

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 3902

IN THE MATTER OF:

Served March 17, 1992

Application of ANA HALLO TOURS,)
(USA), INC., for Approval of)
Contract Pursuant to the Compact)
Title II, Article XII, Section 3)

Case No. AP-91-26

Investigation of DESTINATION)
WASHINGTON, LTD., and PHOENIX)
TOURS, INC., with Regard to)
Compliance with the Compact)

Case No. MP-91-30

PHOENIX TOURS, INC., Suspension)
and Investigation of Revocation of)
Certificate No. 110)

Case No. MP-91-36

This proceeding began as the application of ANA Hallo Tours (USA), Inc., for approval of a contract pursuant to the Compact, Title II, Article XII, Section 3, in Case No. AP-91-26. Protests alleging violations of the Compact by the other party to the contract, Destination Washington, Ltd., were filed, and the Commission launched an investigation of that party and its alleged affiliate, Phoenix Tours, Inc., holder of Certificate of Authority No. 110, in Case No. MP-91-30. Case No. AP-91-26 and Case No. MP-91-30 were then consolidated, and a hearing was held on November 20, 1991, before Presiding Administrative Law Judge Robert Bamford (Judge Bamford).

On December 16, 1991, pending the filing of briefs in the aforementioned consolidated cases, the certificate of insurance of Phoenix Tours, Inc., on file with the Commission, expired without being renewed or replaced. The Commission subsequently suspended the operating authority of Phoenix Tours, Inc., and initiated an investigation into the revocation of its Certificate of Authority in Case No. MP-91-36. Because of a common question of law -- whether Certificate of Authority No. 110 should be revoked -- we herewith consolidate Case No. MP-91-36 with consolidated Case Nos. AP-91-26 and MP-91-30.

I. THE RECORD IN CASE NOS. AP-91-26 AND MP-91-30

A. ANA's Application

By correspondence filed April 9, 1991, through May 20, 1991, ANA Hallo Tours (USA), Inc. (ANA), applied for Commission approval of a contract with Destination Washington, Ltd. (DWL), pursuant to the Compact, Title II, Article XII, Section 3, which provides in pertinent part that a person under common control with a carrier shall obtain Commission approval to contract to operate a substantial part of the property of another carrier that operates in the Metropolitan District.

The proposed agreement called for DWL to provide drivers for ANA's vehicles, to maintain and fuel ANA's vehicles, and to maintain a vehicle inspection book and driver files according to United States Department of Transportation requirements. Although DWL is not a WMATC certificated carrier, it appeared from the correspondence at the time that DWL was under common control with Phoenix Tours, Inc. (Phoenix), the holder of WMATC Certificate No. 110. ANA holds Certificate No. 144. As described by ANA, the contract covered a substantial part of ANA's property.

B. Order No. 3805

The Commission served Order No. 3805 on August 9, 1991, giving notice of ANA's application, naming Phoenix a party to the proceeding, establishing a protest deadline, directing ANA to file a copy of its contract with DWL, directing Phoenix to file a statement of full disclosure of its relationship with DWL, and assessing a joint application fee of \$100.

On August 26, 1991, ANA fully complied with that order by paying the \$100 fee and filing a copy of DWL's counter offer,¹ together with a driver rate sheet for service from April 30, 1991, through March 31, 1992, which ANA apparently accepted.²

Phoenix also filed a copy of the counter offer on August 26, and responded that DWL provides drivers for Phoenix and that both DWL and Phoenix are owned by the same principal.

C. The Protests

On the same day that ANA and Phoenix responded to Order No. 3805, Gold Line, Inc. (Gold Line), and Nostalgia Tours, Inc. (Nostalgia), filed protests and requests for oral hearing on the grounds that Commission approval would not be consistent with the public interest.

1. Gold Line's Protest

Gold Line alleged in its protest that DWL and Phoenix were "totally lacking in financial responsibility" and that at the time the protest was filed, DWL was "engaged in deliberate, wilful and flagrant unlawful operations in the provision of per capita and other tour services without the required operating authority from this Commission or appropriate tariffs on file with this Agency."³

In support of the "financial responsibility" allegation, Gold Line submitted the sworn statement of its vice-president and general

¹ Document dated 03-14-91 from DWL to ANA.

² Document dated 04-30-91 from ANA to DWL.

³ Gold Line also alleged a "conspiracy or subterfuge" between DWL and Phoenix and ANA amounting to an "unauthorized lease of the operating authority of (ANA) in WMATC Certificate No. 144" Given our findings on the unlawful operations allegations, we find it unnecessary to reach this issue.

manager, Charles L. Cummings. Mr. Cummings averred that Gold Line had obtained a judgement against Phoenix in the amount of \$7,000, that a structured payment schedule had been worked out and that Phoenix was delinquent in making those payments.

In support of the "unlawful operations" allegation, Gold Line submitted the sworn affidavit of its sightseeing manager, Theresa M. Stone. Appended to Ms. Stone's affidavit, and admitted into evidence as Exhibit 1, is a brochure titled, "Washington, D.C. Sightseeing Tours." The brochure indicates that tours were being offered by DWL and lists origin and destination points and tour sites that indicate each tour was being conducted wholly within the Metropolitan District. The brochure states:

Carriers offering transportation services such as those described herein are regulated by the Washington Metropolitan Area Transit Commission, 1828 L Street, N.W., Room 703, Washington, D.C., 20036-5104.

Also appended to Ms. Stone's affidavit, and admitted into evidence as Exhibit 2, is a group of three photographs of a bus with the following lettering on the side: "OWNED & OPERATED BY DESTINATION WASHINGTON LIMITED ICC #167668." Pursuant to Commission Regulation No. 22-05, 06, & 07, it may be officially noticed that ICC records identify ICC No. 167668 as being issued to Phoenix Tours, Inc. See also Fed. R. Evid. 201(b) (may notice facts readily and accurately determinable from source whose accuracy not reasonably questioned).

Ms. Stone averred in her affidavit in pertinent part as follows:

I have personal knowledge that Destination Washington Limited is currently operating the tour services described in the brochure attached hereto as Appendix A. I was present at the Concierges' Trade Show held at the Aestrea's Book Store in March, 1991, when it was announced that Phoenix Tours was no longer in business; and that tour service would now be conducted by Steven Foreman through a new company, Destination Washington Limited (DWL). This change from Phoenix to DWL was later confirmed by Mr. Foreman personally, when he spoke to a concierges' meeting I attended at the Woodrow Wilson House in May, 1991.

Gold Line serves all of the hotels listed as pickup points by DWL in its brochure except the J. W. Marriott. For this reason, I am aware through my efforts to solicit business for Gold Line that DWL is serving these hotels daily. In fact, I have personally observed the owner of DWL, Mr. Foreman, making a pickup at the Marriott Crystal Gateway for the afternoon tour. I observed three passengers on his mini-bus as he departed.

* * *

DWL uses both mini-bus and coach equipment in its operations. The three photographs attached as Appendix B, show MCI Coach No. 9104, being used in sightseeing

service in front of the Hyatt Regency Hotel, 400 New Jersey Avenue, N.W. These pictures were taken by Robert Martin, Sightseeing Dispatcher, for Gold Line at that hotel location on Saturday, August 24, 1991.

2. Nostalgia's Protest

Nostalgia alleged in its protest that DWL, its affiliates and/or its principal repeatedly violated the Compact. In support of this allegation, Nostalgia submitted the sworn statement of its president, Pierre Brenenstuhl:

The Commission's Order No. 3805 states that DWL is not a WMATC certificated carrier. From my personal conversations with Mr. Foreman, I understand that DWL operates at least one intercity coach and several minibuses in the Washington area. I have personally viewed the DWL intercity coach on at least two occasions (it is a new, MCI manufactured coach) and it bears the name "Destination Washington" on the sides, the front, and the back. There is no other name shown on the coach at the location where such a name and/or authority number would ordinarily appear.

With regard to DWL's financial fitness, Mr. Brenenstuhl further stated:

Mr. Foreman, on behalf of DWL, has requested my company to perform bus transportation services for DWL. Nostalgia Tours has performed such services, but following repeated requests for payment, no such payment has been forthcoming. DWL now owes Nostalgia Tours in excess of \$3,000 for transportation services performed but not paid for.

3. DWL's Reply

Nostalgia served a copy of its protest on DWL, Phoenix and ANA on August 26, 1991.⁴ On September 3, 1991, over the signature of its president, Stephen M. Forman, DWL unilaterally attempted to terminate the application proceeding by filing what may be deemed a reply to Nostalgia's protest.⁵ DWL asserted that approval under Section 3 was unnecessary because DWL and ANA were not operating under common control. No defense or objection to Nostalgia's protest was raised.

D. Order No. 3829

Following receipt of the protests and DWL's reply, the Commission served Order No. 3829 on October 8, 1991. The order recited the protestant's allegations, which are more fully described above, and instituted an investigation for the purpose of determining:

⁴ Gold Line served a copy of its protest on ANA the same day.

⁵ DWL may have been replying to Gold Line's protest also. DWL was providing services to ANA during this period, and ANA had a copy of Gold Line's protest.

- (1) whether DWL is performing transportation subject to the Commission's jurisdiction without a WMATC Certificate of Authority;
- (2) whether DWL and Phoenix are passenger carriers operating within the Metropolitan District under common control without requisite Commission approval; and
- (3) whether DWL and/or Phoenix are in violation of any other Compact provisions or Commission rules, regulations, or orders.

The investigation was consolidated with the application proceeding, and Phoenix was therein put on notice that the outcome might result in suspension and/or revocation of its Certificate of Authority No. 110.

The order further granted Gold Line and Nostalgia intervenor status in the investigation and set a discovery request deadline of October 31, 1991. Finally, the order directed DWL and Phoenix each to file by October 31, 1991, a list of stockholders, directors, and officers, together with a copy of their initial articles of incorporation and a current certificate of good standing.

The Commission served Order No. 3829 on all parties of record, including DWL and Phoenix. Thus, at this point, DWL and Phoenix were fully apprised of Gold Line's and Nostalgia's allegations and what was at stake for Phoenix. DWL and Phoenix never responded.

E. The Subpoenas

On October 31, 1991, Gold Line filed two motions seeking production of documents prior to the hearing and attendance of witnesses at the hearing.

1. The Subpoenas Duces Tecum

Gold Line's first motion requested the issuance of subpoenas requiring Mr. Forman to produce, in advance of the hearing, DWL's and Phoenix's operations records from the period June 1, 1991, through September 30, 1991, and their latest balance sheets and income statements. The motion also sought a subpoena directing Yasuhiko Seino, ANA's general manager, to produce at the same time ANA's records showing ANA's use of services of DWL, or Phoenix, or anyone working under or in concert with either or both.

On November 6, 1991, pursuant to Commission Rule No. 18-01, Judge Bamford granted Gold Line's motion and directed the issuance of three subpoenas -- one each to DWL, Phoenix and ANA -- commanding production of said documents at the Commission's hearing room on November 15, 1991. Gold Line's sworn affidavits of service attest to Gold Line's service of those subpoenas on DWL, Phoenix, and ANA on November 7, 1991, in person, in accordance with Commission Rule No. 18-02. The subpoenas indicated on their face that the Commission was investigating DWL and Phoenix with regard to their compliance with the Compact.

ANA appeared at the Commission's hearing room on November 15 with responsive documents. DWL and Phoenix did not. To this date, DWL and Phoenix have yet to comply or explain their noncompliance.

2. The Subpoenas ad Testificandum

Gold Line's second motion sought to compel the attendance of six witnesses at the hearing: four hotel concierges, plus Mr. Forman and Mr. Seino. Judge Bamford authorized the subpoenas on November 6, 1991, as requested, pursuant to Commission Rule No. 18-01. Gold Line's affidavits of service establish that all who were subpoenaed were properly served, in person, in accordance with Commission Rule No. 18-02 -- including Mr. Forman. The subpoenas indicated on their face that the Commission was investigating DWL and Phoenix with regard to their compliance with the Compact. The subpoenaed parties appeared and testified at the hearing on November 20, 1991, as commanded, with the exception of Mr. Forman. Mr. Forman has offered no explanation for his absence.

F. The Hearing

The testimony of six witnesses was taken at the hearing and an opportunity was provided to cross-examine on the affidavits in support of Gold Line's and Nostalgia's protests. In addition, ANA produced additional documents establishing DWL's unlawful transportation of passengers for hire in the Metropolitan District. Finally, two dispositive motions were made.

1. The Head Concierges' Testimony

Sandra H. Rice is the head concierge at the J.W. Marriott Hotel. Ms. Rice testified that she knows Stephen M. Forman as the owner and president of DWL. She further testified that Mr. Forman had personally operated DWL vehicles stopping at her hotel and that her hotel stocked a supply of the DWL brochure marked as Exhibit 1. She also testified that she was personally familiar with two occasions when DWL provided tour service for guests of her hotel as described in the brochure and that the brochure's reference to the Commission would lead her to believe that DWL had suitable operating authority. She had personally spoken to Stephen Forman on more than one occasion -- the latest being in October 1991, when he was still soliciting business for DWL -- and knew him as the owner of DWL and Phoenix.

Jeffrey W. Larson is the concierge manager at the Grand Hyatt. Mr. Larson testified that his office had used Phoenix on many occasions. Mr. Larson further testified that his hotel stocked a supply of the DWL brochure marked as Exhibit 1. Mr. Larson also testified that his office had received commissions from Mr. Forman for booking hotel guests on DWL's tours and that the last time he used Phoenix was March 1991; thereafter, he used DWL. Mr. Larson had noticed the brochure's reference to the Commission and assumed DWL had the necessary authority. When Mr. Forman dropped off the brochures, he told Mr. Larson that he had changed the name of his company from Phoenix Tours to Destination Washington, Ltd.

Katharin K. Vidnovic is the head concierge for the ANA Westin Hotel. Ms. Vidnovic testified that as concierge she has used the services of DWL. Prior to that, she had used Phoenix. In each case,

the person she dealt with was Stephen Forman. Mr. Forman personally dropped off a supply of the brochure marked as Exhibit 1. Ms. Vidnovic personally sent two people on a DWL tour. She assumed DWL had the necessary authority. When Mr. Forman delivered the brochures, he explained to Ms. Vidnovic that DWL would not be offering any out-of-city tours. She had sold out-of-city tours for Phoenix in the past, but was unaware that Phoenix had authority to conduct in-city tours at that time.

Barbara Lynn Krengel is the head concierge at the Hyatt Regency Washington. Ms. Krengel testified that her hotel had used Phoenix Tours often. She further testified that Phoenix was replaced by DWL, with a gap in service around March or April of 1991. She also testified that she was personally acquainted with a DWL driver by the name of Steve. Ms. Krengel did not personally sell tours for Phoenix, but she did for DWL. Hotel guests would pay a deposit equal to the sales commission to Ms. Krengel and the balance of the tour fare to the DWL driver. Her hotel stocked a supply of the DWL brochure marked as Exhibit 1. Ms. Krengel knew there was a relationship between DWL and Phoenix because Phoenix had contacted her office to say that it would be reopening as a new company. When selling DWL tours, Ms. Krengel relied on the Destination Washington brochure. She was familiar with its reference to the Commission and assumed DWL had the necessary operating authority. Ms. Krengel believed that Steve, the DWL driver, also was the owner and operator of Phoenix, based on her conversations with him. Her physical description of Steve-the-driver matches that of Stephen M. Forman. Ms. Krengel observed two different vehicles DWL used for tour operations, one of which was a large coach. When asked to identify the vehicle pictured in Exhibit 2, Ms. Krengel agreed that it could be the one she had observed. She did not remember the lettering, but then she was not paying attention to any markings on the outside of DWL's bus when she observed it.

2. Yasuhiko Seino's Testimony

Yasuhiko Seino is the general manager of ANA. Mr. Seino testified that ANA operates a tour service for tourists flying from Japan on All Nippon Airways. He further testified that ANA has done business with DWL and Phoenix. Mr. Seino's contact at both companies was Stephen Forman, who advised Mr. Seino in the spring of 1991 that Phoenix would be replaced by a new company, which Mr. Seino later came to know as DWL. Mr. Seino also testified that ANA and DWL entered into an arrangement whereby from April 1991 through mid-July 1991 plus September 1991, DWL operated, garaged, maintained and repaired ANA's 25-passenger minibus, which is the subject of ANA's application in this consolidated proceeding. Concurrently, these two companies entered into another arrangement whereby DWL provided the vehicles, as well, including a large coach capable of seating 45-50 passengers and labelled Destination Washington, Ltd.

Mr. Seino identified Exhibit 3 as invoices from DWL to ANA for charter and transfer service in the Metropolitan District, involving DWL's use of its own vehicles. These invoices, approximately 100, run from May 1991 through October 1991 and show total billings of over \$18,000. Mr. Seino could not specifically identify the vehicle pictured in Exhibit 2, but he had seen one like it. Mr. Seino's testimony and Exhibit 3 indicate that ANA's and DWL's relationship was terminated in October 1991.

3. Charles L. Cummings' Testimony

Charles L. Cummings is the vice president and general manager of Gold Line who verified Gold Line's protest, as noted above. At the hearing, Mr. Cummings once more affirmed that Gold Line had obtained a judgement against Phoenix, that Phoenix had not fully satisfied that judgement, and that it had been two years since Phoenix had last remitted payment.

4. The Parties' Motions

ANA moved orally at the hearing to withdraw its application. Nostalgia, joined by Gold Line, moved orally to have Phoenix's Certificate of Authority No. 110 revoked. Judge Bamford reserved these motions for Commission decision.

II. FINDINGS

A. Withdrawal of ANA's Application

Mr. Seino's testimony that ANA and DWL have abandoned or otherwise terminated their agreement concerning DWL's operation of ANA's vehicle, has rendered ANA's application moot. Although there is the matter of the parties operating under that agreement in September while ANA's application was pending, it would appear that ANA may have been misled by DWL's reply to Nostalgia's protest into thinking that Commission approval was unnecessary. We do not condone ANA's conduct in this regard. The parties clearly should have suspended performance of the agreement pending a decision in this proceeding. We do note, however, that ANA has cooperated completely in our investigation of DWL and Phoenix, bringing forth evidence which incriminated not only DWL but itself, as well. We grant ANA's motion to withdraw its application.

B. DWL's Unlawful Transportation of Passengers

The evidence of DWL's unlawful transportation of passengers for hire in the Metropolitan District is overwhelming. The undisputed testimony of the four head concierges and Mr. Seino and the uncontroverted affidavits of Mr. Cummings, Ms. Stone and Mr. Brenenstuhl leave no room for doubt.

Exhibit 3 alone is conclusive. These invoices present a clear picture of the extensive nature of DWL's provision of charter and transfer services to ANA: over 100 trips from May through October and over \$18,000 revenue.⁶

⁶ While ANA, itself a certificated carrier, should have been more careful to assure that it was dealing with a licensed carrier, Mr. Seino's uncontradicted testimony is that he believed DWL was operating under Phoenix's authority. Mr. Seino's explanation is plausible. Phoenix attempted to mislead this Commission when, in response to Order No. 3805, it stated that DWL was merely providing it with drivers, when in fact the two had consolidated operations. DWL's brochure is obviously calculated to mislead hotels and their guests into believing that DWL had the necessary operating authority from this Commission to offer tour services in the Metropolitan District. Mr. Seino's explanation, on the other hand, provides ANA with no excuse. The Compact, Title II, Article XI, Section 11(b) provides: "A person

The testimony of the head concierges, averments of the affiants and the brochure, likewise, speak plainly of DWL's holding itself out to the public as a duly-authorized provider of tour services in the Metropolitan District from April 1991 through October 1991. DWL's owner and president, Stephen M. Forman, personally distributed DWL's brochures. Hotel guests were booked on DWL tours according to the brochure's terms and picked up by DWL drivers -- on occasion, Mr. Forman -- in a vehicle with DWL markings. Fares were paid by customers.

The Commission, therefore, finds that DWL has transported passengers for hire in the Metropolitan District without a Certificate of Authority, proper evidence of insurance and duly-filed tariff, in violation of the Compact, Title II, Article XI, Sections 6, 7, and 14 and Commission Regulation Nos. 55 and 58.

C. DWL's and Phoenix's Unlawful Operations Under Common Control

Phoenix's response to Order No. 3805 stated that DWL and Phoenix were owned by the same principal. DWL's reply to Nostalgia's protest identified its president as Stephen M. Forman, who, according to Phoenix's tariff on file with this Commission, is Phoenix's president, also. Further, by virtue of DWL's and Phoenix's disregard of Order No. 3829, which directed them to produce documents going to this issue, common control is deemed established. Fed. R. Civ. P. 37(b) (2) (A). It also is confirmed by the witnesses and affiant.

Commission approval is required under the Compact, Title II, Article XII, Section 3, before a person under common control with a carrier may contract to operate a substantial part of the property of another carrier. Mr. Seino's testimony and Exhibit 4 establish that DWL had a contract to operate ANA's only tour bus from April 1991 through September 1991. A carrier's only tour bus is a substantial part of its property. DWL, thus, was operating in violation of the Compact for a period of 5 to 6 months. DWL's noncompliance with the subpoena seeking records going to this issue bolsters this conclusion. Fed. R. Civ. P. 37(d). Moreover, when the Commission issue Order No. 3805, alerting DWL to the approval requirement of Section 3, DWL openly defied the Commission by not immediately discontinuing these operations. Granted, ANA did not immediately break off its relationship with DWL either, but ANA has been fully cooperative in this proceeding, whereas DWL has been fully uncooperative.

Section 3 also requires Commission approval before a person under common control with a carrier may consolidate any part of the management or operation of its property with a carrier in the Metropolitan District. There is convincing evidence in the record and in the Commission's files of DWL's and Phoenix's consolidation of management and operations.

DWL and Phoenix are managed by the same president, Stephen M. Forman. They share the same office, as indicated by their use of the same telephone number. Phoenix's tariff cover sheet lists its telephone number; it is the same telephone number appearing on DWL's

other than the person to whom an operating authority is issued by the Commission may not lease, rent, or otherwise use that operating authority."

letterhead. Their mailing addresses are different because Phoenix's address is actually that of a private post office box operator. They share the same bus. The MCI coach in Exhibit 2 declares it is owned and operated by DWL, but the ICC number on its side was issued to Phoenix.

We note, also, certain declarations by Mr. Forman. Mr. Larson testified that Mr. Forman explained he had "changed the name" of Phoenix to DWL. Phoenix had contacted Ms. Krengel's office to say that it would be "reopening" as a new company. This is how she knew Phoenix and DWL were related. Ms. Stone averred that this "change from Phoenix to DWL" was confirmed by Mr. Forman in May 1991.

Given Phoenix's filing of August 26, 1991, stating that DWL was supplying it with drivers, and Phoenix's tariff filing on September 13, 1991, it is clear that Phoenix did not vanish upon DWL's incorporation, but rather, Phoenix survived and coexisted with DWL. Interpreting Mr. Forman's statements in this light leads to the conclusion that he regarded these two live entities as one and the same, as far as operations were concerned. His coupling of DWL's markings with Phoenix's ICC number reinforces that conclusion. His failure to appear at the hearing, under the circumstances, entitles the Commission to this negative inference regarding his state of mind. Barnett v. United States, 319 F.2d 340, 344 (8th Cir. 1963); Lauratex Textile Corp. v. Allton Knitting Mills, 517 F. Supp. 900, 904 (S.D.N.Y. 1981).

Upon consideration of all the uncontested evidence, we find that DWL and Phoenix have been operating under common control in violation of Title II, Article XII, Section 3 of the Compact.

D. Other Violations by DWL/Phoenix

1. Phoenix's Violation of Commission Regulation No. 68

Commission Regulation No. 68 mandates that any person holding a Certificate of Authority must keep its official address on file with the Commission and that the address must be the actual street location of the person's principal place of business. According to affidavits of service filed in this proceeding, Phoenix's address on file with the Commission is that of a private mail box firm. Phoenix is, therefore, in violation of Commission Regulation No. 68.

2. DWL's, Phoenix's and Stephen M. Forman's Violations of Commission Orders and Subpoenas

Phoenix responded in misleading fashion to Order No. 3805, disobeyed Order No. 3829 and disregarded the subpoena duces tecum issued by this Commission. Any one of these is sufficient grounds for revoking Phoenix's Certificate of Authority No. 110, under the Compact, Title II, Article XI, Section 10(c). Phoenix's violations of the Compact, Title II, Article XII, Section 3 and Commission Regulation No. 68, add weight. For these reasons, Nostalgia's and Gold Line's motion to revoke Phoenix's Certificate of Authority will be granted.

We also find Phoenix's conduct grounds for assessing a civil forfeiture. The Compact, Title II, Article XIII, Section 6(f)(i),

provides that "[a] person who knowingly and willfully violates a provision of this Act, or a rule, regulation, requirement, or order issued under it, or a term or condition of a certificate shall be subject to a civil forfeiture of not more than \$1,000 for the first violation and not more than \$5,000 for any subsequent violation" (emphasis added). A subpoena commandment clearly is a "requirement." Phoenix is hereby assessed a civil forfeiture in the amount of \$500, for its knowing and willful failure to obey a Commission order, and an additional \$500 for its knowing and willful failure to obey a Commission subpoena.

Just as Phoenix did, DWL directly disobeyed Order No. 3829 and disregarded the subpoena duces tecum issued by this Commission. We find DWL's noncompliance to be both knowing and willful. We, therefore, assess a civil forfeiture against DWL pursuant to the Compact, Title II, Article XIII, Section 6(f)(i) in the amount of \$500 for disobeying a Commission order and an additional \$500 for disobeying a Commission subpoena.

Lastly, we find Mr. Forman's noncompliance with the subpoena ad testificandum issued by this Commission to be knowing and willful. We, therefore, assess a civil forfeiture against Stephen M. Forman pursuant to the Compact, Title II, Article XIII, Section 6(f)(i), in the amount of \$500.

III. SUSPENSION AND INVESTIGATION OF REVOCATION OF PHOENIX'S CERTIFICATE OF AUTHORITY

On December 16, 1991, during the pendency of Case Nos. AP-91-26 and MP-91-30 discussed above, Phoenix's certificate of insurance on file with the Commission expired without being renewed or replaced. Upon expiration, Phoenix's Certificate of Authority No. 110 was invalid by operation of law, pursuant to the Compact, Title II, Article XI, Section 7(g), and Phoenix was not in compliance with Commission Regulation No. 58.

By Order No. 3864, served December 16, 1991, the Commission (1) instituted an investigation in Case No. MP-91-36, pursuant to the Compact, Title II, Article XI, Section 10; (2) named Phoenix a party respondent; (3) directed Phoenix, within 30 days, to comply with the Compact Title II, Article XI, Section 7(f) and Commission Regulation No. 58, and to file an appropriate certificate of insurance or other evidence why Certificate of Authority No. 110 should not be revoked; (4) suspended Certificate of Authority No. 110 and directed Phoenix to cease and desist transportation subject to the Compact; and (5) provided Phoenix an opportunity for oral hearing on the matter.

Order No. 3864 was served on Phoenix, at its address on file with the Commission, by first-class mail and by certified mail, return receipt requested. The certified mail was returned to the Commission on December 30, 1991, marked "moved, not forwardable." Phoenix made no response to Order No. 3864 within the 30 days allowed or thereafter. Therefore, Phoenix is in violation of the Compact, Title II, Article XI, Section 7(f); Commission Regulation No. 58; and Order No. 3864. Certificate of Authority No. 110 is, therefore, revoked.

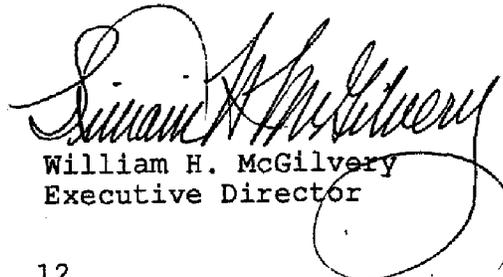
IV. CONCLUSION

In conclusion, the Commission finds: that ANA's application is moot; that DWL has performed transportation subject to the Commission's jurisdiction without a WMATC Certificate of Authority; that DWL and Phoenix are passenger carriers who operated within the Metropolitan District under common control without requisite Commission approval; that Phoenix violated Commission Regulation No. 68; that DWL, Phoenix, and Stephen M. Forman knowingly and willfully violated Commission orders and subpoenas; and that Phoenix is not in compliance with Commission insurance requirements.

THEREFORE, IT IS ORDERED:

1. That the motion of ANA Hallo Tours (USA), Inc., to withdraw its application is hereby granted.
2. That Destination Washington, Ltd., and its owner and president, Stephen M. Forman, are hereby directed to cease and desist from transporting passengers for hire in the Metropolitan District.
3. That Certificate of Authority No. 110, held by Phoenix Tours, Inc., is hereby revoked.
4. That Phoenix Tours, Inc., is hereby assessed a civil forfeiture in the amount of \$1,000 and directed to deliver that amount, by certified check or money order payable to the Commission, to the office of the Commission within 30 days of the date of this order.
5. That Destination Washington, Ltd., is hereby assessed a civil forfeiture in the amount of \$1,000 and directed to deliver that amount, by certified check or money order, payable to the Commission, to the office of the Commission within 30 days of the date of this order.
6. That Stephen M. Forman, president of Phoenix Tours, Inc., and Destination Washington, Ltd., is hereby assessed a civil forfeiture in the amount of \$500 and directed to deliver that amount, by certified check or money order payable to the Commission, to the office of the Commission within 30 days of the date of this order.
7. That the costs of this proceeding in the amount of \$1,196.50 are assessed jointly and severally against Phoenix Tours, Inc., and Destination Washington, Ltd., pursuant to the Compact, Title II, Article XIV, Section 1(a) and they are directed to deliver that amount, by certified check or money order payable to the Commission, to the office of the Commission within 30 days of the date of this order.

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


William H. McGilvery
Executive Director