

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 6549

IN THE MATTER OF:

Served February 21, 2002

Investigation of Unauthorized )  
and Unsafe Operations of JUNIOR'S )  
ENTERPRISES, INC., WMATC No. 401, )  
and Order to Show Cause )

Case No. MP-2001-103

This investigation was initiated on October 17, 2001, in Commission Order No. 6387 after one of respondent's vehicles failed an inspection by Commission staff. The order gave respondent thirty days to produce all revenue vehicles for inspection by Commission staff and to show cause why the Commission should not assess a civil forfeiture for knowing and willful violation of Title II of the Compact, Article XI, Section 5(a), which mandates that each WMATC carrier shall provide safe and adequate transportation service, equipment, and facilities, and for knowing and willful violations of Commission Regulations Nos. 61 and 62 governing vehicle markings and leases, respectively.

On November 16, 2001, respondent's president requested an additional five days to respond, citing personal reasons. The request was granted for good cause shown, but no vehicles were presented for inspection by the extended deadline, and the show cause response filed November 19, 2001, was not supported by any vehicle safety inspection certificates and admitted the violations of Regulations Nos. 61 and 62.

In the meantime, records obtained by the Commission from the Business Services and Finance Division of the Maryland State Department of Assessments and Taxation (MSDAT), showed that respondent forfeited its charter on October 6, 1998. Under Maryland law, a corporation ceases to exist upon forfeiture of its charter, and all assets owned by a corporation at the time of forfeiture are transferred by operation of law to the corporation's directors.<sup>1</sup> It therefore appeared that the violations noted in Order No. 6387 were committed not by respondent but by respondent's trustee(s) in forfeiture, as was the failure to comply with Order No. 6387.

Accordingly, we issued Order No. 6479 on January 3, 2002, giving respondent's trustee(s) in forfeiture thirty days to show cause why the Commission should not assess a civil forfeiture for knowing and willful violations of Article XI, Section 5(a), of the Compact, Commission Regulations Nos. 61 and 62, and Commission Order No. 6387. We also gave the trustee(s) thirty days to show cause why the Commission should not assess a civil forfeiture for knowing and

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<sup>1</sup> Cloverfields Improvement Ass'n, Inc., v. Seabreeze Properties, Inc., 362 A.2d 675 (Md. Ct. Spec. App. 1976), aff'd, 373 A.2d 935 (Md. 1977).

willful violations of Article XI, Section 11, prohibiting unauthorized transfer and use of WMATC operating authority.

Finally, we suspended operations under Certificate of Authority No. 401 and gave the trustee(s) thirty days to show cause why Certificate No. 401 should not be revoked.

A certificate of good standing in respondent's name from respondent's state of incorporation was filed on January 8, 2002. One of respondent's two current vehicles passed inspection by staff on January 14, 2002. The other passed inspection on January 23, 2002.<sup>2</sup> That same day, a copy of a notarized statement was filed by respondent's president urging the Commission to lift the January 3, 2002, suspension and forgo assessing any forfeiture.

As explained below, we assess forfeitures against respondent and its president/director, Horace C. Green, Jr., for knowing and willful violations of Sections 5(a) and 11 of Article XI and failure to obey Commission Order No. 6387. We assess no forfeitures with regard to the admitted violations of Commission Regulations Nos. 61 and 62. The January 3, 2002, suspension shall be lifted upon timely payment of the assessed forfeitures.

#### I. THE COMPACT'S CIVIL FORFEITURE PROVISIONS

A person who knowingly and willfully violates a provision of the Compact, or a rule, regulation, requirement or order issued under it, or a term or condition of a certificate 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.<sup>3</sup>

The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.<sup>4</sup> The term "willfully" does not mean with evil purpose or criminal intent.<sup>5</sup> Rather, it means purposely or obstinately, with intentional disregard or plain indifference.<sup>6</sup> It describes conduct marked by careless disregard.<sup>7</sup> Employee negligence is no defense.<sup>8</sup>

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<sup>2</sup> This vehicle passed inspection on January 15, 2002, for all purposes except compliance with Regulation No. 62 governing leases. An acceptable lease was filed January 23, 2002.

<sup>3</sup> Compact, tit. II, art. XIII, § 6(f)(i).

<sup>4</sup> In re ResponseCare Mobile Health Services, LLC, t/a ResponseCare & ResponseCare Mobility Services & LifeStar Response of Maryland, Inc., t/a LifeStar Response, No. MP-99-27, Order No. 5709 (Sept. 23, 1999); In re Safe Transp., Inc., No. MP-96-15, Order No. 4849 (May 17, 1996); 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).

<sup>5</sup> Order No. 5709; Order No. 4849; Order No. 4499.

<sup>6</sup> Order No. 5709; Order No. 4499.

<sup>7</sup> Order No. 4849.

<sup>8</sup> Order No. 5709; Order No. 4849.

## II. OPERATION OF UNSAFE VEHICLE

On July 18, 2001, Commission staff directed respondent to present all of its vehicles for inspection because of a statement in respondent's annual report that one of the vehicles in its fleet had a seating capacity of 16 persons. Respondent is authorized to operate only vehicles that seat 15 persons or less, including the driver.

Respondent's president presented the vehicle in question for inspection on July 27, 2001. Staff's inspection revealed that seating capacity was less than 16 persons including the driver, but the inspection uncovered violations of Commission Regulation No. 62 (copy of lease not in vehicle) and Regulation No. 61 (name of owner not displayed on vehicle). In addition, the vehicle did not have a valid safety inspection sticker and was being operated with noncommercial license plates.

Article XI, Section 5(a) of the Compact states that each authorized carrier shall provide safe and adequate transportation service, equipment, and facilities. Operation of a vehicle with an expired, invalid or missing safety inspection sticker violates Article XI, Section 5(a).<sup>9</sup> Such a vehicle is presumptively unsafe and inadequate.<sup>10</sup>

The presumption is confirmed in this case by a vehicle inspection report dated July 30, 2001, filed by respondent's president on August 2, 2001, for the purpose of demonstrating the vehicle's prospective fitness for commercial operations. The inspection report shows that the vehicle required repairs before it was fit to operate. Respondent does not argue that this vehicle was not in operation at the time of staff's inspection. Indeed, the November 19, 2001, show-cause filing describes it as "the one vehicle in operation."

The November 19, 2001, filing takes issue with the statement in Order No. 6387 that the vehicle did not have a valid safety inspection sticker when staff conducted its inspection on July 27, 2001. The Commission has evidence of only three safety inspections concerning this vehicle: one conducted in Virginia on February 24, 1997; one conducted in Maryland on July 30, 2001; and one conducted in Maryland on January 14, 2002. None of these was valid on July 27, 2001.

We will assess a forfeiture of \$500 against respondent and its president/director for knowingly and willfully operating an unsafe vehicle in violation of Article XI, Section 5(a) of the Compact.<sup>11</sup>

## III. UNAUTHORIZED TRANSFER/USE OF CERTIFICATE NO. 401

During the course of this investigation, the Commission obtained records from the Business Services and Finance Division of the Maryland State Department of Assessments and Taxation (MSDAT), showing that respondent forfeited its charter on October 6, 1998, for failure to file a personal property return due April 15, 1997. As

<sup>9</sup> Order No. 4849.

<sup>10</sup> Id.

<sup>11</sup> See id. (assessing net forfeiture of \$500 for operating unsafe vehicle).

noted above, a Maryland corporation ceases to exist upon forfeiture of its charter, and all assets owned by the corporation at the time of forfeiture are transferred by operation of law to the corporation's directors.<sup>12</sup> This means that Certificate No. 401 was transferred without Commission approval in violation of Article XI, Section 11(a), of the Compact<sup>13</sup> and that any transportation performed under color of Certificate No. 401 after October 6, 1998, was conducted in violation of Article XI, Section 11(b).<sup>14</sup>

Respondent admits violating Section 11 but disputes that the violation was knowing and willful -- calling it a technical violation as the "result of omission." Respondent further asserts that no member of the public was injured by the transfer, that respondent's president/director, Mr. Green, did not benefit from the transfer, that the proper insurance was in place during the transfer, and that respondent has revived its charter and restored its good standing in Maryland by paying all fees and penalties assessed by the State.

As noted above, employee negligence is no defense to a charge of knowingly and willfully violating the Compact. "To hold carriers not liable for penalties where the violations . . . are due to mere indifference, inadvertence, or negligence of employees would defeat the purpose of" the Act.<sup>15</sup>

We will assess a forfeiture of \$250 against respondent and its president/director for knowingly and willfully transferring and using Certificate No. 401 without Commission approval in violation of Article XI, Section 11 of the Compact.

#### **IV. DISREGARD OF COMMISSION ORDER NO. 6387**

Commission Order No. 6387, issued October 17, 2001, gave respondent thirty days to produce all revenue vehicles for inspection by Commission staff. On November 16, 2001, respondent's president requested a five day extension. The request was granted for good cause shown, but no vehicles were presented for inspection by the extended deadline. Only after we issued Order No. 6479 on January 3, 2002, and suspended operations under Certificate No. 401 did respondent comply.

We will assess a forfeiture of \$250 against respondent and its president/director for knowingly and willfully disobeying Commission Order No. 6387.

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<sup>12</sup> According to respondent's application for operating authority filed June 3, 1997, the directors are Terry Lee Harwood and respondent's president, Horace C. Green, Jr.

<sup>13</sup> Section 11(a) states that a person may not transfer a Certificate of Authority unless the Commission approves the transfer as consistent with the public interest.

<sup>14</sup> Section 11(b) states that a person other than the person to whom an operating authority is issued by the Commission may not lease, rent, or otherwise use that operating authority.

<sup>15</sup> United States v. Illinois Cent. R.R., 303 U.S. 239, 243, 58 S. Ct. 533, 535 (1938).

**V. VIOLATION OF VEHICLE LEASING AND MARKING REGULATIONS**

Commission Regulation No. 61 requires, among other things, that each revenue vehicle operated by a WMATC carrier display the name of the vehicle owner. Commission Regulation No. 62 requires, among other things, that each leased revenue vehicle operated by a WMATC carrier carry a copy of the lease on file with the Commission. The vehicle presented for inspection on July 27, 2001, complied with neither requirement. On the other hand, the carrier name and number were properly displayed on the vehicle, a copy of the lease was in the Commission's possession at the time of the inspection, and both of respondent's revenue vehicles are now in compliance.

Respondent is admonished to comply with all requirements of these regulations in the future. Repeat violations will be dealt with more severely.

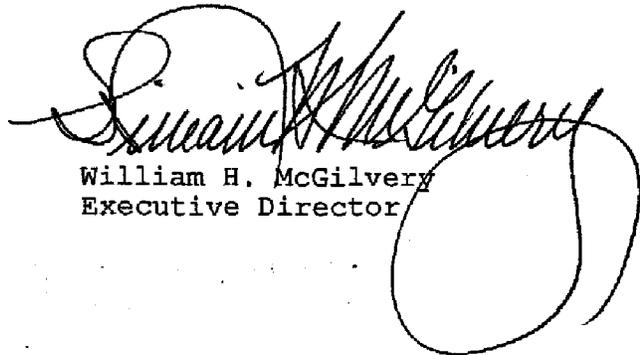
THEREFORE, IT IS ORDERED:

1. That the Commission hereby assesses civil forfeitures against Junior's Enterprises, Inc., and Horace C. Green, Jr. (respondents), jointly and severally, in the combined amount of \$1,000 for knowing and willful violations of Article XI, Sections 5(a) and 11, of the Compact and Commission Order No. 6387.

2. That respondents are 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 dollars (\$1,000).

3. That upon respondents' timely compliance with the requirements of this order, the Commission shall issue an order permitting resumption of operations under Certificate No. 401.

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



William H. McGilvery  
Executive Director