

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 5065

IN THE MATTER OF:

Served April 24, 1997.

Investigation of Unauthorized)
Operations of GREAT AMERICAN) Case No. MP-96-54
TOURS, INC., and THE AIRPORT)
CONNECTION, INC. II, and)
Affiliation with AIRPORT BAGGAGE)
CARRIERS, INC., WMATC No. 150)

This investigation was initiated on September 25, 1996, in Order No. 4943, after the Commission had received and obtained a number of documents indicating that Great American Tours, Inc. (GAT), and The Airport Connection, Inc. II (TAC II), were operating in the Metropolitan District in violation of the Compact.¹ To confirm our suspicions, we directed respondents to produce any and all records in their possession, custody or control relating to transportation of passengers for hire between points in the Metropolitan District during the period beginning September 1, 1995, and ending September 25, 1996. We also directed each respondent to file a current list of officers, directors and shareholders. Finally, we directed GAT and TAC II to cease and desist operations in the Metropolitan District.

The Commission subsequently discovered that Airport Baggage Carriers, Inc. (ABC), WMATC Carrier No. 150, had merged into GAT as of December 31, 1994, and that the merged entity had been operating in the Metropolitan District. This discovery was made when respondents filed a motion to stay the investigation to allow respondents "an opportunity to resolve their corporate structure." The motion to stay was denied in Order No. 4986, served December 17, 1996, on the grounds that sufficient time had passed for reversing the merger or obtaining Commission approval.

Order No. 4986 directed respondents to show cause why a civil forfeiture should not be assessed and why Certificate No. 150, issued to ABC, should not be suspended for merging a WMATC carrier into a non-WMATC carrier without Commission approval. Operations under Certificate No. 150 were immediately banned because ABC had merged into a carrier which had been ordered to cease and desist operations in the Metropolitan District.

The record now shows that respondents have reversed the merger of ABC into GAT. It was for this reason we issued Order No. 5007, served January 23, 1997, lifting the ban on operations under

¹ The documents included a certificate of insurance in the name of all three respondents, a local yellow pages listing in the name of "Airport Connection & Great American Tours," and a local itinerary on GAT/TAC II letterhead. See Order No. 4943.

Certificate No. 150. For the same reason, we find that ABC has shown good cause for not suspending Certificate No. 150.² Respondents have not shown good cause, however, for avoiding a civil forfeiture.

The record, which consists chiefly of contracts, invoices, itineraries and driver records for transportation performed between September 1, 1995, and September 25, 1996,³ shows that prior to 1996, it was the practice of GAT and TAC II to execute a standard contract for transportation service in the Metropolitan District when dealing directly with the public.⁴ The standard contract heading was inscribed "Great American Tours" on the first line and "The Airport Connection, II" on the second. The standard contract was binding "by and between The Airport Connection / Great American Tours (hereafter referred to as 'TAC')" and the client. Although "TAC" undertook to make all arrangements and payments to suppliers, the standard contract purported to be a "transportation service agreement," as signed by Joseph Dolan, the Director of Sales for "TAC The Airport Connection II, Inc. / Great American Tours, Inc."

The standard contract was amended in early 1996.⁵ Thereafter, it was binding "by and between Great American Tours (hereafter referred to as 'GAT')" and the client. "GAT" undertook to make all arrangements and payments to suppliers, but the amended standard contract, nevertheless, purported to be a "transportation service agreement," as signed by Joseph Dolan, the Director of Sales for "GAT

² Inasmuch as the GAT/ABC merger has been reversed and GAT has ceased operating as a carrier (GAT has signed a lease transferring complete control of its only vehicles to ABC), common control of ABC and GAT no longer requires Commission approval. Common control of ABC and TAC II was approved in 1989. See In re The Airport Connection, Inc., & Airport Baggage Carriers, Inc., No. AP-88-27, Order No. 3302 (Mar. 13, 1989) (approving transfer of authority to ABC while ABC and TAC II were affiliated).

³ Respondents also filed some GAT bank records and payroll records, which are discussed below, and some GAT financial statements, which are not considered competent for the purposes of this investigation because of the prominent disclaimer stating: "FOR INTERNAL PURPOSES ONLY."

⁴ See e.g., contract accompanying invoice no. 102039. On October 10, 1995, Mordecai Buckingham, who is an officer and controlling shareholder of each respondent, filed a contract tariff with the Commission for service commencing October 17, 1995, and ending July 31, 1996. The contract was not one of the standard contracts described in this order and was purportedly between ABC and Close Up Foundation. Close Up Foundation itineraries, however, identify TAC II as the carrier Close Up understood was performing the contract. See e.g. invoices nos. 102232 and 102775 and accompanying documents.

⁵ See e.g., contracts accompanying invoices nos. 103234 and 103239.

Great American Tours, Inc." The contract heading still said "Great American Tours" on the first line and "The Airport Connection, II" on the second.

One client, the Smithsonian Institution, apparently insisted on using its own standard contract. The details surrounding formation of that contract are significant. On April 18, 1996, the Smithsonian Institution sent a letter to "Airport Connection" describing a need for local shuttle service from June 24 through July 9.⁶ A reply was mailed the next day on "Great American Tours" "The Airport Connection II" letterhead and informed the Smithsonian that Great American Tours, Inc., was a "subsidiary" of "The Airport Connection" and a "full-service charter motorcoach company serving the Metropolitan Washington, Northern Virginia and suburban Maryland communities since 1972." The letter was signed by Joseph Dolan, Director of Sales.⁸ The contract was signed on May 15, 1996, and identified "Great American Tours" "The Airport Connection II" as the "contractor."⁹

Invoices were standardized, as well. Prior to September 1996, the standard invoice heading read "Great American Tours, Inc." on the first line and "Airport Connection II" on the second. Several of these invoices are noteworthy. Invoice no. 102039 was issued for a "TOUR WITH VAN" on September 14, 1995. According to the itinerary, the van displayed the name "Airport Connection" on the side and was used for a transfer from National Airport to a hotel in DC pursuant to the standard contract described above.¹⁰ According to invoice no. 102057, and the accompanying itinerary, "2 TAC BUSES" and "2 GAT BUSES" were furnished on September 19, 1995, for shuttle service in DC. Invoice no. 102068 and the accompanying itinerary indicate that "ONE (1) GAT COACH" was provided for shuttle service in DC on September 21, 1995, as confirmed by Joseph Dolan on behalf of "THE AIRPORT CONNECTION." Similar requests for and confirmations of service in the Metropolitan District in "GAT" and "TAC" coaches are reflected in other invoices throughout the investigatory period.¹¹

⁶ See letter from Bill Holmes accompanying invoice no. 102916.

⁷ Letter to Bill Holmes accompanying invoice no. 102916 (emphasis added).

⁸ An identical letter was issued June 25, 1996, to another client. See letter accompanying invoice no. 102998. This form letter thus appears to be a standard marketing device, raising the inference that similar letters were sent to other potential customers.

⁹ Contract accompanying invoice no. 102916.

¹⁰ According to vehicle lists recently provided to the Commission by respondents, only TAC II owns and operates vans.

¹¹ See e.g., invoices nos. 102762, 103025, 103032, 103043 and accompanying documents.

A new standard invoice was adopted in late September 1996 under the name "AIRPORT BAGGAGE CARRIERS, INC."¹² Shareholder/director minutes filed in response to Order No. 4986, however, show that the merger of ABC into GAT was not reversed until the end of 1996, and six of seven motorcoaches inspected by Commission staff in early January 1997 were still marked in conspicuous letters, "The Airport Connection," even though they were purportedly "owned and operated by ABC." Moreover, contracts and purchase orders underlying the new ABC invoices identify GAT as the contracting party in two instances and confirm that passengers were transported in "One GAT Coach" on one occasion and in one "Great American Tour" coach on another.¹³

Revenue was funnelled through GAT's bank accounts. Driver wages were paid out of a GAT payroll account.¹⁴ No records were produced that would establish respondents had subcontracted out any work.

Based on this evidence, we find that GAT and TAC II, individually and jointly, transported passengers for hire between points in the Metropolitan District from September 1, 1995, through September 25, 1996.

Respondents admit that they "have been operating in a manner combining all three entities" and acknowledge that the records submitted in response to Order No. 4943 "indicate the lack of separation and individual control of the companies."¹⁵ Respondents concede that their owners/officers, Mordecai E. Buckingham and David L. Buckingham, "treated the respondent companies as one business for the convenience of the transportation operation."¹⁶ "[T]he banking was done through essentially one business account."¹⁷ The "books were combined," and "financial statements were prepared as one company."¹⁸

Article XIII, Section 6(f), provides that a person who knowingly and willfully violates a provision of the Compact 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 and that each day of the violation constitutes a separate violation. The term "knowingly" means with perception of the underlying facts, not

¹² See e.g., invoice no. 103225.

¹³ See contracts accompanying invoices nos. 103234 and 103239, and purchase orders accompanying invoices nos. 103225 and 103238.

¹⁴ Compare, e.g., driver assignment records accompanying invoices nos. 102012, 102530 and 103225 with GAT payroll records for the weeks ending Sept. 8, 1995, April 5, 1996, and Sept. 20, 1996.

¹⁵ Response to Order No. 4986 at 1.

¹⁶ Id. at 2.

¹⁷ Id. at 2.

¹⁸ Id. at 2.

that such facts establish a violation.¹⁹ "Willfully" does not mean with evil purpose or criminal intent; rather, it describes conduct marked by careless disregard whether or not one has the right so to act.²⁰

GAT has never held any operating authority from this Commission, and TAC II's WMATC operating authority was revoked in 1991.²¹ Moreover, under Title II of the Compact, Article XI, Section 11, Commission approval is required when a WMATC carrier transfers its certificate by merging into another corporation.²² As a WMATC carrier, ABC is charged with this knowledge,²³ which is attributable to commonly-controlled affiliates, such as GAT.²⁴ At the very least, GAT was careless in not consulting with the Commission prior to holding itself out as a carrier in the Metropolitan District and commencing post-transfer operations. At the same time, TAC II was aware that its operating rights in the Metropolitan District had been revoked in 1991. Consequently, we find that respondents' violations of the Compact were knowing and willful.

The record reveals that operations were conducted unlawfully on 263 days during the period under investigation. We will assess a civil forfeiture against respondents, jointly and severally, in the amount of \$250 per day,²⁵ for a total of \$65,750. We will suspend all but \$3,000, in recognition of respondents' cooperation with the investigation and the flawed attempt by GAT to file a transfer application before the investigation was initiated.

Respondents have requested that the Commission treat the documents produced in this proceeding as confidential business records. We will grant respondents' request in part. Many of the records submitted by respondents pertain to trips outside the

¹⁹ In re All-Star Presidential, LLC, & Presidential Coach Co., & Presidential Limo. Serv., Inc., No. MP-95-82, Order No. 4774 (Feb. 27, 1996).

²⁰ Id.

²¹ In re The Airport Connection, Inc., II, No. MP-91-14, Order No. 3761 (May 21, 1991).

²² See In re Boston Coach-Wash. Corp., No. AP-93-21, Order No. 4163 (Sept. 13, 1993) (WMATC carrier merged into new corporation).

²³ Cf., Order No. 4774 (WMATC carrier charged with knowledge of need for approval of merger under art. XII, § 3). In fact, ABC first acquired WMATC operating authority by transfer. See In re The Airport Connection, Inc., & Airport Baggage Carriers, Inc., No. AP-88-27, Order No. 3302 (Mar. 13, 1989) (approving partial transfer of certificate).

²⁴ Order No. 4774.

²⁵ See id. (operations by affiliates of WMATC carrier assessed at \$250 per day).

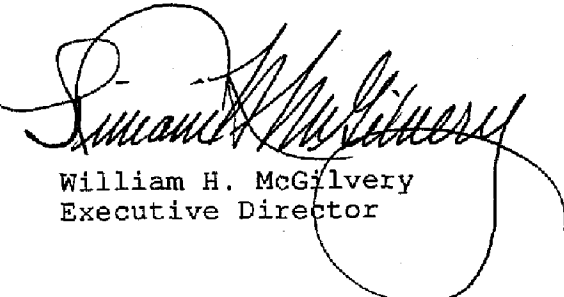
Commission's jurisdiction. These shall be accorded confidential status. Records pertaining to trips within the Commission's jurisdiction shall not. However, because of space limitations, only a small number of copies, and summaries prepared from these by staff, shall be retained in the public record, and only to the extent necessary to support our findings herein. Respondents may reclaim their records once this proceeding, including any appeals, has terminated.

THEREFORE, IT IS ORDERED:

1. That the Commission hereby assesses a net civil forfeiture against respondents, jointly and severally, in the amount of \$3,000, for knowing and willful violations of the Compact, and that respondents are hereby directed to pay to the Commission within thirty days from the date of this order, by money order, certified check, or cashiers check, the sum of three thousand dollars (\$3,000).

2. That upon respondents' failure to timely pay the net forfeiture, Certificate of Authority No. 150 shall stand suspended and subject to revocation without further proceedings, and the full assessed forfeiture of \$65,750 shall stand reinstated and immediately due and payable.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS ALEXANDER, LIGON, AND MILLER:



William H. McGilvery
Executive Director