

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 3585

IN THE MATTER OF:

Served November 8, 1990

Formal Complaint of GOLD LINE,)
INC., Against ALL ABOUT TOWN, INC.,)
et al.)

Case No. FC-90-01

On February 20, 1990, Gold Line, Inc. (Gold Line or complainant) filed a formal complaint against All About Town, Inc., John W. Paris, and Kathleen G. Paris (AAT or respondents). The complaint alleged, among other things, that respondents unlawfully conducted widespread transportation of passengers in for-hire charter and special operations between points in the Metropolitan District, without the authority required by the Compact, Title II, Article XII, Section 4(a).

By Order No. 3509, served June 4, 1990, it was found that respondents were engaged in transportation for hire of persons between points in the Metropolitan District in violation of the Compact. Moreover, the Commission found respondents' violations to be wilful. Respondents were directed to cease and desist from transportation covered by the Compact, except to the limited extent authorized by respondents' Certificate No. 131. In Order No. 3509, the Commission did not find respondents unfit to operate Certificate No. 131. However, the Commission did make a tentative finding that the wilful, extensive, and long-continued violations found in this case may render respondents unfit to receive grants of expanded authority such as respondents sought in certain applications tendered for filing on March 27, 1990. Further, the Commission found that such violations, if continued, would tend to show an unwillingness or inability of respondents to comply with the law and could, for that reason, necessitate revocation of Certificate No. 131. The applications tendered for filing on March 27, 1990, were held in abeyance. This was to give respondents an opportunity to demonstrate, and the Commission an opportunity to evaluate, respondents' compliance fitness. Respondents were directed to certify to the Commission in detail the steps taken to correct past mistakes, to establish prospective compliance fitness, and the status of their compliance. Provision was made for complainant to respond to the report. The following pleadings filed in this case remain to be considered:

- * Complainant's motion for enforcement, filed July 13, 1990;
- * Respondents' statement required by Order No. 3509, filed September 14, 1990,
- * Complainant's motion to reject respondents' statement, filed September 21, 1990;

* Complainant's reply to respondents' statement, filed September 21, 1990;

* Respondents' reply to complainant's motion to reject statement, filed September 28, 1990.

In its motion for enforcement filed July 13, 1990, complainant Gold Line urges the Commission to bring an action in the United States District Court to enjoin Compact violations by respondents. In this connection, complainant also asks the Commission to seek imposition of the maximum fines authorized by the Compact. Submitted with complainant's motion was the verified report of a private investigating firm to the effect that AAT was found to be conducting sightseeing operations between points in the Metropolitan District on June 24 and 26, 1990. The Commission finds that the relief requested by complainant would be premature in the specific circumstances of this case prior to administrative determination of this formal complaint. Complainant's motion is denied.

On September 14, 1990, respondents filed their statement in response to Order No. 3509. Submitted as part of the filing are exhibits consisting of affidavits of John Paris and Cathi Paris. According to respondents:

These statements show that All About Town has discontinued the conduct of passenger transportation within the Metropolitan District for which it held no authority to operate. These statements show defendants are now in compliance with the law. These statements describe defendants' stated intent to comply with the law in the future. (Statement, p. 3.)

The following is excerpted from the affidavit of John Paris:

All About Town has now completely discontinued its local charter and per capita fare sightseeing operations subject to WMATC jurisdiction, effective August 20, 1990.

Those changes which have occurred are as follow:

1. The six All About Town coaches have been leased to Blue Lines with WMATC approval.
2. To the best of my knowledge, the drivers for those coaches are now employees of Blue Lines, paid by Blue Lines from Blue Lines' funds. No employee of All About Town drives these coaches.
3. I have resigned from All About Town and have become an employee of Blue Lines, paid by Blue Lines, to direct part of Blue Lines' sightseeing activities.
4. The leased coaches have been properly identified and bear the legend "leased to and operated by Blue Lines Sightseeing, WMATC No. 10."

5. All About Town has completely discontinued its local sightseeing service. In my employment by Blue Lines, I manage a sightseeing business which is conducted under the name "Blue Lines Sightseeing, d/b/a All About Town." Brochures advertising the service bear this legend; all other paperwork accompanying this business bears the same legend. [1/]

Although I am neither an employee nor officer of All About Town, I am aware of its activities, since it is owned by my wife, Cathi.

All About Town is today engaged in limited passenger transportation activities only. These consist of (1) interstate charter service subject to regulation by the Interstate Commerce Commission, and (2) local service to Rosecroft Raceway in Prince George's County, Maryland, as described in WMATC Certificate No. 131. All About Town is not engaged in any other passenger transportation activities. (Affidavit of John Paris, pp. 4 and 5.)

With respect to future compliance, I speak for myself, Cathi Paris, and All About Town, in acknowledging the Commission's jurisdiction over the Washington area operations which All About Town had been performing. We have, upon the Commission's Order, discontinued those operations, and we plan not to begin them again without appropriate authority from WMATC, so long as the Commission retains jurisdiction over such transportation. (Affidavit of John Paris, p. 6.)

The affidavit of Cathi Paris affirms the affidavit of John Paris on behalf of Cathi Paris as an individual and on behalf of All About Town, Inc., of which Cathi Paris is the owner.

On September 21, 1990, Gold Line filed a motion to reject respondents' statement and affidavits as untimely filed. The argument rests on the language of Order No. 3509, which says "at the end of the 90 days, Respondents will certify to the Commission" (Order No. 3509, p. 10.) Respondents' statement was filed 10 days after the end of the 90 days. On September 28, 1990, respondents filed a reply to the motion. Gold Line has misapprehended the requirement of Order No. 3509, and we find the statement and affidavits of respondents, filed September 14, 1990, to have been timely filed. Therefore, the motion of Gold Line to reject is denied.

On September 21, 1990, Gold Line filed a reply to respondents' statement and affidavits. Gold Line takes issue with respondents' assertions (at Statement, p. 2 and affidavit of John Paris, pp. 2, 5,

1/ The Commission specifically disapproves this practice and has directed that it be discontinued. See Order No. 3584, served November 8, 1990, in Case No. AP-90-33.

and 6) to the effect that AAT was not required to cease unlawful operations until July 31, 1990, the date of Order No. 3533. AAT's position rests on the notion that the cease and desist order, Order No. 3509, served June 4, 1990, was "stayed" by AAT's filing of an application for reconsideration on July 3, 1990, and that the cease and desist order did not become effective until July 31, 1990, when the application for reconsideration was dismissed by Order No. 3533. The Compact, Title II, Article XII, Section 16 provides that any person affected by any final order or decision of the Commission may seek reconsideration, the timely filing of which shall act as a stay until the application for reconsideration is determined. First, even if respondents were correct, the order was not "stayed" between June 4, and July 3, during which period operations continued. Second, respondents conveniently ignore the fact that their application for reconsideration was dismissed because it would not lie. Third, even the stay of an order to cease unauthorized operations could not seriously or logically be read somehow to reinstate operating authority that never existed. The Commission finds that respondents continued operations in knowing violation and without authority until August 20, 1990.

Gold Line also asserts that AAT, on and after August 20, 1990, is engaged in:

. . . the subterfuge that its operations are now the operations of Blue Line rather than continued unlawful service under an illegal lease of Blue Line's operating authority [to AAT].

The Commission originally raised this issue in Order No. 3541, served August 16, 1990, in Case No. AP-90-33. In the context of that case, the Commission carefully considered whether the lease of six buses from AAT to Blue Lines, Inc., should be approved as consistent with the public interest, or whether it, and the circumstance surrounding it, constitute the subterfuge alleged by Gold Line. By Order No. 3584, served November 8, 1990, the Commission conditionally approved the lease, deciding the subterfuge issue in favor of AAT.

In conclusion, complainant again urges the Commission to dismiss the pending applications of AAT, seek an injunction against AAT in the United States District Court, and seek the maximum fines permitted by the Compact.

Gold Line has sustained its complaint that AAT, et al., conducted operations in wilful violation of the Compact. The Commission so found in Order No. 3509, served June 4, 1990. Had it been necessary for this formal complaint to go to hearing, we would have assessed the cost of hearing against respondents. However, more elaborate proceedings were not necessary because respondents admitted the violations. In Order No. 3509, the Commission fashioned a remedy overtly designed to rehabilitate respondents. This course was understandably distasteful to Gold Line, which had gone to the trouble and expense of filing and successfully prosecuting the complaint.

Nevertheless, the rehabilitative approach is consistent with case law and precedent as described in Order No. 3509. The Commission must now determine whether respondents have become rehabilitated.

Respondents were advised that the Commission and others would have an interest in the alacrity with which they responded to the requirements of Order No. 3509. Compliance fitness -- the issue in this case -- involves a willingness to comply voluntarily with the law and its requirements. Respondents, defining alacrity as a cheerful willingness, have said they are willing, but not cheerful. Between the two, the Commission is more interested in willing. The idea of alacrity "stresses promptness in response." 2/

The Commission has already found in this order that respondents knowingly continued operations without authority in violation of the Compact from June 4, 1990, when Order No. 3509 was issued, until August 20, 1990, some 76 days into the 90 day period after which respondents were to certify to the Commission the steps taken to correct past mistakes, to establish prospective compliance fitness, and the status of their compliance. Had respondents ceased unlawful operations on the first day, the Commission would have been favorably impressed. Had they ceased on the last day, the Commission would have been unfavorably impressed. As matters eventuated, the Commission is about 15 percent favorably impressed and about 85 percent unfavorably impressed with respondents' timing.

The Commission is concerned about this contrasting thread sewn through the fabric of John Paris' affidavit:

"We know that we must comply . . . but we do not do so with alacrity" (p. 6.)

"[Respondents] were wrong to have operated in the past, without appropriate WMATC authority, but we do believe, contrary to the Commission's decision, that there were mitigating factors." (pp. 6 and 7.)

"I now understand that it is a necessity that All About Town comply with all of the regulations of WMATC, even if we do not agree with them." (p. 8.)

"My focus has been on serving the public. In the future, I shall focus my responsibilities under regulatory law." (p. 8.)

Several things are of concern here: the implication that what is admitted to have been wrong was really not; the sense of unconvinced, reluctant compliance; and the differentiation between serving the public and complying with the law. For her part, Cathi Paris affirms

2/ Webster's New Collegiate Dictionary, copyright 1960 by G. & C. Merriam Co., at p. 133.

"all of John's representations in his affidavit for me and for All About Town, Inc." Even if the Commission were not concerned about such representations because John Paris now works for Blue Lines, they stand affirmed by AAT and its owner.

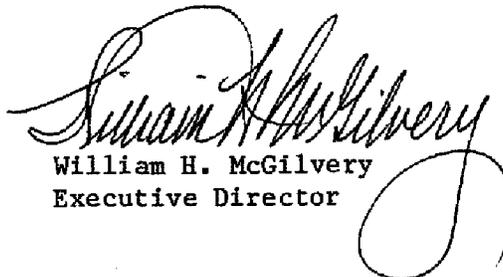
While one must abide by the law, one is not obliged to like it. The Commission must determine whether respondents are willing to comply with the law voluntarily, in spite of their apparent crankiness about it. We so find. Rhetoric notwithstanding, respondents have taken action to correct past violations. Respondents have (1) admitted unauthorized operations, (2) leased most of their vehicles to Blue Lines, (3) ceased unauthorized operations, (4) met the reporting requirements of Order No. 3509, and (5) filed sworn affidavits that they will comply with the Compact and the regulations and requirements of the Commission. By their actions, respondents have brought themselves into compliance.

The Commission acknowledges Gold Line's role in this proceeding. Gold Line, WMATC Carrier No. 14, has a decades-long record of passenger carrier service in the Metropolitan District. The Compact specifically provides a procedure by which a carrier with clean hands can seek Commission action on perceived violations. Gold Line has rightfully and successfully employed this procedure, undoubtedly to serve thoroughly legitimate business interests. The Commission notes on the record that, in doing so, Gold Line has also served its community.

THEREFORE, IT IS ORDERED:

1. That the investigation in Case No. FC-90-01 is hereby terminated.
2. That the Commission staff may begin processing the applications of All About Town, Inc., tendered for filing on March 27, 1990.

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


William H. McGilvery
Executive Director