

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 6911

IN THE MATTER OF:

Served November 18, 2002

ZOHERY TOURS INTERNATIONAL, INC.,)
WMATC No. 362, Investigation of)
Violation of Seating Capacity)
Restriction and Commission)
Regulations Governing Vehicle)
Markings and Leases and Advertising)

Case No. MP-2002-46

This matter is before the Commission to determine whether Zohery Tours International, Inc., WMATC No. 362, knowingly and willfully violated the seating capacity restriction in Certificate No. 362, the Commission's vehicle marking and leasing regulations and the Commission's advertising regulation.

I. BACKGROUND

This investigation was initiated on June 21, 2002, in Order No. 6710, on the basis of evidence generated by staff indicating that: (1) respondent had been operating two motorcoaches and a minibus ("the buses") in violation of the 15-person seating capacity restriction in Certificate No. 362; (2) respondent's three vans were not marked as required by Commission Regulation No. 61; (3) respondent had failed to file with the Commission copies of applicable leases, in violation of Regulation No. 62; and (4) respondent's website violated the Commission's advertising regulation, Regulation No. 63, by failing to inform the public that respondent is regulated by the Commission and by displaying rates and services within the Commission's jurisdiction but not included in respondent's tariff.

Order No. 6710 directed respondent to: (1) bring its operations into compliance with Commission Regulations Nos. 61, 62, and 63, governing vehicle markings, leases and advertising, respectively; and (2) within thirty days, produce all revenue vehicles for inspection by Commission staff and produce any and all records and documents within respondent's possession, custody or control relating to operations in the Metropolitan District from July 1, 2001, to June 21, 2002.

The response to Order No. 6710 was less than satisfactory. First, respondent produced some responsive documents but not all.¹ Second, respondent presented the buses for inspection but not the vans. Third, the exterior of each bus was marked with "WMATC 362,"

¹ For example, the bank statements produced by respondent do not cover July and August of 2001.

notwithstanding that the seating capacity of each exceeded the 15-person limit in Certificate No. 362. Fourth, more than two months after Order No. 6710 had issued, respondent's website still displayed WMATC rates and services unauthorized by Certificate No. 362 and WMATC rates and services authorized by Certificate No. 362 but not authorized by a WMATC tariff on file with the Commission.

Consequently, the Commission issued Order No. 6798 on September 3, 2002, suspending Certificate No. 362 and directing respondent to: (1) immediately cease advertising services, and rates for services, between points in the Metropolitan District that are not lawfully described in a tariff on file with the Commission; (2) immediately remove "WMATC No. 362" from, and cease and desist operating in the Metropolitan District, vehicles seating more than 15 persons, including the driver; (3) show cause within thirty days why the Commission should not assess a civil forfeiture against respondent for knowingly and willfully violating the 15-person seating capacity restriction in Certificate No. 362, Commission Regulations Nos. 61, 62, and 63, and Order No. 6710; and (4) show cause within thirty days why Certificate No. 362 should not be revoked for willful failure to comply with the 15-person seating capacity restriction in Certificate No. 362, Commission Regulations Nos. 61, 62, and 63, and Order No. 6710.

II. RESPONSE TO ORDER NO. 6798 AND FINDINGS

Respondent requests a one-month extension of the show-cause deadlines to arrange for the lease of the buses to a WMATC carrier with unrestricted authority. We do not see how respondent's arrangements for the lawful operation of buses in the Metropolitan District in the future has any bearing on whether the Commission should assess a civil forfeiture for respondent's violations of the Compact and Commission regulations in the past, and we are not inclined to revoke Certificate No. 362 at this time. Accordingly, the request is denied.

A. Advertising

Regulation No. 63-04 provides that no carrier "regulated by the Commission or subject to such regulation shall advertise or hold itself out to perform transportation or transportation-related services within the Metropolitan District unless such transportation or transportation-related services are authorized by the Commission."

Respondent filed a new general tariff on September 9, 2002, consisting of the Commission's cover sheet and several pages of rates and services from respondent's website. The tariff appears proper in all respects. We cannot say the same for respondent's website.

As of October 23, 2002, respondent's website still displayed an hourly tour rate for up to 29 persons and hourly tour rate for up to 49 persons. These rates were available for sightseeing in the District of Columbia, Maryland and Virginia.

We find that applicant failed to comply with the requirement in Order No. 6798 that respondent immediately cease advertising services, and rates for services, between points in the Metropolitan District that are not lawfully described in a tariff on file with the Commission.

B. Bus Markings and Operations

Shortly after Order No. 6798 was issued, respondent resubmitted the buses for inspection and filed a notarized statement averring cessation of operations in the Washington Metropolitan Area in vehicles with a seating capacity of sixteen or more passengers. The inspections revealed that the buses no longer display respondent's WMATC number.

We find that applicant has complied with the requirement in Order No. 6798 that respondent immediately remove "WMATC No. 362" from, and cease and desist operating in the Metropolitan District, vehicles seating more than 15 persons, including the driver.

C. Civil Forfeiture Show Cause

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.² Each day of the violation constitutes a separate violation.³

The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.⁴ The term "willfully" does not mean with evil purpose or criminal intent; rather, it describes conduct marked by careless disregard whether or not one has the right so to act.⁵ Employee negligence is no defense.⁶

1. Unauthorized operations

The evidence in the record indicates that respondent, and/or its president, used the buses to transport passengers for hire between points in the Metropolitan District on one or more occasions beginning August 14, 2001.⁷ The record is not clear, however, as to the specific number of days the buses were operated in our jurisdiction because

² Compact, tit. II, art. XIII, § 6(f)(i).

³ Compact, tit. II, art. XIII, § 6(f)(ii).

⁴ In re Washington Exec. Sedan, Inc., & Global Express Limo. Serv., Inc., No. MP-02-03, Order No. 6772 (Aug. 13, 2002).

⁵ Id.

⁶ Id.

⁷ In response to Order No. 6710, respondent produced a \$5 million insurance certificate in the name of respondent's president with an effective date of August 14, 2001.

respondent has not produced all of the documents required by Order No. 6710.

We will give respondent and its president thirty days to produce any and all records in their possession, custody or control relating to any and all operations conducted in the buses inside the Metropolitan District, during the period beginning on August 14, 2001, and ending on the date of this order.⁸ A willful failure to produce said documents shall constitute grounds for assessing the maximum civil forfeiture permitted under Article XIII, Section 6(f), of the Compact, for knowingly and willfully violating Article XI, Section 6(a).

2. Violation of Regulation Nos. 61 & 62

The record reflects that respondent's three vans did not comply with vehicle-identification Regulation No. 61 because certain of the markings were only two inches high.⁹ The vans did not comply with leasing Regulation No. 62 because they were not owned by respondent, and respondent had not filed any leases with the Commission.¹⁰

Subsequent to the issuance of Order No. 6798, respondent produced two of the vans for re-inspection and evidence that the third had become inoperable and had been placed out of service. Respondent also produced proof of ownership for one of the two vans submitted for inspection and a copy of a lease for the other. Staff's re-inspection of the two vans reveals that the markings on those vans now comply with Regulation No. 61.

We believe a civil forfeiture for respondent's violations of Regulation Nos. 61 and 62 is unwarranted at this time. Respondent is now in compliance with those regulations. There is nothing in the record to indicate respondent was aware of Commission Order No. 5007 declaring two inches too small for vehicle markings under Regulation No. 61, and there is no evidence that the failure to file appropriate leases permitted someone other than respondent to operate those vehicles without proper authority or misled anyone into thinking someone other than respondent was operating those vehicles, or that

⁸ We have chosen the date of this order to mark the end of the relevant period because the notarized statement averring cessation of operations of the buses in the Washington Metropolitan Area only speaks for respondent, not its president, and respondent continues to advertise rates that are consistent with operation of the buses in the Metropolitan District.

⁹ See In re Great American Tours, Inc., & The Airport Connection, Inc. II, & Airport Baggage Carriers, Inc., No. MP-96-54, Order No. 5007 (Jan. 23, 1997) (two-inch lettering does not meet legibility standard under Regulation No. 61).

¹⁰ See Regulation No. 62-02 (carrier may not operate non-owned vehicle except pursuant to Commission approved lease).

either such outcome was at all likely. In the future, however, Regulation Nos. 61 and 62 will be strictly enforced as they pertain to respondent's operations.

We note that the two vans presented for re-inspection displayed private vehicle license plates instead of for-hire license plates.¹¹ Respondent may operate these two vans once the suspension of Certificate No. 362 has been lifted and the vans display for-hire tags.¹²

We also note the record shows that between April and October of this year, respondent's president acquired two vehicles that have not been presented for inspection: a 1994 Ford and a 1982 MCI. Respondent shall not operate either of these vehicles unless and until otherwise ordered by the Commission.

3. Violation of Regulation No. 63

The record supports a civil forfeiture for respondent's knowing and willful violations of Regulation No. 63-04. The regulation clearly states that a carrier may not advertise service it is not authorized to provide. Order No. 6710 directed respondent to bring its website into compliance. Respondent did not comply. Order No. 6798 again directed respondent to bring its website into compliance. Respondent still did not comply. We will, therefore, assess a forfeiture of \$250 against respondent for knowingly and willfully violating Commission Regulation No. 63-04.¹³

4. Violation of Order No. 6710

The record supports a civil forfeiture for respondent's knowing and willful violations of Order No. 6710. The order directed respondent to produce all revenue vehicles for inspection within thirty days. More than two months later respondent still had not presented its vans. The order directed respondent to produce any and all records and documents within respondent's possession, custody or control relating to operations in the Metropolitan District from July 1, 2001, to June 21, 2002. As noted above, respondent produced some documents but not all. We will, therefore, assess a forfeiture

¹¹ One van has Maryland "M" tags, which the Commission recognizes as private tags. The Virginia registration for the other van states that the plates are for private use.

¹² See In re V.I.P. Tours, No. AP-83-10, Order No. 2504 (Dec. 2, 1983) (on reconsideration) (Commission may investigate transportation-related violations of non-WMATC laws, rules or regulations), aff'd per curiam, No. 83-2341, judgment (D.C. Cir. Jan. 25, 1985).

¹³ See Order No. 6772 (assessing \$250 for violating Regulation No. 63-04).

of \$250 against respondent for knowingly and willfully violating Commission Order No. 6710.¹⁴

D. Revocation Show Cause

We believe it would be premature to decide whether Certificate No. 362 should be revoked prior to obtaining respondent's records and the records of its president relating to operations conducted in the buses inside the Metropolitan District. Evidence of extensive bus operations inside the Metropolitan District, or willful failure to produce relevant documents, might warrant revocation. A showing to the contrary might stay our hand.

V. CONCLUSION

In the absence of any evidence of further violations of the Compact or Commission orders or regulations, the Commission shall issue an order lifting the suspension of Certificate No. 362 as soon as respondent brings its website into full compliance with advertising Regulation No. 63. Respondent may operate the two vans that passed inspection by staff once the suspension of Certificate No. 362 is lifted and staff verifies the vans display for-hire tags. Respondent shall have thirty days to pay a combined forfeiture of \$500 for knowingly and willfully violating Regulation No. 63 and Order No. 6710. Respondent and its president shall have thirty days to show cause why an additional forfeiture should not be assessed for knowingly and willfully operating buses inside the Metropolitan District.

THEREFORE, IT IS ORDERED:

1. That the request for a one-month extension of time to show cause is hereby denied.

2. That unless and until otherwise ordered by the Commission, Certificate of Authority No. 362 shall remain suspended for respondent's continuing willful failure to comply with Commission Regulation No. 63.

3. That respondent may recommence operations at such time as respondent has brought its advertising into compliance with Commission Regulation No. 63 and the Commission by order has lifted the suspension of Certificate No. 362; provided, that if the suspension is lifted, unless and until otherwise ordered by the Commission, respondent may conduct operations in the Metropolitan District only in vehicles which comply with applicable Commission regulations, display for-hire license plates and have a maximum seating capacity of 15 persons or less, including the driver, all as verified in writing by Commission staff.

¹⁴ See In re Junior's Enterprises, Inc., No. MP-01-103, Order No. 6549 (Feb. 21, 2002) (assessing \$250 for disobeying Commission order).

4. That the Commission hereby assesses a civil forfeiture against respondent in the amount of \$500 for knowingly and willfully violating Commission Regulation No. 63 and Order No. 6710.

5. That respondent is hereby directed to pay to the Commission within thirty days of the date of this order, by money order, certified check, or cashier's check, the sum of five hundred dollars (\$500).

6. That respondent and its president are hereby directed to produce, within thirty days from 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 their possession, custody or control and which relate to the transportation of passengers for hire between points in the Metropolitan District in vehicles with a seating capacity of 16 or more persons, including the driver, during the period beginning on August 14, 2001, and ending on the date of this order.

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



William H. McGilvery
Executive Director