

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 7316

IN THE MATTER OF:

Served July 17, 2003

Application of QUIANA TOURS, INC.,)
to Acquire Certificate No. 290)
from WILLIAM E. GILLISON, Trading)
as QUIANA TOURS)

Case No. AP-2002-140

By application accepted for filing December 3, 2002, Quiana Tours, Inc., a Maryland corporation, seeks Commission approval to acquire Certificate No. 290 from William E. Gillison, trading as Quiana Tours. Gillison has agreed to transfer Certificate No. 290 and other assets in exchange for a controlling interest in Quiana Tours, Inc., a new carrier. The application is unopposed.

Article XI, Section 11(a), of the Compact governs the transfer of a certificate of authority in exchange for a controlling interest in a new carrier.¹ A transfer of this nature raises fitness issues only.² The burden is on applicant to establish its financial fitness, operational fitness, and regulatory compliance fitness.³

Applicant proposes commencing operations with one minibus and three motorcoaches. Applicant's proposed tariff contains hourly charter rates, with minimum charges and airport transfer rates. Applicant verifies that: (1) applicant owns or leases, or has the means to acquire through ownership or lease, one or more motor vehicles meeting the Commission's safety requirements and suitable for the transportation proposed in this application; (2) applicant owns, or has the means to acquire, a motor vehicle liability insurance policy that provides the minimum amount of coverage required by Commission regulations; and (3) applicant has access to, is familiar with and will comply with the Compact, the Commission's rules, regulations and orders, and Federal Motor Carrier Safety Regulations as they pertain to transportation of passengers for hire. Normally, such evidence would establish applicant's fitness, but in this case

¹ In re NMS Transit Servs. Inc. & Nadir Salih, t/a NMS Sys. Technologies, No. AP-03-03, Order No. 7082 (Mar. 10, 2003).

² Id.; In re Haymarket Transp., Inc., No. AP-98-35, Order No. 5427 (Oct. 1, 1998).

³ Order No. 5427.

applicant's owner/president, Gillison, has a history of regulatory violations.⁴

On March 4, 2003, in Case No. MP-2002-97, Gillison was found to have knowingly and willfully violated Regulation No. 61, governing vehicle markings, and Order No. 5359, directing Gillison to cease doing business under the name "Quiana Tours, Inc."⁵ Gillison also was found to have knowingly and willfully violated Regulation No. 62 governing revenue vehicle leases.⁶

We assessed three forfeitures of \$250 each against Gillison for the past violations and, because Gillison by that time had complied with regulation No. 62 but had offered no evidence of bringing his operations into compliance with Order No. 5359 and Regulation No. 61, directed Gillison to show cause why Certificate No. 290 should not be suspended or revoked to prevent any further violations.⁷

Gillison paid the forfeitures on March 26, 2003. On April 2, 2003, he filed an affidavit averring compliance with Order No. 5359 and Regulation No. 61. Compliance with Order No. 5359 was corroborated by supporting documents. Compliance with Regulation No. 61 was not, and Gillison failed to present his vehicles for inspection as requested by Commission staff. As a result, the Commission suspended Certificate No. 290 on June 4, 2003, and gave Gillison thirty days to show cause why Certificate No. 290 should not be revoked.⁸

Reinspection of Gillison's vehicles on June 12 and 16, 2003, revealed that they had been brought into compliance with Regulation No. 61. Accordingly, we lifted the suspension and terminated the investigation as it pertained to Gillison and applicant.⁹

When a person controlling an applicant has a record of regulatory violations, or a history of controlling companies with such a record, the Commission considers the following factors in assessing the likelihood of an applicant's future compliance: (1) the nature and extent of the violations, (2) any mitigating circumstances,

⁴ The past conduct of an applicant's owners and officers is relevant to a determination of applicant's compliance fitness. In re Miju Express, Inc., No. AP-91-36, Order No. 3865 (Dec. 19, 1991).

⁵ In re William E. Gillison, t/a Quiana Tours, Quiana Tours, Inc., & Baron Transp., Inc., No. MP-02-97, Order No. 7066 (Mar. 4, 2003).

⁶ Id.

⁷ Id.

⁸ In re William E. Gillison, t/a Quiana Tours, Quiana Tours, Inc., & Baron Transp., Inc., No. MP-02-97, Order No. 7229 (June 4, 2003).

⁹ In re William E. Gillison, t/a Quiana Tours, Quiana Tours, Inc., & Baron Transp., Inc., No. MP-02-97, Order No. 7315 (July 17, 2003).

(3) whether the violations were flagrant and persistent, (4) whether sincere efforts have been made to correct past mistakes, and (5) whether a willingness and ability to comport with the Compact and rules and regulations thereunder in the future has been demonstrated.¹⁰

The three violations that Gillison committed were not serious enough to warrant revocation of Certificate No. 290. Although the violation of Order No. 5359 could be characterized as persistent, the other two violations were not. None, in our estimation, were flagrant. The forfeitures have been paid, and Gillison has reestablished compliance with Order No. 5359 and Regulation Nos. 61 and 62. Given the nature and extent of the violations, the lack of any flagrant element and the corrective efforts that have been made, we believe that a finding of prospective compliance fitness is warranted, on the condition that applicant and its owner/president serve a period of probation.¹¹

Based on the evidence in this record, and in consideration of the terms of probation prescribed herein, the Commission finds applicant to be fit, willing, and able to perform the proposed transportation properly and to conform with applicable regulatory requirements and, therefore, that the transfer of Certificate No. 290 to applicant is consistent with the public interest.

THEREFORE, IT IS ORDERED:

1. That upon applicant's timely compliance with the requirements of this order, Certificate of Authority No. 290 shall be reissued to Quiana Tours, Inc., 8955 D'Arcy Road, Upper Marlboro, MD 20772.

2. That applicant may not transport passengers for hire between points in the Metropolitan District pursuant to this order unless and until Certificate of Authority No. 290 has been reissued in accordance with the preceding paragraph.

3. That applicant is hereby directed to file the following documents within thirty days: (a) evidence of insurance pursuant to Commission Regulation No. 58 and Order No. 4203; (b) an original and four copies of a tariff or tariffs in accordance with Commission Regulation No. 55; (c) a vehicle list stating the year, make, model, serial number, fleet number, license plate number (with jurisdiction) and seating capacity of each vehicle to be used in revenue operations; (d) a copy of the for-hire vehicle registration card, and a lease as required by Commission Regulation No. 62 if applicant is not the registered owner, for each vehicle to be used in revenue operations; (e) proof of current safety inspection of said vehicle(s) by or on behalf of the United States Department of Transportation, the State of

¹⁰ In re Adventures By Dawn L.L.C., No. AP-00-89, Order No. 6087 (Jan. 16, 2001).

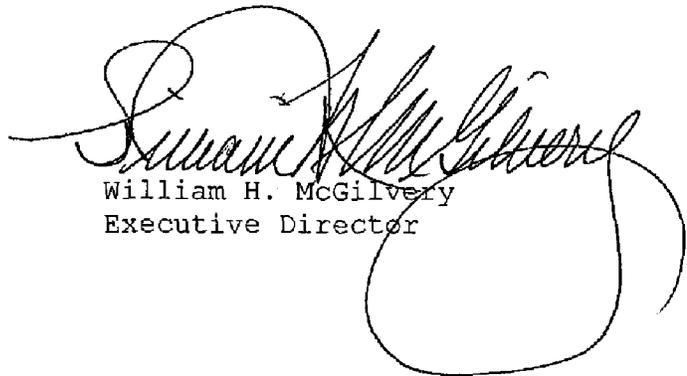
¹¹ See id. (prescribing one year probation period).

Maryland, the District of Columbia, or the Commonwealth of Virginia; and (f) a notarized affidavit of identification of vehicles pursuant to Commission Regulation No. 61.

4. That applicant and its owner/president shall be placed on probation for a period of one year commencing with the reissuance of Certificate of Authority No. 290 in accordance with the terms of this order and that a willful violation of the Compact, or of the Commission's rules, regulations or orders thereunder, by applicant or its owner/president during the period of probation shall constitute grounds for immediate suspension and/or revocation of applicant's operating authority without further proceedings, regardless of the nature of the violation.

5. That the approval of transfer herein shall be void and the application shall stand denied upon applicant's failure to timely satisfy the conditions of reissuance prescribed herein.

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



William H. McGilvery
Executive Director