

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 12,748

IN THE MATTER OF:

Served March 3, 2011

Application of CRESCENT CARE, INC.,)
for a Certificate of Authority --)
Irregular Route Operations)

Case No. AP-2010-173

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's CEO and president, Ahmed Naser, previously held WMATC Certificate of Authority No. 521 under the trade name, EACF Transportation Service, from March 1, 2000, until February 24, 2009, when Certificate No. 521 was revoked in Order No. 11,859 for Naser's willful failure to comply with the Commission's insurance regulation, Regulation No. 58.⁵ The order noted that Naser's outstanding 2009

¹ *In re Nur Corp.*, No. AP-10-178, Order No. 12,730 (Feb. 15, 2011).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *In re Ahmed S. Naser, t/a EACF Transp. Serv.*, No. MP-09-006, Order No. 11,859 (Feb. 24, 2009).

annual report and \$400 in outstanding fees would remain due. The order further gave Naser 30 days to surrender Certificate No. 521 and confirm removal of WMATC markings from Naser's vehicle(s). Naser did not comply.

Naser subsequently reapplied for a certificate of authority on April 21, 2009, and simultaneously filed a 2009 annual report and paid the \$400 in outstanding fees. Naser later surrendered Certificate No. 521 and submitted a notarized affidavit stating that he had removed WMATC markings from his vehicles. Naser also asserted that he had not conducted any business as EACF Transportation Service "since Oct. 19, 2007."⁶ But Naser produced no evidence of post suspension - post-January 9, 2009 - insurance coverage, and it appeared doubtful that he would. Accordingly, Order No. 12,098, served July 21, 2009, directed Naser to produce pertinent business records to corroborate his assertion of timely cessation of operations as required by Regulation No. 58-14.⁷ Naser failed to produce any records, and the application was dismissed.⁸

The Commission accepted this current application by letter dated December 3, 2010. The letter gave applicant an opportunity to explain why approving this application would be consistent with the public interest even though Naser did not produce the documents requested by Order No. 12,098. Applicant's response, signed by Naser, apologizes "for any inconvenience I may have caused by not complying with the Commission's insurance requirements." The response continues on to say, "[a]s the CEO and President of Crescent Care, Inc., my goals are still the same, to provide quality service with the safety and satisfaction of customers in mind." The response, however, does not explain why Naser failed to comply with Order No. 12,098.

II. LIKELIHOOD OF FUTURE COMPLIANCE

When an applicant or a person controlling an applicant has a record of 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

⁶ This statement filed in July 2009 does not appear to be consistent with an earlier statement filed by Naser in May 2009 asserting that he had been providing service to the public "for nine years", which given a March 1, 2000, start of operations date would seem to indicate Naser did not stop operating in October 2007 as alleged.

⁷ *In re Ahmed Said Naser, t/a EACF Transp. Serv.*, No. AP-09-045, Order No. 12,098 (July 21, 2009).

⁸ *In re Ahmed Said Naser, t/a EACF Transp. Serv.*, No. AP-09-045, Order No. 12,138 (Sept. 2, 2009).

and ability to comport with the Compact and rules and regulations thereunder in the future.⁹

Naser's failure to maintain compliance with Regulation No. 58 was serious enough to warrant revocation of Certificate No. 521. Naser explained in the 2009 application proceeding that his failure to maintain compliance with Regulation No. 58 was due to being "out of the country on family emergency." This is insufficient grounds for violating regulatory requirements designed to protect the public and thus does not mitigate the violation.¹⁰ Naser eventually corrected the mistake of initially failing to respond to the revocation order, but on the record before us, his failure to produce the business records requested in Order No. 12,098 leaves open the question of whether he continued operating on and after January 9, 2009, and calls into question his current willingness and ability to comply with Commission requirements.

Consequently, we cannot say that applicant has carried its burden of establishing regulatory compliance fitness.

THEREFORE, IT IS ORDERED that the application of Crescent Care, Inc., 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

⁹ *In re Metro Day Treatment Center, Inc.*, No. AP-10-032, Order No. 12,729 (Feb. 15, 2011).

¹⁰ See *In re Hatim Awad Hamed Elfaki, t/a H and S Trans*, No. MP-07-094, Order No. 10,484 (May 10, 2007) (out of country on vacation not good cause for failing to tender annual report and fee).