

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 12,638

IN THE MATTER OF:

Served November 29, 2010

Application of F&O TRANSPORT)
SERVICE, LLC, for a Certificate of)
Authority -- Irregular Route)
Operations)

Case No. AP-2010-132

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 the 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.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Applicant previously held WMATC Certificate No. 748 from January 30, 2003, until December 30, 2008, when it was revoked in Order No. 11,775 for applicant's willful failure to comply with the Commission's insurance requirements and pay a \$50 late fee assessed under Regulation No. 67-03(c).⁵ The order noted that the \$50 late fee

¹ *In re Reliable Medical Transport, LLC*, No. AP-08-098, Order No. 11,696 (Nov. 19, 2008).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *In re F&O Transp. Serv., LLC*, No. MP-08-248, Order No. 11,775 (Dec. 30, 2008).

remained due and gave applicant 30 days 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. 748 to the Commission.

Applicant subsequently paid the \$50 late fee,⁶ submitted a new \$1.5 million primary WMATC Endorsement, and filed a request for reinstatement of Certificate No. 748.⁷ The request was denied because applicant was not in compliance with Regulation No. 58-14. That regulation applies whenever a carrier's operating authority is automatically suspended under Regulation No. 58-12 and the effective date of a later-filed replacement Endorsement falls after the automatic suspension date. When that happens, Regulation No. 58-14 requires that the carrier verify cessation of operations as of the automatic suspension date. In applicant's case, the automatic suspension date was November 20, 2008, and the effective date of the replacement Endorsement was January 26, 2009.⁸ Applicant failed to verify cessation of operations as of November 20, 2008, and the request for reinstatement was accordingly denied.⁹

As the record stands now, applicant has accounted for the whereabouts of Certificate No. 748 in a statement supporting the application,¹⁰ but applicant has yet to confirm removal of Regulation No. 61 markings from applicant's vehicle(s), and applicant has yet to verify cessation of operations as of November 20, 2008.

Until such time as applicant complies with the requirements of Order No. 11,755 and Regulation No. 58-14, we cannot say that applicant has demonstrated prospective compliance fitness.

THEREFORE, IT IS ORDERED that the application of F&O Transport Service, LLC, for a certificate of authority, irregular route operations, is hereby denied without prejudice.

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



⁶ Applicant initially tendered a \$50 check in payment of the late fee on January 28, 2009, but the check was returned unpaid. Applicant subsequently tendered a \$50 money order on October 8, 2010.

⁷ *In re F&O Transp. Serv., LLC*, No. MP-08-248, Order No. 11,872 (Mar. 4, 2009).

⁸ Order No. 11,872.

⁹ *Id.*

¹⁰ Applicant states that the certificate was mailed. The Commission, however, has no record of receiving it.

William S. Morrow, Jr.
Executive Director