

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 12,730

IN THE MATTER OF:

Served February 15, 2011

Application of NUR CORPORATION for)
a Certificate of Authority --)
Irregular Route Operations)

Case No. AP-2010-178

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 of Authority No. 1317. The certificate was issued to applicant on March 22, 2007, based in part on applicant having filed a \$1.5 million WMATC Insurance Endorsement. The endorsement was canceled on August 10, 2007, effective September 17, 2007. Applicant did not replace the endorsement until September 20, 2007. By then, Certificate No. 1317

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.*

had become automatically suspended under then Regulation No. 58-02, and a \$50 late fee had come due under Regulation No. 67-03(c).

Order No. 10,761, served September 17, 2007, advised applicant that Certificate No. 1317 would be subject to revocation pursuant to Article XI, Section 10(c), of the Compact, if applicant failed to file the necessary WMATC Insurance Endorsement(s) and pay \$50 by money order, certified check, or cashier's check within thirty days.

As noted, applicant filed a \$1.5 million replacement endorsement on September 20, 2007. But applicant did not pay the late fee. The Commission sent a reminder by fax on October 19, 2007. But applicant did not respond. The Commission subsequently revoked Certificate No. 1317 on November 29, 2007, in Order No. 10,946 for applicant's failure to pay the late fee.⁵ The revocation order directed applicant to surrender Certificate No. 1317 and file an affidavit verifying removal of vehicle markings within 30 days. Applicant did not comply.

Applicant, through its attorney, admits operating within the Metropolitan District after Certificate No. 1317 was revoked but denies that this violation was knowing and willful. Applicant's attorney explains that applicant was not aware of the suspension and revocation because applicant received neither Order No. 10,761, noting the automatic suspension of Certificate No. 1317 and the \$50 late fee, nor Order No. 10,946, revoking Certificate No. 1317. According to applicant's attorney, applicant moved its place of business sometime prior to September 17, 2007, without notifying the Commission as required by Regulation No. 68. Applicant apparently failed to notify the U.S. Postal Service, as well.

Commission records show that the Commission mailed copies of both orders via Certified Mail to applicant at the address applicant gave to the Commission for receiving official notice. Commission records also show that the Postal Service left notice of attempted delivery both times. Both were returned to the Commission unclaimed. Applicant cannot evade a Commission order by failing to accept service⁶ or frustrating the means of service.

In any event, applicant does not say it was unaware of the insurance cancellation. When a carrier's insurance has terminated or is about to terminate the carrier must contact the Commission to ascertain whether the necessary endorsement has been filed before

⁵ *In re Nur Corp.*, No. MP-07-186, Order No. 10,946 (Nov. 29, 2007).

⁶ *In re Jet Tours USA, Inc.*, No. AP-09-130, Order No. 12,443 (June 15, 2010); *In re Carl's Place Inc.*, No. AP-10-20, Order No. 12,361 (Apr. 7, 2010); *In re Annie Gardner, t/a Gardner Transp.*, No. MP-06-115, Order No. 10,456 (May 8, 2007); *In re Amna O. Abugusseisa, t/a AB & B Trans*, No. MP-03-50, Order No. 7621 (Dec. 18, 2003).

continuing to operate on and after the termination date.⁷ The Commission has no record of contemporaneous contact from applicant regarding the September 17, 2007, cancellation.

Furthermore, the Commission has no record of applicant attempting to maintain compliance with Regulation Nos. 60 and 67 by tendering an annual report and annual fee in January 2008. Had applicant done so, the Commission would have reminded applicant of its revoked status at that time.

II. REQUEST FOR ADDITIONAL INFORMATION

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.⁸

Operating without authority is a serious violation, but we cannot determine the extent of the violations on this record. We find no mitigating circumstances. The admitted operations were persistent if not flagrant. Applicant has corrected some of its past mistakes by paying the \$50 late fee, surrendering Certificate No. 1317, and verifying removal of vehicle markings. But there is no evidence that applicant has taken any steps to ensure that the violations of the past are not repeated in the future. We have only counsel's assurances, which are not evidence, only argument.⁹

In the interest of ensuring a full and fair determination of this application, applicant will be given an opportunity to submit evidence of the number of days applicant operated on and after September 17, 2007.¹⁰ In addition, applicant shall have an opportunity to present evidence of any steps applicant has taken to ensure that the violations of the past are not repeated in the future.

THEREFORE, IT IS ORDERED:

1. That within 30 days, applicant shall file an affidavit stating the number of days applicant operated under color of

⁷ *In re Advance Care Servs., Inc.*, No. MP-03-46, Order No. 7332 (July 24, 2003).

⁸ *In re Adesina Adegbie Ganiyu*, No. AP-10-107, Order No. 12,637 (Nov. 29, 2010).

⁹ *See In re Washington Shuttle, Inc., t/a SuperShuttle*, No. AP-96-13, Order No. 4996 (Jan. 8, 1997) (allegations in brief not accorded evidentiary status).

¹⁰ *See Angel Enter. Inc., t/a The Angels*, No. MP-09-049, Order No. 12,001 (May 18, 2009) (same).

Certificate No. 1317 on and after September 17, 2007, and support the affidavit with copies of all business records relating to that period.

2. That applicant shall have 30 days to present evidence of any steps applicant has taken to ensure that the violations of the past are not repeated in the future.

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