

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 12,799

IN THE MATTER OF:

Served April 8, 2011

Application of PANTIO MEDICAL) Case No. AP-2011-023
TRANSPORTATION: LLC for a)
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.¹ The application is unopposed.

Article XI, Section 7(a), of the Washington Metropolitan Area Transit Regulation Compact² provides that the Commission (WMATC) shall issue a certificate of authority to any qualified applicant, authorizing all or any part of the transportation covered by the application, if the Commission finds that: (i) 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; and (ii) the transportation is consistent with the public interest. An applicant must establish financial fitness, operational fitness, and regulatory compliance fitness.³

Applicant proposes commencing operations with one van. Applicant proposes operating under a tariff containing rates for Medicaid transportation and rates for private pay ambulatory/wheelchair transportation.

Applicant verifies that: (1) applicant owns or leases, or has the means to acquire through ownership or lease, one or more motor vehicles meeting the Commission's safety requirements and suitable for

¹ This is the third application for operating authority filed by this applicant. Applicant applied for operating authority twice last year. The first application was dismissed without prejudice for want of prosecution. *In re Pantio Med. Transp.: LLC*, No. AP-10-047, Order No. 12,470 (July 2, 2010). The second application was denied without prejudice for failure to demonstrate regulatory compliance fitness. *In re Pantio Med. Transp.: LLC*, No. AP-10-124, Order No. 12,631 (Nov. 19, 2010).

² Pub. L. No. 101-505, § 1, 104 Stat. 1300 (1990), amended by Pub. L. No. 111-160, 124 Stat. 1124 (2010) (amending tit. I, art. III).

³ *In re Metro Day Treatment Center, Inc.*, No. AP-10-032, Order No. 12,729 (Feb. 15, 2011).

the transportation proposed in this application; (2) applicant owns, or has the means to acquire, a motor vehicle liability insurance policy that provides the minimum amount of coverage required by Commission regulations; and (3) applicant has access to, is familiar with and will comply with the Compact, the Commission's rules, regulations and orders, and Federal Motor Carrier Safety Regulations as they pertain to transportation of passengers for hire.

Normally, such evidence would establish applicant's fitness,⁴ but applicant's president has a history of regulatory violations.

I. PAST VIOLATIONS

Applicant's owner and president, Salwa Seedahmed, previously held WMATC Certificate No. 733 from March 12, 2003, until September 1, 2009, when it was revoked in Order No. 12,135, after this Commission found Ms. Seedahmed operated while suspended and uninsured for two days in willful violation of Article XI, Section 6(a), of the Compact, Regulation No. 58, and Order No. 11,826.⁵ The revocation order also assessed a \$750 forfeiture and gave Ms. Seedahmed 30 days to: (1) pay the forfeiture; (2) remove WMATC markings from her vehicle(s); (3) file a notarized affidavit verifying removal; and (4) surrender Certificate No. 733.

Ms. Seedahmed applied for reconsideration of Order No. 12,135 on September 24, 2009. The Commission denied the application on November 20, 2009.⁶

Ms. Seedahmed paid the forfeiture on October 14, 2009, but did not verify removal of vehicle markings until August 23, 2010. Ms. Seedahmed claims Certificate No. 733 was returned to the Commission by her husband on April 14, 2010, but the Commission has no record of this.⁷

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,

⁴ *Id.* at 2.

⁵ *In re Salwa Seedahmed, t/a Pantio Med. Transp.*, No. MP-08-254, Order No. 12,135 (Sept. 1, 2009), *recon. denied*, Order No. 12,233 (Nov. 20, 2009).

⁶ Order No. 12,233.

⁷ We view this as the equivalent of a statement that the original cannot be located and, therefore, not an impediment to approval of this application. See *In re Felicia Elizabeth Medlock, T/A I Get Around the DMV Shuttle*, No. AP-10-082, Order No. 12,512 (Aug. 19, 2010) (approving application notwithstanding original certificate not located); *In re Carl's Place Inc.*, No. AP-10-020, Order No. 12,361 (Apr. 7, 2010) (same).

and (5) whether the controlling party has demonstrated a willingness and ability to comport with the Compact and rules and regulations thereunder in the future.⁸

We do not view the two days of unlawful operations as persistent or flagrant, but operating while suspended and uninsured is a serious offense.⁹ No mitigating circumstances are cited in the revocation order, but Commission records show that Ms. Seedahmed later submitted a WMATC Insurance Endorsement that closes the 13-day gap in insurance coverage that was a contributing factor in the revocation of Certificate No. 733, and payment of the \$750 forfeiture may be viewed as evidence of correcting a past mistake.¹⁰

This brings us to willingness and ability to comply with Commission requirements in the future. The issue is whether Ms. Seedahmed has "put in place personnel and/or process sufficient to prevent recurring violations of routine regulatory requirements."¹¹

In the past, the Commission has found such evidence in the hiring of counsel to act as an ongoing advisor or in the existence of a new investor with no record of regulatory violations and sufficient control and financial incentive to ensure compliance with the Compact and the Commission's rules, regulations and orders thereunder.¹²

In the second application filed last year, applicant relied on the hiring of Mr. Yousif E. Gasmalla "to operate the company as a general manager for 10% of the company net profit."¹³ The Commission noted that there was nothing in the record that would suggest Mr. Gasmalla had a history of regulatory violations, but the Commission also noted that a general manager is normally subordinate to a president, and there was nothing in the record to indicate that the relationship between Mr. Gasmalla and Ms. Seedahmed would be any different.¹⁴ Further, without some evidence that Mr. Gasmalla would share not just in profits but losses as well, the Commission could not say that Mr. Gasmalla had the kind of financial stake in applicant to warrant a finding that Mr. Gasmalla had sufficient incentive to ensure applicant's compliance with the Compact and the Commission's rules, regulations and orders thereunder.¹⁵ The application was therefore denied without prejudice for failure to establish compliance fitness.¹⁶

⁸ Order No. 12,729 at 6.

⁹ *Id.* at 6; Order No. 12,631 at 2.

¹⁰ Order No. 12,631 at 2.

¹¹ *Id.* at 2.

¹² *Id.* at 3.

¹³ *Id.* at 3.

¹⁴ *Id.* at 3.

¹⁵ *Id.* at 3.

¹⁶ *Id.* at 3.

The record in this proceeding shows that applicant has since hired the law firm of Grove, Jaskiewicz and Cobert, a Washington, D.C., transportation law firm, to assist with this application and applicant's future regulatory compliance. Ms. Seedahmed states that Pantio "will continue to engage and consult with this law firm on an ongoing basis to ensure that we have continuing regulatory advice to comply with Commission regulations."

In consideration of the foregoing, we find that the record in this proceeding supports a finding of prospective compliance fitness, subject to a one-year period of probation.¹⁷

III. CONCLUSION

Based on the evidence in this record, and in consideration of the terms of probation and other conditions prescribed herein, the Commission finds that the proposed transportation is consistent with the public interest and that 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.

THEREFORE, IT IS ORDERED:

1. That upon applicant's timely compliance with the requirements of this order, Certificate of Authority No. 733 shall be reissued to Pantio Medical Transportation: LLC, 6441 Frenchmans Drive, Alexandria, VA 22312-1647.

2. That applicant may not transport passengers for hire between points in the Metropolitan District pursuant to this order unless and until Certificate No. 733 has been reissued in accordance with the preceding paragraph.

3. That applicant is hereby directed to present its revenue vehicle(s) for inspection and file the following documents within the 180-day maximum permitted in Commission Regulation No. 66: (a) evidence of insurance pursuant to Commission Regulation No. 58; (b) an original and four copies of a tariff or tariffs in accordance with Commission Regulation No. 55; (c) a vehicle list stating the year, make, model, serial number, fleet number, license plate number (with jurisdiction) and seating capacity of each vehicle to be used in revenue operations; (d) a copy of the for-hire vehicle registration card, and a lease as required by Commission Regulation No. 62 if applicant is not the registered owner, for each vehicle to be used in revenue operations; and (e) proof of current safety inspection of said vehicle(s) by or on behalf of the United States Department of Transportation, the State of Maryland, the District of Columbia, or the Commonwealth of Virginia.

¹⁷ See Order No. 12,729 at 7 (same).

4. That applicant shall be placed on probation for a period of one year commencing with the reissuance of Certificate No. 733 in accordance with the terms of this order and that a willful violation of the Compact, or of the Commission's rules, regulations or orders thereunder, by applicant during the period of probation shall constitute grounds for immediate suspension and/or revocation of applicant's operating authority without further proceedings, regardless of the nature and severity of the violation.

5. That the grant of authority herein shall be void and the application shall stand denied upon applicant's failure to timely satisfy the conditions of issuance prescribed herein.

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



William S. Morrow, Jr.
Executive Director