

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 4689

IN THE MATTER OF:

Served November 2, 1995

Application to Transfer Assets)
from REGENCY SERVICES, INC., WMATC)
No. 260, to CAREY LIMOUSINE D.C.,)
INC., WMATC No. 69, and for)
Temporary Approval)

Case No. AP-95-39

Application of REGENCY SERVICES,)
INC., for Voluntary Termination)
of its Certificate No. 260)

Case No. AP-95-24

Investigation of Failure to Pay)
Annual Fee and Order to Show)
Cause Why Civil Forfeiture Should)
Not be Assessed and Why Operating)
Authority Should Not be Suspended)
or Revoked, Directed to: REGENCY)
SERVICES, INC., WMATC No. 260)

Case No. MP-95-31

Investigation of Failure to File)
Annual Report and Order to Show)
Cause Why Civil Forfeiture Should)
Not be Assessed and Why Operating)
Authority Should Not be Suspended)
or Revoked, Directed to: REGENCY)
SERVICES, INC., WMATC No. 260)

Case No. MP-95-56

On March 7, 1995, the Commission opened Case No. MP-95-31 and Case No. MP-95-56 for the purpose of investigating the failure of Regency Services, Inc. (Regency or respondent), to timely pay a \$100 annual fee for 1995 and file an annual report for 1994. Order No. 4513 in MP-95-31 granted respondent thirty days to pay the annual fee and a \$50 civil forfeiture. Order No. 4514 in MP-95-56 granted respondent thirty days to file the annual report and either pay a civil forfeiture of \$50 or show cause why a civil forfeiture should not be assessed. The orders also provided that failure to timely comply would result automatically in suspension of respondent's operating authority. Each order further provided that upon automatic suspension respondent would have thirty days to show cause why its certificate of authority should not be revoked for failure to comply with the requirements of the order.

Respondent failed to timely comply with Orders Nos. 4513 and 4514, thus triggering the automatic suspension of respondent's operating authority at 12:01 a.m., April 7, 1995, and exposing Certificate No. 260 to revocation.

On April 18, 1995, Regency filed an application for voluntary termination of Certificate No. 260. That application was docketed as Case No. AP-95-24.

By application filed August 25, 1995, Regency Services, Inc., WMATC Carrier No. 260 (transferor), and Carey Limousine D.C., Inc., WMATC Carrier No. 69 (Carey or transferee), (collectively applicants), seek Commission approval of Carey's purchase of a substantial portion of the assets of Regency. Carey also seeks temporary approval to operate those assets pending approval of the transfer. That application has been docketed as Case No. AP-95-39.

Notice of the transfer application was served on August 30, 1995, in Order No. 4655. Applicants were directed to publish further notice in a newspaper and file an affidavit of publication. Regency's president/sole shareholder was directed to file a statement under oath describing the current disposition of Regency's vehicles and stating whether Regency will survive the transfer of assets if approved. Applicants complied. The application is unopposed.

SUMMARY OF EVIDENCE IN CASE NO. AP-95-39

The application includes information regarding, among other things, transferee's corporate status, carrier affiliations, facilities, proposed tariff, finances, and regulatory compliance record.

Transferee is under common control with affiliates in New York, NY, Philadelphia, PA, and Los Angeles, CA, but only Carey operates in the Metropolitan District.

Transferee proposes conducting operations with three minibuses, one limousine and one sedan. Transferee will continue operations under its current tariff.

Transferee certifies it has access to, is familiar with, and will comply with the Compact, the Commission's rules and regulations, and United States Department of Transportation regulations relating to transportation of passengers for hire.

The application also includes the purchase agreement. Under the agreement, Carey acquires Regency's customer lists, furniture, fixtures and contract rights.¹ Carey also acquires all right, title and interest in Regency's corporate and trade names.

Regency, which survives the transfer, agrees not to conduct business under those names and expressly agrees that it will adopt a new corporate name which does not include the word "Regency." Regency further agrees not to compete against Carey within one hundred miles of DC for a period of two years, and not to hire Carey's employees or solicit Carey's clients for a period of three years, following the

¹ Section 1.1(iii) provides for transfer of Regency's WMATC certificate as more fully described in Schedule A, but Schedule A contains no description.

closing date of the agreement.² Regency retains title to all of its vehicles, but Regency's president avers that all of Regency's vehicles have either been sold or returned to the lessor. Regency's office staff and chauffeur staff will maintain employment through Carey.

DISCUSSION AND CONCLUSION

Under Article XII, Section 3(a)(ii), of the Compact, the Commission may approve the proposed transfer of assets if the Commission finds said transfer to be in the public interest. The public interest analysis in a transfer of assets focuses on the transferee's fitness, the resulting competitive balance, the benefits to the riding public, and the interests of affected employees.³

As an existing WMATC carrier, transferee is presumptively fit.⁴ There is no evidence in the record suggesting that acquisition of transferor's customer lists will result in any appreciable concentration of market power subject to our jurisdiction.⁵ The public benefits are self-evident and were established when transferor acquired its certificate. Transferor's employees will not be substantially affected. We therefore find that the proposed transfer is consistent with the public interest.

Under Article XII, Section 3(d), of the Compact, the Commission may grant transferee temporary approval to operate transferor's assets prior to reissuance of transferee's Certificate No. 69, up to a maximum of 180 consecutive days, but only if said grant is found to be consistent with the public interest.⁶ The public interest analysis includes an assessment of whether and to what extent a denial of

² The agreement also contemplates that Regency's president will become a member of Carey's management, but Exhibit 2-A, "Management Employment and Non-Competition Agreement," is blank.

³ In re Tri State Casino Tours, Inc., D.A.Y. Enters., Inc., & New World Tours, Inc., No. AP-95-36, Order No. 4670 (Sept. 29, 1995).

⁴ In re Carey Limo. D.C., Inc., & ADV Int'l Corp., t/a Moran Limo. Serv., No. AP-94-53, Order No. 4499 (Feb. 16, 1995).

⁵ Commission records reveal that the bulk of Regency's business was limited to operations in vehicles seating nine persons or less, including the driver. Carey apparently will conduct those operations through independent owner/operators. Carey would be a broker with respect to those operations. Brokerage is not subject to our jurisdiction. On the other hand, under Article XI, Section 5, of the Compact, Carey must enforce Commission regulations. Carey is admonished that said independent owner/operators must possess a certificate of authority or meet the definition in Regulation No. 51-09, under which flat fares, among other things, are prohibited. In re Regency Limo. Serv., Inc., No. MP-94-01, Order No. 4323 (June 21, 1994).

⁶ Order No. 4670 at 2.

temporary approval would cause a diminution in value or utility of the subject property.⁷

We have already found transferee presumptively fit, and inasmuch as transferor no longer controls any vehicles, it may be inferred that denial of temporary authority will result in a diminution in the value of goodwill associated with transferor's customer lists until transferee's certificate is reissued.⁸ Accordingly, we will grant temporary approval. Such approval shall be effective as of the date this order is served and shall continue until such time as Certificate No. 69 is reissued, not to exceed 180 days.

Under Orders Nos. 4513 and 4514, Regency remains obligated to file its annual report and pay an annual fee of \$100 and a combined civil forfeiture of \$100. We will waive the filing of the annual report, but not the payment of the annual fee and civil forfeiture. Upon payment, Case Nos. MP-95-31 and MP-95-56 will stand terminated.

We will direct Regency to file a certificate of amendment issued by the State of Maryland showing Regency's new name.

Upon satisfaction of all conditions stated herein, Certificate of Authority No. 260 will stand terminated.

By this order we consolidate the above-captioned cases pursuant to Commission Rule No. 20-02.

THEREFORE, IT IS ORDERED:

1. That Cases Nos. AP-95-39, AP-95-24, MP-95-31 and MP-95-56 are hereby consolidated.

2. That Carey is hereby granted temporary approval to operate the assets of Regency at the rates in Carey's General Tariff No. GT-2, and that such approval shall be effective as of the date this order is served and shall continue until such time as Certificate No. 69 is reissued, not to exceed 180 days.

3. That the proposed transfer of assets is hereby conditionally approved, contingent upon Regency's timely compliance with the following requirements.

4. That Regency is hereby directed to pay to the Commission by money order, certified check, or cashiers check, the sum of two hundred dollars (\$200).

5. That Regency is hereby directed to file an original and four copies of a certificate of amendment issued by the State of Maryland showing Regency's new name.

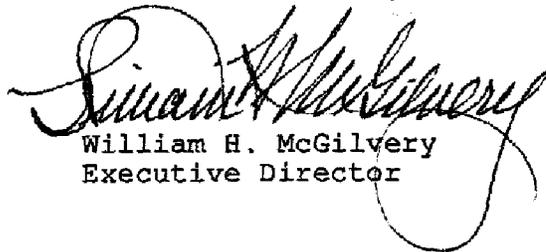
⁷ Id. at 2-3.

⁸ Id. at 3.

6. That upon Regency's timely compliance with the requirements of this order, Certificate of Authority No. 69 shall be reissued to Carey Limousine D.C., Inc., 768 South 23rd Street, Arlington, VA 22202.

7. That unless Regency complies with the requirements of this order within 30 days from the date of issuance, or such additional time as the Commission may direct or allow, the grant of temporary approval and approval of transfer shall be void and the application shall stand denied in its entirety effective upon the expiration of said compliance time.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS ALEXANDER, LIGON, AND SHANNON:



William H. McGilvery
Executive Director