

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 7538

IN THE MATTER OF:

Served November 17, 2003

ZAINABU KAMARA, Trading as NALLAH)
TRANSPORTATION EXPRESS, WMATC)
No. 506, and NALLAH TRANSPORTATION)
EXPRESS, INC., Investigation of)
Unauthorized Transfer)

Case No. MP-2003-62

Application of NALLAH)
TRANSPORTATION EXPRESS INC. to)
Acquire Certificate No. 506 from)
ZAINABU KAMARA, Trading as)
NALLAH TRANSPORTATION EXPRESS)

Case No. AP-2003-96

This matter is before the Commission on respondents' response to Order No. 7274, served June 26, 2003, which initiated the investigation in Case No. MP-2003-62 to determine whether respondents violated the Compact by transferring the assets and operations of Zainabu Kamara, trading as Nallah Transportation Express, and/or Certificate of Authority No. 506, to Nallah Transportation Express, Inc., without Commission approval.

Case No. MP-2003-62 is being consolidated with Case No. AP-2003-96 because the question of whether respondents violated the Compact is relevant to a determination of whether Nallah Transportation Express Inc., is fit to receive a certificate of authority.

I. BACKGROUND

Under the Compact, a person may not transfer a certificate of authority unless the Commission approves the transfer as consistent with the public interest.¹ 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.² A carrier or any person controlling, controlled by, or under common control with a carrier shall obtain Commission approval to purchase, lease, or contract to operate a substantial part of the property or franchise of another carrier that operates in the Metropolitan District.³

Certificate of Authority No. 506 was issued to Zainabu Kamara, a sole proprietor trading as Nallah Transportation Express, on December 9, 1999, pursuant to Commission Order No. 5741.⁴ The 2002

¹ Compact, tit. II, art. XI, § 11(a).

² Compact, tit. II, art. XI, § 11(b).

³ Compact, tit. II, art. XII, § 3(a)(ii).

⁴ In re Zainabu Kamara, t/a Nallah Transp. Express, No. AP-99-67, Order No. 5741 (Nov. 9, 1999).

annual report for WMATC Carrier No. 506 was filed on February 5, 2003, in the name of "Nallah Transportation Express, Inc." Records obtained from the Taxpayer Services Division of the Maryland Department of Assessments and Taxation show that the corporation was formed on January 5, 2000. Commission staff advised respondents to file a transfer application on or before March 25, 2003. Respondents failed to file an application or otherwise reply. This investigation ensued.

Order No. 7274 directed Nallah Transportation Express, Inc., to refrain from, and/or cease and desist from, transporting passengers for hire between points in the Metropolitan District unless and until otherwise ordered by the Commission. The order also 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 the period beginning January 5, 2000, and ending on June 26, 2003.⁵ The order further directed respondents to present their vehicles for inspection within thirty days.⁶

II. RESPONSE AND FINDINGS

The documents produced by respondents on July 28, 2003, point to the corporation as the entity that has conducted operations under Certificate No. 506 since January 5, 2000:

- The articles of incorporation for Nallah Transportation Express, Inc., state that the purpose for which the corporation was formed was "to transport Medicaid clients in the Washington Metropolitan Area."
- An IRS Form 1099-MISC issued by Health Services for Children with Special Needs shows medical and health care payments to Nallah Transportation Express in 2001 under the corporation's federal taxpayer identification number.
- The bank statements of account produced by respondents display the federal taxpayer identification number appearing on the corporation's federal income tax returns.
- Cancelled checks drawn on the corporation's bank account show disbursements throughout the investigation period for commercial auto insurance, van installment loan payments, van maintenance and repairs, and gas.
- All payroll records identify the corporation as the employer.
- The 2001 and 2002 federal income tax returns for the corporation show the corporation reporting revenue and expense from "Transportation" activities, including depreciation deductions for three "van[s]."

⁵ 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).

⁶ See Compact, tit. II, art. XII, § 1(b) (Commission shall have access at all times to equipment of any carrier for inspection purposes).

- The corporation's 2001 and 2002 personal property returns, the only property returns produced, describe the nature of the corporation's business as "Transportation" and "Transportation Service," respectively, and declare tens of thousands of dollars worth of "Transportation Equipment" but little else.
- An IRS Form 1099-MISC issued by the District of Columbia shows medical and health care payments to Nallah Transportation Express in 2001 under Ms. Kamara's federal taxpayer identification number, but the 2000 through 2002 federal income tax returns for Ms. Kamara show no profit or loss from any self-employment transportation business, only earnings and losses as an employee and shareholder of the corporation, plus some small amounts of income from miscellaneous sources.

During the period under investigation, the Commission received insurance certificates in the name of Zainabu Kamara, trading as Nallah Transportation Express, but the underlying policies were issued to Nallah Transportation, Nallah Transportation Service, and Nallah Transportation Express. The corporation's legal name was Nallah Transportation Express until August 7, 2003, when it was corrected to Nallah Transportation Express, Inc. None of the policies were issued to Zainabu Kamara, trading as Nallah Transportation Express. Thus, other than that the first policy was issued in 1999 before the corporation was formed, there is nothing in the record to indicate that Ms. Kamara purchased the insurance as a sole proprietor. On the other hand, the record is clear that beginning in April 2000, insurance down payments and insurance installment payments were made out of the corporation's bank account.

We also note that a van presented for inspection on July 18, 2002, displayed "WMATC 506" and the name "Nallah Transportation Express, Inc." on both sides.

We therefore find that Nallah Transportation Express, Inc., conducted operations under Certificate No. 506 throughout the investigation period in violation of Article XI, Section 11(b), and Article XII, Section 3(a), of the Compact and that the markings on the van inspected on July 18, 2003, did not comply with Commission Regulation No. 61.⁷

III. CONCLUSION

Order No. 7274 directed Nallah Transportation Express, Inc., to refrain from, and/or cease and desist from, transporting passengers for hire between points in the Metropolitan District unless and until otherwise ordered by the Commission. Under Commission Rule No. 28, Nallah Transportation Express, Inc., was required to file a report within thirty days verifying compliance. To date, no report has been filed. Nallah Transportation Express, Inc., shall have fifteen days to file a Rule 28 compliance report. In addition, respondents shall have thirty days to show cause why the Commission should not assess a civil

⁷ 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.

forfeiture,⁸ suspend or revoke Certificate No. 506,⁹ and deny the transfer application.¹⁰

THEREFORE, IT IS ORDERED:

1. That in accordance with Commission Rule No. 28, Nallah Transportation Express, Inc., shall file a report within fifteen days, under oath, verifying compliance with the edict in Order No. 7274 to refrain from, and/or cease and desist from, transporting passengers for hire between points in the Metropolitan District unless and until otherwise ordered by the Commission and specifying the date compliance was achieved.

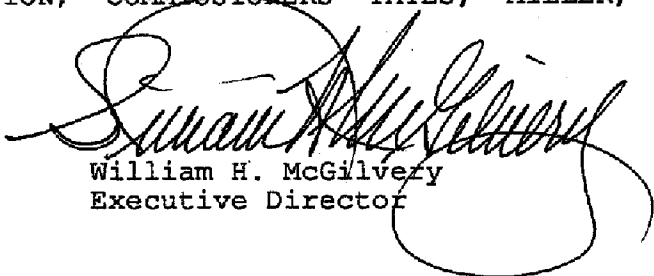
2. That respondents shall have thirty days to show cause why the Commission should not assess a forfeiture for knowingly and willfully violating Article XI, Section 11(b), and Article XII, Section 3(a), of the Compact, Regulation No. 61 and Order No. 7274.

3. That respondents shall have thirty days to show cause why Certificate No. 506 should not be suspended or revoked for willful failure to comply with Article XI, Section 11(b), and Article XII, Section 3(a), of the Compact, Regulation No. 61 and Order No. 7274.

4. That respondents shall have thirty days to show cause why the application of Nallah Transportation Express, Inc., to acquire Certificate of Authority No. 506 should not be denied for failure to establish regulatory compliance fitness.

5. That respondents 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. McGilverey
Executive Director

⁸ 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. Compact, tit. II, art. XIII, § 6(f).

⁹ 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).

¹⁰ See In re Shaw Bus Serv., Inc., & American Coach Lines, Inc., No. AP-88-09, Order No. 3224 (Aug. 25, 1988) (transferee continued to operate without requisite authority in face of cease and desist order).