

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 7719

IN THE MATTER OF:

Served January 29, 2004

ATLANTIC AIRPORT SHUTTLE, INC., )  
WMATC No. 559, and BORJA & GARCIA )  
ENTERPRISES INC., Trading as )  
ATLANTIC AIRPORT SHUTTLE, )  
Investigation of Unauthorized )  
Transfer )

Case No. MP-2003-61

This matter is before the Commission on respondents' response to Order No. 7513, served November 5, 2003.

Order No. 7513 revoked Certificate of Authority No. 559 for respondents' willful failure to comply with Article XII, Section 3(a), of the Compact, Commission Order No. 7273, and Commission Regulation No. 61. The order also directed respondents to pay a civil forfeiture of \$15,000 within thirty days for knowingly and willfully violating Article XI, Section 11(b), and Article XII, Section 3(a), of the Compact, and for the purpose of contesting the forfeiture gave respondents 15 days to file a request for oral hearing.

On November 26, 2003, respondent Borja & Garcia Enterprises Inc. filed a request for reduction in forfeiture and adoption of a monthly payment plan. The amount of reduction and number of installments sought are not specified. As cause for reducing the forfeiture, Borja & Garcia claims not to have made any profit from its unlawful operations, but no evidence is offered in support, and the record in this proceeding is to the contrary.<sup>1</sup> The Commission, however has approved payment plans in the past where, as here, there is evidence of an impaired ability to pay the assessed forfeiture all at once.<sup>2</sup> We will approve a twelve month payment plan at \$1,250 per month.

On December 5, 2003, respondents filed an application for reconsideration of Order No. 7513. Under the Compact, a party may seek reconsideration of a final order of the Commission by filing an application within 30 days of its publication.<sup>3</sup> The application must specify the errors claimed as grounds for reconsideration.<sup>4</sup>

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<sup>1</sup> See Order No. 7513 at 4 (2002 profit of approximately \$5,000).

<sup>2</sup> See In re Zohery Tours Int'l, Inc., No. MP-02-46, Order No. 7096 (Mar. 19, 2003) (approving 10-month payment plan); In re V.I.P. Tours, Inc., & V.I.P. Tours, L.L.C., No. MP-01-98, Order No. 6656 (May 14, 2002) (approving 6-month payment plan).

<sup>3</sup> Compact, tit. II, art. XIII, § 4(a).

<sup>4</sup> Id.

An order is final if it imposes an obligation, denies a right, or fixes some legal relationship, usually at the consummation of an administrative process. Normally, in an adjudication a final order is one that disposes of all issues as to all parties.<sup>5</sup>

Although Order No. 7513 revoked Certificate No. 559, it did not dispose of all issues as to all parties. Order No. 7513 clearly preserved respondents' right to contest the \$15,000 forfeiture. Hence, Order No. 7513 is not a final order for the purpose of seeking reconsideration.<sup>6</sup> The application does not allege any error on the part of the Commission, in any event. Indeed, respondents do not dispute the central finding in Order No. 7513 that Borja & Garcia continued transporting passengers for hire under color of Certificate No. 559 despite the rejection of its transfer application and two warnings to cease and desist. The application for reconsideration therefore is denied.

THEREFORE, IT IS ORDERED:

1. That the application for reconsideration is denied.
2. That Atlantic Airport Shuttle, Inc., Borja & Garcia Enterprises Inc., Sandra Borja and Christian Garcia shall pay the sum of \$15,000 in twelve equal monthly installments of \$1,250 each, payable on the first of each month beginning March 2004, by money order, certified check, or cashier's check.
3. That upon the failure of Atlantic Airport Shuttle, Inc., Borja & Garcia Enterprises Inc., Sandra Borja and Christian Garcia to timely comply with the requirements of this order, the unpaid portion of the forfeiture assessed in Order No. 7513 shall become immediately due and payable.

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



William H. McGilvery  
Executive Director

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<sup>5</sup> In re Affordable Airport Charter, Inc., & Bach Vu, t/a Affordable Airport Charter, No. AP-97-47, Order No. 5400 (Aug. 31, 1998) (quoting Natural Resources Defense Council, Inc. v. United States Nuclear Regulatory Comm'n, 680 F.2d 810, 815 (D.C. Cir. 1982)).

<sup>6</sup> See id. (order denying license but not disposing of all issues as to all parties not final order).