

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 7096

IN THE MATTER OF:

Served March 19, 2003

ZOHERY TOURS INTERNATIONAL, INC., )  
WMATC No. 362, Investigation of )  
Violation of Seating Capacity )  
Restriction and Commission )  
Regulations Governing Vehicle )  
Markings and Leases and Advertising )

Case No. MP-2002-46

This matter is before the Commission on respondent's application for reconsideration of Commission Order No. 7005, served January 21, 2003, which assessed a civil forfeiture against respondent in the amount of \$20,750 and revoked Certificate No. 362 for respondent's continuing violation of the 15-person vehicle seating capacity restriction in Certificate No. 362 in the face of a Commission cease-and-desist order, Order No. 6710.

A party to a proceeding affected by a final order or decision of the Commission may file within 30 days of its publication a written application requesting Commission reconsideration of the matter involved, and stating specifically the errors claimed as grounds for the reconsideration.<sup>1</sup> If the application is granted, the Commission shall rescind, modify, or affirm its order or decision with or without a hearing, after giving notice to all parties.<sup>2</sup>

Respondent timely filed the application on February 20, 2003, and in it requests that the revocation be rescinded and the forfeiture reduced. Respondent states that without WMATC operating authority it lacks the means to pay the assessed forfeiture. Respondent points out that it had a clean record prior to the violations cited in Order No. 7005 and notes that its owner filed an application for unrestricted authority last summer.<sup>3</sup>

The Commission has reduced forfeitures in the past where the violators filed, or made attempts to file, applications for operating authority prior to or during the midst of the violations. In fact,

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<sup>1</sup> Compact, tit. II, art. XIII, § 4(a).

<sup>2</sup> Compact, tit. II, art. XIII, § 4(d).

<sup>3</sup> The application was not acceptable for filing and was rejected on July 19, 2002.

this has been the Commission's approach in six such cases,<sup>4</sup> with none to the contrary. Moreover, the Commission has reduced the assessed forfeiture when, as here, the violator produces inculpatory evidence.<sup>5</sup> Finally, in suspending some or all of the assessment, the Commission may consider the violator's previous compliance record.<sup>6</sup>

The reduction in forfeiture must take into account the purposes served by assessing a forfeiture in the first place. The civil forfeiture provision of the Compact serves at least two functions: deterrence of future violations and disgorgement of unjust profits.<sup>7</sup> In the instant case, respondent admits to a profit of \$9,345 in 2002, which appears to have stemmed chiefly from respondent's unlawful operations.<sup>8</sup>

In consideration of respondent's previously clean record and production of inculpatory evidence, and respondent's owner having filed an application for unrestricted authority shortly after this investigation was launched,<sup>9</sup> we will suspend \$10,000 of the forfeiture assessed in Order No. 7005. Further reduction is not warranted given the admitted profit in 2002 and the need to deter respondent and others from persistently ignoring regulatory constraints.

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<sup>4</sup> See In re Washington Exec. Sedan, Inc., & Global Express Limo. Serv., Inc., No. MP-02-03, Order No. 6772 (Aug. 13, 2002) (\$15,750 assessed, all but \$2,500 suspended); In re Safe Ride Servs., Inc., No. MP-97-83, Order No. 5269 (Feb. 5, 1998) (\$29,750 assessed, all but \$4,500 suspended); In re Megaheds, Inc., t/a Megaheds Transp., No. AP-97-24, Order No. 5113 (June 26, 1997) (\$12,500 assessed, all but \$2,000 suspended); In re Great American Tours, Inc., & The Airport Connection, Inc. II, & Airport Baggage Carriers, Inc., No. MP-96-54, Order No. 5065 (Apr. 24, 1997) (\$65,750 assessed, all but \$3,000 suspended); DD Enters., Inc., t/a Beltway Transp. Serv., v. Reston Limo. Serv., No. FC-93-01, Order No. 4226 (Dec. 20, 1993) (\$10,000 assessed, all but \$1,500 suspended); In re Air Couriers Int'l Ground Transp. Servs., Inc., t/a Passenger Express, & United Mgmt. Corp., t/a Passenger Express, No. MP-92-05, Order No. 3955 (June 15, 1992) (\$15,375 assessed, all but \$2,000 suspended).

<sup>5</sup> See In re Malek Investment, Inc., t/a Montgomery Airport Shuttle, & Malek Investment of Va., Inc., & Assadollah Malekzadeh, No. MP-98-53, Order No. 5707 (Sept. 22, 1999) (\$50,000 assessed, all but \$15,000 suspended).

<sup>6</sup> Order No. 3955.

<sup>7</sup> Order No. 4226.

<sup>8</sup> The record in this case includes evidence of many trips in vehicles exceeding the seating capacity restriction in Certificate No. 362 and little evidence of any trips in vehicles respondent was authorized to operate.

<sup>9</sup> Order No. 6710 was issued June 21, 2002. The application for unrestricted authority was filed July 16, 2002.

As for rescinding revocation, the Commission has revoked operating authority four times in the past where carriers continued to exceed the authority in their certificates in open opposition to Commission cease-and-desist orders.<sup>10</sup> In the one case the Commission merely suspended a carrier for such conduct, the carrier had relied on advice of counsel construing the interplay between the Compact and the Interstate Commerce Act.<sup>11</sup> That is not remotely the case here. Accordingly, the request to rescind revocation shall be denied.

Finally, we are not persuaded that respondent will be unable to pay the reduced forfeiture while Certificate No. 362 remains revoked. Respondent's owner is currently leasing to Megaheds, Inc., trading as Megaheds Transportation, WMATC No. 397, one of the buses previously operated by respondent, and Megaheds has filed a cost-plus contract tariff for sightseeing tours brokered by respondent, allowing respondent to continue deriving income from tours it arranges as a broker in the Washington Metropolitan Area. Further, respondent's owner possesses other buses, which, as the tourist season ramps up, could be leased to Megaheds as demand increases, provided Megaheds files the necessary paperwork under Regulation No. 62. Respondent apparently has the option of conducting operations outside the Metropolitan District under federal authority, as well.<sup>12</sup> We will, however, modify Order No. 7005 to permit respondent to pay the reduced forfeiture in monthly installments if respondent so chooses.

THEREFORE, IT IS ORDERED:

1. That the application for reconsideration of Order No. 7005 is granted.

2. That the revocation of Certificate No. 362 as provided in Order No. 7005 is affirmed.

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<sup>10</sup> See Air Couriers Int'l Ground Transp. Servs., Inc., t/a Passenger Express, v. Madison Limo. Serv., Inc., No. FC-90-02, Order No. 3810 (Aug. 30, 1991) (certificate revoked where carrier continued to exceed authority in face of cease and desist order); In re American Coach Lines, Inc., No. MP-87-08, Order No. 3222 (Aug. 25, 1988) (same); In re D.C. Transit Sys., Inc., No. 320, Order No. 1713 (June 22, 1977) (same); In re Ira F. Gadd, t/a Columbia Sightseeing Co., No. 193, Order No. 973 (Sept. 11, 1969) (same), aff'd per curiam, No. 23,762, judgment (D.C. Cir. June 8, 1971).

<sup>11</sup> See Gold Line, Inc., v. American Coach Lines, Inc., No. FC-86-01, Order No. 3079 (Oct. 9, 1987) (holding that advice of counsel mitigates but does not absolve).

<sup>12</sup> USDOT No. 997972.

3. That within thirty days from the date of this order respondent shall:

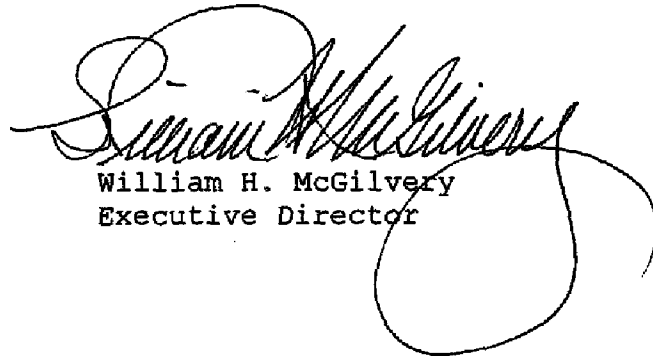
- a. remove from respondent's vehicle(s) the identification placed thereon pursuant to Commission Regulation No. 61;
- b. file a notarized affidavit with the Commission verifying compliance with the preceding requirement; and
- c. surrender Certificate No. 362 to the Commission.

4. That the \$20,750 civil forfeiture assessed in Order No. 7005 is hereby reduced to \$10,750.

5. That respondent shall pay the reduced forfeiture to the Commission, by money order, certified check, or cashier's check, within thirty days from the date of this order; provided, that in the alternative, respondent may pay the reduced forfeiture in ten equal monthly installments of \$1,075 on the first of each month beginning April 2003.

6. That the full forfeiture of \$20,750, as assessed in Order No. 7005, shall be immediately due and payable in the event respondent does not timely comply with this order.

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



William H. McGilvery  
Executive Director