

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 5449

IN THE MATTER OF:

Served November 16, 1998

Investigation of Unauthorized ) Case No. MP-98-61  
Transfer of Control from OLANDERS )  
CLARK, Trading as CLOUD NINE )  
COACHWAYS, WMATC No. 318, to CLOUD )  
NINE COACHWAYS, INC. )

Under the Compact, Commission approval must be obtained to transfer control over a WMATC carrier's assets, operations or certificate of authority.<sup>1</sup> On April 6, 1998, the Commission approved respondents' application to transfer control of Mr. Clark's operations to the corporation, contingent on respondents filing certain specified documents.<sup>2</sup> Because respondents filed some but not all of the required documents within the 180 days permitted under Commission Regulation No. 66, approval was later deemed denied.<sup>3</sup>

Among the documents filed by respondents were six motorcoach registrations and a certificate of insurance in the name of the corporation. Mr. Clark has not filed any leases to operate those vehicles under his certificate of authority. Considering that these vehicles represent two-thirds of Mr. Clark's fleet, and given the status of the application proceeding, we are concerned that either Mr. Clark is operating those vehicles in violation of Commission Regulation No. 66, governing leases, or the corporation is operating those vehicles without WMATC approval in violation of the Compact, Article XII, Section 3.

Under Title II of the Compact, Article XIII, Section 1(c), the Commission may investigate a carrier on its own motion to determine whether a carrier has violated the Compact. Section 1(e) provides:

For the purpose of an investigation or other proceeding under this Act, the Commission may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of books, papers, correspondence, memoranda, contracts, agreements, or other records or evidence which the Commission considers relevant to the inquiry.

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<sup>1</sup> Compact, tit. II, art. XI, § 11, & art. XII, § 3.

<sup>2</sup> In re Olanders Clark, t/a Cloud Nine Coachways, & Cloud Nine Coachways, Inc., No. AP-98-08, Order No. 5302 (Apr. 6, 1998).

<sup>3</sup> See Commission Regulation No. 66 (setting 180-day time limit for complying with conditions of grant).

Article XII, Section 1(b) & (c), contains a parallel provision directed at WMATC carriers and carriers under common control with WMATC carriers:

The Commission shall have access at all times to the accounts, records, memoranda, lands, buildings, and equipment of any carrier for inspection purposes. This section shall apply to any person controlling, controlled by, or under common control with a carrier subject to this Act, whether or not that person otherwise is subject to this Act.

We shall direct respondents to produce any and all books, papers, correspondence, memoranda, contracts, agreements, and other records and documents, in their possession, custody or control relating to transportation of passengers for hire between points in the Metropolitan District during the period beginning January 1, 1998, and ending on the date of this order.

THEREFORE, IT IS ORDERED:

1. That an investigation of respondents' operations and affiliation in the Washington Metropolitan Area Transit District is hereby initiated under Article XIII, Section 1, of the Compact.

2. That Cloud Nine Coachways, Inc., is hereby directed to refrain from, and/or cease and desist from, transporting passengers for hire between points in the Metropolitan District unless and until otherwise ordered by the Commission.

3. That respondents -- Olanders Clark and Cloud Nine Coachways, Inc. -- are hereby directed to produce, within thirty days of the date of this order, any and all books, papers, correspondence, memoranda, contracts, agreements, and other records and documents, including any and all stored electronically, that are within respondents' individual or joint possession, custody or control and which relate to the transportation of passengers for hire between points in the Metropolitan District during the period beginning January 1, 1998, and ending on the date of this order, including, but not limited to:

a. any and all correspondence to or from 3601-B West Street, Landover, MD 20785;

b. any and all customer invoices;

c. any and all invoices from other carriers;

d. any and all bank records;

e. any and all tax returns;

f. any and all vehicle insurance records;

g. any and all vehicle registration cards and safety inspection certificates for (i) the vehicles listed in the application filed in Case No. AP-98-08, and (ii) any other vehicles stored at, or controlled from, or dispatched from 3601-B West Street, Landover, MD 20785.

4. That Certificate of Authority No. 318 shall be automatically suspended upon either respondent's failure to timely respond to this order.

5. That in the event Certificate of Authority No. 318 is suspended pursuant to the preceding paragraph, Olanders Clark shall have thirty days thereafter to show cause why Certificate of Authority No. 318 should not be revoked for failure to comply with the requirements of this order.

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



William H. McGilvery  
Executive Director

