

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 11,693

IN THE MATTER OF:

Served November 19, 2008

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.

Article XI, Section 7(a), of the Compact provides that 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 must establish financial fitness, operational fitness, and regulatory compliance fitness.¹

This application is unopposed, but applicant has a history of regulatory violations.

I. PAST VIOLATIONS

Applicant previously 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. 60-01, governing annual reports; and (4) Article XI, Section 14, of the Compact and Regulation No. 55, governing tariffs.²

Applicant reapplied for operating authority later in 2001, and the application was approved in early 2002 in substantial part on the

¹ *In re Business Logistics Group, L.L.C., t/a ATS, L.L.C.*, No. AP-06-002, Order No. 9652 (June 15, 2006); *In re EMK Services Inc.*, No. AP-05-168, Order No. 9391 (Mar. 16, 2006); *In re Zee Transp. Serv. Inc.*, No. AP-05-01, Order No. 8749 (May 31, 2005).

² *In re Skyhawk Logistics, Inc.*, No. MP-01-042, Order No. 6291 (July 19, 2001).

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.³ 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.⁴ The Commission lifted the suspension the first three times⁵ and revoked Certificate No. 406 the fourth.⁶

As of December 13, 2007, the record showed that applicant continued operating after receiving a copy of the fourth suspension order, Order No. 10,406, served April 16, 2007.⁷ The order directed applicant to "not transport passengers for hire under Certificate No. 406, unless and until otherwise ordered by the Commission." The Commission has yet to issue such an order. Applicant's president, O. Jimmy Ogunniyi claims that applicant continued operating anyway because applicant "was under the impression" that Certificate No. 406 had been reinstated. This prompted our holding in Order No. 11,001, served December 13, 2007, that Mr. Ogunniyi's "impression" had no basis in fact and was therefore unreasonable.

To make matters worse, the record showed that applicant experienced a lapse of insurance coverage for seventeen days from July 14 through July 30, 2007.⁸ There was 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.⁹

On the other hand, the record also contained a statement from Mr. Ogunniyi 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."¹⁰ VGA holds WMATC Certificate No. 445. We acknowledged in Order No. 11,001 that the existence of

³ *In re Skyhawk Logistics, Inc.*, No. AP-01-100, Order No. 6503 (Jan. 29, 2002).

⁴ *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).

⁵ *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).

⁶ *In re Skyhawk Logistics, Inc.*, No. MP-07-072, Order No. 10,681 (Aug. 8, 2007).

⁷ Statement of Skyhawk Logistics, Inc., by O. Jimmy Ogunniyi, (Statement), ¶ 23 at 4.

⁸ Applicant admits July 15 through July 30. Statement, ¶ 15. at 3. The record, however, shows coverage expired at 12:01 a.m. July 14.

⁹ See *In re Handi-Pro Transp., Inc.*, No. MP-07-060, Order No. 10,817 (Oct. 10, 2007) (revoking operating authority for same).

¹⁰ Statement, ¶ 17 at 3.

such an arrangement would be some evidence of applicant's willingness and ability to comport with regulatory requirements in the future, but Mr. Ogunniyi's statement was not supported by a copy of the assignment, and VGA had not filed the assignment as a contract tariff in accordance with Commission Regulation Nos. 55 and 56. Accordingly, we concluded that Mr. Ogunniyi's statement was entitled to little weight on this point.

Thus as matters stood December 13, 2007, we could not say that applicant had established regulatory compliance fitness, but we withheld our finding on this issue pending applicant's showing as to why the Commission should not assess a civil forfeiture against applicant for knowingly and willfully operating without authority.

In response, applicant admits that it "provided transportation services from May 29, 2007 through November 7, 2007" while suspended and revoked. Applicant offers no new argument as to why this violation should not be deemed knowing and willful within the meaning of the compact.

To applicant's credit, however, applicant has filed a contract tariff on behalf of VGA that obligates VGA to perform applicant's government contracts.¹¹ The contract is effective November 7, 2007, and expires December 31, 2008. From this it would appear that applicant last operated without authority on November 7, 2007.

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.¹²

The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.¹³ The term "willfully" does not mean with evil purpose or criminal intent; rather, it describes conduct marked by careless disregard whether or not one has the right so to act.¹⁴ Once a carrier is apprised of Compact requirements, the onus is on the carrier to determine whether its operations are in compliance.¹⁵ Violations occurring thereafter are viewed as knowing and willful.¹⁶ Employee negligence is no defense.¹⁷ "To hold carriers not liable for penalties where the

¹¹ The tariff was accepted for filing, but the lease was not.

¹² Compact, tit. II, art. XIII, § 6(f)(i).

¹³ *In re Union, Inc.*, No. AP-07-013, Order No. 10,482 (May 10, 2007); *In re Associated Community Servs., Inc.*, No. AP-02-88, Order No. 6839 (Oct. 3, 2002).

¹⁴ Order Nos. 10,482; 6839.

¹⁵ Order Nos. 10,482; 6839.

¹⁶ Order Nos. 10,482; 6839.

¹⁷ Order No. 6839.

violations . . . are due to mere indifference, inadvertence, or negligence of employees would defeat the purpose of" the statute.¹⁸

We shall assess a forfeiture of \$250 per day¹⁹ for the 163 days of admitted operations while suspended/revoked, or \$40,750. We will assess an additional \$250 per day for the 17 days applicant operated while uninsured, or \$4,250, for a total forfeiture of \$45,000. We will suspend all but \$7,500 in recognition of applicant's admission of guilt and voluntary filing of this application.²⁰ Failure to pay the net forfeiture in a timely fashion shall result in reinstatement of the full \$45,000.

II. PROSPECTIVE COMPLIANCE

Applicant proposes commencing operations with one van and three minibuses. Applicant proposes operating under a tariff containing rates for transportation under contracts with private entities and government agencies.

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 be sufficient to establish an applicant's fitness but not when an applicant has a history of regulatory violations.²¹ 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

¹⁸ *United States v. Illinois Cent. R.R.*, 303 U.S. 239, 243, 58 S. Ct. 533, 535 (1938).

¹⁹ See *In re Shirlington Limo. & Transp., Inc.*, No. AP-02-20, Order No. 6709 (June 21, 2002) (assessing \$250 per day for operating while suspended and while revoked); *In re Phoenix Limo. & Tour Co.*, No. AP-98-10, Order No. 5304 (Apr. 6, 1998) (same).

²⁰ See *In re Zohery Tours Int'l, Inc.*, No. MP-02-46, Order No. 7096 (Mar. 19, 2003) (reducing civil forfeiture in recognition of applicant's production of inculpatory evidence and filing of application).

²¹ *In re Zohery Tours Int'l, Inc.*, No. AP-07-053, Order No. 10,602 (July 5, 2007); *In re BLS Limo Group*, No. AP-07-056, Order No. 10,472 (May 9, 2007); Order No. 9652; Order No. 9391; Order No. 8749.

applicant has demonstrated a willingness and ability to comport with the Compact and rules and regulations thereunder in the future.²²

The Commission has applied these criteria and approved applications in the past under similar circumstances.²³ Upon payment of the forfeiture assessed herein, the record will support a finding of prospective compliance fitness,²⁴ subject to a one-year period of probation.²⁵

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 pursuant to Article XIII, Section 6(f), of the Compact, the Commission hereby assesses a net civil forfeiture against applicant in the amount of \$7,500 for knowingly and willfully violating Article XI, Section 6(a), of the Compact by transporting passengers for hire between points in the Metropolitan District on one hundred sixty-three separate days while Certificate No. 406 was suspended and revoked.

2. That applicant is hereby directed to pay to the Commission within thirty days of the date of this order, by money order, certified check, or cashier's check, the sum of seven thousand five hundred dollars (\$7,500).

3. That the full forfeiture of \$45,000 assessed in this order shall be immediately due and payable if applicant fails to timely pay the net forfeiture.

²² Order Nos. 10,602; 10,472; 9652; 9391; 8749; 6709; *In re Reston Limo. & Travel Serv., Inc., t/a Reston Limo.*, No. AP-93-36, Order No. 4232 (Jan. 11, 1994).

²³ See Order No. 10,602 (payment of forfeiture to Commission and halt in unauthorized operations through lease of vehicles to WMATC carrier while application pending); Order No. 10,472 (halt in unauthorized operations through lease of vehicles to WMATC carrier while application pending); Order No. 6709 (halt in unauthorized operations through subcontract to WMATC carrier while application pending); Order No. 4232 (halt in unauthorized operations through lease of vehicles to WMATC carrier while application pending).

²⁴ Order Nos. 10,482; 6839. See Order No. 6709 (payment of forfeiture corrects past mistakes); Order No. 5304 (same).

²⁵ See Order No. 10,602 (assessing one-year period of probation); Order No. 10,482 (same); Order No. 10,472 (same); Order No. 9652 (same); Order No. 9391 (same); Order No. 8749 (same); Order No. 6709 (same).

4. That upon applicant's timely compliance with the requirements of this order, Certificate of Authority No. 406 shall be reissued to Skyhawk Logistics, Inc., 8121 Georgia Avenue, #1000, Silver Spring, MD 20910.

5. That applicant may not transport passengers for hire between points in the Metropolitan District pursuant to this order unless and until Certificate No. 406 has been reissued in accordance with the preceding paragraph.

6. 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.

7. That applicant shall be placed on probation for a period of one year commencing with the issuance of Certificate No. 406 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.

8. 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