

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 6977

IN THE MATTER OF:

Served December 23, 2002

WILLIAM E. GILLISON, Trading as) Case No. MP-2002-97
QUIANA TOURS, WMATC No. 290,)
QUIANA TOURS, INC., and BARON)
TRANSPORTATION, INC., WMATC No. 33,)
Investigation of Unauthorized)
Operations and Violation of)
Regulations Governing Vehicle)
Identification and Leases)

This investigation was initiated in Order No. 6810, served September 20, 2002, to determine whether William E. Gillison, trading as Quiana Tours, WMATC No. 290, violated Commission Regulations Nos. 61 and 62 governing vehicle identification and leases, respectively, and whether Quiana Tours, Inc., and Baron Transportation, Inc., WMATC No. 33, transported passengers for hire without proper authority in violation of Article XI, Section 6(a), of the Compact, governing certificates of authority.

I. BACKGROUND

Baron's Certificate of Authority No. 33 was automatically suspended on June 6, 2002, for Baron's willful failure to comply with the Commission's insurance requirements.¹ That same day, Baron transmitted copies of five insurance cards to the Commission showing that Baron's five buses were being carried on an insurance policy belonging to Gillison.

On June 18, 2002, Baron transmitted a copy of a document dated June 17, 2002, and apparently signed by Baron President Philip Luelsdorff and by Gillison, declaring that: "Effective on May 31, 2002 Quiana Tours will be leasing Baron Transportation buses." The five buses listed in the "lease" document match the five buses identified in the five insurance cards and the five buses identified in Baron's annual report for 2001.

On July 24, 2002, the Commission obtained a vehicle list from Gillison's insurance company. The list shows that the five Baron buses were added to Gillison's insurance policy effective June 5, 2002.

¹ In re Baron Transp., Inc., No. MP-02-42, Order No. 6685 (June 6, 2002).

Baron's Certificate of Authority No. 33 was revoked on August 7, 2002, for Baron's continued willful failure to comply with the Commission's insurance requirements.² That same day, a Commission staff member observed one of the Baron buses being operated in the District of Columbia without any markings to indicate it was now under Gillison's control. This was the second time staff had observed a Baron bus operating in DC without Gillison identification. The first was on July 17, 2002, and involved a different bus. Staff observed a third Baron bus operating in DC without Gillison identification on August 20, 2002.

These observations raised the issue of whether Baron continued operating its buses while suspended, and then revoked, or whether Gillison has been operating these vehicles without the vehicle markings -- carrier name and number -- required by Regulation No. 61.

A related issue was whether Baron's buses and Gillison's own buses were being operated by Quiana Tours, Inc. This issue was raised by Gillison filing his 2001 annual report in the name of Quiana Tours, Inc. This happened once before when Gillison filed his annual report for 1997. The Commission opened an investigation into whether Gillison had transferred control to the corporation.³ The investigation revealed that Gillison had formed Quiana Tours, Inc., as a Maryland corporation in 1994 but that the corporate charter had been forfeited in 1996.⁴ The Commission ordered Gillison to cease and desist all operations in the Metropolitan District under the name "Quiana Tours, Inc."⁵ Gillison assured the Commission that he would file an application to transfer Certificate No. 290 to Quiana Tours, Inc., once the charter had been revived.⁶ The charter was revived in 1999, forfeited again in 2001, and revived again in January of 2002, but no transfer application was filed until December 3, 2002.

Order No. 6810 directed Baron to produce any and all records and documents in its possession, custody or control relating to transportation of passengers for hire between points in the Metropolitan District during the period beginning May 31, 2002, and ending on September 20, 2002.

Order No. 6810 directed Gillison and Quiana Tours, Inc., to produce any and all records and documents in their possession, custody

² In re Baron Transp., Inc., No. MP-02-42, Order No. 6763 (Aug. 7, 2002).

³ In re William E. Gillison, t/a Quiana Tours, & Quiana Tours, Inc., No. MP-98-16, Order No. 5308 (Apr. 7, 1998).

⁴ In re William E. Gillison, t/a Quiana Tours, & Quiana Tours, Inc., No. MP-98-16, Order No. 5359 (June 25, 1998).

⁵ Id.

⁶ Id.

or control relating to transportation of passengers for hire between points in the Metropolitan District during the period beginning August 5, 1999, and ending on September 20, 2002.

Finally, Order No. 6810 directed respondents to bring their operations into compliance with the Compact and Commission regulations and produce their revenue vehicles for inspection.

Baron produced documents on October 10, 2002. Gillison timely produced documents on November 14, 2002, and its buses on November 15, 2002, after receiving an extension of time in Order No. 6886, served October 30, 2002. Baron failed to produce its buses.

II. BARON'S BUSES

The records produced by both Baron and Gillison reveal no tangible evidence that Gillison has ever operated Baron's buses in the Metropolitan District. There is some evidence that Gillison hired Baron to transport passengers on several occasions and/or that Baron hired Gillison to transport passengers on several occasions, and there is evidence that Gillison added Baron's buses to his insurance policy, but there is no evidence that Gillison actually operated Baron's buses.⁷

On the other hand, there is evidence that Baron continued operating its buses between points in the Metropolitan District while suspended/revoked on twenty four separate days during the period beginning June 6, 2002, and ending September 20, 2002. Moreover, Baron apparently has yet to cease operating in the Metropolitan District. On September 24, 2002, a Commission staff member observed one of Baron's buses being operated in the District of Columbia with markings on the side declaring that it was operated by Baron.

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.⁸ Each day of the violation constitutes a separate violation.⁹

The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.¹⁰ The term "willfully" does not mean with evil purpose or criminal intent;

⁷ As of November 14, 2002, all of Baron's buses have been removed from Gillison's insurance policy.

⁸ Compact, tit. II, art. XIII, § 6(f)(i).

⁹ Compact, tit. II, art. XIII, § 6(f)(ii).

¹⁰ In re Washington Exec. Sedan, Inc., & Global Express Limo. Serv., Inc., No. MP-02-03, Order No. 6772 (Aug. 13, 2002).

rather, it describes conduct marked by careless disregard whether or not one has the right so to act.¹¹ Employee negligence is no defense.¹²

Baron shall have thirty days to show cause why the Commission should not assess civil forfeitures against Baron for operating while suspended/revoked during the period beginning June 6, 2002, and ending September 20, 2002, and for failing to produce its buses for inspection.

Baron also shall have thirty days to produce its revenue vehicles for inspection and to produce any and all records and documents in its possession, custody or control relating to transportation of passengers for hire between points in the Metropolitan District during the period beginning September 21, 2002, and ending on the date of this order.

III. QUIANA TOURS, INC.

The records produced by Gillison reveal that: (1) the name Quiana Tours, Inc., begins appearing on driver paychecks on September 28, 2000, and on customer invoices on December 4, 2001; (2) a federal income tax return was filed in the name of Quiana Tours, Inc., for 2001; and (3) driver logs for April through September, 2002, the only period for which such records were provided, identify the employer as Quiana Tours, Inc. Records obtained by the Commission from the Taxpayer Services Division of the Maryland State Department of Assessments and Taxation, show that personal property returns were filed in the name Quiana Tours, Inc., on July 21, 1999, January 15, 2002, and November 26, 2002.

Gillison shall have thirty days to show cause why the Commission should not assess a civil forfeiture against Gillison for failing to cease and desist all operations in the Metropolitan District under the name "Quiana Tours, Inc.," as mandated by Order No. 5359 on June 25, 1998.

Staff inspection of the four vehicles produced by Gillison revealed that most of the markings on Gillison's vehicles do not comply with Regulation No. 61 because they are two inches in height or less.¹³ The inspections also revealed that Gillison is not the owner of those vehicles, and Commission records show that Gillison did not comply with the lease filing requirement of Commission Regulation No. 62 until December 3, 2002.

¹¹ Id.

¹² Id.

¹³ See In re Great American Tours, Inc., & The Airport Connection, Inc. II, & Airport Baggage Carriers, Inc., No. MP-96-54, Order No. 5007 (two-inch lettering does not meet Regulation No. 61 legibility standard) (Jan. 23, 1997).

Gillison shall have thirty days to show cause why the Commission should not assess civil forfeitures against Gillison for violating Regulation Nos. 61 and 62.

IV. CONCLUSION

We shall conduct an inquiry into whether Baron ceased operating in the Metropolitan District after Order No. 6810 was issued. Baron still must produce its vehicles for inspection. Both Baron and Gillison shall be permitted an opportunity to show cause why the Commission should not assess civil forfeitures for the violations of record.

THEREFORE, IT IS ORDERED:

1. That Baron shall have thirty days to show cause why the Commission should not assess civil forfeitures against Baron for knowingly and willfully violating Article XI, Section 6(a), of the Compact and Commission Order No. 6810.

2. That Baron shall produce all revenue vehicles for inspection by Commission staff within thirty days from the date of this order.

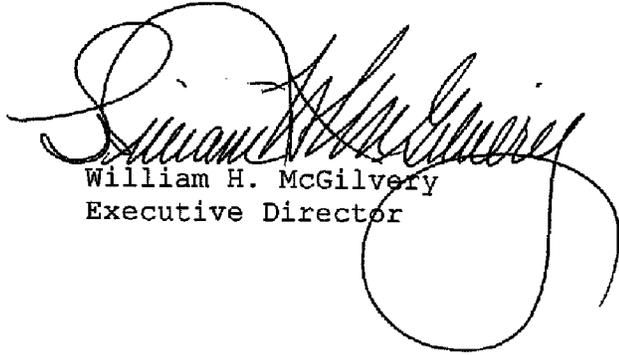
3. That Baron Transportation, Inc., is hereby directed to produce, within thirty days from the date of this order, any and all books, papers, correspondence, memoranda, contracts, agreements, and other records and documents, including any and all stored electronically, that are within Baron's possession, custody or control and which relate to the transportation of passengers for hire between points in the Metropolitan District during the period beginning September 21, 2002, and ending on the date of this order, including, but not limited to any and all:

- a. customer contracts, invoices and confirmations;
- b. evidence of communications, including telephone logs, facsimile transmissions, and correspondence;
- c. calendars and itineraries;
- d. bank records;
- e. vehicle operator hours-of-service records;
- f. payroll records; and
- g. advertising materials.

4. That Gillison shall have thirty days to show cause why the Commission should not assess civil forfeitures against Gillison for knowingly and willfully violating Commission Order No. 5359 and Commission Regulation Nos. 61 and 62.

5. That either respondent may file within 15 days from the date of this order a request for oral hearing, specifying the grounds for the request, describing the evidence to be adduced and explaining why such evidence cannot be adduced without an oral hearing.

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



William H. McGilvery
Executive Director