, 2002).

⁴ *In re Jet Tours USA, Inc.*, No. AP-02-133, Order No. 7078 (Mar. 6, 2003).

⁵ *In re Jet Tours USA, Inc.*, No. MP-06-098, Order No. 9672 (June 21, 2006); *In re Jet Tours USA, Inc.*, No. MP-05-68, Order No. 8789 (June 21, 2005); *In re Jet Tours USA, Inc.*, No. MP-04-96, Order No. 8001 (May 10, 2004).

⁶ See *In re Jet Tours USA, Inc.*, No. AP-08-089, Order No. 11,405 (June 10, 2008) (conditionally approving reissuance of Certificate No. 315).

⁷ See *id.* (approval of amendment void upon applicant's failure to timely satisfy conditions of reissuance). Respondent presented only two of five vehicles seating more than 15 persons.

The Commission subsequently issued Order No. 12,110 on August 3, 2009, initiating an investigation in Case No. MP-2009-110 to determine whether Jet Tours violated the seating capacity restriction in Certificate No. 315. The order directed Jet Tours to produce within fifteen days (1) a complete list of vehicles in its 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 Jet Tours thirty days to present its vehicles for inspection and produce copies of its business records from January 1, 2007, to the date of the order, August 3, 2009

The order further directed Jet Tours 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, and stipulated that Certificate No. 315 would stand suspended and be subject to revocation without further proceeding upon Jet Tours' failure to timely comply with the order.

When Jet Tours did not respond to Order No. 12,110 within the time allowed, the Commission issued Order No. 12,187 on October 8, 2009, declaring that Certificate No. 315 stood suspended and subject to revocation for Jet Tours' failure to timely comply with Order No. 12,110. Order No. 12,187 gave Jet Tours 30 days, or until November 7, 2009, to show cause why the Commission should not assess a civil forfeiture and/or revoke Certificate No. 315. The Commission later extended the November 7 deadline to November 27 at Jet Tours' request.⁸

III. RESPONSE TO ORDER NO. 12,187

In response to Order No. 12,187, Jet Tours presented its vehicles for inspection by Commission staff on several dates between November 12 and November 20. Six of the vehicles presented for inspection had an individual seating capacity of more than 15 persons, including the driver. Commission staff observed that Jet Tours' WMATC number, "WMATC 315", was displayed on all vehicles presented for inspection, including the six seating more than 15 persons each.

Jet Tours thereafter produced documents responsive to Order No. 12,110 on November 27, 2009. Later, Jet Tours supplemented its November 27 response with two affidavits from Jet Tours President Raymond Thomas. According to the first affidavit, filed March 11, 2010, Jet Tours operated a 14-passenger van in the Washington Metropolitan Area in 2003. The affidavit states that the van was removed from service in 2004. Attached to the affidavit are documents showing that Jet Tours registered the van in New Jersey in June 2004 and reported to New Jersey in October 2004 that the van had been sold. Consistent with the affidavit, Commission records show that Jet Tours commenced operations with the van in question in 2003. Also consistent with the affidavit, the 2005 and 2006 WMATC annual reports

⁸ *In re Jet Tours USA, Inc.*, No. MP-09-110, Order No. 12,216 (Nov. 3, 2009).

for Jet Tours indicate that Jet Tours had no vehicles in the Washington Metropolitan Area when those reports were filed in January 2005 and January 2006, respectively.

The first affidavit also states that Jet Tours' WMATC number had been removed from the vehicles seating more than 15 persons each as of March 8, 2010. Photos of those vehicles are attached as corroboration.

According to the second affidavit, filed May 13, 2010, Jet Tours listed all of its vans and buses on its post-2006 WMATC annual reports because Jet Tours personnel had developed the mistaken belief that Jet Tours was required to report all of its vehicles to WMATC, including vehicles not operated within WMATC jurisdiction. The second affidavit states that Jet Tours never operated any buses within the Commission's jurisdiction. Jet Tours acknowledges conducting roundtrip operations from New Jersey and New York to the Washington Metropolitan Area Transit District and return, now and in the past, but no passengers have ever joined those trips in the Metropolitan District. The Commission has no jurisdiction over trips originating outside the Metropolitan District and touring within the Metropolitan District if no passengers are added to the original party inside the Metropolitan District.⁹

The affidavits are corroborated by income tax records showing that all of Jet Tours' drivers reside in New Jersey and New York. The affidavits are further corroborated by invoices from Xaberia Tours, Inc., WMATC Carrier No. 179, showing that Jet Tours has been contracting out its Metropolitan District operations since at least 2007.

IV. FINDINGS

As noted at the beginning of this order, Order No. 12,187, served October 8, 2009, in Case No. MP-2009-110, directed Jet Tours to show cause why the Commission should not assess a civil forfeiture against Jet Tours, and/or revoke Certificate No. 315, for failing to timely respond to Order No. 12,110, which directed Jet Tours to produce documents and present vehicles for inspection on or before September 2, 2009, and/or for operating vehicles with seating capacities exceeding the 15-person restriction in Certificate No. 315.

On the failure to timely respond issue, Jet Tours says that it did not receive Order No. 12,110. The record shows that a copy of Order No. 12,110 was timely served on Jet Tours by Certified Mail. The envelope was addressed to the mailing address specified in Jet Tours' 2009 annual report filed January 26, 2009. The order was

⁹ *Easy Travel, Inc. v. Jet Tours USA, Inc.*, No. FC-94-01, Order No. 4649 (Aug. 22, 1995) (citing *D.C. Transit Sys., Inc. v. Public Serv. Coordinated Trans.*, FC-17, Order No. 897 (Dec. 18, 1968), *aff'd sub nom.*, *D.C. Transit Sys. v. WMATC*, 420 F.2d 226 (D.C. Cir. 1969)).

returned by the U.S. Postal Service marked "Unclaimed". Applicant cannot evade a Commission order by failing to accept service.¹⁰

As for operating vehicles in violation of the seating capacity restriction in Certificate No. 315, the evidence adduced by Jet Tours in response to Order No. 12,187 indicates that Jet Tours did not use those vehicles in operations subject to WMATC jurisdiction. The affidavits and supporting documents are consistent with a lack of operations inside the Metropolitan District, beyond those not requiring WMATC authority, after the one van used to commence operations in 2003 was removed from service in 2004.

The evidence does however support a finding that Jet Tours improperly displayed its WMATC number on vehicles with seating capacities exceeding the 15-person restriction in Certificate No. 315. A non-WMATC carrier may not, by advertisement or otherwise, hold itself out as authorized to provide services requiring a WMATC certificate of authority.¹¹ This prohibition is codified in Commission Regulation No. 63-04(a), which provides that no carrier "regulated by the Commission or subject to such regulation shall advertise or hold itself out to perform transportation or transportation-related services within the Metropolitan District unless such transportation or transportation-related services are authorized by the Commission." Although Jet Tours possessed WMATC authority at all times relevant to our investigation, that authority did not, and does not, extend to vehicles seating more than 15 persons, including the driver. The unauthorized display of WMATC No. 315 thus violates Regulation No. 63-04(a).¹²

We find that Jet Tours has shown cause why Certificate No. 315 should not be revoked but has failed to show cause why a civil forfeiture should not be assessed.

V. ASSESSMENT OF FORFEITURE

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.¹³

¹⁰ *In re Carl's Place Inc.*, No. AP-10-20, Order No. 12,361 (Apr. 7, 2010); *In re Annie Gardner, t/a Gardner Transp.*, No. MP-06-115, Order No. 10,456 (May 8, 2007); *In re Amna O. Abugusseisa, t/a AB & B Trans*, No. MP-03-50, Order No. 7621 (Dec. 18, 2003).

¹¹ *In re Haymarket Transp., Inc.*, No. AP-08-181, Order No. 11,873 (Mar. 4, 2009); *In re Union, Inc.*, No. AP-07-013, Order No. 10,482 (May 10, 2007); *In re Associated Community Servs., Inc.*, No. AP-02-88, Order No. 6839 (Oct. 3, 2002).

¹² See Order No. 11,873 (display of unauthorized number violates Reg. No. 63-04); Order No. 10,482 (same); Order No. 6839 (same).

¹³ Compact, tit. II, art. XIII, § 6(f)(i).

The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.¹⁴ The term "willfully" does not mean with evil purpose or criminal intent; rather, it describes conduct marked by careless disregard whether or not one has the right so to act.¹⁵

We find that applicant knowingly and willfully violated Regulation No. 63-04(a) by displaying WMATC No. 315 on its six vehicles seating more than 15 persons each. We shall assess a civil forfeiture of \$250.¹⁶

We find that applicant knowingly and willfully violated Order No. 12,110 by failing to timely produce documents. We shall assess a civil forfeiture of \$250.¹⁷

VI. APPLICATION TO REMOVE SEATING CAPACITY RESTRICTION

Under Article XI, Section 10(b), of the Compact, the Commission may amend a certificate of authority upon application by the holder. A carrier seeking expanded operating authority must show that it is fit and that the proposed transportation is consistent with the public interest.¹⁸ This application is unopposed.

Applicant proposes commencing operations with eight vans, two minibuses, and four motorcoaches. Applicant proposes operating under a tariff containing charter rates.

Applicant verifies that: (1) applicant owns or leases, or has the means to acquire through ownership or lease, one or more motor vehicles meeting the Commission's safety requirements and suitable for the transportation proposed in this application; (2) applicant owns, or has the means to acquire, a motor vehicle liability insurance policy that provides the minimum amount of coverage required by Commission regulations; and (3) applicant has access to, is familiar with and will comply with the Compact, the Commission's rules, regulations and orders, and Federal Motor Carrier Safety Regulations as they pertain to transportation of passengers for hire.

Normally, such evidence would be sufficient to establish an applicant's fitness but not when an applicant has a history of

¹⁴ Order No. 11,873; Order No. 10,482; Order No. 6839.

¹⁵ Order No. 11,873; Order No. 10,482; Order No. 6839.

¹⁶ See Order No. 11,873 (assessing \$250 forfeiture for displaying unauthorized WMATC markings on vehicle); Order No. 10,482 (same); Order No. 6839 (same).

¹⁷ See *In re Chukwunenye Nnakwu, t/a Progressive Med. Care Servs.*, No. MP-08-242, Order No. 12,121 (assessing \$250 forfeiture for failing to timely produce documents); *In re Sams Health Care Servs. Inc.*, No. MP-08-005, Order No. 11,947 (Apr. 23, 2009) (same).

¹⁸ *In re W & T Travel Services LLC, t/a WTTS*, No. AP-08-162, Order No. 11,933 (Apr. 9, 2009).

regulatory violations.¹⁹ When an applicant has a record of violations, the Commission considers the following factors in assessing the likelihood of future compliance: (1) the nature and extent of the violations, (2) any mitigating circumstances, (3) whether the violations were flagrant and persistent, (4) whether applicant has made sincere efforts to correct its past mistakes, and (5) whether applicant has demonstrated a willingness and ability to comport with the Compact and rules and regulations thereunder in the future.²⁰

The Commission has approved applications in the past where the applicant displayed a WMATC number without Commission approval but did not engage in unauthorized operations.²¹ Upon payment of the forfeiture assessed herein, the record will support a finding of prospective compliance fitness,²² subject to a one-year period of probation.²³

Based on the evidence in this record, and in consideration of the terms of probation and other conditions prescribed herein, the Commission finds that the proposed transportation is consistent with the public interest and that applicant is fit, willing, and able to perform the proposed transportation properly, conform to the provisions of the Compact, and conform to the rules, regulations, and requirements of the Commission.

THEREFORE, IT IS ORDERED:

1. That Case Nos. AP-2009-130 and MP-2009-110 are hereby consolidated pursuant to Commission Rule No. 20-02.

2. That pursuant to Article XIII, Section 6(f), of the Compact, the Commission hereby assesses a civil forfeiture against applicant in the amount of \$500 for knowingly and willfully violating Regulation No. 63-04(a) and Order No. 12,110.

3. That applicant is hereby directed to pay to the Commission within thirty days of the date of this order, by money order or check, the sum of five hundred dollars (\$500).

4. That upon applicant's timely compliance with the requirements of this order, Certificate of Authority No. 315 shall be reissued, as amended consistent with this order, to Jet Tours USA, Inc., 299 Murray Hill Parkway, East Rutherford, NJ 07073-2112.

¹⁹ *Id.*

²⁰ *Id.*

²¹ See Order No. 12,361 (approving application despite unauthorized display of WMATC markings); Order No. 11,873 (same); Order No. 10,482 (same); Order No. 6839 (same).

²² See Order No. 12,361 (payment of forfeiture corrects error and supports fitness finding); Order No. 11,873; Order No. 10,482 (same); Order No. 6839 (same).

²³ See Order No. 12,361 (same); Order No. 11,873 (same); Order No. 10,482 (same).

5. That applicant may not transport passengers for hire between points in the Metropolitan District pursuant to this order unless and until Certificate No. 315 has been reissued in accordance with the preceding paragraph.

6. That applicant is hereby directed to present its revenue vehicle(s) for inspection and file the following documents within the 180-day maximum permitted in Commission Regulation No. 66: (a) evidence of insurance pursuant to Commission Regulation No. 58; (b) an original and four copies of a tariff or tariffs in accordance with Commission Regulation No. 55; (c) a vehicle list stating the year, make, model, serial number, fleet number, license plate number (with jurisdiction) and seating capacity of each vehicle to be used in revenue operations; (d) a copy of the for-hire vehicle registration card, and a lease as required by Commission Regulation No. 62 if applicant is not the registered owner, for each vehicle to be used in revenue operations; (e) proof of current safety inspection of said vehicle(s) by or on behalf of the United States Department of Transportation, the State of Maryland, the District of Columbia, or the Commonwealth of Virginia; and (f) the original Certificate No. 315 issued April 18, 2003.

7. That applicant shall be placed on probation for a period of one year commencing with the issuance of a certificate of authority in accordance with the terms of this order and that a willful violation of the Compact, or of the Commission's rules, regulations or orders thereunder, by applicant during the period of probation shall constitute grounds for immediate suspension and/or revocation of applicant's operating authority without further proceedings, regardless of the nature and severity of the violation.

8. That the grant of authority herein shall be void and the application shall stand denied upon applicant's failure to timely satisfy the conditions of issuance prescribed herein.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS BRENNER AND CHRISTIE:



William S. Morrow, Jr.
Executive Director