

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 4986

IN THE MATTER OF:

Served December 17, 1996

Investigation of Unauthorized)
Operations of GREAT AMERICAN)
TOURS, INC., and THE AIRPORT)
CONNECTION, INC. II, and)
Affiliation with AIRPORT BAGGAGE)
CARRIERS, INC., WMATC No. 150)

Case No. MP-96-54

On July 2, 1996, the Commission received a certificate of insurance from TIB Transportation Insurance Brokers for "Airport Baggage Carriers, Inc., dba Airport Connection II, Inc., dba Great American Tours, Inc." According to the Maryland State Department of Assessments and Taxation, Corporate Charter Division, Great American Tours, Inc., is an active Maryland corporation distinct from, but located at the same Lanham, MD, address as, Airport Baggage Carriers, Inc. The Corporate Charter Division shows The Airport Connection, Inc. II, as an active Maryland corporation located in Glen Burnie, MD.

Great American Tours, Inc., has never held authority from this Commission. Airport Connection II's, authority from this Commission was revoked May 21, 1991. Notwithstanding their lack of authority, Great American Tours and Airport Connection II currently hold themselves out to perform sightseeing and airport transfers in the metropolitan area through listings in the District of Columbia Yellow pages for the period May 1996 through April 1997.

On September 25, 1996, in Order No. 4943, we initiated an investigation into respondents' operations and corporate affiliations in the Metropolitan District. Great American Tours and Airport Connection II, were directed to cease and desist from transporting passengers for hire between points in the Metropolitan District. All respondents were directed to produce any and all records in their possession, custody or control relating to transportation of passengers for hire between points in the Metropolitan District during the period beginning September 1, 1995, and ending September 25, 1996, and each respondent was directed to file a current list of officers, directors and shareholders.

On November 15, 1996, the deadline for responding to Order No. 4943, respondents filed a motion to stay the order until respondents have had "an opportunity to resolve their corporate structure." In support of the motion, respondents have submitted a copy of articles of merger between Great American Tours and Airport Baggage Carriers, duly executed with a stated effective date of December 31, 1994. Airport Baggage Carriers is identified as the merging corporation and Great American Tours as the surviving corporation. Although the articles were never filed with the proper

authorities, several vehicles display both corporate names,¹ and a balance sheet has been submitted for "Airport Baggage Carriers Inc/ Great American Tours Inc," as of June 30, 1996. From this it is apparent that a de facto merger was accomplished in 1994, and that, therefore, respondents have had ample opportunity to "resolve their corporate structure."

The motion shall be denied, and respondents shall comply with Order No. 4943 within fifteen days of the date this order is served.

Under Title II of the Compact, Article XI, Section 11, Commission approval is required when a WMATC carrier transfers its certificate by merging into another corporation.² Further, under Article XII, Section 3, a carrier or any person controlling, controlled by, or under common control with a carrier shall obtain Commission approval to consolidate or merge any part of the ownership, management, or operation of its property or franchise with a carrier that operates in the Metropolitan District. Respondents contend Great American Tours merely acts as a broker, but there is no evidence in the record to sustain such a finding, and the evidence of merger is to the contrary.

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. Further, under Article XI, Section 10(c), the Commission may suspend a certificate for willful failure to comply with a provision of the Compact or an order, rule, or regulation of the Commission. The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.³ The terms "willful" and "willfully" do not mean with evil purpose or criminal intent; rather, the terms describe conduct marked by careless disregard whether or not one has the right to act.⁴

As a WMATC carrier, Airport Baggage Carriers is charged with the knowledge that a merger under Article XII, Section 3, requires approval beforehand.⁵ Such knowledge is attributable to commonly-

¹ Motion to Stay at 2.

² See In re Boston Coach-Wash. Corp., No. AP-93-21, Order No. 4163 (Sept. 13, 1993) (WMATC carrier merged into new corporation).

³ In re All-Star Presidential, LLC, & Presidential Coach Co., & Presidential Limo. Serv., Inc., No. MP-95-82, Order No. 4774 (Feb. 27, 1996).

⁴ Id.; In re All-Star Presidential, LLC, & Presidential Coach Co., & Presidential Limo. Serv., Inc., No. MP-95-82, Order No. 4961 (Oct. 29, 1996).

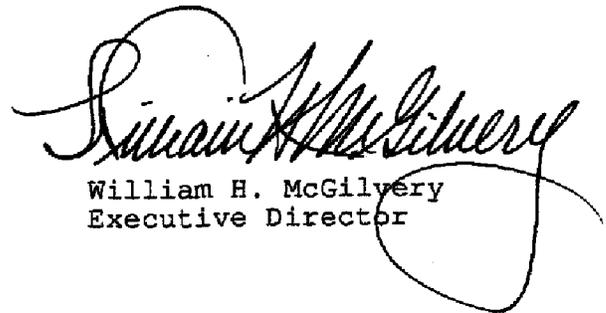
⁵ Order No. 4774.

controlled carriers.⁶ Respondents shall have fifteen days to show cause why a civil forfeiture should not be assessed and why Certificate No. 150 should not be suspended. In the meantime, because Order No. 4943 directed Great American Tours to cease and desist, and because Great American Tours and Airport Baggage Carriers have merged, no operations may be conducted under Certificate No. 150 unless and until otherwise ordered by the Commission.

THEREFORE, IT IS ORDERED:

1. That the Motion to Stay Effectiveness of Investigation is denied.
2. That respondents shall comply with Order No. 4943 within fifteen days of the date this order is served.
3. That respondents shall have fifteen days to show cause why a civil forfeiture should not be assessed and why Certificate No. 150 should not be suspended.
4. That no operations may be conducted under Certificate No. 150 unless and until otherwise ordered by the Commission.

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



William H. McGilverey
Executive Director

⁶ Id.