

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 4266

IN THE MATTER OF:

Served March 28, 1994

Application of V.I.P. TOURS (a)
Partnership) to Change the Name)
on Certificate of Authority No. 85)

Case No. AP-94-06

Investigation of Alleged Clerical)
Error in Certificate of Authority)
No. 85)

Case No. MP-94-02

By application filed March 4, 1994, V.I.P. Tours (a partnership) (VIP), seeks to change the name on Certificate of Authority No. 85 from "James L. Davenport, James L. Hughes, and Luther Ray Huff, a Partnership Trading as V.I.P. Tours" to "V.I.P. Tours." The change is necessitated by the stated intention of Mr. Huff to retire from the partnership.

Also on March 4, VIP filed a Motion to Correct Clerical Error and for Stay. VIP asserts that the name on Certificate of Authority No. 85 should presently read "V.I.P. Tours." VIP attributes the discrepancy between what appears on the certificate and what VIP believes should appear on the certificate to probable clerical error on the part of the Commission. VIP requests that the Commission reform Certificate of Authority No. 85 accordingly and stay the application for name change pending resolution of the motion.

SUMMARY OF EVIDENCE

On April 21, 1983, the Commission received an application for a certificate of public convenience and necessity styled, "Application of V.I.P. Tours." The application was signed by Jimmie Lee Davenport in his capacity as "General Partner of VIP Tours." Attached to the application as "Exhibit E Partnership Agreement," is a document captioned, "V.I.P. Tours A General Partnership." The paragraph therein headed "NAME AND BUSINESS" provides: "The parties hereby form a partnership under the name of 'V.I.P. Tours.'" The Commission approved the application in Order No. 2447, served August 9, 1983, stating: "That in Case No. AP-83-10, V.I.P. Tours is hereby granted authority to transport passengers"

VIP filed an application for temporary authority on July 11, 1985, styled, "Application of V.I.P. Tours." The application was signed by Jimmie Lee Davenport in his capacity as "a partner of V.I.P. Tours." Attached to the application as Exhibit D is a copy of the then existing certificate issued in the name of "V.I.P. TOURS." The Commission approved the application in Order No. 2747, served August 9, 1985, stating: "That V.I.P. Tours is hereby granted temporary authority to transport passengers" The order directed VIP to file a supplement to its existing tariff. The supplement, filed on August 12, 1985, is titled:

SUPPLEMENT NO. 1 TO
WMATC TARIFF NO. 1
Jimmie Lee Davenport
James Hughes and
Luther Huff,
a partnership,
T/A V.I.P. Tours

Seeking to perpetuate the operations approved in the temporary authority proceeding, VIP filed an application for permanent authority on December 5, 1985, in the name of "V.I.P. TOURS." The application was submitted by Jimmie Lee Davenport in his capacity as "Partner of V.I.P. Tours." Attached to the application as Exhibit E is a copy of the then existing certificate issued in the name of "V.I.P. TOURS." The Commission approved the application in Order No. 2837, served March 17, 1986, stating: "That V.I.P. Tours is hereby granted authority to transport passengers"

VIP filed an application to amend its certificate on December 16, 1987. Once again, the application was filed in the name of "V.I.P. Tours" by Jimmie Lee Davenport in his capacity as General Partner of "V.I.P. Tours." Attached to the application as Exhibit D is a copy of the then existing certificate issued in the name of "V.I.P. TOURS." Exhibit B, VIP's proposed tariff, is titled:

WMATC TARIFF NO. 2
V.I.P. TOURS
Jimmie Davenport
James Hughes
Luther Huff

The application to amend was approved, and additional authority granted in the name of "V.I.P. Tours," in Order No. 3164, served May 10, 1988. A copy of the approved certificate in the name of "V.I.P. TOURS" is appended to the order. VIP filed its new tariff with the appellation:

V.I.P. TOURS
Jimmie Lee Davenport
James Hughes
Luther Huff

On March 19, 1991, VIP filed a Motion for Temporary Suspension of a Portion of WMATC Certificate No. 85, requesting that its authority be restricted to operations in vehicles seating 15 persons or less, including the driver. The motion was granted the same day in Order No. 3634, which suspended the relevant portion of "Certificate of Public Convenience and Necessity No. 85 held by V.I.P. Tours, a partnership consisting of James L. Davenport, James L. Hughes, and Luther Ray Huff." On April 23, 1991, a certificate of insurance tendered by VIP was rejected as not acceptable for filing because the motor carrier name was not specific enough. The rejection letter indicated that the name of the carrier should be:

V.I.P. Tours, a partnership consisting of
James L. Davenport, James L. Hughes, and
Luther Ray Huff

VIP's current certificate of authority was issued on May 1, 1991, in Order No. 3711, pursuant to the Compact, Title II, Article XI, Section 6(b).¹ The opening paragraph of the order states: "James L. Davenport, James L. Hughes, and Luther Ray Huff, a Partnership, trading as V.I.P. Tours holds Certificate of Public Convenience and Necessity No. 85, issued pursuant to the Compact, Title II, Article XII, Section 4." As noted above, Certificate of Authority No. 85 was issued in that name.

A review of annual reports filed since the inception of VIP reveal that all were submitted in the name of V.I.P. Tours.

DISCUSSION AND CONCLUSION

The Commission is precluded from looking behind the face of a certificate to the underlying record unless the certificate is patently ambiguous or contains a clerical error.² If such an error occurs, the Commission has the power under Title II of the Compact, Article XIII, Section 3(a), to correct it.³

The case of American Trucking Ass'ns v. Frisco Transp. Co., 358 U.S. 133, 79 S. Ct. 170 (1958) is instructive. Frisco was the motor carrier subsidiary of a rail carrier and had expanded operations by acquiring existing routes. The Interstate Commerce Commission (ICC) order approving acquisition of the routes in question contained a restriction limiting those routes to service which was auxiliary or supplementary to the rail service provided by Frisco's parent. A second order directing Frisco to file certain compliance documents as a precondition to issuance of the approved certificates omitted the restriction, as did the certificates. Some two years later, ATA brought this error to the ICC's attention. The ICC subsequently reissued the certificates with the aforementioned restriction inserted. Frisco then obtained a District Court order setting aside the ICC's reissuance order. ATA appealed, and the Supreme Court reversed, ruling that the ICC's statutory duty to conduct proceedings "in such manner as will best conduce to the proper dispatch of business and to the ends of justice" empowered the ICC to correct "inadvertent ministerial errors," 79 S. Ct. at 177, and holding that the evidence supported the ICC's finding that omission of the restrictive language from the certificates was attributable to a staff drafting error and not a change in ICC policy. Id. at 177-78.

¹ That section provides: "On the effective date of this Act a person engaged in transportation subject to this Act under an existing 'Certificate of Public Convenience and Necessity' or order issued by the Commission shall be issued a new 'Certificate of Authority' within 120 days after the effective date of this amendment."

² In re Frank Martz Coach Co. & Atwood's Transport Lines, Inc., No. 283, Order No. 1670 (Apr. 13, 1977).

³ Section 3(a) provides: "The Commission shall perform any act, and prescribe, issue, make, amend, or rescind any order, rule, or regulation that it finds necessary to carry out the provisions of this Act."

The record here overwhelmingly supports the conclusion that Certificate of Authority No. 85 was issued in error. To be sure, VIP has submitted a few tariffs over the years arguably supporting a different conclusion, but the partnership agreement, applications for operating authority, annual reports, prior Commission orders and previously issued certificates clearly establish that Certificate of Authority No. 85 should have been issued in the name of V.I.P. Tours.

It appears from Commission records that in an abundance of caution, the names of the individual partners were added to Certificate No. 85 in May, 1991, to ensure submission of proof of insurance not only for the partnership but the individual partners, as well. Prior to April 22, 1991, VIP had routinely filed certificates of insurance in both its name and the names of the individual partners. On April 22, VIP filed a certificate of insurance in the name of VIP Tours alone, which was rejected as noted above. Because Commission Regulation No. 58-06, requires certificates of insurance to be issued in the "full and correct name of the . . . partnership," placing the partners' names on the certificate of authority would help ensure that VIP did not abandon its prior practice. However wise this course of action may have been, especially in light of VIP's history of policy cancellations and lapses, we are constrained to agree with VIP that Certificate of Authority No. 85 was issued in the wrong name. Ample other means are at our disposal to ensure VIP's compliance with our insurance requirements, in any event.

Generally, it has not been the policy of the Commission to issue certificates to partnerships in other than the partnership name. For example, Certificate of Authority No. 243 was issued on January 27, 1994, in the name of "M.S. Medical Transportation, a Partnership." individual partner names were omitted. The suffix, "a Partnership," was added to eliminate the potential for confusion in the public mind concerning the type of entity authorized to do business under that certificate.⁴

In accordance with the foregoing, we shall grant the motion of VIP to correct Certificate of Authority No. 85. VIP's application for name change shall be dismissed as moot.

THEREFORE, IT IS ORDERED:

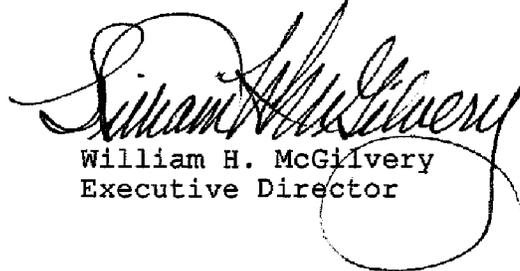
1. That the Motion to Correct Clerical Error and for Stay of V.I.P. Tours is hereby granted.
2. That the application of V.I.P. Tours (a partnership) to change the name on Certificate of Authority No. 85 is hereby dismissed as moot.
3. That V.I.P. Tours is hereby directed to file the following documents with the Commission: (a) evidence of insurance pursuant to Commission Regulation No. 58 and Order No. 4203; (b) evidence of ownership or a lease as required by Commission Regulation No. 62 for each vehicle to be used in revenue operations; and (c) a notarized affidavit of identification of vehicles pursuant to Commission Regulation No. 61.

⁴ See In re Ernest H. Bannister, Sr., No. AP-79-06, Order No. 1996 (May 11, 1979) (sole proprietor ordered to remove "Ltd." from trade name).

4. That upon timely compliance with the requirements of the preceding paragraph and acceptance of the documents required by the Commission, Certificate of Authority No. 85 shall be reissued in the name of "V.I.P. Tours, a Partnership."

5. That unless V.I.P. Tours complies with the requirements of this order within 30 days from the date of its issuance, or such additional time as the Commission may direct or allow, the grant herein shall be void and the motion 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