

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 12,725

IN THE MATTER OF:

Served February 15, 2011

Application of ADDIS)
TRANSPORTATION, INC., for a) Case No. AP-2010-167
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. 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

I. HISTORY OF VIOLATIONS

Applicant previously held WMATC Certificate No. 1314 from February 21, 2007, until August 7, 2008, when it was revoked in Order No. 11,519 for applicant's failure to comply with the Commission's tariff filing requirements and because applicant's vehicles failed a

¹ *In re F&O Transp. Serv., LLC*, No. AP-10-132, Order No. 12,638 (Nov. 29, 2010).

² *Id.*

³ *Id.*

⁴ *Id.*

staff inspection.⁵ Certificate No. 1314 was later reinstated on September 12, 2008.⁶

Certificate No. 1314 was suspended from May 5, 2009, until June 3, 2009, for failure to pay the \$150 2009 annual fee and \$200 in late fees assessed under Regulation No. 67-03.⁷

Certificate No. 1314 was suspended again on February 23, 2010, when the \$1.5 million primary WMATC Insurance Endorsement on file for applicant terminated without replacement. Order No. 12,314, served February 23, 2010, noted the automatic suspension of Certificate No. 1314 pursuant to Regulation No. 58-12, directed applicant to cease transporting passengers for hire under Certificate No. 1314, and gave applicant 30 days to replace the terminated endorsement and pay the \$50 late fee due under Regulation No. 67-03(c) or face revocation of Certificate No. 1314.⁸

The order also noted that applicant had neither filed its 2010 annual report nor paid its 2010 annual fee as required by Regulation Nos. 60-01 and 67-02 and gave applicant 30 days to comply and to pay the \$200 in associated late fees under Regulation No. 67-03(a),(b).

Applicant paid all outstanding fees and filed an acceptable 2010 annual report on March 24, 2010. Applicant thereafter submitted a \$1.5 million primary WMATC Insurance Endorsement on March 31, 2010, and the suspension was lifted on April 2, 2010, in Order No. 12,353, but because the effective date of the new endorsement was April 9, 2010, instead of February 23, 2010, the order gave applicant 30 days to verify cessation of operations as of February 23, 2010, in accordance with Regulation No. 58-14.⁹ And because applicant's only tariff was for service rendered to the public, the order gave applicant 30 days to corroborate the verification with copies of applicant's pertinent business records.¹⁰ Applicant did not respond.

Order No. 12,395, served May 6, 2010, accordingly gave applicant 30 days to show cause why the Commission should not assess a civil forfeiture against applicant, and/or suspend or revoke Certificate No. 1314, for knowingly and willfully conducting operations under an invalid/suspended certificate of authority and failing to produce documents as directed in violation of Article XI,

⁵ *In re Addis Transp., Inc.*, No. MP-07-164, Order No. 11,519 (Aug. 7, 2008).

⁶ *In re Addis Transp., Inc.*, No. MP-07-164, Order No. 11,573 (Sept. 12, 2008).

⁷ *In re Addis Transp., Inc.*, No. MP-09-067, Order No. 12,023 (June 3, 2009).

⁸ *In re Addis Transp., Inc.*, No. MP-10-013, Order No. 12,314 (Feb. 23, 2010).

⁹ *In re Addis Transp., Inc.*, No. MP-10-013, Order No. 12,353 (Apr. 2, 2010).

¹⁰ *Id.*

Section 6(a), of the Compact, Regulation No. 58, and the orders issued in that proceeding.¹¹

Certificate No. 1314 became automatically suspended again on June 16, 2010, when applicant's WMATC Endorsement terminated without replacement,¹² and Certificate No. 1314 was revoked on June 24, 2010, when applicant failed to respond to Order No. 12,395.¹³

The revocation order, Order No. 12,456, also assessed a \$250 civil forfeiture against applicant and gave applicant 30 days to: (1) pay the \$250 civil forfeiture; (2) remove from its vehicles the identification placed thereon pursuant to Commission Regulation No. 61; (3) file a notarized affidavit and supporting photographs with the Commission verifying removal; and (4) surrender Certificate No. 1314 to the Commission. Applicant did not comply.

II. LIKELIHOOD OF FUTURE COMPLIANCE

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.¹⁴

The violations listed above were serious enough to warrant revocation of Certificate No. 1314 twice in four years. While we cannot say the violations were flagrant, on the whole, applicant has persisted in ignoring Commission requirements.

The record of applicant's efforts to correct its latest mistakes is as follows.

On October 29, 2010, prior to submitting this application, applicant paid the \$250 civil forfeiture assessed in Order No. 12,456. On November 12, 2010, the same day applicant submitted this application, applicant complied with the remaining requirements of Order No. 12,456 by returning the original Certificate No. 1314 issued February 21, 2007, submitting a notarized statement declaring that the WMATC number was removed from its vehicle, and corroborating the statement with

¹¹ *In re Addis Transp., Inc.*, No. MP-10-013, Order No. 12,395 (May 6, 2010).

¹² *In re Addis Transp., Inc.*, No. MP-10-013, Order No. 12,450 (June 17, 2010).

¹³ *In re Addis Transp., Inc.*, No. MP-10-013, Order No. 12,456 (June 24, 2010).

¹⁴ *In re Adesina Adegbie Ganiyu*, No. AP-10-107, Order No. 12,637 (Nov. 29, 2010).

photographs of the vehicle. This cures applicant's noncompliance with Order No. 12,456.

In belated compliance with Order No. 12,353, applicant has submitted the notarized affidavit of its president, Mr. Fissaha Eshete, stating that applicant did not transport passengers for-hire between February 23, 2010, and May 12, 2010. The affidavit is supported by a copy of a letter from Medical Transportation Management, Inc., (MTM), with whom applicant had contracted to provide transportation services within the Metropolitan District, and MTM check stubs. The letter states, "Addis Transportation did not operate as a transportation provider under the DC Medicaid contract with Medical Transportation Management, Inc., (MTM, Inc.) from February 23, 2010 - May 12, 2010 due to noncompliance with the insurance requirements per MTM's contractual guidelines." The check stubs and other Commission records, however, do not appear to be consistent with these statements.

The check stubs show that MTM regularly disbursed payment to applicant every other Thursday from January 14, 2010 through March 25, 2010, in response to invoices submitted one or two days prior, in amounts ranging from \$1,277 to \$2,120. There is also a check stub showing payment to applicant of \$1,479 on April 22, 2010, in response to an invoice submitted by applicant on April 6, 2010. The timing of invoices and payments is inconsistent with applicant's claim of having ceased operations from February 23, 2010 to May 12, 2010.

Furthermore, the check stubs show that the every-other-Thursday payments resumed July 1, 2010 and continued unabated until at least December 2, 2010. The timing of invoices and payments is consistent with an email from MTM in October 2010 listing applicant as an active MTM provider. The timing of payments and October provider list are strong evidence that applicant continued operating on and after the June 16, 2010, suspension and June 24, 2010, revocation of Certificate No. 1314.

Given applicant's substantial history of violations of Commission requirements and failure to timely comply with Commission orders, as well as strong evidence applicant operated within the Metropolitan District while its WMATC Certificate of Authority was suspended and later revoked, we cannot say that applicant has demonstrated prospective compliance fitness.

THEREFORE, IT IS ORDERED that the application of Addis Transportation, Inc., for a certificate of authority, irregular route operations, 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