

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 12,637

IN THE MATTER OF:

Served November 29, 2010

Application of ADESINA ADEGBIE)
GANIYU for a Certificate of)
Authority -- Irregular Route)
Operations)

Case No. AP-2010-107

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

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

¹ *In re Charles B. Mainor, t/a Mainor's Bus Serv.*, No. AP-08-105, Order No. 11,744 (Dec. 11, 2008).

² *Id.*

³ *Id.*

⁴ *Id.*

willingness and ability to comport with the Compact and rules and regulations thereunder in the future.⁵

Applicant held WMATC Certificate No. 516 from April 18, 2000, until May 16, 2001, when it was revoked in Order No. 6222 for willful failure to comply with the Commission's insurance requirements.⁶ Order No. 6222 directed applicant to verify removal of WMATC vehicle markings. Applicant has filed a verification statement in support of this application. According to the statement, applicant removed said markings from his vehicle in 1991. This makes no sense. Certificate No. 516 was not issued until 2000. Perhaps applicant intended to say 2001 instead of 1991, but that is not what applicant's statement says.

In any event, when a carrier's certificate of authority is automatically suspended under Regulation No. 58 and then later revoked, Commission Rule No. 28 requires that the carrier verify cessation of operations as of the suspension date.⁷ According to Commission records, Certificate No. 516 was automatically suspended March 24, 2001.⁸ Applicant has yet to file any statement regarding cessation of operations on that date.

Finally, we note that applicant paid the \$250 application fee by check drawn on the account of a defunct Maryland corporation, Apex Investment Company, of which applicant was a director. Records obtained from the Maryland Department of Assessments and Taxation indicate that the charter was forfeited in 2004 for failure to file a 2003 property return. Under Section 3-514(a) of the Maryland Corporations and Associations Code, "Any person who transacts business in the name or for the account of a corporation knowing that its charter has been forfeited and has not been revived is guilty of a misdemeanor and on conviction is subject to a fine of not more than \$500." Under Section 3-514(b), "For the purpose of this section, unless there is clear evidence to the contrary, a person who was an officer or director of a corporation at the time its charter was forfeited is presumed to know of the forfeiture."

In response to the Commission's questions about this matter, applicant claims not to have known about the forfeiture until now. It is not our province to decide whether applicant's statement constitutes "clear evidence" that applicant was unaware of the forfeiture. We are concerned, however, that it took applicant two months to close the Apex Investment Company bank account after we brought this matter to applicant's attention. Applicant's failure to fulfill his legal obligations as a corporate director further detracts

⁵ *Id.*

⁶ *In re Adesina Ganiyu Adegbe, t/a Metropolitan Airport Shuttle*, No. MP-01-26, Order No. 6222 (May 16, 2001).

⁷ Order No. 11,744.

⁸ *In re Adesina Ganiyu Adegbe, t/a Metropolitan Airport Shuttle*, No. MP-01-26, Order No. 6166 (March 27, 2001).

from his showing of fitness to conduct business under a WMATC certificate of authority.

Under the circumstances, we are unable to say that applicant has demonstrated that he is fit, willing, and able to conform to the provisions of the Compact and conform to the rules, regulations, and requirements of the Commission.

THEREFORE, IT IS ORDERED that the application of Adesina Adegbie Ganiyu for a certificate of authority is hereby denied without prejudice.

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

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

William S. Morrow, Jr.
Executive Director