

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 12,252

IN THE MATTER OF:

Served December 17, 2009

Application of METROPOLITAN)
TRANSPORTATION, INC., for a) Case No. AP-2009-032
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.

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 bears the burden of establishing 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 proposes commencing operations with one van. Applicant proposes operating under a tariff containing rates for private pay ambulatory/wheelchair transportation.

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,

¹ *In re BLS Limo Group, Inc.*, No. AP-05-195, Order No. 9569 (May 18, 2006).

² *Id.*

³ *Id.*

⁴ *Id.*

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 establish applicant's fitness,⁵ but in this case applicant's president, Clarence Pollard, appears to have a history of controlling a carrier with a record of regulatory violations. Applicant's president is the husband of Justina L. Pollard,⁶ who held WMATC Certificate No. 616 under the trade name P.H.O. until February 16, 2005, when it was revoked in Order No. 8558 for P.H.O.'s willful failure to comply with the Commission's insurance regulation, Regulation No. 58.⁷ Clarence Pollard's spousal relationship with Justine Pollard raises the presumption that he controlled P.H.O. at the time of P.H.O.'s violations.⁸ That presumption is bolstered by Clarence Pollard having identified himself as "president" of P.H.O. in a tariff and annual report that he signed and filed on behalf of P.H.O. in 2004.⁹

After the revocation of Certificate No. 616, Mr. Pollard formed People Helping Others Transportation, Inc., and as president caused it to file an application for WMATC operating authority in February 2005. During the course of that application, the Commission noted that the application fee had been paid by check drawn on the account of P.H.O. Transportation LLC, a Maryland Limited Liability Company, which according to its articles of organization was formed by Clarence and Justine Pollard on April 17, 2002, "to provide transportation".¹⁰ The Commission accordingly directed People Helping Others Transportation, Inc., to produce any and all records relating to the LLC's operations, if any, in the Metropolitan District.¹¹ The Commission also directed People Helping Others Transportation, Inc., to produce copies of the registrations for the three vehicles listed in the application.¹² The application was later dismissed when People Helping Others Transportation, Inc., failed to produce the records and registrations and failed to satisfactorily account for their absence.¹³

⁵ *In re Smart Ride, Inc.*, No. AP-08-081, Order No. 11,446 (July 1, 2008).

⁶ *In re People Helping Others Transp., Inc.*, No. AP-05-17, Order No. 8623 (Apr. 4, 2005).

⁷ *In re Justina L. Pollard, t/a P.H.O.*, No. MP-04-216, Order No. 8558 (Feb. 16, 2005).

⁸ Order No. 8623.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *In re People Helping Others Transp., Inc.*, No. AP-05-17, Order No. 9812 (Aug. 9, 2006).

When a person controlling an applicant has a record of violations, or a history of controlling carriers 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.¹⁴ Applicant shall have thirty days to explain why on this record the Commission should find applicant has demonstrated a willingness and ability to comport with the Compact and rules and regulations thereunder in the future.

IT IS SO ORDERED.

FOR THE COMMISSION



William S. Morrow, Jr.
Executive Director

¹⁴ Order No. 11,446.