

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 4762

IN THE MATTER OF:

Served February 8, 1996

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: BILL APPELL, Trading as )  
PERSONAL PACE TOURS/TECH TOURS )  
WASHINGTON, WMATC No. 130 )

Case No. MP-95-18

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: BILL )  
APPELL, Trading as PERSONAL PACE )  
TOURS/TECH TOURS WASHINGTON, )  
WMATC No. 130 )

Case No. MP-95-40

Respondent's certificate of authority was revoked on June 26, 1995, pursuant to Order No. 4618, which directed respondent to remove all indicia of WMATC authority from his vehicles and file a notarized affidavit within thirty days verifying compliance. Respondent did not comply.

We responded by issuing Order No. 4696 on November 14, 1995, which directed respondent to show cause why the Commission should not assess a civil forfeiture for respondent's failure to comply with Order No. 4618. The order also directed respondent to produce any and all records in his possession, custody or control relating to his activities in the Metropolitan District after April 6, 1995, the date his operating authority was suspended.

On November 21, 1995, respondent filed a request for an oral hearing. On January 2, 1996, respondent withdrew that request. In the meantime, on December 29, 1995, respondent filed a complete annual report for 1994, an explanation of respondent's failure to comply with the initial orders in this proceeding,<sup>1</sup> a report of daily revenue by customer for the period April 6, 1995, through December 15, 1995, with

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<sup>1</sup> Respondent explains personal circumstances prevented him from filing a simple 2-page annual report on a timely basis, but the fact remains those circumstances were not so debilitating as to prevent respondent from operating while suspended.

a summary of associated expenses, and an affidavit averring that all WMATC identification has been removed from respondent's vehicle and that respondent has ceased all WMATC operations.

Respondent's report of daily revenue shows that respondent transported passengers for hire on 102 days while Certificate No. 130 was suspended or revoked. A person may not engage in transportation subject to the Compact unless there is in force a certificate of authority issued by the Commission authorizing the person to engage in that transportation.<sup>2</sup> Respondent lacked the requisite certificate on the 102 days in question.

Article XIII, Section 6(f), provides that a person who knowingly and willfully violates a provision of the Compact 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 and that each day of the violation constitutes a separate violation. The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.<sup>3</sup> The term "willfully" does not mean with evil purpose or criminal intent but purposely or obstinately, with intentional disregard or plain indifference.<sup>4</sup>

The Commission will assess a civil forfeiture against respondent in the amount of \$250 per violation, for a total of \$25,500. The Commission will suspend all but \$1,500, in recognition of the negligible profit realized by respondent from his unlawful conduct<sup>5</sup> and respondent's cooperation in the investigation of respondent's post-April 6 operations.

THEREFORE, IT IS ORDERED, that the Commission hereby assesses a civil forfeiture against respondent in the amount of \$1,500, for knowing and willful violations of the Compact, and that respondent is

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<sup>2</sup> Compact, tit. II, art. XI, § 6(a).

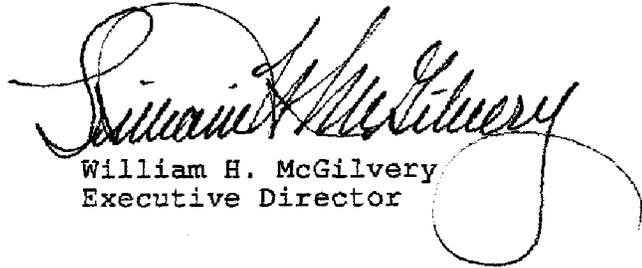
<sup>3</sup> In re Mustang Tours, Inc., No. MP-93-42, Order No. 4224 (Dec. 15, 1993).

<sup>4</sup> Id.

<sup>5</sup> According to respondent's figures for the subject period, respondent realized \$23,871, in revenue and incurred \$25,671, in expenses, for a net loss of \$1,800. After prorating respondent's insurance expense and restating equipment expenditures according to a 5-year, double-declining balance method of depreciation, it appears respondent realized \$1,740 in net profit for the period -- before provision for driver's wages. Any reasonable adjustment for driver's wages would yield minimal net income. See Order No. 4224 at 2 (unlawful profit adjusted for driver's wages); see also In re Madison Limo. Serv., Inc., No. AP-91-39, Order No. 3891 (Feb. 24, 1992) (reducing amount of forfeiture in absence of evidence of unjust enrichment from post-revocation operations).

hereby directed to pay to the Commission within thirty days of the date of this order, by money order, certified check, or cashiers check, the sum of one thousand five hundred dollars (\$1,500).

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



William H. McGilvery  
Executive Director