

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 8062

IN THE MATTER OF:

Served June 7, 2004

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. 7854, served March 12, 2004, which revoked Certificate No. 506, denied the transfer application and gave respondents thirty days to pay a net civil forfeiture of \$2,500 and verify removal of all Regulation No. 61 markings from respondents' vehicles.

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 On February 5, 2003, Ms. Kamara filed her 2002 annual report in the name of "Nallah Transportation Express, Inc." Records obtained from the

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).

Taxpayer Services Division of the Maryland Department of Assessments and Taxation confirmed that Ms. Kamara had formed a corporation on January 5, 2000. By letter dated March 5, 2003, Commission staff advised respondents to file a transfer application on or before March 25, 2003.

We initiated this investigation in Order No. 7274, served June 26, 2003, after respondents failed to reply to staff's letter. The order gave respondents thirty days to present their vehicles for inspection⁵ and produce 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, 2003.⁶ The order also 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.

Respondents produced a van on July 18, 2003, and responsive documents on July 28, 2003. The van displayed Ms. Kamara's WMATC number and the name "Nallah Transportation Express, Inc." The documents -- including insurance records, bank statements, cancelled checks, payroll records and tax returns -- showed substantial transportation-related activity on the part of the corporation and little or no transportation-related activity on the part of Ms. Kamara. Based on the evidence thus produced by respondents, we found in Order No. 7538 that Nallah Transportation Express, Inc., conducted operations under Certificate No. 506 from January 5, 2000, until at least June 26, 2003.

By affidavits filed December 4 and 17, 2003, Ms. Kamara acknowledged receiving staff's March 5 letter and admitted that she "continued to do business in the corporate name" even after receiving the June 26, 2003, cease and desist order, Order No. 7274. Ms. Kamara also admitted that she made no effort to reestablish the operations as her own, in her capacity as a sole proprietor, until November 29, 2003, when she opened a bank account in the name of Zainabu Kamara d/b/a/ Nallah Transportation Express.

⁵ See Compact, tit. II, art. XII, § 1(b) (Commission shall have access at all times to equipment of any carrier for inspection purposes).

⁶ 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).

Accordingly, Order No. 7854 assessed a forfeiture of \$250 per day⁷ for one hundred fifty-three days of unauthorized operations, or \$38,250. In consideration of the corporation's apparent lack of profit,⁸ production of inculpatory evidence and the filing of a transfer application shortly after this investigation was initiated,⁹ we suspended all but \$2,500.¹⁰

Order No. 7854 also revoked Certificate No. 506, denied the transfer application and gave respondents thirty days to verify removal of all Regulation No. 61 markings from respondents' vehicles.

On March 24, 2004, respondents paid the net forfeiture, and Ms. Kamara filed an application for reconsideration.

II. RECONSIDERATION

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.

Ms. Kamara timely filed the application for reconsideration, but the application does not allege any error on the part of the Commission. Instead, with an admission of commingling of assets, Ms. Kamara now invites us to pierce the corporate veil and find that she and not the corporation performed transportation under Certificate No. 506. Ms. Kamara now claims that she used the corporate banking accounts to pay all of her personal bills and that she considers those accounts to be hers personally. Her statement is supported by her personal 2003 federal and state income tax returns. But Ms. Kamara does not say that no income was reported by the corporation in 2003. Indeed, her 2003 personal income tax returns show only \$20,125, in gross revenue, whereas the corporate returns for 2001 and 2002 report gross revenue of \$126,722, and \$158,412, respectively.

Additionally, Ms. Kamara's admission of commingling must be viewed in the context of her apparent failure to cease operating upon receiving Order No. 7854. Ms. Kamara claims to be under the impression

⁷ See 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) (assessing \$250 per day for unauthorized operations).

⁸ The corporation's federal income tax returns for 2001 and 2002 combined show a net loss.

⁹ Order No. 7274 was issued June 26, 2003. The transfer application was first filed on July 9, 2003.

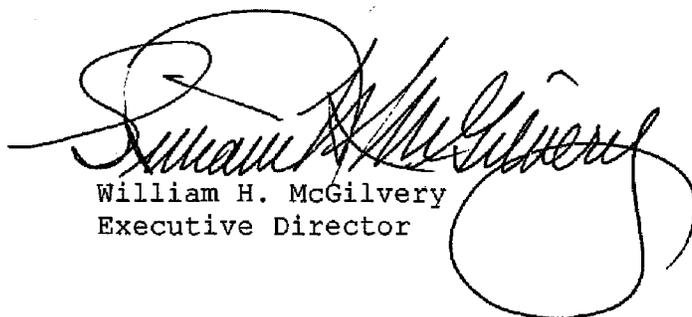
¹⁰ See Order No. 5065 (reducing forfeiture from \$65,750 to \$3,000 in light of respondent's cooperation in investigation and filing of application).

that she had until April 11, 2004, to cease operating, notwithstanding the unqualified declaration in Order No. 7854 that "Certificate of Authority No. 506 is hereby revoked" and the clear command of Commission Rule No. 7-03 that Commission orders are effective when issued unless otherwise specified. Ms. Kamara's misinterpretation of Order No. 7854 and admission of commingling of funds seem symptomatic of a willingness or careless propensity to misconstrue and ignore legal requirements pertinent to enforcement of the Compact.

The application for reconsideration is denied.

IT IS SO ORDERED.

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



William H. McGilvery
Executive Director