

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 11,001

IN THE MATTER OF:

Served December 13, 2007

Application of SKYHAWK LOGISTICS,)
INC., for a Certificate of)
Authority -- Irregular Route)
Operations)
Case No. AP-2007-195

Applicant seeks a certificate of authority to transport passengers in irregular route operations between points in the Metropolitan District. The application is unopposed, but applicant has a history of regulatory violations.

I. APPLICATION

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 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

Applicant held WMATC Certificate of Authority No. 406 from February 26, 1998, until July 19, 2001, when the Commission revoked Certificate No. 406 for applicant's willful failure to comply with: (1) Article XI, Section 7(g), of the Compact and Commission Regulation No. 58, governing insurance; (2) Article IV, Section 4(a), of the Compact, Regulation No. 67 and Order No. 3601, governing annual fees; (3) Article XII, Section 1(a), of the Compact and Regulation No. 60-

¹ *In re EMK Servs. Inc.*, No. AP-05-005, Order No. 8921 (Aug. 19, 2005).

² *Id.*

³ *Id.*

⁴ *Id.*

01, governing annual reports; and (4) Article XI, Section 14, of the Compact and Regulation No. 55, governing tariffs.⁵

Applicant reapplied for operating authority later in 2001, and the application was approved in early 2002 in substantial part on the basis of applicant's representation that it had access to, was familiar with, and would comply with the Compact and the Commission's rules and regulations thereunder.⁶ Certificate No. 406 was reissued to applicant on February 22, 2002, and suspended four times over the next five and one-quarter years for willful failure to comply with Regulation No. 58, governing insurance.⁷ The Commission lifted the suspension the first three times⁸ and revoked Certificate No. 406 the fourth.⁹

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.¹⁰

The history recounted above would warrant denial without more - and there is more. The record shows that applicant continued operating after receiving a copy of the fourth suspension order, Order No. 10,406, served April 16, 2007,¹¹ notwithstanding that the order clearly directed applicant to "not transport passengers for hire under Certificate No. 406, unless and until otherwise ordered by the Commission." Applicant's president, O. Jimmy Ogunniyi explains that applicant "was under the impression" that Certificate No. 406 had been reinstated.¹² Perhaps Mr. Ogunniyi was under that "impression", but

⁵ *In re Skyhawk Logistics, Inc.*, No. MP-01-042, Order No. 6291 (July 19, 2001).

⁶ *In re Skyhawk Logistics, Inc.*, No. AP-01-100, Order No. 6503 (Jan. 29, 2002).

⁷ *In re Skyhawk Logistics, Inc.*, No. MP-07-072, Order No. 10,406 (Apr. 16, 2007); *In re Skyhawk Logistics, Inc.*, No. MP-05-043, Order No. 8653 (Apr. 19, 2005); *In re Skyhawk Logistics, Inc.*, No. MP-05-032, Order No. 8607 (Mar. 22, 2005); *In re Skyhawk Logistics, Inc.*, No. MP-04-077, Order No. 7887 (Mar. 22, 2004).

⁸ *In re Skyhawk Logistics, Inc.*, No. MP-05-043, Order No. 9653 (June 15, 2006); *In re Skyhawk Logistics, Inc.*, No. MP-05-032, Order No. 8619 (Mar. 30, 2005); *In re Skyhawk Logistics, Inc.*, No. MP-04-077, Order No. 8059 (June 3, 2004).

⁹ *In re Skyhawk Logistics, Inc.*, No. MP-07-072, Order No. 10,681 (Aug. 8, 2007).

¹⁰ Order No. 8921.

¹¹ Statement of Skyhawk Logistics, Inc., by O. Jimmy Ogunniyi, (Statement), ¶ 23 at 4.

¹² *Id.*

the record is clear that no such order had issued. His impression therefore had no basis in fact and was unreasonable.¹³

To make matters worse, the record shows that applicant experienced a lapse of insurance coverage for seventeen days from July 14 through July 30, 2007.¹⁴ There is nothing in the record to indicate that applicant discontinued operating during that period. Operating while suspended and uninsured is one of the most serious violations a carrier can commit.¹⁵

On the other side of the ledger, we have Mr. Ogunniyi's statement that "on November 7, 2007, Skyhawk entered into a Temporary Assignment of Skyhawk's Contract to provide on-call shuttle services with VGA Enterprises, Inc."¹⁶ VGA holds WMATC Certificate No. 445. If what Mr. Ogunniyi says is true, this would be some evidence of applicant's willingness and ability to comport with regulatory requirements in the future, but Mr. Ogunniyi's statement is not supported by a copy of the assignment, and VGA has not filed the assignment as a contract tariff in accordance with Commission Regulation Nos. 55 and 56.¹⁷ Accordingly, his statement is entitled to little weight on this point.¹⁸

We also have Mr. Ogunniyi's statement that he was forced to delegate insurance compliance to a subordinate for the past six months but will personally monitor applicant's insurance compliance going forward. As noted above, however, applicant's history of insurance violations stretches back several years - to a time when by implication Mr. Ogunniyi was personally in charge. His assurance that he will timely consult on these issues with counsel,¹⁹ therefore, is not particularly convincing as the record now stands.

Finally, we note that documents available from the website of the Maryland Department of Assessments and Taxation indicate that applicant currently is not in good standing for failure to file a property tax return for 2007. This adds to our doubt about

¹³ See *In re Second to None Tour & Travel Inc.*, No. MP-06-135, Order No. 10,639 (July 18, 2007) (carrier in receipt of suspension order had no reasonable basis for resuming operations in absence of order lifting suspension).

¹⁴ Applicant admits July 15 through July 30. Statement, ¶ 15. at 3. The record, however, shows coverage expired at 12:01 a.m. July 14.

¹⁵ See *In re Handi-Pro Transp., Inc.*, No. MP-07-060, Order No. 10,817 (Oct. 10, 2007) (revoking operating authority for same).

¹⁶ Statement, ¶ 17 at 3.

¹⁷ We also note that if VGA is operating applicant's 2002 Ford Winstar to perform this service, VGA would be required to file a lease with the Commission and report that vehicle to VGA's insurance company in accordance with Regulation No. 62. VGA has done neither.

¹⁸ See *In re Ali Zohery t/a Zohery Tours*, No. AP-05-045, Order No. 9809 (Aug. 8, 2006) (fitness showing deficient in part because no copy of subcontract on file with Commission).

¹⁹ Statement, ¶¶ 25-29 at 4-5.

applicant's willingness and ability to comport with regulatory requirements in the future.²⁰

On this record, we cannot say that applicant has established regulatory compliance fitness. We will hold our finding in abeyance, however, until such time as applicant complies with the directives below.

II. SHOW CAUSE ORDER

A person who knowingly and willfully violates a provision of the Compact, or a rule, regulation, requirement, or order issued under it, or a term or condition of a certificate shall be subject to a civil forfeiture of not more than \$1,000 for the first violation and not more than \$5,000 for any subsequent violation.²¹ Each day of the violation constitutes a separate violation.²²

The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.²³ The terms "willful" and "willfully" do not mean with evil purpose or criminal intent; rather, they describe conduct marked by careless disregard whether or not one has the right so to act.²⁴

Inasmuch as applicant has admitted operating while suspended, applicant shall have thirty days to show cause why the Commission should not assess a civil forfeiture against applicant for knowingly and willfully violating Article XI, Section 6(a), of the Compact, Regulation No. 58, and the orders issued in Case No. MP-07-072 by conducting operations under an invalid/suspended certificate of authority. As part of its showing, applicant shall identify the dates on which it operated and corroborate its statement with copies of its business records.

THEREFORE, IT IS ORDERED:

1. That applicant shall have thirty days to show cause why the Commission should not assess a civil forfeiture against applicant for knowingly and willfully violating Article XI, Section 6(a), of the Compact, Regulation No. 58, and the orders issued in Case No. MP-07-072.

2. That within thirty days from the date of this order, applicant shall file a statement identifying the dates on which it operated on and after April 15, 2007.

²⁰ See Order No. 8921 (denying application of corporation not in good standing).

²¹ Compact, tit. II, art. XIII, § 6(f)(i).

²² Compact, tit. II, art. XIII, § 6(f)(ii).

²³ *In re Westview Med. & Rehab. Servs., P.C. Inc.*, No. MP-07-070, Order No. 10,882 (Nov. 2, 2007); *In re Handi-Pro Transp., Inc.*, No. MP-07-060, Order No. 10,817 (Oct. 10, 2007); *In re Special People Transp., LLC*, No. MP-06-103, Order No. 10,683 (Aug. 8, 2007).

²⁴ Order Nos. 10,882, 10,817 & 10,683.

3. That within thirty days from the date of this order, applicant shall produce any and all books, papers, correspondence, memoranda, contracts, agreements, and other records and documents, including any and all stored electronically, that are within applicant's possession, custody or control and which relate to the transportation of passengers for hire between points in the Metropolitan District during the period beginning April 15, 2007, and ending on the date of this order, including, but not limited to any and all:

- a. customer contracts and invoices;
- b. invoices from other carriers;
- c. calendars and itineraries;
- d. bank and payroll records; and
- e. the VGA assignment.

4. That applicant may submit within 15 days from the date of this order a written request for oral hearing, specifying the grounds for the request, describing the evidence to be adduced and explaining why such evidence cannot be adduced without an oral hearing.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS YATES AND CHRISTIE:



William S. Morrow, Jr.
Executive Director