

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 7913

IN THE MATTER OF:

Served April 6, 2004

Investigation of Failure to File) Case No. MP-2003-142
Annual Report, Assessment of Civil)
Forfeiture, and Notice of Automatic)
Suspension and Revocation,)
Directed to: OLALEKAN SALAMI,)
Trading as STARTIME VENTURES,)
WMATC No. 685)

Investigation of Failure to Pay) Case No. MP-2003-152
Annual Fee, Assessment of Civil)
Forfeiture, and Notice of Automatic)
Suspension and Revocation,)
Directed to: OLALEKAN SALAMI,)
Trading as STARTIME VENTURES,)
WMATC No. 685)

This matter is before the Commission on respondent's response to Order No. 7716, served January 29, 2004.

I. BACKGROUND

These proceedings were initiated on November 10, 2003, in Order Nos. 7525 and 7526 for the purpose of investigating respondent's failure to file his annual report for 2002 pursuant to Regulation No. 60 and pay a \$100 annual fee for 2003 pursuant to Regulation No. 67 and Order No. 3601. Together, the initial orders gave respondent until December 10, 2003, to file the annual report, pay the annual fee, and pay a combined civil forfeiture of \$200. Payment was to be by money order, certified check or cashier's check. The orders further provided that upon respondent's failure to timely comply, respondent's operating authority would stand suspended and be subject to revocation without further proceeding pursuant to Article XI, Section 10(c), of the Compact.

On November 21, 2003, respondent paid the \$100 annual fee for 2003 and the \$100 forfeiture assessed in Case No. MP-2003-152 by tendering a personal check payable to the Commission in the amount of \$200. The Commission advised respondent by letter dated November 24, 2003, that Case No. MP-2003-152 would be terminated as soon as respondent's check cleared. The Commission further advised respondent that respondent's 2002 annual report and the \$100 forfeiture assessed in Case No. MP-2003-142 were still due on or before December 10, 2003.

On January 29, 2004, the Commission issued Order No. 7716 revoking Certificate No. 685 on the valid ground that respondent had failed to file his 2002 annual report and pay \$100 forfeiture assessed in Case No. MP-2003-142 and on the invalid ground that respondent also had failed to pay the 2003 annual fee and the \$100 forfeiture assessed in Case No. MP-2003-152 despite respondent's check having been honored by respondent's bank.

II. RESPONSE AND FINDINGS

On March 10, 2004, respondent filed his 2002 annual report, paid the \$100 forfeiture assessed in Case No. MP-2003-142, and submitted a request that we lift the revocation announced in Order No. 7716.

Under Title II of the Compact, Article XIII, Section 4(a), 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 reconsideration. The thirty-day period is jurisdictional/mandatory and may not be waived.¹

The request to lift the revocation was filed too late to be entertained as an application for reconsideration of Order No. 7716, but the Commission may reopen a proceeding under Rule No. 26-04 after the reconsideration period has run in order to correct a Commission decision that manifestly in hindsight was fundamentally in error when issued.²

Although it was error not to recognize in Order No. 7716 that respondent had in fact paid the 2003 annual fee and the forfeiture assessed in Case No. MP-2003-152, it was not error to revoke

¹ In re Baron Transp., Inc., No. MP-02-42, Order No. 7136 (Apr. 18, 2003); In re Paramed Med. Transp., Inc., No. MP-02-50, Order No. 7085 (Mar. 10, 2002); In re Capitol Bus Rental, Inc., t/a Capitol Tours, No. MP-95-04, Order No. 4694 (Nov. 9, 1995); In re Atwood's Transport Lines, Inc., No. 389, Order No. 1730 (Aug. 5, 1977) (on reconsideration); In re Atwood's Transport Lines, Inc., No. 258, Order No. 1327 (May 14, 1974) (on reconsideration); In re Washington, Va. & Md. Coach Co., No. 72, Order No. 819 (May 21, 1968) (on reconsideration); In re D.C. Transit Sys., Inc., No. 131, Order No. 705 (Apr. 27, 1967), appeal dismissed per curiam, sub nom., Powell v. WMATC, No. 20,939, order (D.C. Cir. June 1, 1967); In re D.C. Transit Sys., Inc., Order No. 672 (Feb. 7, 1967), aff'd on reconsideration, Order No. 686 (Mar. 13, 1967), aff'd per curiam, No. 20,899, slip op. (D.C. Cir. Jan. 29, 1968).

² See In re Double Decker Bus Tours, W.D.C., Inc., No. AP-95-21, Order No. 5963 (Aug. 15, 2000) (reopening application proceeding five years after decision where applicant's vice president admitted falsifying revenue vehicle records).

Certificate No. 685 inasmuch as respondent had yet to file his 2002 annual report and pay the forfeiture assessed in Case No. MP-2003-142.³

On the other hand, having reopened these proceedings to correct the error in Order No. 7716, and having accepted respondent's late-filed 2002 annual report and payment of the forfeiture assessed in Case No. MP-2003-142, we may consider reinstating Certificate No. 685.⁴

At this time we are unable to say reinstating Certificate No. 685 would be consistent with the public interest. Respondent admits not ceasing operations until March 9, 2004, even though Certificate No. 685 stood suspended December 11, 2003, and was revoked January 29, 2004.

Respondent shall have thirty days to show cause why the Commission should reinstate Certificate No. 685 notwithstanding that respondent continued operating while suspended and revoked in violation of Article XI, Section 6(a), of the Compact,⁵ and why the Commission should not assess a civil forfeiture against respondent for knowingly and willfully violating the Compact.⁶

THEREFORE, IT IS ORDERED:

1. That respondent shall have thirty days to show cause why the Commission should reinstate Certificate No. 685.

2. That respondent shall have thirty days to show cause why the Commission should not assess a civil forfeiture against respondent for knowingly and willfully violating Article XI, Section 6(a), of the Compact.

³ See In re Big Time Limos, Inc., No. MP-02-69, Order No. 6896 (Nov. 13, 2002) (authority revoked for failure to file annual report); In re Shirlington Limousine & Transportation, Inc., No. MP-01-79, Order No. 6459 (Dec. 18, 2001) (same).

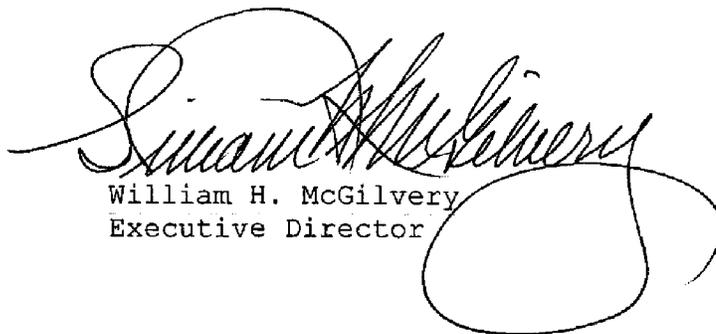
⁴ See In re Amna O. Abugusseisa, t/a AB & B Trans, No. MP-03-50, Order No. 7373 (Aug. 27, 2003) (considering reinstatement based on post-revocation compliance).

⁵ "A person may not engage in transportation subject to this Act unless there is in force a 'Certificate of Authority' issued by the Commission authorizing the person to engage in that transportation." (Emphasis added)."

⁶ Under Article XIII, Section 6(f), of the Compact, a person who knowingly and willfully violates a provision of the Compact, or a regulation or order issued under it, 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.

3. That respondent may submit within 15 days from the date of this order a written 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