

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 6556

IN THE MATTER OF:

Served March 1, 2002

DISTRICT OF COLUMBIA ARC, INC.,)
Trading as DC ARC, Suspension and)
Investigation of Revocation of)
Certificate No. 501)

Case No. MP-2001-100

This matter is before the Commission on respondent's application for reconsideration of Commission Order No. 6475, served December 19, 2001, in which the Commission revoked Certificate of Authority No. 501 pursuant to Article XI, Section 10(c), of the Compact for respondent's willful failure to comply with the insurance provisions of the Compact, the regulations thereunder and the initial order in this proceeding.

Under Title II of the Compact, Article XIII, Section 4(a), an application for reconsideration of a Commission order must be filed within thirty days of its publication and state specifically the errors claimed as grounds for reconsideration.

The application for reconsideration was timely filed on January 9, 2002, and takes issue with the Commission's finding in Order No. 6475 that no acceptable WMATC Certificate of Insurance and Policy Endorsement (WMATC Endorsement) was on file as of December 19, 2001, for \$500,000 of the \$1.5 million in coverage required under Commission Regulation No. 58-03.

The record in this proceeding shows that: (1) WMATC Endorsements on file for respondent expired October 1, 2001; (2) Order No. 6380 was issued October 11, 2001, noting automatic suspension of Certificate No. 501 and giving respondent thirty days to file acceptable replacements; (3) an acceptable WMATC Endorsement for \$1 million in primary coverage was filed with the Commission on October 12, 2001; (4) an unacceptable WMATC Endorsement for \$1 million in excess coverage was filed with the Commission on October 29, 2001; and (5) Order No. 6380 was issued December 19, 2001, revoking Certificate No. 501 and explaining that the excess coverage Endorsement was unacceptable because the issuer of the endorsement was unknown to the Commission and as of December 19, 2001, had not been identified by the underlying insurance company as authorized to issue WMATC Endorsements on the insurance company's behalf. The record also shows that the insurance company subsequently filed an acceptable authorization letter January 4, 2002.

Respondent's argument is, and must be to succeed, that respondent's filing under Regulation No. 58-05 was complete on October 29, 2001, and that, therefore, the Commission committed error when it revoked Certificate of Authority No. 501 on December 19, 2001. We disagree with that argument for three reasons.

First, the Commission did not have any authorization letters in its files from the insurance company named in the Endorsement, Mount Vernon Fire Insurance Company, when the Commission made its decision

to revoke Certificate No. 501 on December 19, 2001. What the Commission did have was a copy of a letter received from the signer of the Endorsement, Thomas D. Alfano, Jr., vice president of Horan Goldman of Maryland, dated October 22, 2001, in which Mr. Alfano requests authority from Mount Vernon to execute the Endorsement on Mount Vernon's behalf. Without proof Mr. Alfano was authorized to sign the WMATC Endorsement on Mount Vernon's behalf, and with affirmative evidence from Mr. Alfano to the contrary, the Commission did not commit error when it issued Order No. 6475 on December 19, 2001.

Second, Mount Vernon did not issue the authorization letter until January 3, 2002. The letter does not say Mr. Alfano was authorized to execute the WMATC Endorsement on Mount Vernon's behalf when he signed it on October 23, 2001, or even when he filed it on October 29, 2001. Instead, it appears to us that the letter merely ratifies Mr. Alfano's previously unauthorized act. Hence, respondent's filing was not complete as of December 19, 2001, and the Commission did not commit error.

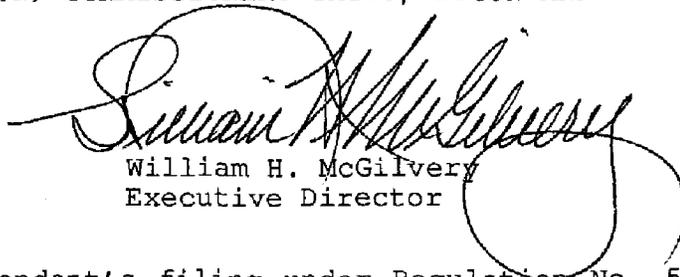
Third, to grant retroactive filing status to a later-filed authorization letter would encourage the execution and filing of the WMATC Endorsement by unauthorized persons hoping to obtain written authorization at some later date. By the same token, WMATC carriers might be tempted to continue operating in the face of suspension orders in the same hope that valid authorization ultimately resulting in exoneration of their unlawful conduct would soon be obtained. In the meantime, such unlawful operations would shift onto the public the unacceptable risk of uninsured or underinsured operations -- and at that for an indefinite period of time.

The application, therefore, is denied.

However, considering that respondent's insurance filing became acceptable on January 4, 2002, when the Commission received Mount Vernon's authorization, and considering that respondent is now in compliance with the insurance provisions of the Compact and regulations thereunder, we will reopen this proceeding on our own initiative and reinstate Certificate of Authority No. 501.²

IT IS SO ORDERED.

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


William H. McGilvery
Executive Director

¹ While we find that respondent's filing under Regulation No. 58-05 was not complete until January 4, 2002, this does not affect the effective date of coverage under the Endorsement, which according to the Endorsement is October 1, 2001.

² See In re Capitol Bus Rental, Inc., t/a Capitol Tours, No. MP-01-39, Order No. 6331 (Aug. 23, 2001) (reinstating certificate of authority).