

Before the Motor Carrier Commission of British Columbia

Application 741/03

Applicant: Mega Coach Ltd.

Objectors Greyhound Canada Transportation Corp.
Gray Line of Vancouver Holdings Ltd.

Before: Dennis J. Day, Commissioner
David McLean, Commissioner

Appearances: Gunter Schlieper, Straightline Consulting Service for the Applicant
Harley Harris, Owen Bird for the Objectors

Date and Place of Hearing: April 14 and 15, 2004
Radisson Hotel, Burnaby, BC

Date of Decision: May 5, 2004

Introduction

Mega Coach Ltd. (Mega) is applying for a licence and four certificates to provide charter trip transportation to operate vehicles with capacities between 11 and 58 passengers. Service is to be provided under contract exclusively to Carnival Holidays, Inc. (Carnival) and may originate in Licence Districts 14, 14A and 15 to any point in BC or extra provincially, with return if arranged for on the same charter. At the time of the Application Mega did not hold a Motor Carrier Licence.

Greyhound Canada Transportation Corp. (Greyhound) and Gray Line of Vancouver Holdings Ltd. (GLV) object to the Application.

Issue

Whether to grant in whole, grant in part or refuse to grant a Motor Carrier Licence to Mega as applied for in Application 741/03?

Within the context of the overarching issue, two separate issues need to be addressed:

1. Has Mega demonstrated that it is fit, willing and able to provide the service to be offered? Further, does Mega's corporate relationship to certain other companies impact on its ability to be a fit motor carrier?
2. Has Mega satisfied the Commission that it has demonstrated a public need and/or a satisfactory business plan to deliver the service to be offered in a sustainable manner?

Evidence

Ms. Esther Butt, President, Director and majority shareholder of Mega testified on behalf of the Applicant. She described her background in the travel industry, most recently as a travel agent for Carnival Holidays. She stated that, while with Carnival, she booked buses for tours and had done bookings through Surrey Bus Services Limited (SBSL) and Charter Bus Lines. She said she sometimes encountered difficulty in finding the types of buses her clients required, specifically newer vintage Prevost or similar style.

Ms. Butt testified that an Application had been filed in an attempt to transfer the licence of SBSL to Mega but that the Commission did not permit this. She then proceeded with the current Application. Her intent, if granted the licence and four certificates, is to operate three highway coaches and one mini-coach.

Ms. Butt testified that she is inexperienced in the management of a bus company but is learning and would take some courses if granted the licence. She had been reluctant to take these courses, as there were three or four of them at a cost of about \$200 each. She testified that she is currently operating two buses using another company's Motor Carrier Authority but could not, or would not, name that company.

Under cross-examination Ms. Butt testified that her husband, Mr. William Ip, is President, Director and General Manager of Carnival and has been since January 1996. She said that Mr. Ip is also President of Firmstone Bus Leasing Inc. (Firmstone) and that Mega leases buses from Firmstone. Mr. Ip is also a Director of SBSL, a company which had its Motor Carrier Authority and National Safety Code (NSC) certification revoked in 2002. This company also operated a bus under charter to Carnival when that bus was involved in an accident resulting in six fatalities.

Ms. Butt also testified that Mr. Yee Chung (Michael) Maio is a Director of Carnival, Firmstone and SBSL. Mr. Maio is also shown as a Director and Secretary of Mega in the BC Company Summary that is currency dated March 18, 2004 (Exhibit 7 Tab 19). Ms. Butt testified that Mr. Maio had resigned as a Director of Mega approximately November 2002. She stated that

Mr. Maio decided he did not want to invest in buses after his experience with SBSL, however she also stated that he resigned because Mega could not get NSC certification if he was a Director. Exhibit 13, pages two and seven of a nine page facsimile transmission, was introduced to demonstrate that Mr. Maio had resigned as a Director. The Panel accepted this evidence with some reservations, since it is not known what bearing the missing pages of the facsimile might have had on this evidence. The explanation offered for Mr. Maio's name still appearing on the record is less than satisfactory.

Ms. Butt testified that she and her husband, Mr. Ip, are both Directors of a currently inactive company, Scenic Holdings Co. Ltd. (Scenic). She also stated that Mega, Firmstone and Carnival all have the same address and the same place of business in Richmond.

Ms. Butt stated that while she was employed at Carnival she stopped chartering buses from SBSL because that company lost its NSC certification but stated she was unaware of why SBSL lost its certification or whether or not the Motor Carrier Commission (the Commission) had issued any orders pertaining to SBSL.

In response to questions from the Objectors, Ms. Butt stated she is responsible for NSC adherence at Mega and had been since the company started leasing buses. She stated she had read the NSC in June 2003 but was not "totally familiar with it."

Evidence was adduced in Exhibit 7 Tab 31 and corroborated by Ms. Butt that Mega does, in fact, have advertising posted on a number of websites. Although Ms. Butt states that this was arranged by Mr. Pierre Bougie, previously the General Manager of the company who left the company in June 2003, Ms. Butt was the President and Director of the company at that date.

It is apparent from the evidence and the testimony of Ms. Butt that a bus, unit 1120, was previously under lease to SBSL from Firmstone, was subsequently under lease to Carnival from Firmstone and more recently was under lease to Mega from Firmstone. While under lease to Mega, the NSC certification used is that of Sybarite Investments Ltd. The evidence on record points to SBSL's NSC number being used for insurance beyond the date at which SBSL's NSC certification was cancelled, and at a time when Mega was operating the vehicle.

It is similarly apparent from the evidence and the testimony of Ms. Butt that a bus, unit 1130, was previously under lease to SBSL from Firmstone, was then under lease to Carnival from Firmstone and more recently was under lease to Mega from Firmstone. As with unit 1120, the NSC number used is that of Sybarite Investments Ltd. And the evidence points to SBSL's NSC number being used for insurance beyond the date at which SBSL's NSC certificate was cancelled, and at a time when Mega was operating the vehicle.

In the case of both units 1120 and 1130, Ms. Butt denies any knowledge of insurance matters or NSC certification, despite acknowledging that Mega operated the buses and she was the President and Director of the company at that time.

The records of Mega pertaining to coaches 1120 and 1130 are incomplete following the date 9/11/03. Ms. Butt explained that the buses had no trips after that date due to cancellation of business.

Ms. Butt stated that Mega is responsible for hiring and disciplining drivers, keeping records, employing the drivers and controlling the use of the vehicles as lessee. Mega is responsible for vehicle maintenance and the buses carry Mega signage in a prominent manner. In exchange for the use of the NSC number, Mega paid Sybarite \$500/month and now continues to pay the successor company to Sybarite (632226 BC Ltd.) \$500/month for this arrangement. Coach 1120 was recently sold and is no longer under lease from Firmstone.

A letter dated August 13, 2003 from Mr. Escano, an employee of Mega, identifies the company as "Firmstone Bus Leasing Inc. (Mega Coach Ltd.)" for purposes of requesting temporary Alberta Authority.

Mr. Emerson Escano, dispatcher for Mega, offered testimony. Mr. Escano joined Mega as a part time driver approximately one year ago after acquiring his class 2 licence. This was his first position in a transportation company. He made only a few trips before becoming the dispatcher in June 2003. Mr. Escano is responsible for doing a road test with prospective drivers to determine if they are suitable for employment. Mr. Escano is responsible for keeping records of the bus trips. His explanation of the missing information in the records after 9/11/03, that there was a data entry problem, was significantly different than that offered by Ms. Butt.

Mr. Grant Odsen testified on behalf of Greyhound. Mr. Odsen is currently Assistant General Manager for BC and has 20 years experience with Greyhound. He provided an overview of some of Greyhound's services, routes and rates. He noted that his business in the past two to three years is "flat to down 3%".

Mr. Doug McCandless, Manager Group Services, testified on behalf of his employer GLV. He noted the types of tours and services offered by GLV. He noted that GLV have 35 vehicles currently and add up to 15 sub-leases in the summer period, although this year he expects to add only three because business is down. He testified that charter bus rates are flat or down over the past 10 years, and that GLV lost money for the first time last year.

Mr. McCandless stated that the type of business offered by Carnival would be attractive because of the volume and consistency it represented, even though the proposed daily charter rates were low.

Under cross-examination Mr. McCandless noted that GLV has some Renaissance and Prevost buses either in its service or that it can access to meet needs similar to Carnival's. He stated that summer weekends, with cruise ship schedules, can be problematic for capacity but otherwise there is an excess of capacity.

Facts

The Panel, upon careful review of the evidence, finds the following facts:

- Mega Coach Ltd. has no Motor Carrier Authority.
- Mega has leased buses, maintained buses, hired and disciplined drivers and chartered buses since at least November 2002.
- Mega has leased buses from Firmstone and chartered buses to Carnival.
- Firmstone has leased buses to SBSL, Carnival and Mega.
- Mega has paid Sybarite and 632226 BC Ltd. For the use of each of those companies' NSC certification number in order to place insurance upon the buses it leased and operated.
- Mega advertised, and continues to advertise, as a bus company for charter.
- Ms. Butt was, under cross-examination, a hesitant and not entirely forthright witness. The Panel found her credibility to be less than exemplary.
- Ms. Butt showed only very rudimentary knowledge of the NSC and many matters related to the operation of Mega with regard to insurance, permits and similar matters.
- Mr. Ip and Mr. Maio are Directors of Carnival, SBSL and Firmstone.
- Mr. Maio was a Director of Mega and is still shown as such in the most recently available print out of information in the BC Corporate Registry.

Submissions

Mr. Harris, in summation for the Objectors, put forward the view that Mega had failed to illustrate public need by way of statements of service usage and that suitable transportation alternatives exist in sufficient number and of sufficient quality that the proposed service is unnecessary.

The Objectors also posit that the proposal is not economically viable and does not promote sound economic conditions in the transportation business. In support of this they state that

Mega's business plans are incomplete and that the BC tourism business in general, and the transportation sector in particular, have been negatively impacted by a variety of external factors.

The Objectors put forth the view that Mega is unfit as a carrier, citing illegality of current and past activities and a lack of familiarity with the NSC and other matters as evidence of this lack of fitness.

Mr. Schlieper, in support of the Applicant, states that this is simply a charter arrangement with a contract between Mega and an established travel agency, all of which should have no impact on the rest of the industry. His view is that under these circumstances, the demonstration of need is not at issue.

Mr. Schlieper also expresses the view that safety is not an issue as the buses are maintained at high standards and have had no service failures or accidents. He states that the proposal is viable as evidenced by Mr. McCandless' testimony that he would accept the business at Mega's proposed tariff.

Mr. Schlieper also notes that only the related companies, Greyhound and GLV, are present as Objectors and suggests that the Panel should therefore conclude that no other parties are opposed to the Application.

Analysis

The Motor Carrier Commission has a statutory mandate to administer the *Motor Carrier Act* and licence motor carriers that transport passengers for compensation. Section 39(1) of the *Motor Carrier Act* vests the Commission with a duty to:

- ◆ promote adequate and efficient service to the public at just and reasonable charges;
- ◆ promote safety on the public highways; and
- ◆ foster sound economic conditions in the transportation industry.

Section 39(2) of the *Motor Carrier Act* empowers the Motor Carrier Commission to make investigations, inquiries, regulations and orders it thinks necessary for carrying out the objects referred to in section 39(1).

Section 5(2) of the *Motor Carrier Act* sets out broad parameters that the Commission may consider when determining whether to issue a motor carrier licence. Considerations may include:

- ◆ objections from persons providing transportation services in an area that the applicant intends to serve on the ground that suitable services exist or the granting of a licence would be in excess of requirements, or, if the applicant is a licensee on the ground that it is not complying with its conditions of licence.
- ◆ the general effect that licensing would have on other transport services and any public interest; and
- ◆ the quality and permanence of the service to be offered, and the fitness, willingness and ability of the applicant to provide proper service.

The evidence adduced at the hearing, in particular the testimony of Ms. Butt as President, Director and Manager of Mega, indicate clearly that Mega has been operating as a Motor Carrier without benefit of a Motor Carrier Licence in violation of Section 3 of the Act. It is clear that Mega has leased buses, exercised control of the maintenance, storage, record keeping and dispatching of these buses. Mega has hired drivers for these buses and exercised control over these drivers, has advertised these buses for charter, has chartered these buses and been paid for these charters. These are the actions of a Motor Carrier under the Act.

Mega has, by its own admission, engaged in paying other companies, specifically Sybarite and 632226 BC Ltd., a monthly fee to have the Mega buses registered under those companies NSC numbers. In effect, Mega has operated the Motor Carrier Licences of Sybarite and 632226 BC Ltd. without the consent of the Commission in violation of Sections 3 and 13 of the Act. The Panel is also concerned about the relationship between 632226 BC Ltd. and the Applicant, as it is contrary to the Motor Carrier Act to assign or transfer a licence without Commission approval. Licensees must maintain care and control of their Motor Carrier Licences.

The business plan submitted to the Motor Carrier branch in support of the Application was dated, weak in its details and inadequate for purposes of analysis. Despite requests from Inspector Webster, no updated business plan of any consequence was submitted for review by the Inspector or the Panel. The only recent revenue figures provided were one expense line item from a plan purported to be that of Carnival. No representative of Carnival appeared at the hearing either to corroborate that plan or to assure the Panel that the costs to Carnival represented revenues to Mega. No evidence was presented to show how Mega intended to finance the purchase of three coaches and a mini-coach as proposed by Ms. Butt in her testimony. She also testified that she had not researched the acquisition of the coaches. All of

this testimony was rendered less credible by the fact that Ms. Butt had expressed a reluctance to spend some \$600 to \$800 on courses with respect to gaining knowledge about the safety aspects of operating a bus company while proposing to acquire motor coaches worth perhaps more than \$1,000,000. The only statement of support usage was from Carnival and, under the circumstances of the Application, this is not entirely surprising. However, since this represents all of the business for Mega, the Panel would place more weight on this support if either a contract had been produced or a representative of Carnival had testified in support of the Application.

There was some evidence adduced that charter bus availability, particularly on weekends during the cruise ship season, could be problematic. However, there was absolutely no documentation provided by Mega, or alternatively by their sole proposed customer Carnival, that this was the case. The rather weak and undocumented assertions by Ms. Butt were not convincing.

With respect to the web of ownership of the various companies that are in some way less than at arm's length from Carnival, the Panel has some real concerns. It is a fact that Mr. Ip and Mr. Maio were Directors of SBSL and, as such, are not permitted to be associated with a company that wishes to qualify for NSC certification. Mr. Ip and Mr. Maio are Directors of Firmstone, which has leased buses to SBSL, to Carnival (in which both are Directors) and currently leases a bus to Mega. Mr. Ip is Ms. Butt's husband. Ms. Butt worked at Carnival for several years. Mr. Ip and Ms. Butt are both Directors of Scenic. This establishes a business as well as a marital relationship between Ms. Butt and Mr. Ip. Mr. Maio was a Director of Mega when it initially applied for transfer of SBSL's licence, and resigned only when he learned that Mega could not receive NSC certification if he was a Director due to his association with SBSL. Mr. Maio still appears as a Director of Mega in the BC Corporate Registry, despite conflicting evidence. The Panel is deeply concerned about the connection between the Directors of SBSL, Mr. Ip and Mr. Maio, and this Application. Due to these connections and Ms. Butt's lack of familiarity with many operational aspects of Mega, which has been operating as a two bus charter company, the Panel is sceptical as to the extent of her role in the company.

Conclusion

With respect to the first issue, whether Mega demonstrated that it is fit, willing and able to provide the service offered, the Panel finds that Mega is not fit. Mega clearly, on the evidence, has operated as a motor carrier since about November 2002 without having obtained a Motor Carrier Licence. This ongoing illegal operation for the past 16 months or more cannot be rewarded with a licence.

The Panel finds that the close business and personal relationships between Ms. Esther Butt, President, Director and Manager of Mega and Mr. William Ip and Mr. Michael Maio are of great concern. The role of Mr. Ip and Mr. Maio as Directors of SBSL which had its NSC certification revoked and its Motor Carrier Licence cancelled is a matter of record. Mr. Ip is Ms. Butt's former employer as President of Carnival, which is the sole client of the proposed service by Mega. Mr. Ip is Ms. Butt's husband and business partner in Scenic. Mr. Ip and Mr. Maio are both Directors of Firmstone, which leases buses to Mega for Mega's illegal bus operation. Mr. Maio is also a Director of Carnival and was (or, on the evidence, perhaps still is) a Director of Mega. There is no doubt, in the view of the Panel, that Mega has contrived to accomplish through Ms. Butt that which neither Mr. Ip nor Mr. Maio could accomplish because of their involvement in SBSL: to obtain a Motor Carrier Licence. This would ultimately benefit Firmstone as the lessor of buses to Mega and Carnival as the company to whom the buses would be chartered.

With regard to the second issue, whether Mega demonstrated a public need and/or a satisfactory business plan to deliver the service to be offered in a sustainable manner, the Panel finds that Mega did not satisfy this requirement. Mega did not provide any detailed support beyond one written statement of service usage and provided no documentation of the alleged shortages of suitable buses for charter by its sole proposed customer, Carnival. In *Dana Vivian Attridge et al*, MC Order #4-93, the Commission held: "In the absence of proof of material deficiencies in available service, the mere preference of people for the proposed service does not afford a sufficient base on which to predicate the granting of a licence." In this case the "people" with a preference are represented by Carnival, which apparently would prefer to charter buses from Mega.

Further, Mega provided an inadequate and outdated business plan and failed to respond to requests to provide further details that might have helped its Application.

Order

In the matter of the Motor Carrier Act, R.S.B.C., Chapter 315 and Motor Carrier Regulation 311/2003, as amended, the Commission Orders that Application #741/03 be denied.

Further, Mega Coach Ltd. is ordered to cease and desist from advertising or offering for charter any transportation services in the province of British Columbia.

A copy of this Order shall be provided to 632226 BC Ltd. to emphasize the Panel's specific concerns relating to care and control of the licence held by that company.

The Commission further Orders that costs be assessed against the Applicant and Objectors and that the security deposits filed with the Commission be retained as payment for costs.

MOTOR CARRIER COMMISSION

Dennis J. Day, Commissioner

Panel member concurring.

ENTERED:

Jan Broocke
Secretary to the Commission