

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 3857

IN THE MATTER OF:

Served December 3, 1991

Formal Complaint of ACTION TAXI,)
INC., against MALEK INVESTMENT,)
INC., Trading as MONTGOMERY AIRPORT)
SHUTTLE)

Case No. FC-91-01

On October 31, 1991, Action Taxi, Inc. (ATI or Complainant), filed a formal complaint against Malek Investment, Inc., trading as Montgomery Airport Shuttle (MAS or Respondent). The complaint alleges, inter alia, that MAS (also known as "Montgomery County Taxi") on September 16, 1991, began for-hire transportation of passengers from hotels in Montgomery County, MD, to Washington National Airport (National) in Arlington County, VA, and Washington Dulles International Airport (Dulles) in Loudoun County, VA. Complainant specifies certain violations including conduct of operations without the required operating authority, without meeting the Commission's tariff requirements, and without meeting the Commission's insurance requirements. Complainant requests that Respondent be ordered to cease unauthorized operations. Among other things, the complaint includes copies of two advertising fliers attributed to Respondent, which appear to offer service from thirteen specified hotels in Montgomery County, MD, to National at \$17 one-way and to Dulles at \$19 one-way, between the hours of about 6 a.m. to 8:30 p.m. These materials show the service as being offered by "Montgomery Airport Shuttle." The complaint is sworn and notarized and bears a certificate of service showing that it was served on Respondent and on its attorney by certified mail on October 30, 1991.

On November 4, 1991, the Commission's Executive Director also served a copy of the complaint on Respondent by certified mail and on its attorney.

Commission Rule No. 12 provides as follows (emphasis supplied):

12. Answers.

12-01. When Required. When provided for by these Rules, by order, or by the Compact, an answer shall be filed by each respondent named in an order to show cause or order of investigation issued by the Commission. An answer shall be filed to any formal complaint or petition filed by any person other than the Commission by each respondent against whom any relief is requested. Joint answers may be filed when common issues of fact or law are involved.

12-02. Content. An answer must admit or deny each material allegation of the pleading to which it responds and shall be so drawn as to fully disclose the particular grounds upon which it is based. Answers may

contain matters of affirmative defense as well as denials of material allegations. All matters not specifically denied or to which no affirmative defense is pleaded are deemed admitted. All answers shall conform to Rule No. 4.

12-03. Time for Filing. All answers shall be filed within fifteen (15) days of service of the pleading to which the answer is to be filed, unless otherwise ordered by the Commission.

On November 21, 1991, MAS tendered for filing an application for a Certificate of Authority and for temporary authority. A cover letter from MAS's counsel contains the following paragraph:

We wish to note that on page 5 of the Application Form under the Compliance Fitness Evidence, the applicant has signed it and circled that there are pending proceedings. There is a pending matter that does not address the issue of fitness which is presently before the Commission, in IC#92057. We had asked that that matter be tabled, by a letter from this office dated October 15, 1991, until this application has been ruled upon. The same complainant, Action Taxi, Inc., filed a formal complaint in case No. FC-91-01. Both matters are pending.

Also on November 21, 1991, counsel for MAS filed a letter responding to the Commission staff's letter of November 4, 1991. Although not expressly denominated as such, the Commission deems this to be an Answer to ATI's Complaint. MAS's Answer provides as follows:

This office has been retained to represent Montgomery Airport Shuttle. The company is in the process of applying for a certificate of authority and a temporary certificate. There is a great need for this service in the upper Montgomery County area as none exists at the present time.

We hope that the certificates can be issued as soon as possible. I would ask that no action be taken on this pending matter until the decision for the issuance of a license is determined.

We submit that after the application has been submitted that Montgomery Airport Shuttle will be found a fit candidate for a certificate. Even if all the allegations about are my client are proven, it would not legally prevent my client from obtaining the certificates requested.

Pursuant to Commission Rule No. 12, the Commission finds that (1) Respondent's Answer to the formal complaint was not timely filed; (2) the Answer, when filed, failed to deny the allegations in the formal complaint; and (3) therefore, the allegations in the formal complaint are deemed admitted by Respondent.

Pursuant to the Compact, Title II, Article XIII, Section 1 and Commission Rule No. 21-02, the Commission finds that (1) Respondent was given sufficient notice of the formal complaint, having been served by both the Complainant and the Commission staff; (2) Respondent was given sufficient opportunity to be heard; and (3) that the allegations in the formal complaint are deemed admitted by Respondent. Respondent is found to be in knowing and willful violation of the Compact, Title II, Article XI, Section 6 (requiring a Certificate of Authority); Section 7(f) (requiring the filing of evidence of insurance; and Section 14(a) (requiring the filing of a tariff).

Accordingly, Respondent will be directed to cease and desist operations in violation of the Compact and will further be directed to report to the Commission the status of its compliance within 15 days of the date of this order. Further, Respondent having been found to be in knowing and willful violation of the Compact at this time, the applications tendered for filing on November 21, 1991, will be held in abeyance. The existence of such violations creates a presumption that Respondent is unfit to receive a grant of authority because it is unable or unwilling to conform to the provisions of the Compact and conform to the rules, regulations, and requirements of the Commission. See Compact, Title II, Article XI, Section 7(a)(i). The Commission's investigation into this formal complaint will remain open to determine what, if any, further proceedings may be required and to determine whether and how to proceed with the applications tendered for filing by Respondent on November 21, 1991.

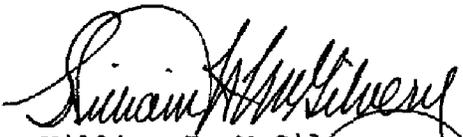
THEREFORE, IT IS ORDERED:

1. That Malek Investment, Inc., is hereby directed to cease and desist all operations in violation of the Compact.

2. That Malek Investment, Inc., is hereby directed to file with the Commission within 15 days of the date of this order an original plus four copies of an affidavit, sworn and notarized, specifying with particularity the steps taken to bring itself into compliance with the Compact and the Commission's rules, regulations, and requirements, including the requirements of this order.

3. That the application tendered for filing on November 21, 1991, shall be held in abeyance pending further order of the Commission.

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


William H. McGilvery
Executive Director