

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 11,694

IN THE MATTER OF:

Served November 19, 2008

Application of FON PIUS NDE,)
Trading as PIUSMED WORLD TRANSPORT,)
for a Certificate of Authority --)
Irregular Route Operations)
Case No. AP-2008-134

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.

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

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

I. PAST VIOLATIONS

Under the Compact, a WMATC carrier may not engage in transportation subject to the Compact if the carrier's certificate of authority is not "in force."² A certificate of authority is not valid unless the holder is in compliance with the Commission's insurance requirements.³

Applicant previously held Certificate No. 1327. Commission Regulation No. 58 required applicant to insure the revenue vehicles operated under Certificate No. 1327 for a minimum of \$1.5 million in combined-single-limit liability coverage and maintain on file with the Commission at all times proof of coverage in the form of a WMATC

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 Compact, tit. II, art. XI, § 6(a).

³ Compact, tit. II, art. XI, § 7(g).

Certificate of Insurance and Policy Endorsement (WMATC Insurance Endorsement) for each policy comprising the minimum. Certificate No. 1327 was automatically suspended on September 17, 2007, pursuant to Regulation No. 58 when the \$1.5 million primary WMATC Insurance Endorsement on file for applicant terminated without replacement.⁴ Certificate No. 1327 was subsequently revoked on May 15, 2008, for applicant's failure to comply with a commission order directing applicant to: (1) verify cessation of operations as of September 17, 2007; and (2) corroborate with client statements and copies of applicant's business records.⁵

Applicant has previously denied operating while suspended. A recently produced statement from one of applicant's former clients,⁶ however, shows that applicant did not cease operating until October 2, 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.⁷

The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.⁸ 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.⁹ Once a carrier is apprised of Compact requirements, the onus is on the carrier to determine whether its operations are in compliance.¹⁰ Violations occurring thereafter are viewed as knowing and willful.¹¹ Employee negligence is no defense.¹² "To hold carriers not liable for penalties where the violations . . . are due to mere indifference, inadvertence, or negligence of employees would defeat the purpose of" the statute.¹³

⁴ *In re Fon Pius Nde, t/a Piusmed World Transp.*, No. MP-07-187, Order No. 10,762 (Sept. 17, 2007).

⁵ *In re Fon Pius Nde, t/a Piusmed World Transp.*, No. MP-07-187, Order No. 11,362 (May 15, 2008).

⁶ United Cerebral Palsy of Washington, D.C. and Northern Virginia, Inc., trading as U. C. P., WMATC No. 1315.

⁷ Compact, tit. II, art. XIII, § 6(f)(i).

⁸ *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).

⁹ Order Nos. 10,482; 6839.

¹⁰ Order Nos. 10,482; 6839.

¹¹ Order Nos. 10,482; 6839.

¹² Order No. 6839.

¹³ *United States v. Illinois Cent. R.R.*, 303 U.S. 239, 243, 58 S. Ct. 533, 535 (1938).

We find that applicant's operations from September 17, 2007, to October 2, 2007, were knowing and willful within the meaning of the Compact. The Commission notified applicant by email on September 6, 2007, that applicant's WMATC Endorsement was set to expire on September 17. Although the notice should have said the endorsement was being cancelled, applicant was on notice that the endorsement would soon terminate. We find that respondent was careless in not checking with the Commission prior to September 17 to verify that the necessary replacement endorsement had been filed.¹⁴

Moreover, applicant admits receiving a second email from the Commission on September 26, 2007, advising applicant that the suspension of Certificate No. 1327 would not be lifted until applicant paid a \$50 late fee. Applicant did not pay the late fee until October 5, 2007.¹⁵ Hence, applicant knew the suspension was still in effect while he continued to perform services for UCP from September 26 to October 2.

We shall assess a forfeiture of \$250 per day¹⁶ for 12 days,¹⁷ or \$3,000. We will suspend all but \$750 in recognition of applicant's production of inculpatory documents and voluntary filing of this application.¹⁸ Failure to pay the net forfeiture in a timely fashion shall result in reinstatement of the full \$3,000.

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.

¹⁴ See *In re Zee Transp., Serv. Inc.*, No. MP-07-120, Order No. 10,671 (Aug. 8, 2007) (same).

¹⁵ Order No. 11,362 at 1.

¹⁶ 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).

¹⁷ The twelve days excludes four weekend days between September 17, 2007, and October 2, 2007.

¹⁸ 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).

Normally, such evidence would be sufficient to establish an applicant's fitness but not when an applicant has a history of regulatory violations.¹⁹ 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.²⁰

The Commission has applied these criteria and approved applications in the past under similar circumstances.²¹ Upon payment of the forfeiture assessed herein, the record will support a finding of prospective compliance fitness,²² subject to a one-year period of probation.²³

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 \$750 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 twelve separate days while Certificate No. 1327 was suspended.

2. That applicant is hereby directed to pay to the Commission within thirty days of the date of this order, by money order,

¹⁹ *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.

²⁰ 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).

²¹ See Order No. 5304 (no evidence of uninsured operations; no evidence of unauthorized operations for over six months); *In re Madison Limo. Serv., Inc., t/a Madison Limo*, No. AP-96-18, Order No. 4857 (May 22, 1996) (same).

²² Order Nos. 10,482; 6839. See Order No. 6709 (payment of forfeiture corrects past mistakes); Order No. 5304 (same).

²³ 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).

certified check, or cashier's check, the sum of seven hundred fifty dollars (\$750).

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

4. That upon applicant's timely compliance with the requirements of this order, Certificate of Authority No. 1327 shall be reissued to Fon Pius Nde, trading as Piusmed World Transport, 1629 K Street, N.W., #300, Washington, DC 20006.

5. That applicant may not transport passengers for hire between points in the Metropolitan District pursuant to this order unless and until Certificate No. 1327 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. 1327 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