

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 2321

IN THE MATTER OF:

Served March 4, 1982

Application of GEORGE A. COUPE)
and BERNARD RESNICK to Acquire)
Stock Control of EXECUTIVE)
LIMOUSINE SERVICE, INC., and for)
Approval of Temporary Control)

Case No. AP-81-23

By application filed October 16, 1981, George A. Coupe and Bernard Resnick (purchasers) seek approval pursuant to Title II, Article XII, Section 12(b) of the Compact to acquire control of Executive Limousine Service, Inc., through the purchase of all of the outstanding capital stock of Executive. In support of the application, the parties have submitted an executed bilateral contract of sale, a statement of the purchasers' financial condition and financial statements of both Admiral Limousine Service and Executive. 1/ A public hearing on the matter was held on January 26, 1982. No person appeared in opposition.

By motion filed January 12, 1982, the purchasers moved to dismiss the proceeding for lack of jurisdiction, claiming that the Commission's assertion of jurisdiction pursuant to Title II, Article XII, Section 12(b) of the Compact regarding approval for common control of carriers is inapplicable inasmuch as Admiral is not a 'carrier' as defined by the Compact. Purchasers admit that Admiral is a limousine service operating in the Metropolitan District. They argue, however, that as a conventional limousine service Admiral is not

1/ Messrs. Coupe and Resnick are contracting to purchase Executive as individuals. Although they are partners, operating Admiral Limousine Service, Admiral is not a party to the purchase of Executive.

now subject to Commission jurisdiction, and that the term 'carrier' implies

the right to control the operation and movement of the vehicle. In traditional limousine service, such as that offered by Admiral . . . the limousine company rents a vehicle with a driver to a customer, and the customer exercises the right of "control" over the origin, destination and other movement of the vehicle. . . . 2/

The Commission finds that the term 'carrier' as defined by Title II, Article XII, Section 2(a) of the Compact 3/ includes Admiral. In their application and at the public hearing, purchasers state that they have been operating a limousine business within the Metropolitan District. That Admiral is not regulated by the Commission is not relevant to this consideration. 4/ Purchasers are required to have Commission approval for the purchase of Executive pursuant to Title II, Article XII, Section 12(b) of the Compact inasmuch as they already control a carrier (Admiral) which operates in the Metropolitan District. Title II, Article XII, Section 12(a)(2) specifically provides that "[i]t shall be unlawful, without approval of the Commission . . . for any carrier which operates in the Metropolitan District or any person controlling . . . such a carrier . . . to acquire control, through ownership of stock . . . of any carrier which operates in such Metropolitan District." The possibilities of price and service discrimination against which this "common control" provision is directed, can be just as real, if not more so, where one of the carriers is not subject to regulation. Accordingly, the motion to dismiss will be denied.

At the public hearing, purchasers generally testified as to their ability to strengthen the financial position of Executive and to purchase new equipment as needed to meet service demands. Messrs. Coupe and Resnick have been operating Executive pursuant to a grant of

2/ Motion to Dismiss For Want of Jurisdiction, filed January 12, 1982, at page 2.

3/ A 'carrier' is defined as ". . . any person who engages in the transportation of passengers for hire by motor vehicle, street railroad or other form or means of conveyance."

4/ See Order No. 2156, served October 24, 1980, at pp. 2-4.

temporary approval to control the carrier through management. ^{5/} They have ameliorated Executive's financial plight through an infusion of capital, have paid up overdue bills and have arranged for the purchase of new equipment.

The purchase price was originally set at \$250,000 subject to certain offsets concerning existing debt at the time of transfer including an outstanding mortgage. Of that price, real estate owned by Executive is valued somewhat in excess of \$200,000 and is subject to a mortgage of about \$112,000.

Title II, Article XII, Section 12(b) of the Compact requires that any person seeking approval of any transaction to which Section 12(a) applies (including stock acquisition) obtain approval from the Commission. Under this provision of the Compact, the Commission may approve the acquisition if it finds that the transaction is consistent with the public interest.

In determining whether this transaction is consistent with the public interest, the Commission considers, among other factors, the fitness of the acquiring party, the fairness of the purchase price, the resulting competitive balance of the industry, whether the operating rights sought to be purchased are dormant and whether the riding public would be benefited by purchasers' acquisition of Executive's Certificate No. 18.

The Commission finds that the proposed transfer is consistent with the public interest. The operating rights to be sold as part of Executive's assets have not been dormant inasmuch as there has been no interruption of service, and purchasers are able to provide a more responsive service to the public by contributing additional capital and purchasing new operating equipment. Purchasers have evidenced a willingness to comply with the Commission's orders, rules and regulations and appear otherwise fit to control Executive. There is no discernible change in the competitive balance at the present time with the carrier merely changing hands (with no protest from any other carrier) and the purchase price appears reasonable, especially in light of the value of real estate owned by Executive.

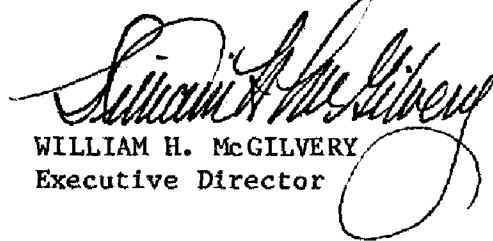
Pursuant to Commission Regulation No. 64-02 we shall require that separate books and records be regularly maintained for Executive apart from the books of Admiral. Expenses, both variable and fixed, must be maintained for Executive, as well as revenue figures.

^{5/} See Order No. 2278, served November 16, 1981.

THEREFORE, IT IS ORDERED:

1. That the motion of applicants in Case No. AP-81-23 to dismiss for want of jurisdiction is hereby denied.
2. That the application of George A. Coupe and Bernard Resnick to acquire stock control of Executive Limousine Service, Inc., is hereby approved subject to the condition that separate books and records be regularly maintained for Executive Limousine Service, Inc., and that the carrier fully comply with the mandates of Commission Regulation No. 64-02.
3. That applicants are hereby required to give the Commission written notice of the consummation of the transaction in accordance with the approval granted herein within 30 days of the date of said consummation.
4. That unless said notice of consummation is received within 30 days thereof, or such additional time as may be authorized by the Commission, the grant of approval herein will be void and the application shall stand denied in its entirety effective upon the expiration of the compliance time.

BY DIRECTION OF THE COMMISSION, COMMISSIONERS CLEMENT, SCHIFTER AND SHANNON:


WILLIAM H. MCGILVERY
Executive Director