

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 12,631

IN THE MATTER OF:

Served November 19, 2010

Application of PANTIO MEDICAL) Case No. AP-2010-124
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, restricted to transportation in vehicles with a seating capacity of less than 16 persons only, including the driver.¹ 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 must establish financial fitness, operational fitness, and regulatory compliance fitness.² A determination of compliance fitness is prospective in nature.³ The purpose of the inquiry is to protect the public from those whose conduct demonstrates an unwillingness to operate in accordance with regulatory requirements.⁴ Past violations do not necessarily preclude a grant of authority but permit the inference that violations will continue.⁵ The past conduct of an applicant's owners and officers is relevant to a determination of applicant's regulatory compliance fitness.⁶

¹ This is the second application for operating authority filed by this applicant. Applicant applied for operating authority earlier this year, but the application was dismissed without prejudice for want of prosecution. *In re Pantio Med. Transp.: LLC*, No. AP-10-047, Order No. 12,470 (July 2, 2010).

² *In re HP Transp. Servs., Inc.*, No. AP-08-157, Order No. 11,697 (Nov. 19, 2008); *In re HP Transp. Servs., Inc.*, No. AP-07-257, Order No. 11,242 (Mar. 31, 2008); *In re EMK Servs. Inc.*, No. AP-05-05, Order No. 8921 (Aug. 19, 2005); *In re Nevah Transp., LLC*, No. AP-02-121, Order No. 7001 (Jan. 21, 2003).

³ Order Nos. 11,697; 11,242; 8921; 7001.

⁴ Order Nos. 11,697; 11,242; 8921; 7001.

⁵ Order Nos. 11,697; 11,242; 8921; 7001.

⁶ Order Nos. 11,697; 11,242; 8921; 7001.

Applicant's owner and president, Salwa Seedahmed, previously conducted passenger carrier operations in the Metropolitan District as a sole proprietor trading as Pantio Medical Transportation and held WMATC Certificate No. 733 from March 12, 2003, until September 1, 2009, when it was revoked after this Commission found Ms. Seedahmed operated while suspended and uninsured for two days in willful violation of Article XI, Section 6(a), of the Compact, Regulation No. 58, and Order No. 11,826.⁷ The revocation order also assessed a \$750 forfeiture.

When a person controlling an applicant has a record of regulatory 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.⁸

We do not view the two days of unlawful operations as persistent or flagrant, but operating while suspended and uninsured is a serious offense.⁹ When the signatories and Congress approved the Compact, they designated noncompliance with Commission insurance requirements as the single offense that would automatically invalidate a certificate of authority.¹⁰ They could not have sent a clearer message that maintaining proper insurance coverage is of paramount importance under the Compact.¹¹

No mitigating circumstances are cited in the revocation order, but Commission records show that Ms. Seedahmed later submitted a WMATC Insurance Endorsement that closes the 13-day gap in insurance coverage that was a contributing factor in the revocation of Certificate No. 733. Commission records also show that Ms. Seedahmed eventually paid the \$750 forfeiture assessed in the revocation order, which may be viewed as evidence of correcting a past mistake.¹²

This brings us to willingness and ability to comply with Commission requirements in the future. On that issue, we see no evidence that Ms. Seedahmed has "put in place personnel and/or process

⁷ *In re Salwa Seedahmed, t/a Pantio Med. Transp.*, No. MP-08-254, Order No. 12,135 (Sept. 1, 2009), *recon. denied*, Order No. 12,233 (Nov. 20, 2009).

⁸ Order Nos. 11,242; 7001.

⁹ Order Nos. 11,242; 8921; 7001.

¹⁰ Order Nos. 11,242; 8921.

¹¹ Order Nos. 11,242; 8921.

¹² See Order No. 11,242 (payment of forfeiture may be viewed as correcting past mistake).

sufficient to prevent recurring violations of routine regulatory requirements."¹³

In the past, the Commission has found such evidence in the hiring of counsel to act as an ongoing advisor¹⁴ or in the existence of a new investor with no record of regulatory violations and sufficient control and financial incentive to ensure compliance with the Compact and the Commission's rules, regulations and orders thereunder.¹⁵

The record shows that Ms. Seedahmed has hired Mr. Yousif E. Gassmalla "to operate the company as a general manager for 10% of the company net profit." There is nothing in the record that would suggest Mr. Gassmalla has any record of regulatory violations, but a general manager is normally subordinate to a president, and there is nothing in the record to indicate that the relationship between Mr. Gassmalla and Ms. Seedahmed would be any different. Further, without some evidence that Mr. Gassmalla will share not just in profits but losses as well, we cannot say that Mr. Gassmalla has the kind of financial stake in applicant to warrant a finding that Mr. Gassmalla has sufficient incentive to ensure applicant's compliance with the Compact and the Commission's rules, regulations and orders thereunder.¹⁶

Accordingly, on this record, we cannot say that applicant has established regulatory compliance fitness.

THEREFORE, IT IS ORDERED that the application of Pantio Medical Transportation: LLC, for a certificate of authority, irregular route operations, is hereby denied without prejudice.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS BRENNER, HOLCOMB, AND KUBLY:



William S. Morrow, Jr.
Executive Director

¹³ Order Nos. 11,697; 11,242; 8921.

¹⁴ E.g., *In re EMK Servs. Inc.*, No. AP-05-168, Order No. 9391 (Mar. 16, 2006).

¹⁵ E.g., *In re Nevah Transp., LLC*, No. AP-03-106, Order No. 7527 (Nov. 10, 2003).

¹⁶ Compare Order No. 7001 (denied where no evidence of financial stake) with Order No. 7527 (approved where such evidence present).