

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 9391

IN THE MATTER OF:

Served March 16, 2006

Application of EMK SERVICES, INC.,)
for a Certificate of Authority --)
Irregular Route Operations)

Case No. AP-2005-168

Applicant seeks a certificate of authority to transport passengers in irregular route operations between points in the Metropolitan District, restricted to transportation in vehicles with a seating capacity of less than 16 persons only, including the driver. The application is unopposed.

Under Article XI, Section 7(a), of the Compact, the Commission shall issue a certificate of authority to any qualified applicant, authorizing all or any part of the transportation covered by the application, if the Commission finds that: (i) the applicant is fit, willing, and able to perform the proposed transportation properly, conform to the provisions of the Compact, and conform to the rules, regulations, and requirements of the Commission; and (ii) the transportation is consistent with the public interest.

An applicant for a certificate of authority must establish financial fitness, operational fitness, and regulatory compliance fitness.¹ A determination of compliance fitness is prospective in nature.² The purpose of the inquiry is to protect the public from those whose conduct demonstrates an unwillingness to operate in accordance with regulatory requirements.³ Past violations do not necessarily preclude a grant of authority but permit the inference that violations will continue.⁴

I. BACKGROUND

Applicant held WMATC Certificate of Authority No. 855 from January 22, 2004 to November 29, 2004, when the Commission assessed a \$750 civil forfeiture against applicant and revoked Certificate No. 855 on the grounds that applicant operated for three days while suspended and uninsured in knowing and willful violation of Article XI, Section 6(a) of the Compact and Order No. 8254.⁵

¹ *In re Zee Transp. Serv. Inc.*, No. AP-05-01, Order No. 8749 (May 31, 2005).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *In re EMK Servs. Inc.*, No. MP-04-153, Order No. 8440 (Nov. 29, 2004).

Applicant reapplied for a certificate of authority on January 10, 2005, but the application was denied without prejudice for failure to establish regulatory compliance fitness.⁶

II. CURRENT APPLICATION

Applicant proposes commencing operations with one van. Applicant's proposed tariff contains rates for transportation under the District of Columbia Medicaid program and similar non-Medicaid rates.

Applicant verifies that: (1) applicant owns or leases, or has the means to acquire through ownership or lease, one or more motor vehicles meeting the Commission's safety requirements and suitable for the transportation proposed in this application; (2) applicant owns, or has the means to acquire, a motor vehicle liability insurance policy that provides the minimum amount of coverage required by Commission regulations; and (3) applicant has access to, is familiar with and will comply with the Compact, the Commission's rules, regulations and orders, and Federal Motor Carrier Safety Regulations as they pertain to transportation of passengers for hire.

Applicant published notice of this application in a newspaper of general circulation as directed by the initial order in this proceeding, and no comments, requests for intervention or protests have been received.

Normally, such evidence would establish applicant's fitness,⁷ but in this case, as noted, applicant has a history of regulatory violations. When an applicant has a record of violations, the Commission considers the following factors in assessing the likelihood of future compliance: (1) the nature and extent of the violations, (2) any mitigating circumstances, (3) whether the violations were flagrant and persistent, (4) whether applicant has made sincere efforts to correct its past mistakes, and (5) whether applicant has demonstrated a willingness and ability to comport with the Compact and rules and regulations thereunder in the future.⁸

In Order No. 8921, the Commission observed that: (1) operating without proper authority is a serious violation; (2) maintaining proper insurance coverage is of paramount importance under the Compact; (3) there was no evidence of mitigating circumstances; and (4) there was little or no evidence that applicant had taken significant steps to prevent a recurrence of regulatory violations in the future. At the same time, the Commission found that the three days of unlawful operations were not persistent or flagrant and acknowledged that applicant had promptly paid the \$750 forfeiture, which may be viewed as

⁶ *In re EMK Servs. Inc.*, No. AP-05-05, Order No. 8921 (Aug. 19, 2005).

⁷ *In re Executive Tech. Solutions, LLC*, No. AP-04-84, Order No. 8273 (Sept. 20, 2004); *In re VGA, Inc.*, No. AP-03-73, Order No. 7496 (Oct. 29, 2003).

⁸ Order No. 8273; Order No. 7496.

correcting a past mistake.⁹ Since then, applicant has hired an attorney, former WMATC Assistant General Counsel Joel C. Weingarten, to furnish ongoing regulatory compliance advice.

On balance, we find applicant has made the requisite showing. The Commission has found other applicants fit under similar circumstances.¹⁰ Applicant, however, shall serve a one year period of probation as a means of ensuring prospective compliance.¹¹

III. CONCLUSION

Based on the evidence in this record, and in consideration of the terms of probation and other conditions prescribed herein, the Commission finds that the proposed transportation is consistent with the public interest and that applicant is fit, willing, and able to perform the proposed transportation properly, conform to the provisions of the Compact, and conform to the rules, regulations, and requirements of the Commission.

THEREFORE, IT IS ORDERED:

1. That upon applicant's timely compliance with the requirements of this order, Certificate of Authority No. 855 shall be reissued to EMK Services, Inc., 1012 Chillum Road, Hyattsville, MD 20782.

2. That applicant may not transport passengers for hire between points in the Metropolitan District pursuant to this order unless and until Certificate No. 855 has been reissued in accordance with the preceding paragraph.

⁹ *In re Capitol Bus Rental, Inc., t/a Capitol Tours*, No. AP-95-50, Order No. 4719 (Dec. 14, 1995).

¹⁰ See Order No. 8749 (paying forfeiture and retaining compliance attorney); Order No. 7496 (retaining compliance attorney); *In re Shirlington Limo. & Transp., Inc.*, No. AP-02-20, Order No. 6709 (June 21, 2002) (payment of forfeiture); *In re Haymarket Transp., Inc.*, No. AP-98-35, Order No. 5427 (Oct. 1, 1998) (paying forfeiture and filing Rule 28 report); *In re Japan Travelers Serv., Inc.*, No. AP-92-34, Order No. 4055 (Feb. 17, 1993) (hiring attorney and paying forfeiture); *In re Ruchman & Assocs., Inc., t/a RAI, Inc.*, No. AP-91-32, Order No. 3911 (Mar. 25, 1992) (same).

¹¹ See Order No. 8749 (applicant placed on one year probation after applicant's CEO operated illegally in the face of a cease and desist order); *In re Henka International, Inc.*, No. AP-03-184, Order No. 8035 (applicant placed on 1 year probation where controlling shareholders had history of Compact violations); *In re Nevah Transps., LLC*, No. AP-03-106, Order No. 7527 (Nov. 10, 2003) (applicant placed on one year probation after co-owner operated while suspended and uninsured); Order No. 7496 (applicant placed on one year probation after operating while suspended and uninsured); Order No. 6709 (applicant with history of Compact violations placed on 1 year probation); *In re Adventures By Dawn L.L.C.*, No. AP-00-89, Order No. 6087 (Jan. 16, 2001) (applicant placed on 1 year probation where controlling shareholders had history of Compact violations).

3. That applicant is hereby directed to present its revenue vehicle(s) for inspection and file the following documents within the 180-day maximum permitted in Commission Regulation No. 66: (a) evidence of insurance pursuant to Commission Regulation No. 58 and Order No. 4203; (b) an original and four copies of a tariff or tariffs in accordance with Commission Regulation No. 55; (c) a vehicle list stating the year, make, model, serial number, fleet number, license plate number (with jurisdiction) and seating capacity of each vehicle to be used in revenue operations; (d) a copy of the for-hire vehicle registration card, and a lease as required by Commission Regulation No. 62 if applicant is not the registered owner, for each vehicle to be used in revenue operations; and (e) proof of current safety inspection of said vehicle(s) by or on behalf of the United States Department of Transportation, the State of Maryland, the District of Columbia, or the Commonwealth of Virginia.

4. That applicant shall be placed on probation for a period of one year commencing with the reissuance of Certificate No. 855 in accordance with the terms of this order and that a willful violation of the Compact, or of the Commission's rules, regulations or orders thereunder, by applicant or its owners/officers during the period of probation shall constitute grounds for immediate suspension and/or revocation of applicant's operating authority without further proceedings, regardless of the nature or severity of the violation.

5. That the grant of authority herein shall be void and the application shall stand denied upon applicant's failure to timely satisfy the conditions of reissuance prescribed herein.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS YATES AND SMITH:



William S. Morrow, Jr.
Executive Director