

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D.C.

ORDER NO. 2984

IN THE MATTER OF:

Served March 3, 1987

GOLD LINE, INC. )

Case No. FC-86-01

v. )

AMERICAN COACH LINES, INC., ET AL. )

Investigation of Compliance of )  
AMERICAN COACH LINES, INC. )

Case No. MP-87-08

By complaint filed December 17, 1986, Gold Line, Inc. ("Gold Line" or "complainant"), alleges that American Coach Lines, Inc. ("ACL"); Sherman Coaches, Inc.; Carter Tours, Ltd.; Frank Sherman, Jr.; and Frank Sherman, Sr. ("the Sherman Group" or "defendants"), either separately or in concert, are conducting unauthorized charter operations between points in the Metropolitan District. As relief, Gold Line asks that the Commission revoke ACL's Certificate No. 1 and order all other defendants to cease and desist from transporting persons in charter operations between points in the Metropolitan District.

By Petition for Investigation, also filed December 17, 1986, Gold Line requests that the Commission open an investigation into ACL's operations to determine whether that carrier has any authority to provide transportation outside the scope of WMATC Certificate No. 1. Gold Line further requests investigation of the operations being conducted separately or in concert with ACL by Frank Sherman, Sr.; Frank Sherman, Jr.; Carter Tours, Ltd.; and Sherman Coaches, Inc., since these entities are under common control, making investigation of all entities necessary in order to determine the precise relationship between ACL, the certificate holder, and other individuals and corporations named in the complaint.

In answer to Gold Line's complaint ACL admits that it performed the shuttle service alleged in the complaint, but denies that such performance was beyond the scope of its operating authority. It is the position of defendants that there are two corporate entities named American Coach Lines, one a District of Columbia corporation and the other a Maryland corporation, both of which are controlled by Frank Sherman through stock ownership. 1/ Defendants assert that the

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1/ Defendants fail to specify whether Frank Sherman, Sr., or Frank Sherman, Jr., owns ACL.

District of Columbia corporation ("ACL-DC") holds WMATC Certificate No. 1 and at all times has been in compliance with its operating authority and WMATC rules and regulations. Defendants further assert that the Maryland corporation ("ACL-MD") holds Interstate Commerce Commission ("ICC") Certificate No. MC 149076 and at all times has been in compliance with its operating authority and with ICC rules and regulations. Based on this compliance, defendants ask that Gold Line's Petition for Investigation be dismissed.

In a separate Motion to Dismiss defendants describe the ownership and control of the corporate entities named in Gold Line's complaint. Carter Tours, Ltd., is a Maryland corporation established in 1981 and holding ICC Certificate No. MC 149458 authorizing charter and special operations throughout the continental United States, excepting Alaska. <sup>2/</sup> Its Board of Directors consists of Frank Sherman, Sr., President/Treasurer; Elizabeth Sherman, Vice-President; and Frank Sherman, Jr., Secretary. Sherman Coaches, Inc., is a Virginia corporation established in 1982 and holding Virginia Certificate No. B-320 authorizing charter operations between (unspecified) points in Virginia. Frank Sherman, Sr., is President of this second corporation; Elizabeth Sherman is Treasurer; and Lawrence Lindeman, defendants' attorney, is Secretary. All stock of Carter Tours, Ltd., and Sherman Coaches, Inc., is owned by "members of the Sherman family." ACL-DC and ACL-MD share a board of directors comprised of Frank Sherman, Jr., as president; Kathleen Hudson as secretary; and Elizabeth Sherman as treasurer. The stock of these companies was purchased from ACL's previous owners in June 1986. ACL-DC holds WMATC authority and performs only that transportation in the Metropolitan District authorized by its WMATC Certificate No. 1 using "its own equipment." ACL-MD conducts regular-route operations between Elkridge, Md., and Washington, D.C. According to ACL, because ACL-MD's ICC certificate "was issued prior to January 1, 1987," <sup>3/</sup> it is authorized to perform charter and special operations from points on that route and the area served by the route to points in the United States and return. Carter Tours, Ltd., and Sherman Coaches, Inc., lend equipment to ACL-MD for Metropolitan District operations. According to defendants, the shuttle service referred to in Gold Line's complaint was conducted by ACL-MD pursuant to its ICC authority using its own buses and buses leased from Sherman Coaches, Inc. Advertising specifically mentions Sherman Coaches, Inc., to avoid confusing passengers. The shuttle service described in Gold Line's complaint was, according to ACL, part of a larger move including airport shuttles. As airport shuttles involve interstate commerce, ACL-MD is of the opinion that its incidental charter authority covers provision of such service. Based on this

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<sup>2/</sup> This certificate is suspended by action of law within the Metropolitan District. Compact, Title II, Article XII, Section 20.

<sup>3/</sup> The significance of this date is not explained.

legal argument, defendants ask that the complaint and the petition be dismissed.

In response to defendants' assertions, Gold Line points out that defendants admit that ACL has engaged in the convention shuttle service described in the complaint and at least Sherman Coaches, Inc., participated by leasing equipment to ACL with drivers. Gold Line notes that defendants do not contend that either of the ACL's or any member of the Sherman Group holds WMATC general charter authority. As for ACL's defense that the charter move at issue was performed not by ACL-DC, the WMATC certificate holder, but by ACL-MD, an entity with interstate incidental charter rights, Gold Line asserts that ACL-MD has been an inactive corporation for five years. In no case are ICC incidental charter rights kept alive where there are no regular route operations. Moreover, in the case of ACL-MD, the ICC has interpreted what incidental charter authority that entity may have once had as excluding the Metropolitan District. The former owners of the ACL's did not contend that ICC authority permitted charter and special operations within the Metropolitan District but attempted to obtain WMATC authority. Based on these facts Gold Line maintains that the operations alleged in its complaint were those of ACL-DC not ACL-MD, ACL-DC being the viable carrier within the Metropolitan District and thus the de facto performer of services. Other members of the Sherman Group by leasing practices admittedly aid and abet the performance of unlawful operations. Gold Line, therefore, asks that the Motion to Dismiss be denied, its Petition for Investigation granted, and its complaint set for oral hearing.

#### DISCUSSION AND CONCLUSIONS

This matter is governed by the Compact, Title II, Article XII, Section 13(a) and (b) which provide in relevant part that

(a) Any person may file with the Commission a complaint in writing with respect to anything done or omitted to be done by any person in contravention of any provision of this Act, or of any requirement established pursuant thereto. If the person complained against shall not satisfy the complaint and there shall appear to be any reasonable grounds for an investigation, the Commission shall investigate the matters complained of.

(b) The Commission may investigate any facts, conditions, practices, or matters which it may find necessary or proper in order to determine whether any person has violated or is about to violate any provision of this Act or any rule, regulation, or order thereunder . . . . (emphasis added)

After reviewing the allegations contained in Gold Line's complaint and petition, defendants' response thereto, and the entire record in this case, we find an investigation into the activities of the individuals and corporations comprising the Sherman Group to be warranted. Defendants have admitted performing charter operations between points in the Metropolitan District. It is settled that American Coach Lines, Inc. (the District of Columbia corporation), is not authorized by virtue of WMATC Certificate No. 1 to conduct bare charter operations within the Metropolitan District. See Order Nos. 2908 and 2738, served September 10, 1986, and July 22, 1985, respectively, and incorporated herein by reference. It is equally settled that American Coach Lines, Inc. (the Maryland corporation), is not authorized by virtue of ICC Certificate No. MC 149076 to conduct charter operations within the Metropolitan District. The ICC has expressly interpreted ACL-MD's certificate as excluding authority to transport passengers in charter or special operations between points in the Metropolitan District. In Re American Coach Lines, Inc., Transferee, and U.S. Bus, Inc., Transferor, No. MC-FC-82906, unpublished decision at 2 (ICC Feb. 11, 1986). It is admitted that Carter Tours, Ltd., and Sherman Coaches, Inc., lack the requisite authority. No representation is made that either Frank Sherman, Sr., or Frank Sherman, Jr., individually, holds any certificate which authorizes transportation of passengers in charter operations. We note also that although defendants assert the existence of two completely separate corporations each named American Coach Lines, Inc., the record in this case to date indicates that, in addition to the name, the corporations are identical as to ownership, management, and equipment. In light of ACL-DC's history of unauthorized charter movements, we shall also open an investigation into the details of its operations with a view to determining whether it has willingly violated the Compact or the Commission's rules and regulations. The complaint and investigation shall be consolidated for hearing, and a prehearing conference shall be scheduled.

Complainant Gold Line, Inc., will be assessed \$1,000, preliminarily estimated to cover the costs of these proceedings. Respondents, jointly, will also be assessed \$1,000 for the same purpose. We shall determine whether complainant or respondents are to bear the expenses of these proceedings according to the results.

THEREFORE, IT IS ORDERED:

1. That the Petition for Investigation filed by Gold Line, Inc., is hereby granted.
2. That the Motions to Dismiss filed by American Coach Lines, Inc., et al., are hereby denied.
3. That Case No. FC-86-01, a complaint proceeding alleging unlawful operations by American Coach Lines, Inc., a District of

Columbia corporation; American Coach Lines, Lines Inc., a Maryland corporation; Sherman Coaches, Inc.; Carter Tours, Ltd.; Frank Sherman, Sr.; and Frank Sherman, Jr., is instituted pursuant to the Compact, Title II, Article XII, Section 13(a) for the purpose of determining whether those persons have violated or are about to violate any part of the Compact or the Commission's rules, regulations, or orders.

4. That Case No. MP-87-08, an investigation into the operations of American Coach Lines, Inc., a District of Columbia corporation; American Coach Lines, Inc., a Maryland corporation; Sherman Coaches, Inc.; Carter Tours, Ltd.; Frank Sherman, Sr.; and Frank Sherman, Jr., is hereby instituted pursuant to the Compact, Title II, Article XII, Section 13(b) for the purpose of determining whether those persons have violated or are about to violate any part of the Compact or the Commission's rules, regulations, or orders, and pursuant to Section 4(g) for the purpose of determining whether Certificate of Public Convenience and Necessity No. 1 should be suspended, changed, or revoked.

5. That American Coach Lines, Inc., a District of Columbia corporation; American Coach Lines, Inc., a Maryland corporation; Sherman Coaches, Inc.; Carter Tours, Ltd.; Frank Sherman, Sr.; and Frank Sherman, Jr., are hereby made parties respondent to Case Nos. FC-86-01 and MP-87-08.

6. That Case Nos. FC-86-01 and MP-87-08 are hereby consolidated for the purpose of public hearing.

7. That Case Nos. FC-86-01 and MP-87-08 are hereby scheduled for public hearing to commence Tuesday, April 21, 1987, at 9:30 a.m. in the hearing room of the Commission, Room 314, 1625 I Street, N.W., Washington, D.C. 20006, and to continue from day to day thereafter until completed.

8. That American Coach Lines, Inc., a Maryland corporation; Sherman Coaches, Inc.; Carter Tours, Ltd.; Frank Sherman, Sr.; and Frank Sherman, Jr., are hereby directed to cease and desist from transporting passengers for hire between points in the Metropolitan District.

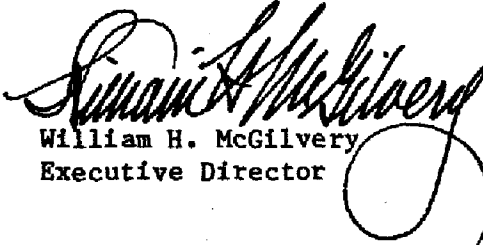
9. That Gold Line, Inc., is hereby assessed \$1,000, an amount preliminarily estimated to cover the expenses of these proceedings, and is directed to deliver said sum to the office of the Commission, Room 316, 1625 I Street, N.W., Washington, D.C. 20006, no later than Friday, April 10, 1987, at 12 noon.

10. That the above-named parties respondent are hereby jointly and severally assessed \$1,000, an amount preliminarily estimated to cover the expenses of these proceedings, and are directed to deliver said sum to

the office of the Commission, Room 316, 1625 I Street, N.W., Washington, D.C. 20006, no later than Friday, April 10, 1987, at 12 noon.

11. That Case Nos. FC-86-01 and MP-87-08 are hereby scheduled for prehearing conference on Thursday, March 12, 1987, at 10:30 a.m. in the hearing room of the Commission, Room 314, 1625 I Street, N.W., Washington, D.C. 20006. Counsel for the parties are directed then and there to appear before the presiding officer for the purposes set forth in Commission Rule No. 17-01.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS WORTHY, SCHIFTER, AND SHANNON:

  
William H. McGilvery  
Executive Director