

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 13,726

IN THE MATTER OF:

Served February 5, 2013

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

Case No. MP-2011-099

This matter is before the Commission upon review of certain corrective safety measures implemented by respondent during this proceeding as noted in Order No. 13,334, served July 3, 2012, which ordered the review and directed respondent to produce certain documents relating to this investigation.

I. BACKGROUND

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

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.

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

This investigation was initiated on November 28, 2011, in Order No. 13,063 to review respondent's compliance with the Commission's safety regulation, Regulation No. 64. Then, as now, Regulation No. 64 adopted and incorporated by reference the Federal Motor Carrier Safety Regulations (FMCSRs) as set out in Title 49 of the Code of Federal Regulations and as they apply to: (1) passenger vehicles seating 9 persons or more, including the driver; and (2) the drivers and carriers operating such vehicles.⁸

At the time this investigation was initiated, respondent operated over 140 vans with a seating capacity of 9-10 persons each. 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."

One of respondent's 10-passenger vans was involved in a fatal crash on the Dulles Access Road on August 15, 2011. Accordingly, the Commission concluded that the public interest warranted a comprehensive review of respondent's compliance with the FMCSRs as adopted by Commission Regulation No. 64. Order No. 13,063 directed the Commission's Executive Director to 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.

II. SAFETY RATING

The Executive Director hired Consolidated Safety Services (CSS) to conduct the review. CSS has more than 20 years of experience providing commercial motor vehicle safety support services to various clients nationwide and has conducted New Entrant Safety Audits of motor

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

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

⁸ Regulation No. 64-01.

passenger carriers on behalf of the FMCSA and comparable reviews of motor passenger carriers for the Department of Defense.

CSS conducted a comprehensive onsite safety compliance review and evaluation of respondent's records and vehicles during the week of February 6, 2012. CSS delivered its report to WMATC on February 14, 2012. Based on the findings, conclusions, and recommendations in the report, respondent was assigned a proposed safety rating of "Unsatisfactory" on March 1, 2012.⁹ Respondent was advised that the proposed rating would become "final" in 45 days in accordance with 49 C.F.R. 385.11(c)(1) - at which time respondent would be required to cease operating commercial motor vehicles in the Metropolitan District in accordance with 49 C.F.R. 385.13(a)(1) - unless respondent took the necessary steps in the meantime to improve the proposed rating to "Conditional" or "Satisfactory".

According to 49 C.F.R. § 385, Appendix B, a safety rating is determined by the number of violations of "acute" and "critical" regulations: "Acute regulations are those identified as such where noncompliance is so severe as to require immediate corrective actions by a motor carrier regardless of the overall safety posture of the motor carrier." "Critical regulations are those identified as such where noncompliance relates to management and/or operational controls." CSS found no violations of acute regulations, but CSS's review did reveal five violations of critical regulations: two with respect to the Driver factor, one with respect to the Operational factor, and two with respect to the Vehicle factor.

After discussing the report with Commission staff and a CSS representative, respondent filed a request on April 12, 2012, for a change to safety rating based upon corrective actions. The request was supported by respondent's "Plan of Remedial Actions to Achieve Full Compliance with Federal Motor Carrier Safety Act," plus new and updated safety compliance forms. Based on the plan and forms and on respondent's representation that implementation of the plan's corrections to management and operational controls had begun and that full compliance with Daily Vehicle Inspection Report requirements would take 60-90 days to achieve, the proposed safety rating was changed to "Conditional" on April 17, 2012,¹⁰ in accordance with 49 C.F.R. § 385.17, subject to a follow-up review to confirm full implementation of respondent's plan.

⁹ An Unsatisfactory rating indicates that a carrier does not have adequate safety management controls in place to ensure compliance with the safety fitness standard in 49 C.F.R. 385.5(a) and that a carrier is operating at an unacceptable level of compliance.

¹⁰ Originally, the proposed rating was due to become final April 15, 2012, but the 45-day period was extended on April 13, 2012, to April 25, 2012, pursuant to 49 C.F.R. § 385.17(f), when it became apparent that WMATC would not have sufficient time to review the request for change in rating by April 15, which fell on a Sunday.

A follow-up review was conducted by CSS on July 26, 2012, and respondent's safety compliance was found satisfactory in all five applicable categories: General, Driver, Operational, Vehicle, and Recordable Accidents. The report concludes:

It appears that [Washington Shuttle, Inc., t/a] Super Shuttle has made a considerable effort to bring itself into substantial compliance. Critical violations have been resolved. The carrier has made a good effort to become knowledgeable and to train management and drivers in applicable requirements. Those other issues noted herein require further attention to detail, training and a system of review. It is recommended that WMATC periodically review the carrier's operation to ensure ongoing compliance, which is necessary to ensure safe operations.

Based on the CSS follow-up report, we find that the appropriate safety rating for respondent is Satisfactory. The Commission, however, shall monitor respondent's safety compliance as recommended by CSS. To that end, beginning with the 3-month period ending March 31, 2013, and ending with the 3-month period ending December 31, 2013, respondent shall file a quarterly list of drivers and vehicles employed during each period, which Commission staff shall use in sampling the record types found critically missing during the February 2012 review: driver motor vehicle records, medical examiner certificates, hours-of-service records, vehicle maintenance records, and driver vehicle inspection reports.

III. FATAL-CRASH DRIVER RECORDS

The fatal crash that prompted this investigation was investigated by the Metropolitan Washington Airports Authority Police Department, the law enforcement agency with jurisdiction over the Dulles Access Road. According to the report of the investigator, neither speed, nor drugs, nor alcohol, nor the driver's psychological state were causal or contributing factors. The investigation revealed no evidence of vehicle mechanical deficiencies. The report concludes that the direct cause of the crash was human error, i.e., loss of control of vehicle due to driver failure to maintain full attention on the road. It bears noting that the report finds the driver was not using the available "lap and shoulder belt restraint system" when the crash occurred.

Order No. 13,334, served July 3, 2012, directed respondent to produce all documents in its possession, custody, or control pertaining to the driver charged in the fatality. Respondent also was directed to report said driver's current employment status and any corrective or disciplinary action initiated by respondent beyond the corrective safety compliance actions mentioned above.

According to the records produced by respondent in response to Order No. 13,334, the driver, Macadolf Hoffman, became a SuperShuttle

franchisee on December 31, 2009. Included in his pre-employment file were the following: Veolia Transportation on Demand¹¹ training certificate dated (10/02/09); National Safety Council Defensive Driving Course certificate of completion (10/02/09); Vehicle Accident Reporting memo (12/31/09).

According to the "SuperShuttle Accident Policies" handout shared with Mr. Hoffman upon his joining respondent's operation, drivers may have no more than: three moving violations within the previous three years, two moving violations in any 12-month period, two preventable accidents in any three-year period, and one preventable accident in any 12-month period.

According to an unsigned letter from an unnamed "Asst. General Manager," Mr. Hoffman was warned by respondent on June 11, 2010, that respondent's GPS system showed Mr. Hoffman's vehicle being operated at "speeds in excess of 75 miles per hour" on 11 occasions during a seven-day period in May 2010, including a number of occasions on which the vehicle was operated in excess of 80 mph. Indeed, once, his vehicle "was tagged for exceeding 85 miles per hour." The letter is self-described as a second warning for excessive speed and cautions that future operations "greater than 70 miles per hour" will place the franchise agreement in jeopardy.¹²

Also in Mr. Hoffman's file are a November 2010 Virginia DMV driver history report, December 2010 criminal background-check report, and December 2010 controlled-substance testing report. Respondent's cause for obtaining these reports is not disclosed.

Finally, Mr. Hoffman's file includes respondent's August 25, 2011, termination letter, which cites as grounds for separation Mr. Hoffman being charged with reckless driving resulting in injury and death.

We commend respondent on its accident policies and imaginative use of its GPS system but would urge respondent to state the GPS violation threshold in terms of applicable speed limits rather than a uniform 70-mph limit that, within the vicinity of Dulles Airport, respondent's hub, only applies to a segment of Interstate 66.¹³

¹¹ According to Commission records, Veolia Transportation On Demand, Inc., has a controlling ownership interest in respondent.

¹² The first warning letter is not among the documents produced by respondent.

¹³ See http://www.virginiadot.org/info/faq/70_mph_speed_limit.asp. We note that the 70-mph limit did not become effective anywhere in Virginia until July 1, 2010, more than two weeks after the warning letter ostensibly issued to Mr. Hoffman on June 11, 2010, and urge respondent to report whatever action it takes in this matter.

IV. SHOW CAUSE ORDER

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.¹⁴

The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.¹⁵ 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.¹⁶

Respondent shall have 30 days to show cause why the Commission should not assess a civil forfeiture for the safety violations discovered in the February 2012 safety compliance review and for Mr. Hoffman's failure to use the available driver seat belt assembly on August 15, 2011, in violation of 49 CFR § 392.16.

THEREFORE, IT IS ORDERED:

1. That the Commission hereby assigns to respondent a safety rating of Satisfactory.

2. That within 30 days, respondent shall show cause why the Commission should not assess a civil forfeiture for the safety violations discovered in the February 2012 safety compliance review and for Mr. Hoffman's failure to use the available driver seat belt assembly on August 15, 2011, in violation of 49 CFR § 392.16.

3. That respondent 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.

4. That beginning with the 3-month period ending March 31, 2013, and ending with the 3-month period ending December 31, 2013, respondent shall file a quarterly list of drivers and vehicles employed during each period, which Commission staff shall use in sampling driver motor vehicle records, medical examiner certificates, hours-of-service records, vehicle maintenance records, and driver vehicle inspection reports. The lists shall be produced within 10 days following the end of each period, and sample documents requested by Commission staff shall be produced within 10 days of each request.

¹⁴ Compact, tit. II, art. XIII, § 6(f).

¹⁵ *In re Veolia Transp. On Demand, Inc., & Washington Shuttle, Inc., t/a SuperShuttle*, No. AP-07-006, Order No. 11,580 (Sept. 18, 2008).

¹⁶ Order No. 6797.

- a. Each vehicle list shall identify the period and include the following information for each vehicle used in WMATC operations during that period: year, make, model, serial number, fleet number, license plate number (with jurisdiction), and seating capacity.
- b. Each driver list shall identify the period and include the following information for each driver that operated a vehicle under respondent's WMATC authority during that period: full name, date hired, vehicle(s) operated, date terminated (as applicable), and franchisee status.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS BRENNER, HOLCOMB, AND BELLAMY:



William S. Morrow, Jr.
Executive Director