

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 3868

IN THE MATTER OF:

Served December 19, 1991

Application of RUCHMAN AND)
ASSOCIATES, INC., Trading as RAI,)
INC., for a Certificate of)
Authority -- Irregular Route)
Operations)

Case No. AP-91-32

On November 13, 1991, the Commission served Order No. 3844 in this proceeding conditionally granting Certificate of Authority No. 191 to Ruchman and Associates, Inc., trading as RAI, Inc. (RAI). On November 26, 1991, DD Enterprises, Inc., trading as Beltway Transportation Service (Beltway), filed an application requesting reconsideration of that order on the grounds that the Commission's determination of RAI's prospective regulatory compliance fitness was in error. RAI was served with a copy of Beltway's application but did not file a reply.

As ordered below, the Commission hereby grants reconsideration and directs RAI and Beltway to appear at a hearing for the purpose of giving testimony and other evidence on the issue of RAI's compliance fitness. Following the conclusion of the hearing, and after weighing the evidence, the Commission will issue an order rescinding, modifying or affirming Order No. 3844. In the meantime, Order No. 3844 will continue in full force and effect.

DISCUSSION

RAI filed its application for a Certificate of Authority and a companion application for temporary authority on October 1, 1991. Beltway protested both applications on October 4, 1991,¹ on the grounds that RAI had transported passengers without proper authority in willful violation of our regulations. RAI filed a response on October 17, 1991, admitting transporting passengers before receiving authority to do so.

On November 4, 1991, we served Order No. 3839, denying RAI's temporary authority application for failure to demonstrate service unavailability. In that order, we found RAI to have willfully violated our regulations but found it prospectively fit as to regulatory compliance on the strength of its prompt discontinuation of

¹The Commission noted in Order No. 3839, served November 4, 1991, that Beltway's October 4 filing did not meet the requirements of Commission Regulation No. 54-04(a) because it was not notarized. Because RAI admitted Beltway's factual allegations, the notarization requirement is hereby waived. See Commission Regulation No. 29.

unauthorized activity following Beltway's challenge.² We reaffirmed our finding of compliance fitness in Order No. 3844, having perceived no change in circumstance since the issuance of Order No. 3839. Beltway now seeks reconsideration of that finding³ and asks that Order No. 3844 be modified from a grant of authority to a denial of authority.

Commission Regulation No. 27-01 provides that any party affected by a final order may within thirty days of publication file an application requesting reconsideration. Beltway's timely protest serves to make it a party to this proceeding. See Commission Rule No. 2-05. As a person having a substantial interest in this proceeding, see Commission Regulation No. 13-01, Beltway is by definition an affected party. An order granting authority is a final order. Beltway's application is timely, coming just thirteen days after the order was served.

As grounds for reconsideration, Beltway alleges matters occurring after service of Order No. 3844. Because a finding of regulatory compliance fitness is forward looking, post-order events implicating a lack of compliance fitness are proper grounds for reconsideration.

Beltway's application for reconsideration alleges that RAI was observed transporting passengers within the Metropolitan District on November 20, 1991, pursuant to a contract with the United States Department of Agriculture, Forest Service (Forest Service). RAI's Certificate of Authority No. 191 was not issued until November 22, 1991 -- the date its certificate of insurance was accepted for filing. RAI's certificate is restricted to operations according to its applicable tariff on file with the Commission. RAI's Forest Service tariff was not effective until December 2, 1991.

If Beltway's allegations are proven true, the Commission may find that on November 20, 1991, RAI was in violation of the Compact, Title II, Article XI, §§ 6, 7, and 14 and Commission Regulation Nos. 55 and 58. Moreover, the timing of the filing of Beltway's reconsideration application and RAI's Forest Service tariff and the surrounding circumstances suggest the possibility that the aforementioned violation may have continued into the following day and that RAI may have violated the terms of its certificate thereafter, up to and including December 1, 1991, the day before the Forest Service tariff became effective.

²Id. at 2-3.

³Beltway does not say as much, but it is clear from the nature of the factual allegations in its application that the compliance fitness finding is the portion of our order it considers to be in error.

CONCLUSION

Given the history of this application, the Commission finds Beltway's sworn allegations serious enough to warrant a hearing, at which the parties shall be directed to give evidence pertaining to these matters and at which RAI otherwise shall be given a full opportunity to answer the charges.

THEREFORE, IT IS ORDERED:

1. That the notarization requirement pertaining to the protest of DD Enterprises, Inc., trading as Beltway Transportation Service is hereby waived for good cause.

2. That the application for reconsideration of Order No. 3844 of DD Enterprises, Inc., trading as Beltway Transportation Service is hereby granted.

3. That a hearing is hereby scheduled to be held before an administrative law judge, in the hearing room of the Commission, 1828 L Street, N.W., Suite 703, Washington, DC 20036-5104, on Wednesday, January 8, 1992, at 10:00 a.m., for the purpose of receiving evidence pertaining to the regulatory compliance fitness of Ruchman and Associates, Inc., trading as RAI, Inc., as that compliance fitness relates to transportation of passengers from November 20, 1991, through December 1, 1991, pursuant to United States Department of Agriculture, Forest Service, Contract No. 53-3187-2-02.

4. That Ruchman and Associates, Inc., trading as RAI, Inc., and DD Enterprises, Inc., trading as Beltway Transportation Service, are hereby directed to appear at the above scheduled hearing, through one or more representatives having full knowledge of, and who shall testify with respect to, the matters set for hearing.

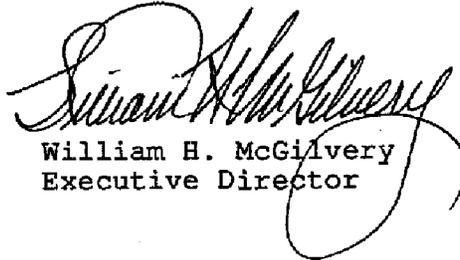
5. That Ruchman and Associates, Inc., trading as RAI, Inc., is hereby directed to produce at the above scheduled hearing, all documents, and all other records in any form, relating to the matters set for hearing, including, but not limited to, contracts, driver logs, correspondence, calendar entries, schedules, records of meetings, records of telephone calls and conversations, electronic facsimile transmissions, vouchers, invoices, bills, receipts, payments, remittances, invoice payments, voucher payments, contract financing payments, and electronic funds transfers.

6. That David R. VanMetre, Jr., Vice-President of Ruchman and Associates, Inc., trading as RAI, Inc., is hereby directed to appear at the above scheduled hearing for the purpose of testifying with respect to the matters set for hearing.

7. That Jay F. Davis, President of DD Enterprises, Inc., trading as Beltway Transportation Service, is hereby directed to appear at the above scheduled hearing for the purpose of testifying with respect to the matters set for hearing.

8. That the parties to this proceeding shall be given full opportunity at the above scheduled hearing to introduce into evidence any other testimony, documents or other records not specifically provided for in this order but relating to the matters set for hearing.

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



William H. McGilvery
Executive Director