

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 12,502

IN THE MATTER OF:

Served August 9, 2010

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 consolidated proceeding is before the Commission on respondents' request for reconsideration of Order No. 12,439, served June 11, 2010.

Order No. 12,439 revoked Certificate No. 445 for the willful failure of VGA to comply with Article XI, Sections 6(a) and 14, of the Compact, Commission Regulation Nos. 58, 60, and 67, and the seating capacity restriction in Certificate No. 445.

Order No. 12,439 also assessed the following civil forfeitures for the following reasons:

- o Against VGA, Incorporated, (VGA), in the amount of \$271,250 for knowingly and willfully violating Article XI, Section 6(a), of the Compact by exceeding the 15-person seating capacity restriction in Certificate No. 445 on 725 days and for operating without sufficient insurance in violation of Regulation No. 58 on 360 of the 725 days;
- O Against VGA in the amount of \$250 for knowingly and willfully violating Article XI, Section 11(a), of the Compact by transferring Certificate No. 445 without Commission approval; and
- O Against Royal System Services Corp., trading as VGA Group, (Royal), in the amount of \$141,000 for knowingly and willfully violating Article XI, Section 6(a), of the Compact by transporting passengers for hire between points in the Metropolitan District without a certificate of authority and without evidence of insurance on file with the Commission on 282 days.

Finally, Order No. 12,439 stipulated that the following outstanding fees and report would remain due from VGA: the \$50 late insurance fee due under Regulation No. 67-03(c); the annual report for 2010 due under Regulation No. 60-01; the \$150 annual fee for 2010 due

under Regulation No. 67-02; and the \$200 in late fees due under Regulation No. 67-03(a),(b).

Under Title II of the Washington Metropolitan Area Transit Regulation Compact, Article XIII, Section 4,¹ a party to a proceeding affected by a final order or decision of the Commission may file within 30 days of its publication a written application requesting Commission reconsideration of the matter involved, and stating specifically the errors claimed as grounds for the reconsideration.² If the application is granted, the Commission shall rescind, modify, or affirm its order or decision with or without a hearing, after giving notice to all parties.³

Respondents timely applied for reconsideration of Order No. 12,439 on July 12, 2010.⁴ Respondents argue that the Commission committed various errors in issuing Order No. 12,439, and urge the Commission to rescind Order No. 12,439 in its entirety. Alternatively, respondents urge the Commission to: (1) limit the revocation of Certificate No. 445 to one year; (2) drastically reduce the size of the forfeitures assessed in Order No. 12,439; or (3) grant such other further relief as justice may require.

The specific errors alleged include the Commission's failure to offer respondents an opportunity to present certain evidence, including but not limited to evidence of respondents' "respective financial circumstances". We believe this allegation of error is not well founded.

Respondents' first opportunity to present evidence was in response to Commission Order No. 12,109, served August 3, 2009. Respondents were directed to produce vehicle lists, copies of vehicle registration cards, and copies of safety inspection certificates. Respondents also were directed to produce any and all books, papers, correspondence, memoranda, contracts, agreements, and other records and documents, including any and all stored electronically, within respondents' respective possession, custody or control relating to the transportation of passengers for hire between points in the Metropolitan District during the period beginning January 1, 2007, as to VGA, and June 1, 2008, as to Royal, and ending August 3, 2009.

VGA produced a vehicle list and copies of vehicle registration cards and safety inspection certificates but nothing else. Royal did not produce anything.

Respondents' second opportunity to present evidence was in response to Commission Order No. 12,192, served October 15, 2009, which gave respondents 30 days to show cause why the Commission should not revoke Certificate No. 445 and assess civil forfeitures against

¹ Pub. L. No. 101-505, § 1, 104 Stat. 1300, 1311 (1990).

² Compact, tit. II, art. XIII, § 4(a).

³ Compact, tit. II, art. XIII, § 4(d).

⁴ Technically, the deadline was June 11, 2010, but because June 11 fell on a Sunday, respondents had until July 12 to file their application under Commission Rule No. 7-01.

respondents for, among other things, failing to produce documents as directed by Order No. 12,109.⁵

VGA eventually produced documents containing financial information relating to its operations during the relevant time period. If VGA possessed other documents bearing on those operations, it should have produced them in response to Order No. 12,109 and subsequently Order No. 12,192.

Royal has yet to produce any documents in this combined proceeding. If Royal possessed documents bearing on operations conducted during the relevant time period, it should have produced them in response to Order No. 12,109 and subsequently Order No. 12,192.

Although we find respondents had ample opportunity to present evidence of their "respective financial circumstances", we note that the Commission in the past has admitted on reconsideration evidence of a carrier's financial results of operations for the purpose of establishing a basis for partially suspending the amount of a civil forfeiture assessed against the carrier.⁶ In accordance with Article XIII, Section 4(d), of the Compact, the Commission shall grant respondents an opportunity to produce such evidence before rendering a decision on the merits of respondents' application for reconsideration. Respondents are reminded that they bear the burden of proof on this issue and are cautioned to comply with Rule No. 4 and produce full supporting documentation and/or independent verification of their computations.

THEREFORE, IT IS ORDERED: That the application for reconsideration of Order No. 12,439 is granted for the purpose of receiving evidence of respondents' respective financial results of operations conducted during the respective time periods in which respondents committed the violations found in Order No. 12,439.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS BRENNER AND HOLCOMB:



William S. Morrow, Jr.
Executive Director

⁵ Order No. 12,192 additionally stipulated that respondents would have 15 days to request an oral hearing. Respondents did not request one.

⁶ See *In re Skyhawk Logistics, Inc.*, No. MP-09-044, Order No. 12,242 (Dec. 2, 2009) (discussing financial evidence introduced on reconsideration to establish basis for reducing forfeiture); see also *In re Jimmie Lee Davenport & James L. Hughes*, No. MP-04-164, Order No. 9987 (Oct. 11, 2006) (discussing unjust profits on reconsideration); *In re Zohery Tours Int'l, Inc.*, No. MP-02-46, Order No. 7096 (Mar. 19, 2003) (same).