

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D.C.

ORDER NO. 2983

IN THE MATTER OF:

Served March 2, 1987

ANTULIO ARIAS AND MERCEDES ARIAS )  
trading as A.M.A. TOURS, Suspension)  
and Investigation of Revocation of )  
Certificate No. 104 )

Case No. MP-86-34

By Order No. 2945, served December 5, 1986, the Commission instituted an investigation pursuant to Title II, Article XII, Section 4(g) of the Compact for the purpose of determining whether Certificate of Public Convenience and Necessity No. 104 of Antulio Arias and Mercedes Arias trading as A.M.A. Tours ("A.M.A." or "respondent") should be revoked. The Commission instituted the investigation in response to A.M.A.'s failure to file a new certificate of insurance upon expiration of the insurance certificate on file with the Commission.

The certificate of insurance on file for A.M.A. expired December 4, 1986. A.M.A. was advised by letter dated November 4, 1986, that an appropriate insurance certificate must be filed before the expiration date. Absence of a valid insurance certificate is a violation of Title II, Article XII, Section 9(a) of the Compact and Commission Regulation No. 62. When no certificate of insurance had been filed by December 4, 1986, Certificate of Public Convenience and Necessity No. 104 was suspended by Order No. 2945. Order No. 2945 also directed A.M.A. to file within 30 days from the order's service date an appropriate certificate or reinstatement of insurance or such other evidence in writing and under oath as A.M.A. might deem pertinent to show good cause why its certificate should not be revoked. The Commission received neither an appropriate insurance certificate nor any other evidence of compliance with the Compact, Title II, Article XII, Section 9(a).

On January 29, 1987, respondent filed (1) a motion to file out of time, and (2) a motion to extend compliance time and for oral hearing. The motion to file out of time asserts that A.M.A. was not aware of Order No. 2945 because the owners were

. . . out of town from mid-November to early January 1987 when they received correspondence from the Commission dated November 4, 1986, essentially warning them of the insurance termination date of

December 4, 1986. Upon receiving the letter, the owners contacted the staff of the Commission and have attempted to rectify the insurance problem. The Commission Order No. 2954 was inexplicably mailed to a different address than the letter of November 4, 1986, and resides in the Commission file, undelivered. The owners of the carrier never received actual notice of the suspension and compliance time pending revocation. AMA asserts that the mail delivery failure stems from the fact that the Certified Mailing of the order is addressed to the appropriate street address but also contains a post office box number, apparently confusing the postal authorities.

Furthermore, AMA asserts that it has talked to the staff of the Commission in an attempt to cure the insurance problem but never understood that the certificate had already been suspended or that an order granting a limited compliance time had been served. In fact, a document from the insurance carrier was submitted but did not meet Commission requirements and contact with the insurance agent has been delayed because of the recent weather inconveniences.

To compound matters, AMA has been engaged in discussions with a number of parties who have expressed an interest in purchasing Certificate No. 104, and it has not conducted operations since mid-November first because of the lack of business in the colder weather and now upon learning that the certificate has been suspended.

First we will take up the matter of addresses. One we will refer to as Dorchester Road, a street address that also contains a post office box number. The other we will refer to as Leesburg Pike. These addresses were not invented by the Commission but were filed with the Commission by and on behalf of A.M.A. Respondent admits receiving mail addressed to Leesburg Pike-- the letter dated November 4, 1986. This letter, not a requirement but a courtesy to remind respondent that its insurance would expire on December 4, 1986, was sent to the address given for A.M.A. on its certificate of insurance. Order No. 2945 was sent to Dorchester Road, the local address given by A.M.A. for service of process. In addition to admitting the receipt of mail at the Leesburg Pike address, A.M.A. also admits that the Dorchester Road street address is "appropriate", but asserts that the postal authorities were apparently confused by the post office box number and so returned to the Commission the copy of Order No. 2945 that was sent by certified mail. The record shows to the contrary. It shows that

the postal authorities left notice at the "appropriate" Dorchester Road address on December 8 and 19, and that the envelope was returned as "unclaimed" on December 23. The record also shows that a copy of Order No. 2945 was also sent to the Dorchester Road address by first class mail in a separate envelope. This envelope was not returned.

Next we will take up the matter of timing. The letter to the Leesburg Pike address was sent on November 4. Respondents say they did not leave town until "mid-November." Order No. 2945 required compliance by January 5, and respondents say they returned in "early January." One would expect more precision from respondents in the expression of facts asserted in aid of their position.

As for notice, required liability insurance is an integral part of respondent's business, and it is reasonable to expect that respondent might be aware of the expiration date. It is also reasonable to expect that the insurance company might have mentioned the matter to respondent. Respondent, as a WMATC carrier, is required to be familiar with the Commission's regulations which require that insurance be on file and in force at all times. In addition, respondent knows, because we remind respondent and all certificated carriers by letter on at least an annual basis, that the statute provides that no operating authority shall remain in force unless appropriate evidence of insurance is filed with and approved by the Commission. Respondent's assertion that it did not know about this matter is not credible.

Respondent's assertions that it attempted to cure its insurance problem by talking to the staff and that it has been engaged in discussions with a number of parties to sell its Certificate No. 104 are irrelevant to the matter at hand.

Finally, respondent asserts the filing of an unspecified "document" which, in the same sentence, it admits did not meet Commission requirements. Significantly, this is the closest respondent comes to asserting that it actually has the required insurance. Rather, it asserts that contact with the insurance agent has been delayed because of recent weather inconveniences -- weather that began January 22.

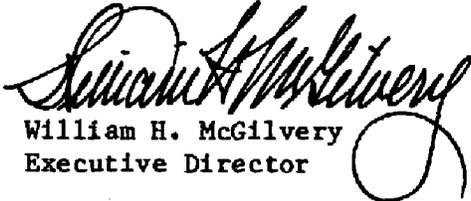
For all of these reasons we find respondent's motion to file out of time to be without merit, and we shall deny it. Accordingly, the motion to extend compliance time and for oral hearing is rejected as untimely filed.

Even at this date, respondent has filed nothing to indicate the existence of the required insurance. Antulio Arias and Mercedes Arias trading as A.M.A. Tours are in violation of the Compact and Commission Regulation No. 62. Pursuant to Title II, Article XII, Section 4(g) of the Compact, Certificate of Public Convenience and Necessity No. 104 shall be revoked for willful failure to comply with the Compact and a lawful regulation of the Commission.

THEREFORE, IT IS ORDERED:

1. That respondent's motion to file out of time is hereby denied.
2. That Certificate of Public Convenience and Necessity No. 104 is hereby revoked.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS WORTHY, SCHIFTER, AND SHANNON:

  
William H. McGilvery  
Executive Director