

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D.C.

ORDER NO. 3142

IN THE MATTER OF:

Served March 31, 1988

Application of SHAW BUS SERVICE, )  
INC., for Approval to Transfer )  
Certificate No. 100 to AMERICAN )  
COACH LINES, INC. )

Case No. AP-88-09

By application filed March 17, 1988, Shaw Bus Service, Inc., ("transferor" or "Shaw"), seeks approval to transfer, by sale, its Certificate No. 100 to American Coach Lines, Inc. ("transferee"). Certificate No. 100 authorizes the following transportation:

IRREGULAR ROUTES:

CHARTER OPERATIONS

Passengers, together with baggage in the same vehicle with passengers, between points in the Metropolitan District, restricted against transportation solely in the Commonwealth of Virginia.

The executed bilateral agreement between transferor and transferee provides for the sale of Certificate No. 100 for a specified amount on March 16, 1988. The agreement provides, inter alia,

THE CORPORATION MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND AS TO THE ASSURANCE OR GUARANTY OF SUCCESSFUL TRANSFER OF THE AUTHORITY FROM THE CORPORATION TO AMERICAN COACH. AMERICAN COACH PURCHASES THE CONDITIONAL RIGHT TO THE USE OF SUCH AUTHORITY AT ITS OWN RISK. (No emphasis added.)

American Coach Lines, Inc., is cautioned that it has no right to "use" Certificate No. 100 prior to Commission approval of the transfer.

American Coach Lines, Inc., is a District of Columbia corporation, holding WMATC Certificate No. 1. The application states that transferee is wholly owned by Frank Sherman, Jr., who is the company's sole director and its president. Kathleen Hutson is transferee's secretary, and Elizabeth Sherman is its treasurer. Transferee's Certificate No. 1 authorizes the following transportation:

IRREGULAR ROUTES:

Passengers and their baggage:

(a) CHARTER OPERATIONS:

Round-trip sightseeing or pleasure tours,  
between points in the Metropolitan  
District;

(b) SPECIAL OPERATIONS:

Round-trip sightseeing or pleasure tours,  
between points in the Metropolitan  
District.

RESTRICTED in (a) and (b) above against any  
intrastate transportation within the states of  
Maryland and Virginia.

As part of the application transferee's balance sheet dated November 30, 1987, was submitted. The balance sheet shows current assets of \$1,384,754 including "accounts receivable" of \$1,206,295 and "inventory" of \$97,550, plus fixed assets after allowance for depreciation of \$615,386, resulting in total assets of \$2,000,140. Current liabilities of \$909,678, including \$362,637 due on long-term debt and \$265,112 "deferred revenue recorded in advance." Long-term liabilities of \$595,245 are listed. Equity consists of \$200 capital stock, \$3,800 earned surplus, and \$491,217 "proprietors' equity." Transferee's operating statement for the six months ended November 30, 1987, reflects WMATC operating income of \$418,563 plus other operating income of \$1,463,098. Total operating expenses, including depreciation and taxes--unallocated between WMATC and non-WMATC operations--of \$1,603,529 are listed, resulting, after allowance for interest expense of \$57,473, in net income for the period of \$220,659.

From the face of the application it is unclear whether this transfer should be governed by Section 4(h) or Section 12(a)(2) of Article XII, Title II of the Compact. According to the application, not all of Shaw's WMATC operating authority is intended to be transferred. However, at this time Shaw holds only WMATC Certificate No. 100 and, therefore, it would seem to retain no other operating authority subsequent to the consummation of the transfer. Moreover, documents filed with the Commission on behalf of Close Up Foundation indicate that Shaw may have divested itself of a substantial portion of the vehicles it used to transport passengers within the Metropolitan District. If the vehicles were transferred to American Coach Lines, Inc., then Section 12(a)(2) would govern. Otherwise this would be a transfer subject to Section 4(h).

In either case, because the Commission must find that the transaction is consistent with the public interest, a hearing is in order. \*/ At a minimum, consistency with the public interest requires a fit carrier. Transferee is the subject of an open Commission investigation, Case No. MP-87-08, Investigation of Compliance of American Coach Lines, Inc. Pursuant to Order Nos. 3079 and 3099, served October 9, 1987, and December 4, 1987, transferee's Certificate No. 1 was suspended for a 90-day period ended March 11, 1988, upon a finding of violations of the Compact and Commission rules, regulations, and orders. Pursuant to those same orders the Commission will continue to audit transferee's operations for six months. The first audit visit is scheduled for Thursday, March 31, 1988. The hearing will be scheduled to accomodate receipt of the report of that first visit.

THEREFORE, IT IS ORDERED:

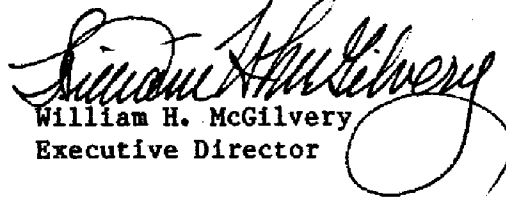
- 1) That American Coach Lines, Inc., is hereby made a co-applicant and a party to these proceedings.
- 2) That Case No. AP-88-09 is hereby scheduled for public hearing to commence Tuesday, May 17, 1988, at 9:30 a.m. in the Hearing Room of the Commission, Room 314, 1625 I Street, N.W., Washington, D.C. 20006.
- 3) That Shaw Bus Service, Inc., and American Coach Lines, Inc., are hereby directed, jointly and severally, to publish once in a newspaper of general circulation in the Metropolitan District no later than Tuesday, April 12, 1988, and to post conspicuously and continuously in each and all of their vehicles, from Tuesday, April 12, 1988, through the date of public hearing, notice of hearing thereon in the form prescribed by the Commission staff, and to produce at the hearing affidavits of said publication and posting.
- 4) That any person desiring to protest shall file a protest in accordance with Commission Rule No. 14 or any person desiring to be heard on this matter shall so notify the Commission in writing no later than Friday, May 6, 1988, and shall simultaneously serve a copy of said protest or notice on Steven L. Weiman, Esq., 444 North Frederick Avenue, Suite 200, Gaithersburg, Md. 20877 and Leonard A. Jaskiewicz, Esq., 1730 M Street, N.W., Suite 501, Washington, D.C. 20036.
- 5) That Shaw Bus Service, Inc., and American Coach Lines, Inc., are hereby, jointly and severally, assessed \$750 pursuant to Title II, Article XII, Section 19 of the Compact and directed to deliver said amount to the office of the Commission no later than Friday, May 6, 1988.

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\*/ Under Title II, Article XII, Section 12 of the Compact, notice and hearing are mandated. There is no mandate in Section 4(h). However, where facts must be found, the Commission may and should hold a public hearing to determine those facts.

6) That American Coach Lines, Inc., is hereby directed to file with the Commission no later than Monday, April 18, 1988, an original and four copies of the following: (a) an operating statement including the period December 4, 1987, through March 11, 1988; (b) an affidavit stating all properties acquired by it or its principals from Shaw Bus Service, Inc., since January 1, 1988, and the agreements, if any, governing said acquisition(s); (c) evidence of ownership of American Coach Lines, Inc.; (d) an equipment list stating the make, model, serial number, vehicle number, seating capacity, and license plate number (with jurisdiction) for each and every vehicle owned or used by American Coach Lines, Inc., in the Metropolitan District; and (e) a proposed tariff covering the operations which would be authorized if this transfer were approved.

FOR THE COMMISSION:

  
William H. McGilvery  
Executive Director