

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 10,602

IN THE MATTER OF:

Served July 5, 2007

Application of ZOHERY TOURS)
INTERNATIONAL, INC., for a) Case No. AP-2007-053
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. The application is unopposed.

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.

Applicant proposes commencing operations with three vans and three motorcoaches. Applicant proposes operating under a tariff containing individual and/or group sightseeing 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.

Normally, such evidence would establish applicant's fitness,¹ but this applicant has a history of regulatory violations. Applicant previously held Certificate No. 362 from October 25, 1996, until January 21, 2003, when it was revoked for applicant's willful failure to comply with the 15-person vehicle seating capacity restriction in Certificate No. 362.² A \$20,750 civil forfeiture was assessed, as well,³ and then reduced by \$10,000.⁴

¹ *In re BLS Limo Group, Inc.*, No. AP-07-056, Order No. 10,472 (May 9, 2007).

² *See In re Zohery Tours Int'l, Inc.*, No. MP-02-46, Order No. 7005 (Jan. 21, 2003), *aff'd on recon.*, Order No. 7096 (Mar. 19, 2003).

³ *Id.*

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.⁵

Few violations are more serious than operating without authority.⁶ And in this case not only were there were no mitigating circumstances; applicant's unlawful operations were persistent and flagrant.⁷

On the other hand, applicant has paid the reduced forfeiture in full and has been leasing its vehicles to a WMATC carrier since December 2006;⁸ and although the Federal Motor Carrier Safety Administration (FMCSA) ordered one of applicant's vehicles out of service within the past 24 months, the FMCSA did not order applicant itself out of service.⁹

The Commission has conditionally granted operating authority under similar circumstances in the past, subject to a one-year period of probation.¹⁰ We believe that probation would be appropriate here, as well, given the circumstances.

Based on the evidence in this record, and in consideration of the terms of probation 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.

⁴ Order No. 7096.

⁵ Order No. 10,472.

⁶ *Id.*

⁷ See Order No. 7005 (83 days despite two cease-and-desist orders).

⁸ A similar lease arrangement alleged in an application filed by applicant's president, Ali Zohery, in 2005 did not save that application because, unlike here, the lease arrangement alleged in that application was not substantiated by the lessee. *In re Ali Zohery, t/a Zohery Tours*, No. AP-05-045, Order No. 9809 (Aug. 8, 2006).

⁹ Applicant's federal safety record is available at <http://www.safersys.org/CompanySnapshot.aspx>.

¹⁰ See Order No. 10,472 (post-violation lease of vehicles to WMATC carrier and clean federal safety record); *In re Business Logistics Group, L.L.C., t/a ATS, L.L.C.*, No. AP-06-002, Order No. 9652 (June 15, 2006) (payment of forfeiture after revocation); *In re Shirlington Limo. & Transp., Inc.*, No. AP-02-20, Order No. 6709 (June 21, 2002) (same); *In re Adventures By Dawn L.L.C.*, No. AP-00-89, Order No. 6087 (Jan. 16, 2001) (driver ordered out of service by FMCSA but not carrier).

THEREFORE, IT IS ORDERED:

1. That upon applicant's timely compliance with the requirements of this order, Certificate of Authority No. 362 shall be reissued to Zohery Tours International, Inc., 1206 Half Street, S.W., Washington, DC 20024.

2. That applicant may not transport passengers for hire between points in the Metropolitan District pursuant to this order unless and until Certificate No. 362 has been reissued in accordance with the preceding paragraph.

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 once year commencing with the reissuance of Certificate No. 362 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 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 and 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 issuance prescribed herein.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS YATES AND CHRISTIE:



William S. Morrow, Jr.
Executive Director