

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 7066

IN THE MATTER OF:

Served March 4, 2003

WILLIAM E. GILLISON, Trading as) Case No. MP-2002-97
QUIANA TOURS, WMATC No. 290,)
QUIANA TOURS, INC., and BARON)
TRANSPORTATION, INC., WMATC No. 33,)
Investigation of Unauthorized)
Operations and Violation of)
Regulations Governing Vehicle)
Identification and Leases)

This matter is before the Commission to evaluate Baron's response, and Gillison's lack of response, to Order No. 6977, served December 23, 2002.

I. BARON

Baron's certificate of authority was automatically suspended on June 6, 2002, for Baron's willful failure to replace an expired WMATC Certificate of Insurance and Policy Endorsement (WMATC Insurance Endorsement) in compliance with Commission Regulation No. 58, as noted in Order No. 6685, served the same day.¹ The order also noted that Baron had failed to pay the \$100 annual fee for 2002, as required by Article IV, Section 4(a), of the Compact, Regulation No. 67 and Order No. 3601. Accordingly, the order directed Baron to cease and desist from conducting transportation subject to the Compact, unless and until otherwise ordered by the Commission. Baron was given thirty days to file a new WMATC Insurance Endorsement and pay the annual fee or face revocation of Certificate No. 33. Baron failed to comply, and Certificate of Authority No. 33 was revoked on August 7, 2002, in Order No. 6763.² The revocation order, among other things, directed Baron to remove from its buses the identification placed thereon pursuant to Regulation No. 61.

In the meantime, Baron had faxed to the Commission a purported lease between Baron and "Quiana Tours" covering Baron's five buses and

¹ In re Baron Transp., Inc., No. MP-02-42, Order No. 6685 (June 6, 2002).

² In re Baron Transp., Inc., No. MP-02-42, Order No. 6763 (Aug. 7, 2002). Baron eventually filed a WMATC Insurance Endorsement and an application for reconsideration on September 5, 2002. The decision on whether to reinstate Certificate No. 33 is on hold pending the outcome of this proceeding.

copies of five insurance cards showing that the buses were being carried on an insurance policy issued to Gillison. The Commission subsequently obtained a vehicle list from Gillison's insurance company confirming that the five Baron buses had been added to Gillison's policy effective June 5, 2002.

This investigation was initiated in Order No. 6810, served September 20, 2002, when it appeared that Baron had not relinquished control of the buses to Gillison after all but, rather, had continued operating between points in the Metropolitan District while suspended and revoked. The order directed respondents to bring their operations into compliance with the Compact and Commission regulations and to produce their revenue vehicles for inspection by Commission staff. The order further directed Baron to produce records of its operations in the Metropolitan District from May 31, 2002, through September 20, 2002. Baron produced the records, which showed that Baron had indeed continued operating between points in the Metropolitan District while suspended and revoked, but neither respondent produced the Baron buses for inspection.

Order No. 6977, therefore, gave Baron thirty days to produce its buses for inspection and to show cause why the Commission should not assess civil forfeitures against Baron for knowingly and willfully violating Article XI, Section 6(a), of the Compact by operating without authority and for knowingly and willfully violating Commission Order No. 6810 by failing to produce the buses. In addition, because Baron's buses had been observed operating in the District of Columbia after Order No. 6810 was issued, Order No. 6977 directed Baron to produce records of its operations in the Metropolitan District from September 21, 2002, through December 23, 2002.

Baron responded to Order No. 6977 by timely producing its buses and responsive records. The inspections revealed that the letters "WMATC" are still displayed on each bus, the number "33" apparently having been removed. The records, on the other hand, show no signs of operations between points in the Metropolitan District after September 20, 2002. Respondent's president denies in a sworn statement any such operations after September 20, 2002.

As for operations between points in the Metropolitan District while suspended and revoked Baron argues in a separate statement that the insurance arrangements through Gillison made those operations lawful. Baron further asserts that at no time did Baron knowingly or willfully violate the Compact or rules thereunder.

Under Article XI, Section 7(g), of the Compact, a certificate of authority is not valid unless the holder is in compliance with the insurance requirements of the Commission. Commission Regulation No. 58 requires respondent to insure the revenue vehicles operated under Certificate No. 33 for a minimum of \$5 million in combined-single-limit liability coverage and maintain on file with the Commission at all times proof of coverage in the form of a WMATC

Insurance Endorsement issued in respondent's name for each policy comprising the minimum. Having Gillison insure Gillison's operation of Baron's buses and having Gillison file a WMATC Insurance Endorsement in Gillison's name does not satisfy Baron's obligation to insure Baron's operation of its buses and file a WMATC Insurance Endorsement in Baron's name. Consequently, during the relevant period, from June 6, 2002, through September 20, 2002, Baron was not in compliance with Regulation No. 58, and Certificate No. 33 was by force of statute necessarily invalid. We therefore find that Baron's operations between points in the Metropolitan District during the period it was out of compliance with Regulation No. 58 violated Article XI, Section 6(a), of the Compact, which mandates that a person may not engage in transportation subject to the Compact unless there is in force a certificate of authority issued by the Commission authorizing the person to engage in that transportation.

With respect to whether Baron's unlawful operations in the Metropolitan District were knowingly and willfully in violation of the Compact, we believe Baron misapprehends the meaning of those terms. The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.³ The terms "willful" and "willfully" do not mean with evil purpose or criminal intent; rather, they describe conduct marked by careless disregard whether or not one has the right so to act.⁴ We find that Baron was careless in disregarding the plain requirements of Regulation No. 58 and the plain mandate in Order No. 6685 to cease and desist from conducting transportation subject to the Compact, unless and until otherwise ordered by the Commission.

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.⁵ Each day of the violation constitutes a separate violation.⁶

As noted in Order No. 6977, the records produced by Baron establish that Baron operated its buses between points in the Metropolitan District, while suspended and revoked, on twenty-four

³ In re Washington Exec. Sedan, Inc., & Global Express Limo. Serv., Inc., No. MP-02-03, Order No. 6772 (Aug. 13, 2002).

⁴ Id.; In re All-Star Presidential, LLC, & Presidential Coach Co., & Presidential Limo. Serv., Inc., No. MP-95-82, Order No. 4961 (Oct. 29, 1996).

⁵ Compact, tit. II, art. XIII, § 6(f)(i).

⁶ Compact, tit. II, art. XIII, § 6(f)(ii).

separate days.⁷ We shall assess a forfeiture against Baron in the amount of \$250 per day for twenty-four days of unauthorized operations,⁸ or \$6,000. We will assess an additional forfeiture against Baron in the amount of \$250 for failing to produce the buses for inspection by October 20, 2002, as commanded by Order No. 6810. Baron shall have thirty days to show cause why the Commission should not assess a civil forfeiture for failing to completely remove the Regulation No. 61 markings from its buses as commanded by Order No. 6763.

II. GILLISON

This part of the investigation was precipitated by Gillison filing his 2001 annual report in the name of Quiana Tours, Inc. This happened once before when Gillison filed his annual report for 1997. The Commission opened an investigation into whether Gillison had transferred control to the corporation.⁹ The investigation revealed that Gillison had formed Quiana Tours, Inc., as a Maryland corporation in 1994 but that the corporate charter had been forfeited in 1996.¹⁰ Order No. 5359, served June 25, 1998, directed Gillison to cease and desist all operations in the Metropolitan District under the name "Quiana Tours, Inc."¹¹ Gillison assured the Commission that he would file an application to transfer Certificate No. 290 to Quiana Tours, Inc., once the charter had been revived.¹² The charter was revived in 1999, forfeited again in 2001, and revived again in January of 2002, but no transfer application was filed until December 3, 2002 (Case No. AP-2002-140).

As noted above, Order No. 6810 directed respondents to bring their operations into compliance with the Compact and Commission regulations and to produce their revenue vehicles for inspection by Commission staff. The order further directed Gillison and Quiana Tours, Inc., to produce any and all records and documents in their possession, custody or control relating to transportation of passengers for hire between points in the Metropolitan District during the period beginning August 5, 1999, and ending on September 20, 2002.

⁷ The record further shows that all but one of those violations occurred prior to September 4, 2002, the effective date of coverage under Baron's new insurance policy.

⁸ See Order No. 6772 (civil forfeiture for operating without authority assessed at \$250 per day).

⁹ In re William E. Gillison, t/a Quiana Tours, & Quiana Tours, Inc., No. MP-98-16, Order No. 5308 (Apr. 7, 1998).

¹⁰ In re William E. Gillison, t/a Quiana Tours, & Quiana Tours, Inc., No. MP-98-16, Order No. 5359 (June 25, 1998).

¹¹ Id.

¹² Id.

Gillison subsequently produced records showing that: (1) the name Quiana Tours, Inc., began appearing on driver paychecks on September 28, 2000, and on customer invoices on December 4, 2001; (2) a federal income tax return was filed in the name of Quiana Tours, Inc., for 2001; and (3) driver logs for April through September, 2002, the only period for which such records were provided, identify the employer as Quiana Tours, Inc. Records obtained by the Commission from the website of the Taxpayer Services Division of the Maryland State Department of Assessments and Taxation, show that personal property returns were filed in the name Quiana Tours, Inc., on July 21, 1999, January 15, 2002, and November 26, 2002.

Staff inspection of the four vehicles produced by Gillison revealed that most of the markings on Gillison's vehicles do not comply with Regulation No. 61 because they are two inches in height or less.¹³ The inspections also revealed that Gillison is not the owner of those vehicles, and Commission records show that Gillison did not comply with the lease filing requirement of Commission Regulation No. 62 until December 3, 2002.

Order No 6977, therefore, gave Gillison thirty days to show cause why the Commission should not assess a civil forfeiture against Gillison for violating the mandate in Order No. 5359 to cease and desist all operations in the Metropolitan District under the name "Quiana Tours, Inc.," and to show cause why the Commission should not assess civil forfeitures against Gillison for violating Regulation Nos. 61 and 62.

Gillison has not responded to Order No. 6977. Accordingly, we shall assess a forfeiture against Gillison in the amount of \$250 each, \$750 total, for knowingly and willfully violating Order No. 5359, Regulation No. 61 and Regulation No. 62.

Also, because Gillison has not offered any evidence that he has ceased operating under the name "Quiana Tours, Inc." and that the markings on his vehicles have been brought into compliance with Regulation No. 61, he shall have thirty days to show cause why Certificate No. 290 should not be suspended or revoked pursuant to Article XI, Section 10(c), of the Compact for willful ongoing failure to comply with Order No. 5359 and Regulation No. 61.

IV. CONCLUSION

Baron shall have thirty days to pay a combined forfeiture of \$6,250 and to show cause why the Commission should not assess a forfeiture for Baron's failure to remove all Regulation No. 61 markings from its buses. Gillison shall have thirty days to pay a combined

¹³ See In re Great American Tours, Inc., & The Airport Connection, Inc. II, & Airport Baggage Carriers, Inc., No. MP-96-54, Order No. 5007 (two-inch lettering does not meet Regulation No. 61 legibility standard) (Jan. 23, 1997).

forfeiture of \$750 and to show cause why Certificate No. 290 should not be suspended or revoked.

THEREFORE, IT IS ORDERED:

1. That the Commission hereby assesses a civil forfeiture against Baron in the amount of \$6,250 for knowingly and willfully violating Article XI, Section 6(a), of the Compact and Order No. 6810.

2. That Baron is 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 six thousand two hundred fifty dollars (\$6,250).

3. That Baron shall have thirty days to show cause why the Commission should not assess a civil forfeiture for knowingly and willfully failing to remove all Regulation No. 61 markings from its buses in violation of Order No. 6763.

4. That the Commission hereby assesses a civil forfeiture against Gillison in the amount of \$750 for knowingly and willfully violating Order No. 5359, Regulation No. 61 and Regulation No. 62.

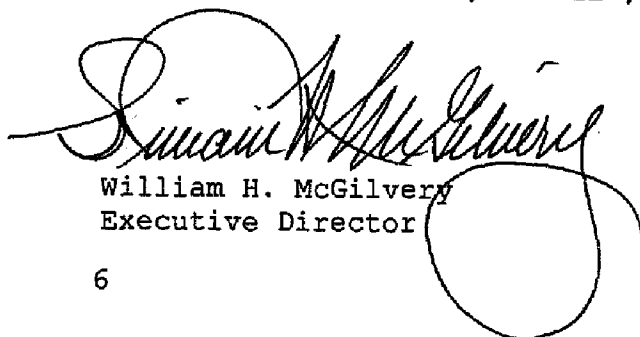
5. That Gillison is hereby directed to pay to the Commission within thirty days of the date of this order, by money order, certified check, or cashier's check, the sum of seven hundred fifty dollars (\$750).

6. That Certificate of Authority No. 290 shall stand suspended, and be subject to revocation without further notice, upon Gillison's failure to timely pay the assessed forfeiture.

7. That Gillison shall have thirty days to show cause why the Commission should not suspend or revoke Certificate No. 290 for willful failure to comply with Order No. 5359 and Regulation No. 61.

8. That Baron, for the purpose of contesting a forfeiture for not removing all Regulation No. 61 markings, and Gillison, for the purpose of contesting suspension or revocation, may each file within 15 days from the date of this order a request for oral hearing specifying the grounds for the request, describing the evidence to be adduced and explaining why such evidence cannot be adduced without an oral hearing.

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



William H. McGilvery
Executive Director