

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 7513

IN THE MATTER OF:

Served November 5, 2003

ATLANTIC AIRPORT SHUTTLE, INC.,)
WMATC No. 559, and BORJA & GARCIA)
ENTERPRISES INC., Trading as)
ATLANTIC AIRPORT SHUTTLE,)
Investigation of Unauthorized)
Transfer)

Case No. MP-2003-61

This matter is before the Commission to determine whether Certificate of Authority No. 559 shall be revoked.¹

I. BACKGROUND

This investigation was initiated to determine whether respondents violated the Compact by transferring the assets and operations of Atlantic Airport Shuttle, Inc., and/or Certificate of Authority No. 559, to Borja & Garcia Enterprises Inc., trading as Atlantic Airport Shuttle, without Commission approval.²

The preliminary evidence of a transfer consisted of the following. The annual fee for Atlantic Airport Shuttle, Inc., was paid with a check drawn on the account of Borja & Garcia Enterprises Inc. Borja & Garcia registered with the Maryland Department of Assessments and Taxation to transact business in the State of Maryland under the trade name Atlantic Airport Shuttle five days after incorporating in Virginia on April 5, 2002. The two corporations share common owners and officers.

By letter dated March 11, 2003, Commission staff advised respondents to file a transfer application on or before April 4, 2003. Respondents failed to file an application or otherwise reply. This investigation ensued.

Order No. 7273, served June 26, 2003, directed respondents to produce within thirty days 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

¹ The Commission may suspend or revoke all or part of any certificate of authority for willful failure to comply with a provision of the Compact, an order, rule, or regulation of the Commission, or a term, condition, or limitation of the certificate. Compact, tit. II, art. XI, § 10(c).

² See Compact, tit. II, art. XI, § 11 (approval required for transfer of certificate, and only carrier named in certificate may operate under it); art. XII, § 3 (approval required for transfer of assets and operations).

the period beginning April 5, 2002, and ending on June 26, 2003.³ The order also directed respondents to present their vehicles for inspection within thirty days.⁴ The order provided that failure to respond would result in suspension of Certificate No. 559 and possibly revocation.⁵

On July 18, 2003, Borja & Garcia filed a transfer application and some of the documents specified in Order No. 7273, but not all. The application did not meet the Commission's filing requirements and was rejected on July 24, 2003. Atlantic Airport Shuttle, Inc., filed no documents at all, and neither respondent produced any vehicles. Accordingly, Order No. 7384, served September 9, 2003, suspended Certificate of Authority No. 559 and gave Atlantic Airport Shuttle, Inc., thirty days to show cause why Certificate of Authority No. 559 should not be revoked.⁶ Borja & Garcia timely filed a response, produced additional documents, and presented for inspection two of the four vehicles listed in the July 18 transfer application.⁷

³ See Compact, tit. II, art. XIII, § 1(c),(e) (Commission may investigate whether a person has violated the Compact and for the purpose of an investigation may "require the production of books, papers, correspondence, memoranda, contracts, agreements, or other records or evidence which the Commission considers relevant to the inquiry"); art. XII, § 1(b) (Commission shall have access at all times to accounts, records, and memoranda of any carrier for inspection purposes).

⁴ See Compact, tit. II, art. XII, § 1(b) (Commission shall have access at all times to equipment of any carrier for inspection purposes).

⁵ The Commission may suspend or revoke a certificate of authority for willful failure to comply with the Compact or Commission rule, regulation or order thereunder. Compact, tit. II, art. XI, § 10(c).

⁶ Order No. 7384 mistakenly stated that Borja & Garcia had produced no documents in response to Order No. 7273. This was in error. Borja & Garcia produced some, but not all, responsive documents on July 18, 2003. Atlantic Airport Shuttle, Inc., however, had produced no documents and neither respondent had produced any vehicles. Thus, the finding that respondents were not in compliance with Order No. 7273 was correct despite the misstatement.

⁷ The July 18, 2003, transfer application listed four vehicles titled in the name of Atlantic Airport Shuttle, Inc. A later transfer application filed October 9, 2003, listed three of those same vehicles, the tags for one having been returned to the Maryland Motor Vehicle Administration on September 17, 2003. Two of the vehicles were presented for inspection on October 6, 2003. The third was not, even though the October 9, 2003, application indicates the third vehicle should have been available for inspection as early as September 15, 2003. The October 9, 2003, application was not accepted for filing because Borja & Garcia did not tender the \$100 application fee, but a copy was retained for this investigation.

II. FINDINGS

The record shows that Sandra Borja and Christian Garcia have controlled both Atlantic Airport Shuttle, Inc.,⁹ and Borja & Garcia⁹ since early April 2002. The record shows no evidence of Atlantic Airport Shuttle, Inc., transacting business after March 2002, whereas Borja & Garcia clearly has - extensively.

Reservation manifests produced by Borja & Garcia, all of which are in the name of Atlantic Airport Shuttle and some of which are in Borja & Garcia's name doing business as Atlantic Airport Shuttle, show activity in our jurisdiction on a near daily basis throughout the investigation period. Borja & Garcia monthly bank statements likewise show substantial activity from April 2002 through June 2003. Borja & Garcia's 2002 federal income tax return shows tens of thousands of dollars in revenue and expense, which is consistent with the thousands of trips reflected in the reservation records and the corresponding level of activity in the bank records. The return describes Borja & Garcia's business as "Cab Service." Fifty-two percent of claimed expenses are for "Insurance-Car," "Car & Truck Expenses," "Vehicle Expenses," "Cab Labor" and "Cab-1099 Labor."

No reservation records were produced in the name of Atlantic Airport Shuttle, Inc. No bank statements were produced in the name of Atlantic Airport Shuttle, Inc. No tax returns were produced in the name of Atlantic Airport Shuttle, Inc. In short, Atlantic Airport Shuttle, Inc., ceased to function once Sandra Borja and Christian Garcia took over.¹⁰

In a statement filed October 9, 2003, Ms. Borja claims that she was unaware of "the rules and regulations of the WMATC." But the record shows that Borja & Garcia continued operating after staff advised it in March of 2003 that "under no circumstances may Borja &

⁹ Articles of amendment for Atlantic Airport Shuttle, Inc., filed with the State of Maryland on April 10, 2002, show Sandra Catalina Borja holding 600 shares, Christian Ricardo Garcia holding 300 shares, and Daniel Eduardo Garcia holding 100 shares. The articles identify Ms. Borja as president, Christian Garcia as treasurer, and Daniel Garcia as vice president/secretary.

⁹ The minutes of the first meeting of the board of directors of Borja & Garcia, dated April 2, 2002, identify Ms. Borja as president and authorize the issuance of common stock to the following persons in the following amounts: 60 shares to Sandra Borja, 25 shares to Christian Garcia and 15 shares to Daniel Garcia. According to the 2002 federal income tax return for Borja & Garcia, dated March 21, 2003, however, Sandra Catalina Santiago and Christian Garcia are the sole shareholders, with each owning 50% of the voting stock of Borja & Garcia. Borja & Garcia payroll records indicate that Sandra Catalina Borja and Sandra Catalina Santiago are the same person.

¹⁰ According to records from the Taxpayer Services Division of the Maryland Department of Assessments and Taxation, Atlantic Airport Shuttle, Inc., filed no property return for 2003 and is currently not in good standing, and while the vehicles operated under Certificate No. 559 and certificates of insurance filed on behalf of Carrier No. 559 were in the name of Atlantic Airport Shuttle, Inc., it was Borja & Garcia that operated the vehicles, paid the insurance premiums and bore the risk of operations.

Garcia Enterprises Inc., trading as Atlantic Airport Shuttle, transport passengers for hire in the Metropolitan District unless and until a transfer has been approved by the Commission." In fact, the record shows that Borja & Garcia continued operating as late as August 2003, after it received Order No. 7273 on June 30, 2003, and after its July 18, 2003, transfer application was rejected. Finally, Atlantic Airport Shuttle, Inc., has yet to be revived, the Atlantic Airport Shuttle trade name is still registered to Borja & Garcia in Maryland and has now been registered to Borja & Garcia in Virginia, and the two vehicles presented for inspection were not marked in compliance with Regulation No. 61.¹¹

Accordingly, we find that Atlantic Airport Shuttle, Inc., has failed to show cause why Certificate No. 559 should not be revoked.¹²

III. ASSESSMENT OF CIVIL FORFEITURE

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; each day of the violation constitutes a separate violation.¹³

The civil forfeiture provision of the Compact serves two functions: deterrence of future violations and disgorgement of unjust profits.¹⁴ Consequently, one of the factors we take into consideration when determining the appropriate size of a forfeiture is whether the carrier profited from its misdeeds.¹⁵

Borja & Garcia's 2002 income tax return shows a profit of approximately \$5,000 when adjusted for the improper expensing of a "Business Loan." Based on the 2002 profit, we estimate the profit for eight months of operations in 2003 at \$3,350. Accordingly, we shall assess a forfeiture of \$15,000, which takes into account the amount of estimated unjust profits and includes a deterrence component, as well.¹⁶

THEREFORE, IT IS ORDERED:

1. That pursuant to Article XI, Section 10(c), of the Compact, Certificate of Authority No. 559 is hereby revoked for willful failure

¹¹ Commission Regulation No. 61 requires each WMATC carrier to display on both sides of each revenue vehicle the carrier's name or trade name and the carrier's WMATC number.

¹² See In re Zohery Tours Int'l, Inc., No. MP-02-46, Order No. 7005 (Jan. 21, 2003) (certificate revoked for exceeding authority in face of cease and desist order).

¹³ Compact, tit. II, art. XIII, § 6(f).

¹⁴ In re Affordable Airport Charter, Inc., & Bach Vu, t/a Affordable Airport Charter, No. MP-97-76, Order No. 5350 (June 2, 1998).

¹⁵ Id.

¹⁶ See id. (WMATC carrier and unauthorized transferee with net loss assessed \$5,500 net forfeiture for 363 days of unlawful operations).

to comply with Article XII, Section 3(a), of the Compact, Commission Order No. 7273, and Commission Regulation No. 61.

2. That within 30 days from the date of this order respondents shall:

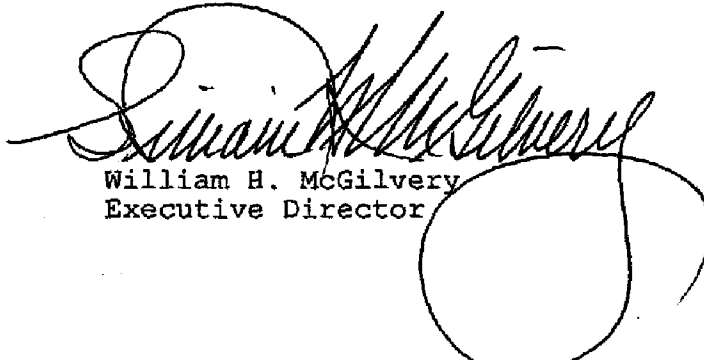
- a. remove from respondents' vehicle(s) the identification placed thereon pursuant to Commission Regulation No. 61;
- b. file a notarized affidavit with the Commission verifying compliance with the preceding requirement; and
- c. surrender Certificate No. 559 to the Commission.

3. That pursuant to Article XIII, Section 6(f), of the Compact, the Commission hereby assesses a civil forfeiture against Atlantic Airport Shuttle, Inc., Borja & Garcia Enterprises Inc., Sandra Borja and Christian Garcia, jointly and severally, in the amount of \$15,000 for knowingly and willfully violating Article XI, Section 11(b), and Article XII, Section 3(a), of the Compact.

4. That Atlantic Airport Shuttle, Inc., Borja & Garcia Enterprises Inc., Sandra Borja and Christian Garcia 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 fifteen thousand dollars (\$15,000).

5. That for the purpose of contesting the forfeiture assessed herein, Atlantic Airport Shuttle, Inc., Borja & Garcia Enterprises Inc., Sandra Borja and Christian Garcia may 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