

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 3915

IN THE MATTER OF:

Served March 25, 1992

Application of MALEK INVESTMENT,)
INC., Trading as MONTGOMERY AIRPORT)
SHUTTLE, for a Certificate of)
Authority -- Irregular Route)
Operations)

Case No. AP-91-45

By application accepted for filing December 19, 1991,¹ Malek Investment, Inc., trading as Montgomery Airport Shuttle (MAS or applicant), a Maryland corporation, seeks a Certificate of Authority to transport passengers, together with baggage in the same vehicles as passengers, in irregular route operations between points in the Metropolitan District, restricted to transportation in vehicles with a manufacturer's designed seating capacity of 15 or fewer persons, including the driver.

Notice of this application was given in Order No. 3870,² and MAS was directed to publish further notice in a newspaper. MAS complied. Order No. 3870 set a protest deadline of January 24, 1992. Executive Coach, Ltd. (Executive Coach), and Action Taxi, Inc. (Action Taxi), filed protests on the 23rd and 24th of January, respectively. Executive Coach simultaneously filed a request for hearing.

MAS filed two pleadings on February 5, 1992, nominally designated responses but in essence replies. One reply addresses Action Taxi's protest, the other Executive Coach's protest. Each reply was served on the corresponding protestant only.

I. DISCUSSION

A. The Protestants' Substantial Interest

Commission Rule No. 13-01 provides in pertinent part that "[a] protest may be filed against the granting of any application . . . by any person having a substantial interest therein." Rule No. 13-02 provides in pertinent part that "[e]ach protest shall contain a concise statement clearly setting forth the substantial interest of the protestant in the proceeding."

Action Taxi's protest contains the following statement:

MAS proposes a transportation service from hotels in Montgomery County, Md. to Washington National Airport and Dulles International Airport. Action Taxi is a

¹ See Action Taxi v. Malek Investment, FC-91-01, Order No. 3867 (Dec. 19, 1991).

² In re Application of Malek Investment, AP-91-45, Order No. 3870 (Dec. 23, 1991).

licensed taxicab company in Montgomery County that presently provides this service at rates determined by County officials.

We accept this as a statement of substantial interest.

We reject Executive Coach's protest and request for hearing for lack of substantial interest, as explained in our order granting MAS temporary authority.³

B. MAS's Untimely and Deficiently Served Replies

Commission Regulation No. 54-04(d) mandates that any reply an applicant chooses to lodge against a protest must be filed within seven days after the date the protest is served, when, as here, the protest is served on the replying party by mail. Intervening Saturdays, Sundays and holidays are not included in the calculation of the seven days.⁴ Each protest was served on January 23, 1992. Replies, therefore, were due no later than February 3, 1992. MAS filed its replies on February 5. In addition, Commission Rule No. 4-07 requires that pleadings be served on all parties of record. There are two protestants in this proceeding. Each reply, however, was served on only the protestant against which it was interposed. Accordingly, MAS's replies are rejected.

C. Summary of MAS's Evidence

MAS proposes to conduct operations in vehicles it owns, each having a manufacturer-designed seating capacity of less than 16 passengers. MAS proposes to provide regularly scheduled service from specified hotels in Montgomery County, MD, to National and Dulles airports at one-way fares of \$17 and \$19, respectively. Children under six would ride without extra charge. We conditionally granted MAS temporary authority to provide this service on February 11, 1992.⁵

MAS's application includes information regarding, among other things, its corporate status, facilities, vehicle maintenance arrangements, proposed tariff, finances, and regulatory compliance record.

Applicant's president certifies on MAS's behalf that it has access to, is familiar with, and will comply with the Compact, the Commission's rules and regulations, and applicable United States Department of Transportation safety regulations.

MAS filed a balance sheet as of June 30, 1991, showing total current assets of \$293,753, total fixed assets of \$383,280, total other assets of \$209,521, total current liabilities of \$17,325, and total capital of \$869,229. MAS's statement of revenue and expense shows total income of \$1,013,912 and total operating expenses of

³ See In re Application of Malek Investment, No. AP-91-44, Order No. 3884 at 2 & n.3 (Feb. 11, 1992).

⁴ Commission Rule No. 7-01.

⁵ Order No. 3884. The temporary authority became effective March 6, 1992

\$726,198. MAS's projected operating statement shows WMATC operating income of \$5,000, other operating income of \$1,034,904, and net income of \$212,404.

The application indicates that applicant's president is its sole shareholder. It is certified that neither MAS nor any person controlling, controlled by, or under common control with MAS has any relationship with a carrier other than MAS, with the exception of MAS's sister division, Montgomery County Taxi, whose relationship to the applicant is disclosed.

D. Findings

This case is governed by the Compact, Title II, Article XI, Section 7(a), which provides in relevant part that

the Commission shall issue a certificate to any qualified applicant, . . . if it finds that --

(i) the applicant is fit, willing, and able to perform that transportation properly, conform to the provisions of this Act, and conform to the rules, regulations, and requirements of the Commission; and

(ii) that the transportation is consistent with the public interest.

MAS has introduced evidence of its fitness and the consistency with the public interest of its proposed service. Action Taxi challenges MAS's operational fitness and regulatory compliance fitness. We considered and dismissed these challenges in Order No. 3884. Order No. 3884 is res judicata with respect to these issues. Therefore, based on the evidence in this record, the Commission finds MAS to be fit, willing, and able to perform the proposed transportation properly and to conform with applicable regulatory requirements. It is further found that the proposed transportation is consistent with the public interest.

II. CONCLUSION

The applicant has made a prima facie case which has not been overcome by the protestant. We, therefore, conditionally grant the applicant a Certificate of Authority.

THEREFORE, IT IS ORDERED:

1. That Malek Investment, Inc., trading as Montgomery Airport Shuttle, 807 South Frederick Road, Gaithersburg, MD 20877, is hereby conditionally granted, contingent upon timely compliance with the requirements of this order, authority to transport passengers, together with baggage in the same vehicles as passengers, in irregular route operations between points in the Metropolitan District, restricted to transportation in vehicles with a manufacturer's designed seating capacity of 15 or fewer persons, including the driver.

2. That Malek Investment, Inc., trading as Montgomery Airport Shuttle, is hereby directed to file the following documents with the Commission within 30 days from the date of this order or such additional time as the Commission may direct or allow: (a) four copies of a tariff or tariffs in accordance with Commission Regulation

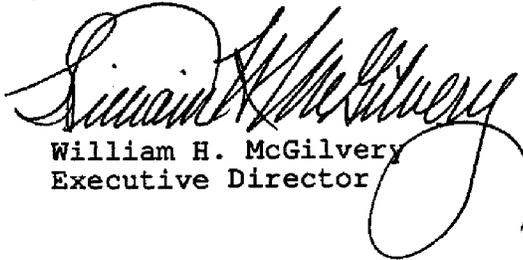
No. 55, (b) four copies of a schedule in accordance with Commission Regulation No. 57, and (c) a notarized affidavit of identification of vehicles in accordance with Commission Regulation No. 61, for which purpose WMATC No. 202 is hereby assigned.

3. That upon timely compliance with the requirements of the preceding paragraph and the acceptance of the documents required by the Commission, Certificate of Authority No. 202 shall be issued to Malek Investment, Inc., trading as Montgomery Airport Shuttle.

4. That the temporary authority granted in Order No. 3884 shall stand terminated upon the issuance of Certificate of Authority No. 202 unless otherwise ordered by the Commission.

5. That unless Malek Investment, Inc., trading as Montgomery Airport Shuttle, complies with the requirements of this order within 30 days from date of issuance or such additional time as the Commission may direct or allow, the grant of authority contained herein shall be void, and this application shall stand denied in its entirety effective upon the expiration of said compliance time.

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



William H. McGilvery
Executive Director