

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 12,361

IN THE MATTER OF:

Served April 7, 2010

Application of CARL'S PLACE INC.)
for a Certificate of Authority --)
Irregular Route Operations)

Case No. AP-2010-020

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.

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Applicant previously held Certificate No. 1439 from May 7, 2008, until July 28, 2008, when it was revoked for applicant's failure to pay a \$50 late fee assessed under Regulation No. 67-03(c).²

The revocation order, Order No. 11,499, noted that the \$50 late fee would remain due and gave applicant until August 27, 2008, to: (1) remove from its vehicles the identification placed thereon pursuant to Commission Regulation No. 61; (2) file a notarized affidavit with the Commission verifying removal; and (3) surrender Certificate No. 1439 to the Commission. Applicant did not comply.

In support of this application, applicant has paid the \$50 late fee and filed a statement explaining that Certificate No. 1439 cannot be located. Applicant also has filed an affidavit verifying removal

¹ *In re Haymarket Transp., Inc.*, No. AP-08-181, Order No. 11,873 (Mar. 4, 2009).

² *In re Carl's Place Inc.*, No. MP-08-149, Order No. 11,499 (July 28, 2008).

of the markings placed on applicant's vehicle pursuant to Regulation No. 61. But the affidavit discloses that those markings were not removed until March 19, 2010.

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.³

The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.⁴ 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.⁵

The record shows that a copy of Order No. 11,499 was sent by Certified Mail to applicant at applicant's principal place of business, 1523 White Place, N.E., Washington, DC 20020, which is applicant's current principal place of business. The record also shows that notice of attempted delivery was left at that address, but applicant never claimed the item. Applicant cannot duck a Commission order by refusing to accept delivery.⁶

We find that applicant knowingly and willfully violated Order No. 11,499 by failing to remove the WMATC markings from its vehicles on or before August 27, 2008, and shall assess a civil forfeiture of \$500.⁷

II. PROSPECTIVE COMPLIANCE

Applicant proposes commencing operations with one van. Applicant proposes operating under a tariff containing rates for transportation under contracts with 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

³ Compact, tit. II, art. XIII, § 6(f)(i).

⁴ Order No. 10,482; Order No. 6839.

⁵ Order No. 10,482; Order No. 6839.

⁶ *In re Amna O. Abugusseisa, t/a AB & B Trans*, No. MP-03-50, Order No. 7621 (Dec. 18, 2003).

⁷ See *In re Malek Investment, Inc., t/a Montgomery Airport Shuttle, & Malek Investment of Va., Inc., & Assadollah Malekzadeh*, No. MP-98-53, Order No. 5707 (Sept. 22, 1999) (assessing \$500 for knowing and willful failure to timely respond to Commission order).

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.⁸ 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.⁹

There is no evidence of post-suspension operations in the record. The Commission has approved applications in the past under similar circumstances.¹⁰ Upon payment of the forfeiture assessed herein, the record will support a finding of prospective compliance fitness,¹¹ subject to a one-year period of probation.¹²

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 civil forfeiture against applicant in the amount of \$500 for knowingly and willfully violating Order No. 11,499.

⁸ Order No. 11,873.

⁹ *Id.*

¹⁰ See Order No. 11,873 (approving application despite unauthorized display of WMATC markings); *In re Union, Inc.*, No. AP-07-013, Order No. 10,482 (May 10, 2007) (same); *In re Associated Community Servs., Inc.*, No. AP-02-88, Order No. 6839 (Oct. 3, 2002) (same); *In re Adventures By Dawn L.L.C.*, No. AP-00-89, Order No. 6087 (Jan. 16, 2001) (same).

¹¹ See Order No. 11,873 (payment of forfeiture corrects error and supports fitness finding); Order No. 10,482 (same); Order No. 6839 (same).

¹² See Order No. 11,873 (same); Order No. 10,482 (same); Order No. 6087 (same).

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

3. That upon applicant's timely compliance with the requirements of this order, Certificate of Authority No. 1439 shall be reissued to Carl's Place Inc., 1523 White Place, S.E., Washington, DC 20020-5343.

4. That applicant may not transport passengers for hire between points in the Metropolitan District pursuant to this order unless and until Certificate No. 1439 has been reissued in accordance with the preceding paragraph.

5. 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.

6. That applicant shall be placed on probation for a period of one year commencing with the issuance of a certificate of authority 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.

7. 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 BRENNER AND CHRISTIE:



William S. Morrow, Jr.
Executive Director

