

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 12,627

IN THE MATTER OF:

Served November 17, 2010

Application of PASSIONS) Case No. AP-2010-130
TRANSPORTATION, LLC 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.

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

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

² *Id.*

³ *Id.*

⁴ *Id.*

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 this applicant has a history of regulatory violations. When an applicant has a record of violations, 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.⁶

Applicant previously held WMATC Certificate of Authority No. 1450 from April 28, 2008, until June 8, 2010, when Certificate No. 1450 was revoked in Order No. 12,433 for applicant's willful failure to comply with the Commission's minimum insurance requirements under Regulation No. 58 and pay the \$50 late insurance fee under Regulation No 67-03(c).⁷

Applicant subsequently paid the \$50 late insurance fee. And applicant has submitted a notarized affidavit verifying removal of the markings placed on its vehicle(s) pursuant to Regulation No. 61, as required by Order No. 12,433. Applicant has not surrendered the original Certificate No. 1450 issued April 28, 2008, however, as required by Order No. 12,433.

Furthermore, applicant has not verified cessation of operations as of April 26, 2010, the date Certificate No. 1450 was automatically suspended under Regulation No. 58-12. Under Regulation No. 58-14:

If a carrier's operating authority is suspended under Regulation No. 58-12 and the effective date of a later-filed replacement Endorsement falls after the automatic suspension date, the carrier must verify timely cessation of operations in accordance with Commission Rule No. 28 and corroborate the verification with client statements and/or copies of pertinent business records, as directed by Commission order.

In the event this application is approved, it is doubtful that any WMATC Endorsement filed by applicant will display an effective

⁵ *In re Ahmed Said Naser, t/a EACF Transp. Serv.*, No. AP-09-045, Order No. 12,098 (July 21, 2009).

⁶ *Id.*

⁷ *In re Ahmed S. Naser, t/a EACF Transp. Serv.*, No. MP-09-006, Order No. 11,859 (Feb. 24, 2009).

date on or before the April 26, 2010, automatic suspension date. In the interest of ensuring a full and fair determination of this application, applicant will be given an opportunity to comply with Order No. 12,433 and Regulation No. 58-14 before a decision is rendered.⁸

THEREFORE, IT IS ORDERED: that respondent shall have thirty days to:

1. Surrender the original Certificate No. 1450 issued April 28, 2008;

2. Submit an affidavit stating whether applicant ceased operating as of April 26, 2010; and

3. Produce statements from applicant's former Medicaid clients - Medical Transportation Management, Inc., and LogistiCare Solutions, LLC - indicating whether applicant has provided any transportation service in the Washington Metropolitan Area Transit District for or on behalf of said clients on and after April 26, 2010.

FOR THE COMMISSION:



William S. Morrow, Jr.
Executive Director

⁸ See *Angel Enter. Inc., t/a The Angels*, No. MP-09-049, Order No. 12,001 (May 18, 2009) (same); see also Regulation No. 54-04(b) (notice of application acceptance may require applicant to furnish additional information necessary to a full and fair determination of the application).