

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 10,207

IN THE MATTER OF:

Served January 8, 2007

Application of BEATRICE RAMONA FAYE) Case No. AP-2006-116
HORSLEY, Trading as ASK)
TRANSPORTATION SERVICES, for a)
Certificate of Authority --)
Irregular Route Operations)

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.

Applicant previously conducted passenger carrier operations in the Metropolitan District through A.S.K. Enterprises, Inc., which held WMATC Certificate No. 361 from February 20, 1998, until January 10, 2005, when it was revoked for A.S.K. Enterprises' three days of operations while suspended and uninsured in knowing and willful violation of Article XI, Section 6(a) of the Compact and Order No. 8236.¹ The Commission gave A.S.K. Enterprises thirty days to: (1) pay the forfeiture; (2) file an affidavit verifying that all WMATC markings had been removed from A.S.K. Enterprises' vehicles; and (3) return Certificate No. 361.² As of the date this application was filed, A.S.K. Enterprises had yet to comply.

I. COMPLIANCE FITNESS STANDARD

The Compact, Title II, Article XI, Section 7(a), authorizes the Commission to issue a certificate of authority if it finds that the proposed transportation is consistent with the public interest and that 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. If an applicant does not make the required showing, the application must be denied under Section 7(b).

An applicant for a certificate of authority bears the burden of establishing financial fitness, operational fitness, and regulatory compliance fitness.³ A determination of compliance fitness is

¹ *In re A.S.K. Enterprises, Inc.*, No. MP-04-152, Order No. 8495 (Jan. 10, 2005).

² *Id.*

³ *In re Ali Zohery, t/a Zohery Tours*, No. AP-05-045, Order No. 9809 (Aug. 8, 2006).

prospective in nature.⁴ The purpose of the inquiry is to protect the public from those whose conduct demonstrates an unwillingness to operate in accordance with regulatory requirements.⁵ Past violations do not necessarily preclude a grant of authority but permit the inference that violations will continue.⁶

When an applicant has a history of controlling a company with a record of regulatory violations, the Commission considers the following factors in assessing the likelihood of applicant's future compliance: (1) the nature and extent of the violations, (2) any mitigating circumstances, (3) whether the violations were flagrant and persistent, (4) whether the controlling party has made sincere efforts to correct past mistakes, and (5) whether the controlling party has demonstrated a willingness and ability to comport with the Compact and rules and regulations thereunder in the future.⁷

II. APPLICANT'S EXPLANATION OF VIOLATIONS

The record in Case No. MP-04-152 shows that Certificate No. 361 was rendered invalid/automatically suspended on August 23, 2004, when the \$500,000 primary and \$1 million excess WMATC Insurance Endorsements on file for A.S.K. Enterprises terminated without replacement.⁸ A.S.K. Enterprises should have ceased operations immediately, as noted in Order No. 8236, served August 24, 2004, but records of invoices furnished by the District of Columbia Department of Health, Medical Assistance Administration (DC Medicaid), indicate that A.S.K. Enterprises continued transporting twenty-three DC Medicaid passengers through August 25, 2004.⁹ A.S.K. Enterprises contended that the invoices sent to DC Medicaid for transportation after August 22, 2004, were submitted in error and supported this contention with exculpatory affidavits from six of the passengers (or their representatives) in question, leaving seventeen passengers for whom A.S.K. Enterprises did not account.¹⁰ Order No. 8358, served October 27, 2004, gave A.S.K. Enterprises thirty days to account for the remaining seventeen passengers, but A.S.K. Enterprises did not reply.¹¹

In the meantime, A.S.K. Enterprises submitted two replacement endorsements on September 8, 2004, with an effective date of September 7, 2004.¹² This means that A.S.K. Enterprises ultimately was without insurance coverage for fifteen days from August 23, 2004, through September 6, 2004.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ Order No. 8495.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

The initial order in this proceeding directed applicant to file a statement explaining why the Commission should not find applicant unfit given the failure of A.S.K. Enterprises to comply with Commission requirements and pay the \$750 forfeiture.

Applicant contends that a change of insurance agents caused a delay in submission of the necessary WMATC Insurance Endorsements. It is not clear, however, whether the change occurred before or after August 23, 2004, and applicant does not explain why A.S.K. Enterprises waited until September 7, 2004, to bind coverage. Applicant also does not explain A.S.K. Enterprises' failure to cease providing for-hire passenger transportation as of August 23, 2004.

Turning to the five criteria, we do not view the three days of unlawful operations as persistent or flagrant, and applicant has now paid the \$750 civil forfeiture, which may be viewed as correcting a past mistake.¹³ Operating while uninsured, on the other hand, is a serious violation.¹⁴ When the signatories and Congress approved the Compact, they designated noncompliance with Commission insurance requirements as the single offense that would automatically invalidate a certificate of authority. They could not have sent a clearer message that maintaining proper insurance coverage is of paramount importance under the Compact.¹⁵

No mitigating circumstances are cited in the order revoking Certificate No. 361, and applicant has brought none to our attention in this proceeding. Furthermore, there is no evidence that applicant has taken significant steps to prevent a recurrence of regulatory violations. The Commission has previously found a significant step to have been completed where applicants have retained an attorney to furnish ongoing regulatory compliance advice¹⁶ or aligned themselves with an outside investor without a history of regulatory violations.¹⁷ No evidence of such steps by applicant appears in the record.

Finally, A.S.K. Enterprises has yet to surrender its revoked Certificate No. 361 to the Commission or to certify to the Commission that it has removed its identification markings from its revenue vehicles, as it was directed by Commission Order No. 8495 almost two years ago. It is difficult to view the likelihood of applicant's future compliance with regulatory requirements in a favorable light when the company applicant controls has yet to fully comply with the simple steps outlined in Order No. 8495.

¹³ *In re EMK Services Inc.*, No. AP-05-05, Order No. 8921 (Aug. 19, 2005).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *See In re EMK Services Inc.*, No. AP-05-168, Order No. 9391 (Mar. 16, 2006) (applicant with history of violations found fit after hiring attorney to furnish ongoing compliance advice).

¹⁷ *See In re Nevah Transports, LLC*, No. AP-03-106, Order No. 7527 (partner without history of violations in control of applicant).

III. CONCLUSION

Based on the evidence in this record, we cannot say that applicant has established regulatory compliance fitness.

THEREFORE, IT IS ORDERED that the application of Beatrice Ramona Faye Horsley, trading as ASK Transportation Services, for a certificate of authority is hereby denied without prejudice.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS YATES AND CHRISTIE:



William S. Morrow, Jr.
Executive Director