

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 13,063

IN THE MATTER OF:

Served November 28, 2011

WASHINGTON SHUTTLE, INC., Trading)
as SUPERSHUTTLE, WMATC No. 369)
Investigation of Violation of)
Commission Regulation No. 64)

Case No. MP-2011-099

The Washington Metropolitan Area Transit Regulation Compact,¹ (Compact), applies to: "the transportation for hire by any carrier of persons between any points in the Metropolitan District."² A person may not engage in transportation subject to the Compact unless there is in force a Certificate of Authority issued by the Washington Metropolitan Area Transit Commission (WMATC) authorizing the person to engage in that transportation.³ "A person other than the person to whom an operating authority is issued by the Commission may not lease, rent, or otherwise use that operating authority."⁴ "Each authorized carrier shall: (a) provide safe and adequate transportation service, equipment, and facilities; and (b) observe and enforce Commission regulations established under [the Compact]."⁵

The Commission may investigate on its own motion a fact, condition, practice, or matter to determine whether a person has violated or will violate a provision of the Compact or a rule, regulation, or order.⁶ If the Commission finds that a respondent has violated a provision of the Compact or any requirement established

¹ Pub. L. No. 101-505, § 1, 104 Stat. 1300 (1990), *amended by* Pub. L. No. 111-160, 124 Stat. 1124 (2010) (amending tit. I, art. III).

² Compact, tit. II, art. XI, § 1. The Metropolitan District includes: the District of Columbia; the cities of Alexandria and Falls Church of the Commonwealth of Virginia; Arlington County and Fairfax County of the Commonwealth of Virginia, the political subdivisions located within those counties, and that portion of Loudoun County, Virginia, occupied by the Washington Dulles International Airport; Montgomery County and Prince George's County of the State of Maryland, and the political subdivisions located within those counties; and all other cities now or hereafter existing in Maryland or Virginia within the geographic area bounded by the outer boundaries of the combined area of those counties, cities, and airports. Compact, tit. I, art. II.

³ Compact, tit. II, art. XI, § 6(a).

⁴ Compact, tit. II, art. XI, § 11(b).

⁵ Compact, tit. II, art. XI, § 5.

⁶ Compact, tit. II, art. XIII, § 1(c).

under it, the Commission shall issue an order compelling compliance and effecting other just and reasonable relief.⁷

This investigation is being initiated to assess respondent's compliance with the Commission's safety regulation, Regulation No. 64.

I. BACKGROUND

On August 15, 2011, a van operated by Washington Shuttle, Inc., trading as SuperShuttle, WMATC No. 369, was involved in a fatal crash on the Dulles Airport Access Road. The next day, the following press release attributed to "SuperShuttle" appeared on the wusa.com⁸ website:

SuperShuttle can confirm that one of its vehicles was involved in an accident at approximately 7:30 a.m. on August 15, 2011 on the Dulles Airport Access Road. We are working closely with authorities and the investigators to understand the nature of the accident. We do not know the name of the fatally injured passenger as of this time and are waiting for verification by the police and for their family to be informed.

The driver has been identified as Macadolf (Mac-a-dolf) Hoffman. Mr. Hoffman has been a SuperShuttle franchisee since December 2009.

We take the safety of our passengers and drivers very seriously. We will continue to work closely with the investigators and will continue to do so until the details of the ongoing investigation are confirmed.

Reports in the press stated that Mr. Hoffman had been charged with reckless driving and that this was not the first time he had been charged with that offense.⁹

Respondent later confirmed to the Commission by email respondent's involvement in the crash but offered no comment on Mr. Hoffman's driving record, other than to say that respondent had been reviewing its drivers' "MVA records" annually and would begin reviewing them semi-annually.

II. REGULATION NO. 64

The Commission's safety regulations may be found in Regulation No. 64, which provides as follows:

The Commission adopts and incorporates herein by reference the Federal Motor Carrier Safety Regulations

⁷ Compact, tit. II, art. XIII, § 1(d).

⁸ WUSA is a television station in the District of Columbia and reports news events in the Washington Metropolitan Area.

⁹ See text and video at www.wusa.com.

[FMCSRs] as amended from time to time, to the extent that the said regulations apply to the operations of passenger carriers. These regulations are set out in Title 49 of the Code of Federal Regulations.

Regulation No. 64 applies to: (1) WMATC vehicles seating 9 persons or more, including the driver; and (2) the drivers and carriers operating such vehicles. This follows from the definition of "commercial motor vehicle" in the FMCSRs adopted by Regulation No. 64: "*Commercial motor vehicle* means any self-propelled or towed motor vehicle used on a highway in interstate commerce to transport passengers or property when the vehicle . . . (2) Is designed or used to transport more than 8 passengers (including the driver) for compensation)." ¹⁰

According to Commission records, respondent operates approximately 150 vans with a seating capacity of 9-10 persons each throughout the Washington Metropolitan Area under contract with the Metropolitan Washington Airports Authority. It appears from coverage in the press that the van involved in the fatality was one of these. ¹¹

Vans seating 9-15 persons have been identified by federal authorities as posing unique safety concerns. In a letter dated December 10, 2010, the National Highway Traffic Safety Administration and the Federal Motor Carrier Safety Administration (FMCSA) advised state DMV commissioners that federal "safety data indicate that 9, 12, and 15-passenger vans are often inadequately maintained, and the tires are especially vulnerable to deterioration as they age." And "[b]ecause these vehicles have unique handling characteristics, they display particular sensitivity to rollovers, particularly when they are fully loaded."

Under the circumstances, it would appear that the public interest warrants a comprehensive review of respondent's compliance with the FMCSRs as adopted by Commission Regulation No. 64.

III. ASSESSMENT OF ESTIMATED COSTS

Article XIV, Section 1, of the Compact contemplates that the cost of investigating a carrier shall be borne by the carrier, as follows:

(a) A carrier shall bear all expenses of an investigation or other proceeding conducted by the Commission concerning the carrier, and all litigation expenses, including appeals, arising from an investigation or other proceeding.

(b) When the Commission initiates an investigation or other proceeding, the Commission may require the carrier

¹⁰ 49 C.F.R. § 390.5 (2010) (available at <http://www.gpoaccess.gov/>).

¹¹ See text and video at www.wusa.com.

to pay to the Commission a sum estimated to cover the expenses that will be incurred under this section.

(c) Money paid by the carrier shall be deposited in the name and to the credit of the Commission, in any bank or other depository located in the Metropolitan District designated by the Commission, and the Commission may disburse that money to defray expenses of the investigation, proceeding, or litigation in question.

(d) The Commission shall return to the carrier any unexpended balance remaining after payment of expenses.

By this order the Commission shall assess \$11,000 as the sum of expenses the Commission estimates it will incur in this investigation. Once payment has been received, the Commission's Executive Director shall take the necessary steps to conduct the review, including but not limited to hiring a firm qualified to perform safety compliance reviews of motor passenger carriers using the criteria the FMCSA uses under Part 385, Appendix B, of the FMCSRs.

THEREFORE, IT IS ORDERED:

1. That an investigation of respondent's compliance with Commission Regulation No. 64 is hereby initiated under Article XIII, Section 1, of the Compact.

2. That pursuant to Article XIV, Section 1, of the Compact, the Commission hereby assesses \$11,000 as the sum of expenses the Commission estimates it will incur in this investigation.

3. That respondent is hereby directed to pay to the Commission within 15 days of the date of this order, by check or money order, the sum of eleven thousand dollars (\$11,000).

4. That the funds remitted by respondent pursuant to this order under Article XIV, Section 1, of the Compact, shall be used to hire a qualified firm to perform a review of respondent's compliance with FMCSRs in accordance with 49 C.F.R. 385, Appendix B, and be used to defray any other expenses incurred by the Commission in the course of pursuing this investigation.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS BRENNER AND HOLCOMB:



William S. Morrow, Jr.
Executive Director