

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 2347

IN THE MATTER OF:

Served June 24, 1982

Motion by DIAMOND TOURS, INC.,)
for Extraordinary Relief from)
Certificate Revocation)

Case No. MP-82-06

By Motion for Extraordinary Relief 1/ filed June 3, 1982, Diamond Tours, Inc. (Diamond), seeks rescision of Commission Order Nos. 2224 and 2244, served May 26, 1981 and July 27, 1981, respectively, and issuance of an order indicating that Diamond's Certificate of Public Convenience and Necessity No. 2 is in full force and effect.

Order No. 2224 instituted an investigation pursuant to Title II, Article XII, Section 4(g) of the Compact, and directed the suspension of Certificate No. 2, requiring Diamond to cease and desist from providing transportation subject to the Compact until further order of the Commission, because the carrier's certificate of insurance had been superceded by a notice of cancellation that went into effect April 25, 1981. By letter of March 27, 1981, the Commission had advised Diamond of the impending insurance cancellation and the need to file a new certificate of insurance before the cancellation date.

Order No. 2224 cited Title II, Article XII, Section 9(a) of the Compact which mandates that no certificate of public convenience and necessity issued under Section 4 of said Article

" . . . shall remain in force unless the person . . . holding such certificate complies with such reasonable regulations as the Commission shall prescribe governing the filing and approval of surety bonds, policies of insurance, [and] qualifications as a self-insurer"

The order found Diamond in violation of the above-cited Compact section and Commission Regulation No. 62 which requires that an acceptable certificate of insurance be in effect at all times.

1/ Filed pursuant to Commission Regulation No. 15.

Order No. 2244 found that Diamond failed to maintain appropriate evidence of insurance coverage in violation of the Compact and Regulation No. 62, and further found that Diamond failed to file a certificate of insurance or show cause why its certificate should not be revoked as directed by Order No. 2224. Accordingly, the revocation of Certificate No. 2 was directed by the Commission pursuant to Title II, Article XII, Section 4(g) of the Compact. No application for reconsideration was filed by Diamond. 2/

Diamond asserts that its current owner immediately commenced a program of equipment rehabilitation and service re-evaluation upon purchase of the outstanding stock of the carrier in 1980. Due to high interest rates and cash flow problems, the carrier temporarily ceased fully active operations during the late spring and summer of 1981, 3/ pending exploration of financial alternatives.

Diamond further states that it had a number of problems arranging for insurance filings with the Commission by its insurance agent, including inadequate coverage and failure to forward appropriate evidence of insurance. The carrier states that its management did not receive a copy of the suspension order (Order No. 2224, served May 26, 1981) until August 1981, and that ". . . management did, some time after service of the revocation decision (Order No. 2244, served July 27, 1981), receive a copy of same."

Again difficulties were experienced in obtaining cooperation of the insurance agency, according to Diamond, but coverage was obtained August 15, 1981, and filed by the insurance company with the Commission September 23, 1981. The carrier asserts that this filing indicates its good faith efforts to comply with the Commission orders once it received actual notice, and that management believed that the insurance filing would bring Diamond into compliance and revive its revoked authority.

Diamond contends that its insurance agent had made previous inaccurate and delayed filings causing problems that were discovered and alleviated by its management, leading to the belief ". . . that the Commission was very lenient with regard to insurance filings." The carrier asserts that it never conducted operations without appropriate insurance in effect, though this may not be reflected in Commission records because of inadequate filings by its insurance agent, and that, in fact, a new insurance binder was obtained on August 15, 1982,

2/ See Title II, Article XII, Section 16 of the Compact.

3/ Order No. 2224 directing suspension of service took effect May 26, 1981.

within the time period established for the filing of an application for reconsideration of the revocation order, though evidence of insurance coverage was not received by the Commission until September 23, 1981.

Diamond states that it has recently obtained a commitment for additional financing enabling it to modernize its fleet and that it seeks to institute new services not currently being made available by any existing carrier. Only upon contacting its legal counsel in late spring 1982 in order to coordinate commencement of service did management discover that its authority had not been reinstated.

Diamond submits that the relevant Commission orders are without force and effect because no hearing was held prior to the suspension and revocation of Certificate No. 2. Title II, Article XII, Section 4(g) of the Compact provides that

"Certificates shall be effective from date specified therein and shall remain in effect until suspended or terminated as herein provided. Any such certificate, may, upon application of the holder thereof, in the discretion of the Commission, be amended or revoked, in whole or in part, or may, upon complaint, or on the Commission's own initiative, after notice and hearing, be suspended, changed or revoked, in whole or in part"

The carrier contends that inasmuch as the Commission can only exercise such powers as have been specifically granted to it by the Compact, a hearing would be required prior to revocation of a carrier's authority. Thus, it is argued, since no hearing was held in this proceeding, the Commission's actions in suspending and revoking Certificate No. 2 are without force and effect as being beyond the scope of its authority and in violation of its empowering legislation.

The Commission's action in first suspending and subsequently revoking Certificate No. 2 was predicated on the violations of Title II, Article XII, Section 9(a) of the Compact and Regulation No. 62. That Compact section, as cited above, provides that no certificate shall remain in force absent compliance with the applicable regulation (No. 62), which requires that a valid certificate of insurance be on file with the Commission. Upon the Commission's receipt of a notice of insurance cancellation, a letter was mailed to Diamond on March 27, 1981, demanding the filing of a new certificate of insurance no later than April 24, 1981. No response was directed to the Commission and no filing was made. After service of Order No. 2224 suspending the carrier, no response was received, and similarly, after service of Order No. 2244 no response was received. The Commission did

receive a certificate of insurance on September 23, 1981, after the period for reconsideration of Order No. 2244 elapsed. In any event, the mere filing of an insurance certificate would not have been adequate as an application for reconsideration within the meaning of the Compact, Title II, Article XII, Section 16. There was no other communication with the Commission until the filing of the Motion for Extraordinary Relief. 4/ With its letter of March 27, 1981, and the ordering language in Order No. 2224 directing Diamond to comply with the Compact section pertaining to insurance and Regulation No. 62, the Commission clearly put the carrier on notice of the problem with its certificate of insurance. Furthermore, Order No. 2224 provided an opportunity to submit any other evidence to show cause why its certificate should not be revoked.

Failure of the carrier's management to read its mail or otherwise investigate the contents of properly served Commission orders does not relieve it of responsibilities under the Compact or regulations. Surely the carrier received information directly from its insurance agent that the policy was to be cancelled effective April 25, 1981. Given past problems with its insurance agent, the carrier should have paid close attention to insurance requirements of the Commission. There is no indication of prior practices in the record which would account for Diamond's view that the Commission's attitude toward insurance matters had been lenient. In fact, it is common Commission practice to suspend outstanding certificates upon violation of insurance regulations, 5/ with reinstatement effected upon timely compliance with the regulation. The subsequent filing of a certificate of insurance could not act to revive a revoked certificate. The appropriate avenue of redress was with an application for reconsideration. Location of additional financing and planned institution of new services likewise could not take the place of a timely assertion of errors as grounds for an application for reconsideration.

While the Commission is empowered to revoke a certificate pursuant to Title II, Article XII, Section 4(g) of the Compact, this must be considered in conjunction with Section 9(a) of that Article which provides that a certificate of public convenience and necessity is not in force absent the proper insurance filings. Upon effective cancellation of insurance, a carrier has no authority to operate. The need to hold a hearing under 4(g) to effect suspension would essentially be a useless act in this circumstance. Furthermore, with

4/ Commission Rule No. 15 provides for the filing of timely motions. In fact, the appropriate filing in the revocation proceeding would have been an application for reconsideration.

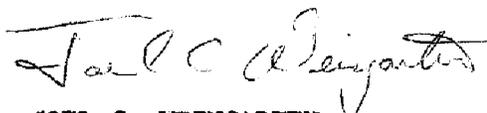
5/ See Order Nos. 1948, 1956, 1987, 1990, 2002, 2027, 2073, 2082, 2160, 2193, 2250, 2269 and 2301.

respect to both suspension and revocation of operating authority resulting from failure to abide by insurance requirements, there are no facts in issue; the law is clear that no certificate to operate shall remain in force. In this case Diamond was given ample notice of the insurance cancellation by letter from the Commission (and presumably by the insurance agency) and of the suspension by Order No. 2224.

There were no facts in dispute to be resolved at a hearing, but given the provisions of Order No. 2224, Diamond had ample opportunity to furnish a valid certificate of insurance or otherwise show cause why its Certificate No. 2 should not be revoked. Fairness certainly requires disclosure of all pertinent matters, with Diamond being given an opportunity to remedy cancellation of its insurance prior to revocation, and to comply with Commission requirements within a reasonable period upon suspension, but in this instance, the scheduling of a hearing would not have presented Diamond with an opportunity to respond not otherwise available.

THEREFORE, IT IS ORDERED that the Motion for Extraordinary Relief filed by Diamond Tours, Inc., is hereby denied.

BY ORDER OF THE COMMISSION, COMMISSIONERS CLEMENT, SCHIFTER AND SHANNON:



JOEL C. WEINGARTEN
Acting Executive Director