

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 11,242

IN THE MATTER OF:

Served March 31, 2008

Application of HP TRANSPORTATION)
SERVICES, INC., for a Certificate) Case No. AP-2007-257
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.

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 The past conduct of an applicant's owners and officers is relevant to a determination of applicant's compliance fitness.⁵

Applicant's CEO, Vincent M. Anderson, previously conducted passenger carrier operations in the Metropolitan District through Handi-Pro Transportation, Inc., ("Handi-Pro") which held WMATC Certificate No. 301 from May 8, 1995, until October 10, 2007, when it was revoked because Handi-Pro operated while suspended and uninsured

¹ *In re EMK Services Inc.*, No. AP-05-05, Order No. 8921 (Aug. 19, 2005); *In re Nevah Transports, LLC*, No. AP-02-121, Order No. 7001 (Jan. 21, 2003).

² Order No. 8921; Order No. 7001.

³ Order No. 8921; Order No. 7001.

⁴ Order No. 8921; Order No. 7001.

⁵ Order No. 8921; Order No. 7001.

in knowing and willful violation of Article XI, Section 6(a) of the Compact.⁶

When a person controlling an applicant has a record of regulatory violations, or a history of controlling companies with such a record, 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

The record in the revocation proceeding does not support a finding that applicant's unlawful operations were persistent or flagrant, and applicant promptly paid the \$250 forfeiture assessed in the revocation order, which may be viewed as correcting a past mistake.⁸

On the other hand, operating while suspended and uninsured is a serious offense.⁹ 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.¹⁰ No mitigating circumstances are cited in the revocation order, and applicant has brought none to our attention in this proceeding.

Finally, there is little evidence that applicant has "put in place personnel and/or process sufficient to prevent recurring violations of routine regulatory requirements."¹¹ Mr. Anderson at first says that he has hired a "business manager" with an "accounting background" and that the manager has been "charged with duties specific to insurance compliance oversight." Mr. Anderson's initial statement does not name the manager, however, and offers no details on the manager's background and no explanation of the procedures the manager will employ to ensure compliance. Mr. Anderson later explains that a "Mr. Green" will ensure applicant's insurance premiums are timely paid even though Mr. Green will not be applicant's new business manager.

⁶ *In re Handi-Pro Transportation, Inc.*, No. MP-07-060, Order No. 10,817 (Oct. 10, 2007).

⁷ Order No. 7001.

⁸ Order No. 8921.

⁹ Order No. 8921; Order No. 7001.

¹⁰ Order No. 8921.

¹¹ *Id.* at 3.

The record reveals that Mr. Green is Horace Green, president of Green's Transportation Company, Inc., WMATC No. 320. Mr. Green has filed a statement in this proceeding stating that he will assist Mr. Anderson "in structuring internal controls which will ensure his company's ability to pay its business insurance payments on time."

Apart from the obvious conflict of interest stemming from Mr. Green's status as Mr. Anderson's competitor, we find little comfort in Mr. Green's assurances inasmuch as Mr. Green's company has been suspended six times in the past for insurance violations - twice last year alone. The public interest will be better served if Mr. Green focuses on keeping his company in compliance with Regulation No. 58.

On this record, we cannot say that applicant has established regulatory compliance fitness.

THEREFORE, IT IS ORDERED that the application of HP Transportation Services, Inc., for a certificate of authority, irregular route operations, is hereby denied without prejudice.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS YATES AND CHRISTIE:



William S. Morrow, Jr.
Executive Director