

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 12,175

IN THE MATTER OF:

Served October 1, 2009

Application of BEATRICE RAMONA FAYE) Case No. AP-2009-034
HORSLEY, Trading as ASK)
TRANSPORTATION SERVICES, for a)
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, 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

Applicant proposes commencing operations with one van. Applicant proposes operating under a tariff containing rates for Medicaid transportation, rates for private pay ambulatory/wheelchair transportation, and rates for transportation under contracts with government agencies and private entities.

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.

¹ *In re Skyhawk Logistics, Inc.*, No. AP-07-195, Order No. 11,693 (Nov. 19, 2008); *In re EMK Services Inc.*, No. AP-05-168, Order No. 9391 (Mar. 16, 2006).

Normally, such evidence would establish applicant's fitness,² but in this case applicant has a history of controlling a company with a record of regulatory violations. When a person controlling an applicant has a record of 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.³

Applicant previously conducted passenger carrier operations in the Metropolitan District through A.S.K. Enterprises, Inc., which held WMATC Certificate No. 361 from February 20, 1998, until January 10, 2005, when it was revoked for A.S.K. Enterprises's three days of operations while suspended and uninsured in knowing and willful violation of Article XI, Section 6(a) of the Compact and Order No. 8236.⁴ The Commission gave A.S.K. Enterprises thirty days to: (1) pay a \$750 forfeiture; (2) file an affidavit verifying that all WMATC markings had been removed from A.S.K. Enterprises's vehicles; and (3) surrender Certificate No. 361.⁵ A.S.K. Enterprises did not comply.

Applicant later applied for a certificate of authority in 2006, but the application was denied without prejudice for failure to establish regulatory compliance fitness.⁶ It is helpful to review the findings and conclusion in that order at this point.

I. FINDINGS AND CONCLUSION IN ORDER NO. 10,207

Order No. 10,207 recited the history noted above, discussed applicant's explanation of prior events, and made the following findings:

Turning to the five criteria, we do not view the three days of unlawful operations as persistent or flagrant, and applicant has now paid the \$750 civil forfeiture, which may be viewed as correcting a past mistake. Operating while uninsured, on the other hand, is a serious violation. When the signatories and

² Order No. 11,693; Order No. 9391; *In re VGA, Inc.*, No. AP-03-73, Order No. 7496 (Oct. 29, 2003).

³ Order No. 11,693; Order No. 9391; Order No. 7496.

⁴ *In re A.S.K. Enters., Inc.*, No. MP-04-152, Order No. 8495 (Jan. 10, 2005).

⁵ *Id.*

⁶ *In re Beatrice Ramona Faye Horsley, t/a Ask Transp. Servs.*, No. AP-06-116, Order No. 10,207 (Jan. 8, 2007).

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.

No mitigating circumstances are cited in the order revoking Certificate No. 361, and applicant has brought none to our attention in this proceeding. Furthermore, there is no evidence that applicant has taken significant steps to prevent a recurrence of regulatory violations. The Commission has previously found a significant step to have been completed where applicants have retained an attorney to furnish ongoing regulatory compliance advice or aligned themselves with an outside investor without a history of regulatory violations. No evidence of such steps by applicant appears in the record.

Finally, A.S.K. Enterprises has yet to surrender its revoked Certificate No. 361 to the Commission or to certify to the Commission that it has removed its identification markings from its revenue vehicles, as it was directed by Commission Order No. 8495 almost two years ago. It is difficult to view the likelihood of applicant's future compliance with regulatory requirements in a favorable light when the company applicant controls has yet to fully comply with the simple steps outlined in Order No. 8495.

Based on these findings, the Commission concluded that it could not say that applicant had established regulatory compliance fitness.

We next consider whether applicant has taken steps since Order No. 10,207 was issued to fully comply with Order No. 8495 and to prevent a recurrence of regulatory violations.

II. STEPS TAKEN SINCE ORDER NO. 10,207 WAS ISSUED

On March 27, 2009, applicant: (1) surrendered the original Certificate No. 361; (2) submitted an affidavit verifying removal of A.S.K. Enterprises's name and WMATC number from its vehicles; and (3) advised the Commission that applicant has hired a lawyer, Patrick Tachie-Menson. Mr. Tachie-Menson confirms that he has been retained as applicant's general counsel. He also states that he has familiarized himself with the Commission's insurance regulations, has reviewed those regulations with applicant, and has explained to applicant the importance of "following and responding on time to" Commission orders.

We find that applicant is now in compliance with Order No. 8495 and that by retaining counsel to furnish ongoing regulatory compliance advice, applicant has taken a significant step to prevent a recurrence

of regulatory violations in the future. The Commission has approved applications in the past under similar circumstances.⁷ The record thus supports a finding of prospective compliance fitness, subject to a one-year period of probation.⁸

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 upon applicant's timely compliance with the requirements of this order, Certificate of Authority No. 361 shall be reissued to Beatrice Ramona Faye Horsley, trading as ASK Transportation Services, 5008 Townsend Way, #C-5, Bladensburg, MD 20710.

2. That applicant may not transport passengers for hire between points in the Metropolitan District pursuant to this order unless and until Certificate No. 361 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; (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 one year commencing with the issuance of Certificate No. 361 in accordance with the terms of this order and that a willful violation

⁷ See Order No. 11,693 (payment of forfeiture and hiring of counsel); Order No. 9391 (same); Order No. 7496 (hiring of counsel).

⁸ See Order No. 11,693 (assessing one-year period of probation); Order No. 9391 (same); Order No. 7496 (same).

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 CHRISTIE AND BRENNER:

A handwritten signature in black ink, appearing to read 'W. S. Morrow, Jr.', written in a cursive style.

William S. Morrow, Jr.
Executive Director