

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 1575

IN THE MATTER OF:

Served June 25, 1976

Application of IRA F. GADD, t/a)
COLUMBIA TOURS for Certificate of)
Public Convenience and Necessity to)
Perform Charter Operations)
Application of IRA F. GADD, t/a)
COLUMBIA TOURS for Certificate of)
Public Convenience and Necessity to)
Perform Special Operations)

Application No. 878

Application No. 879

Docket No. 291

By Application Nos. 878 and 879, dated October 2, 1975, Ira F. Gadd (Gadd), trading as Columbia Tours (Columbia), seeks a certificate of public convenience and necessity, pursuant to Title II, Article XII, Section 4(b) of the Compact, to perform charter operations and special operations. Columbia's charter operations would consist of transporting groups of passengers between (A) points in Fairfax and Arlington Counties and the cities of Alexandria, Fairfax and Falls Church, Virginia, on the one hand, and on the other, points in the District of Columbia and (B) points in the District of Columbia, on the one hand, and on the other, points in either the District of Columbia or Fairfax and Arlington Counties and the cities of Alexandria, Fairfax and Falls Church, Virginia. Columbia's special operations would consist of transporting persons (A) from points within Fairfax and Arlington Counties and the cities of Alexandria, Fairfax and Falls Church, Virginia, to the District of Columbia, and return, and (B) from the points within the District of Columbia to points in both the District of Columbia and Fairfax and Arlington Counties and the cities of Alexandria, Fairfax and Falls Church, Virginia, and return.

By Order No. 1458, served October 15, 1975, Application Nos. 873 and 874 of Gadd trading as Columbia were granted and temporary authority was issued for the performance of the same charter operations and special operations as set forth in Application Nos. 878 and 879. Pursuant to Order No. 1458 and the Commission's Rule of Practice 14, a joint protest was filed on November 8, 1975, by counsel for The Gray Line, Inc. (Gray Line), White House Sightseeing Corporation (White House), and Greyhound Airport Service, Inc. (Greyhound). A public hearing was commenced on November 18, 1975, and a second day of hearing was held on December 17, 1975. Counsel for Columbia filed a brief on January 8, 1976.

Gray Line currently holds Certificate of Public Convenience and Necessity No. 12. That certificate authorizes, as herein relevant, the performance of charter operations, over irregular routes, round-trip or one-way, from points in the Metropolitan District, not including Alexandria, Virginia, to points in the Metropolitan District and one-way, from Alexandria, Virginia, to the District of Columbia, and special operations, over irregular routes, round-trip or one-way, sightseeing or pleasure tours, from points within the Metropolitan District, except Alexandria, Virginia, to points in the Metropolitan District and, round-trip, sightseeing or pleasure tours, from Alexandria, Virginia, to the District of Columbia. White House currently holds Certificate of Public Convenience and Necessity No. 1. That certificate authorizes the performance of charter operations and special operations, over irregular routes, round-trip, sightseeing or pleasure tours, from points within the Metropolitan District to points within the Metropolitan District. Greyhound currently holds Certificate of Public Convenience and Necessity No. 7. That certificate authorizes, as herein relevant, the performance of charter operations and special operations, over irregular routes, between the Washington National Airport, on the one hand, and points in the Metropolitan District, except points in Virginia, on the other, and is restricted to passengers and aircraft crews having a prior or subsequent movement by air.

The joint protest is based upon a common assertion that there is no real, substantial or genuine public need and demand for Columbia's proposed service in addition to that already available to the public by existing certificated carriers. Protestants submit that Columbia has knowingly, deliberately and wilfully been engaged in providing all or a substantial portion of the services set forth in the applications without any certificated authority issued by this Commission and in direct violation of prior written pledges and agreements not to engage in such services. Protestants state that a limited certificate previously issued to Gadd doing business as Columbia has been revoked as a result of willful and deliberate violations of the terms of that certificate and a demonstrated disregard for the Rules and Regulations of the Commission. 1/ Protestants contend that the Commission previously found Gadd doing business as Columbia to be unfit to hold certificate authority and that no stronger evidence could be offered as to an applicant's unfitness. Protestants also submit that the Commission's grant of temporary authority is incomprehensible and shocking as it rewards the

1/ The Commission's Order No. 1458 contains a lengthy discussion of these matters under the heading "Pertinent Background". That discussion should be referenced and is incorporated in the Commission's consideration of the permanent authority applications.

applicant, "an habitual law violator", 2/ for his past unlawful operations and that, presumably, the decision with respect to the pending applications will not be made on any basis other than the record developed at the public hearing.

The findings to be made by the Commission, after hearing, with respect to applications for certificates of public convenience and necessity are set forth in Title II, Article XII, Section 4(b) of the Compact. Essentially, the Commission must make two separate findings. First, the applicant must be "fit, willing and able" to perform the proposed transportation properly and to conform to the provisions of the Compact and the rules, regulations, and requirements of the Commission thereunder. Second, the proposed transportation "must be or will be required" by the public convenience and necessity. In addition, approval by the Commission of the proposed tariff must be based on a finding that the tariff is just, reasonable, and not unduly preferential or unduly discriminatory either between riders or sections of the Metropolitan District. See Compact, Title II, Article XII, Section 6(a)(2).

Gadd trading as Columbia is a sole proprietorship. This Commission's involvement with it previously has been set forth in detail. Columbia holds authority from the Commonwealth of Virginia State Corporation Commission. That Commission has authorized Columbia to transport "special or charter" parties from the cities of Alexandria, Fairfax and Falls Church to the Counties of Arlington and Fairfax and is limited to the use of one 45-passenger motor vehicle only. That Commission also has authorized Columbia

2/ At the public hearing, counsel for Gadd trading as Columbia made a motion requesting the presiding officer to direct that protestants either submit proof to support this characterization of the applicant or withdraw the character comment. There was no withdrawal of the characterization and there was no affirmative evidence submitted by the protestants. Moreover, counsel for protestants stated that the character comment was his statement even though the protest is stated to be filed for the protestants. Accordingly, the comment is unsupported by the record and has been made by a person not having standing as a protestant. The presiding officer denied the motion by counsel for applicant requesting that protestants or their counsel be found guilty of contemptuous, unethical and improper conduct and disqualified and excluded from the proceeding. The denial of the motion was discretionary with the presiding officer and his permitting the protestants and their counsel to participate in the hearing was not so prejudicial to the applicant as to create a basis for a new hearing without the presence of protestants and their counsel.

to operate as a sightseeing carrier, over regular routes, from the cities of Alexandria, Fairfax or Falls Church or the Counties of Arlington or Fairfax. The points to be served on each of these five separate regular routes are the Iwo Jima Memorial, the Arlington National Cemetery, Alexandria, Mount Vernon, Woodlawn, Pohick Church, Gunston Hall, and the Manassas Battlefields. Columbia owns and operates one 15-passenger van. As part of its application, Columbia filed a financial statement for Gadd as of October 1, 1975. That statement indicates the total value of the proprietorship to be \$37,855.02.

With respect to Application No. 894 for charter authority, Columbia sponsored the testimony of several witnesses who generally stated that small groups of persons need charter service for movements between the airports and hotels and motels in the Metropolitan District and for sightseeing purposes. The groups normally range in size between 10 persons and 45 persons. The record reflects that these witnesses have used the services of Gray Line, Greyhound, Diamond Sightseeing Tours, and Atwood's Transport Lines, Inc. (Gold Line). Furthermore, Gadd trading as Columbia has performed these charter services for the witnesses without authority from this Commission in a 15-passenger van. Columbia never performed the services in a 45-passenger bus and has been unable to provide the requested service upon occasions because it lacked sufficient or suitable equipment and operators. The witnesses stated that they always were able to make arrangements for the performance of the required charter service but that, upon occasion, the equipment was unsatisfactory.

With respect to Application No. 895, Columbia sponsored the testimony of persons who operate or manage three motels in Northern Virginia served by the applicant on a commission basis. These witnesses stated that Columbia had been performing individually-ticketed sightseeing service from their motels to the District of Columbia for a period of years. This service has been performed in a 15-passenger van. The record reflects that brochures offering sightseeing services within the District of Columbia are made available to patrons of these motels and that the employees of these motels contact Gadd concerning the performance of such services for patrons of the motels. Upon occasions, guests of these motels have used the sightseeing services of Gray Line and White House. However, the motel received no commission when such services were provided. The witnesses stated that there was a need for Columbia's service from their individual motels and that the public would be better served by having available the personal guide services of Gadd.

Columbia seeks Commission approval to operate charter service and special operations in both 15-passenger vans and 45-passenger motor coaches. Columbia submits that the charter authority is essential so that operations may be conducted on weekends and during the winter months. Columbia also submits that the authority to operate a 45-passenger motor coach was granted to Gadd by the United States Court of Appeals for the District of Columbia

and revoked without basis by this Commission. The record reflects that Columbia has held authority from the Commonwealth of Virginia to operate a 45-passenger motor coach for several years but has never acquired such equipment or leased such equipment for any intrastate charter operations. Gadd stated that, if this Commission were to deny both his applications, Columbia would continue to originate individually-ticketed sightseeing tours in Northern Virginia and the District of Columbia and would continue to operate tour itineraries involving stops at sightseeing attractions within the District of Columbia. Gadd acknowledged that such services were subject to this Commission's regulatory power but stated that it did not matter to him whether the Commission granted or denied the application for individually-ticketed sightseeing service.

DISCUSSION AND CONCLUSIONS

With respect to the performance of charter operations, the Commission finds that the record does not support a grant of Application No. 878. The record does not contain evidence that the public convenience and necessity requires the approval of Columbia's application for authority to perform charter operations in either 15-passenger vans or 45-passenger motor coaches. Accordingly, Application No. 878 shall be denied.

With respect to the performance of individually-ticketed sightseeing service, the Commission finds that Gadd trading as Columbia does not have the ability to acquire and operate a 45-passenger motor coach. The record does not contain evidence that would support a finding of financial ability. Gadd operates Columbia as a sole proprietor and apparently is the only employee. The record does indicate that it is his personal services which are supported by the motel witnesses. Accordingly, that portion of Application No. 879 requesting authority to perform special operations in a 45-passenger motor coach shall be denied.

With respect to the performance of individually-ticketed sightseeing service in a 15-passenger van, the Commission finds that the public convenience and necessity would require approval of Application No. 879 with respect to only three specified points. These points are the Claredon Motel Court, 4819 North 14th Street, Arlington, Virginia, Motel Fifty, 1601 North Fairfax Drive, Arlington, Virginia, and the Americana Motel, 1400 Jefferson Davis Highway, Arlington, Virginia. Accordingly, the Commission shall deny that portion of Application No. 879 which seeks authority to perform special operations in 15-passenger vans (A) from points within Fairfax and Arlington (other than the three specified motels) Counties and the cities of Alexandria, Fairfax and Falls Church, Virginia, to the District of Columbia, and return, and (B) from points within the District of Columbia to points in both the District of Columbia and Fairfax and Arlington Counties and the cities of Alexandria, Fairfax and Falls Church, Virginia, and return.

Upon the basis of these findings, the issue remaining for the Commission is whether Gadd trading as Columbia is fit to perform special operations in 15-passenger vans over irregular routes from the Claredon Motel Court, Motel Fifty, or the Americana Motel to the District of Columbia, and return. The past operations of Gadd trading as Columbia without authority from this Commission and in contravention to his express pledge not to so operate places a doubt upon its fitness to conduct operations on a permanent basis. The burden of establishing fitness properly to perform a proposed transportation service rests upon the applicant. The determination as to whether this burden has been met must be made by the Commission upon full consideration of the nature and extent of violations that may have occurred and any mitigating circumstances shown to have existed. Thereupon, the Commission may determine (a) whether the applicant's conduct represents a flagrant and persistent disregard of the provisions of the Compact, (b) whether the applicant has made a sincere effort to correct past mistakes, and (c) whether applicant is willing and able to comport itself properly in the future.

The Commission finds that Gadd trading as Columbia has conducted transportation activities in a manner which demonstrates a substantial indifference to or a willful disregard of the Compact, the Commission, and the Commission's regulations. Gadd has stated that Columbia's sightseeing tours have been performed between points in Arlington County, Virginia, and the District of Columbia without the necessary authority, that the performance of unauthorized special operations is a result of the Commission's unwarranted action in revoking his previously granted operating authority, and that special operations will be rendered in the future no matter what this Commission decides with respect to Application No. 879. Prior violations would not in and of themselves require a finding of unfitness. However, the unauthorized operations were willingly and knowingly engaged in with the intent of evading or defeating the purpose of regulation. Moreover, there is no doubt that Gadd trading as Columbia will continue to defy the Commission's regulatory powers. This evaluation leads to the conclusion that future operations would be rendered without the proper authority from this Commission. Accordingly, Application Nos. 878 and 879 will be denied because the applicant is unfit.

The Commission has considered the other matters presented by the record but finds they do not warrant action contrary to that which now is directed.

THEREFORE, IT IS ORDERED:

1. That Application No. 878 of Ira F. Gadd trading as Columbia Tours for Certificate of Public Convenience and Necessity to perform charter operations be, and it is hereby, denied.