

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D.C.

ORDER NO. 2995

IN THE MATTER OF:

Served April 3, 1987

GOLD LINE, INC.)

Case No. FC-86-01

v.)

AMERICAN COACH LINES, INC. et al.)

Investigation of Compliance of)
AMERICAN COACH LINES, INC.)

Case No. MP-87-08

By petition filed April 1, 1987, American Coach Lines, Inc., a Maryland corporation ("ACL-MD"); American Coach Lines, Inc., a District of Columbia corporation ("ACL-DC"); Carter Tours, Ltd.; Sherman Coaches, Inc.; Frank Sherman, Sr.; and Frank Sherman, Jr. ("ACL et al." or "petitioners") seek reconsideration of Order No. 2984, served March 3, 1987, which, inter alia, instituted an investigation into the operations of ACL et al. pursuant to the Compact and a petition filed by Gold Line, Inc., and denied petitioners' Motion to Dismiss. We note as a preliminary matter that reconsideration does not lie from these aspects of Order No. 2984 inasmuch as they are purely procedural. However, because Order No. 2984 does contain elements which might be considered final, i.e., the cease and desist directives and because one element of the petition partially addresses our rationale for those directives, we shall entertain the petition on its merits.

As grounds for reconsideration, ACL et al. set forth two sentences contained in Order No. 2984 which they allege to be error.

The first sentence is as follows:

It is equally settled that American Coach Lines, Inc., (the Maryland corporation) is not authorized by virtue of ICC Certificate No. MC 149076 to conduct charter operations within the Metropolitan District. Order No. 2984 at p.4.

It is petitioners' position that the sentence constitutes error because this Commission relied on an order of the Interstate Commerce Commission ("ICC") issued February 11, 1986, disposing of a transfer application. Hence the extent of ACL-MD's incidental charter authority was not at issue. In support of their position ACL et al. cite the

ICC's recitation in that order of the transfer standards under 49 C.F.R. 1181.3(a), the fact that Gold Line argued in the proceeding resulting in that order that incidental charter operations were exempt from WMATC jurisdiction, and the fact that the ICC's order "totally ignores" ACL-MD's legal arguments on the issue of incidental charter rights. */ We are unable to use the ICC's failure to turn its February 11 order into a definitive discussion of the complex issue of incidental charter rights as a basis for ignoring its express statement that ACL-MD lacked such rights in the Metropolitan District. Far from proving that that statement was mere dicta, petitioners have firmly established that the matter was expressly placed before the ICC, and the ICC made a finding thereon. Such a finding having been made, it must be accepted. Contractors Cargo Co. v. U.S., 299 F.Supp. 287 (D.C. Cal. 1969), affirmed 397 U.S. 39 (1970). If ACL-MD disagreed with ICC's interpretation, the appropriate remedy was appeal.

The second sentence claimed to be error is as follows:

In light of ACL-DC's history of unauthorized charter movements, we shall also open an investigation into the details of its operations with a view to determining whether it has willfully violated the Compact or the Commission's rules and regulations.

Petitioners maintain that Frank Sherman, current owner of the stock of ACL-MD and ACL-DC, is being held accountable in this proceeding for the "alleged" past transgressions of Messrs. Picknelly and Magnano from whom Mr. Sherman purchased the stock. A review of this case indicates that the incidents of record occurred after June 1986, the date by which Mr. Sherman had purchased the stock of both ACL's. Hence the specific acts being investigated are those over which Mr. Sherman exercised control. The corporations, being perpetual in duration, remain unchanged by the sale of stock and bound by all orders interpreting their respective operating authorities.

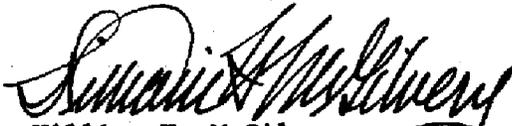
For the reasons set forth above and after a thorough review of Order No. 2984, the Petition for Reconsideration of ACL et al., and the entire record in this case, we find no legal or factual error in the decision at issue. Consequently, the Petition for Reconsideration shall be denied. The effect of this denial is that Order No. 2984

*/ If petitioners mean that Order No. 2984 ignores the legal argument contained in their Motion to Dismiss, that claim is totally without merit. Petitioners relied on an ICC certificate. Order No. 2984 directly addresses this reliance. Moreover, petitioners are reminded that Order No. 2984 was issued by the Commission after review and consideration of the factual and legal record by Commission members. The order is not, as petitioners imply, an order of the Commission staff.

which was stayed by the filing of the Petition for Reconsideration is reinstated in full. From the date of issue of this order all terms and conditions of Order No. 2984 are in full force and effect, and the discovery ordered as a result of the prehearing conference held pursuant to that order is to proceed as previously directed on April 8 to 10, 1987.

IT IS SO ORDERED.

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


William H. McGilvery
Executive Director 