

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 6577

IN THE MATTER OF:

Served March 20, 2002

Investigation of Forfeiture of )  
Corporate Charter of V.I.P. TOURS, )  
INC., and Unauthorized Operations )  
of V.I.P. TOURS, L.L.C. )

Case No. MP-2001-98

This proceeding was initiated on October 3, 2001, in Order No. 6376 for the purpose of investigating the unlawful transfer of Certificate No. 85 and the unauthorized operations of V.I.P. Tours, L.L.C.

V.I.P. Tours, Inc., WMATC Carrier No. 85, forfeited its Maryland charter on October 6, 1998. Under Maryland law, a corporation ceases to exist upon forfeiture of its charter, and all assets transfer to the corporation's directors.<sup>1</sup> Because V.I.P. Tours, Inc., is a close corporation without directors, the assets, including Certificate No. 85, transferred to the managing shareholders, Jimmie L. Davenport and James L. Hughes.<sup>2</sup> Mr. Davenport and Mr. Hughes subsequently formed a limited liability company, V.I.P. Tours, L.L.C., on June 30, 2000, and began operating that company under color of Certificate No. 85.

Under the Compact, Commission approval must be obtained before transferring a WMATC Certificate of Authority.<sup>3</sup> A person other than the person to whom an operating authority is issued by the Commission may not lease, rent, or otherwise use that operating authority.

Order No. 6376 gave Mr. Davenport and Mr. Hughes thirty days to show cause why the Commission should not assess a civil forfeiture against them for knowingly and willfully violating the certificate transfer provisions of the Compact and why Certificate No. 85 should not be revoked. V.I.P. Tours, L.L.C., was given thirty days to produce any and all records in its possession, custody or control relating to its operations in the Metropolitan District from June 30, 2000, until October 3, 2001.

The response deadline was extended twice at respondents' request, at first until December 17, 2001, and then until January 13, 2002. On January 15, 2002, respondents filed a copy of the articles

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<sup>1</sup> Cloverfields Improvement Ass'n, Inc., v. Seabreeze Properties, Inc., 362 A.2d 675 (Md. Ct. Spec. App. 1976), aff'd, 373 A.2d 935 (Md. 1977).

<sup>2</sup> See MD. CORPS. & ASS'NS CODE ANN. § 4-303(2) (2001) (stockholders assume board responsibilities in close corporation with no directors).

<sup>3</sup> Compact, tit. II, art. XI, § 11(a).

<sup>4</sup> Compact, tit. II, art. XI, § 11(b).

of revival of V.I.P. Tours, Inc., dated December 28, 2001. On January 18, 2002, respondents filed a copy of a Maryland certificate of good standing for V.I.P. Tours, Inc., dated January 14, 2002. Respondents presented no defense to the charge of unlawful transfer of Certificate No. 85 and produced no documents relating to the operations of V.I.P. Tours, L.L.C., in the Metropolitan District.

Having filed a current certificate of good standing for V.I.P. Tours, Inc., we find that Mr. Davenport and Mr. Hughes have shown good cause for not revoking Certificate No. 85. V.I.P. Tours, Inc., has been revived and is in good standing.

We find that Mr. Davenport and Mr. Hughes have not shown good cause for avoiding a civil forfeiture for knowingly and willfully violating the certificate transfer provisions of the Compact.<sup>5</sup> "Knowingly" means with perception of the underlying facts, not that such facts establish a violation.<sup>6</sup> "Willfully" describes conduct marked by careless disregard.<sup>7</sup> Employee negligence is no defense.<sup>8</sup>

Mr. Davenport's and Mr. Hughes's careless disregard for maintaining the corporate identity of V.I.P. Tours, Inc., compromised the certainty of coverage under the Commission's insurance endorsement. However, because it is their first offense, we will assess a forfeiture of only \$250.

Respondents will have fifteen days to request a hearing on the evidence that they operated under color of Certificate No. 85 from October 6, 1998, until January 14, 2002. Alternatively, respondents may give up their right to a hearing, and their right to administrative reconsideration and judicial review, and within thirty days pay a civil forfeiture of \$500 for knowingly and willfully violating Article XI, Section 11(b), of the Compact.

THEREFORE, IT IS ORDERED:

1. That the Commission hereby assesses a civil forfeiture against respondents Jimmie L. Davenport and James L. Hughes, jointly and severally, in the amount of \$250 for knowingly and willfully violating Article XI, Section 11(a), of the Compact.

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<sup>5</sup> A person who knowingly and willfully violates a provision of the Compact, or a rule, regulation, requirement or order issued under it, or a term or condition of a certificate 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. Compact, tit. II, art. XIII, § 6(f)(i).

<sup>6</sup> In re ResponseCare Mobile Health Services, LLC, t/a ResponseCare & ResponseCare Mobility Services & LifeStar Response of Maryland, Inc., t/a LifeStar Response, No. MP-99-27, Order No. 5709 (Sept. 23, 1999); In re Safe Transp., Inc., No. MP-96-15, Order No. 4849 (May 17, 1996).

<sup>7</sup> Order No. 4849.

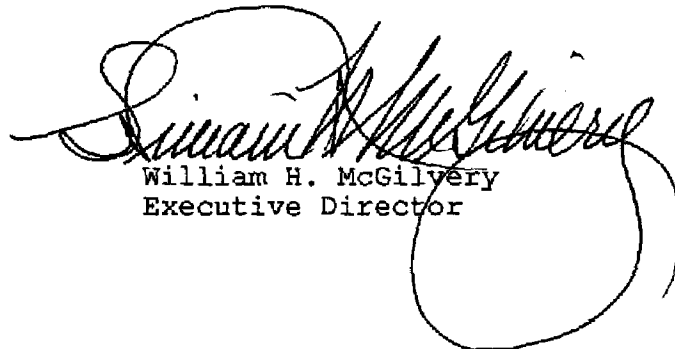
<sup>8</sup> Order No. 5709; Order No. 4849. To hold carriers not liable for violations due to mere indifference, inadvertence, or negligence of employees would defeat the purpose of civil penalties. United States v. Illinois Cent. R.R., 303 U.S. 239, 243, 58 S. Ct. 533, 535 (1938).

2. That respondents Jimmie L. Davenport and James L. Hughes are hereby directed to pay to the Commission within thirty days of the date of this order, by money order, certified check, or cashier's check, the sum of two hundred fifty dollars (\$250).

3. That respondents Jimmie L. Davenport, James L. Hughes, and V.I.P. Tours, L.L.C., shall have 15 days from the date of this order to request a hearing on the evidence that they operated under color of Certificate No. 85 from October 6, 1998, until January 14, 2002. Alternatively, respondents may give up their right to a hearing, and their right to administrative reconsideration and judicial review, and within thirty days pay a civil forfeiture of five hundred dollars (\$500), by money order, certified check, or cashier's check, for knowingly and willfully violating Article XI, Section 11(b), of the Compact.

4. That upon respondents' failure to timely comply with the requirements of this order, Certificate No. 85 shall stand suspended, and V.I.P. Tours, Inc., shall have thirty days thereafter to show cause why Certificate No. 85 should not be revoked.

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



William H. McGilvery  
Executive Director

