

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 13,114

IN THE MATTER OF:

Served January 10, 2012

Application of ADDIS)
TRANSPORTATION, INC., for a) Case No. AP-2011-111
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

This applicant has a history of regulatory violations.

I. HISTORY OF VIOLATIONS

Applicant previously held WMATC Certificate No. 1314. Certificate No. 1314 was suspended by operation of Regulation No. 58-12 on August 13, 2007, when the \$1.5 million WMATC Insurance

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.*

Endorsement on file for applicant terminated without replacement.⁵ Certificate No. 1314 remained suspended until it was revoked on August 7, 2008, for applicant's failure to comply with the Commission's tariff filing requirements and because applicant's vehicles had failed a staff inspection.⁶ Certificate No. 1314 was later reinstated on September 12, 2008.⁷

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. 67-03.⁸

Certificate No. 1314 was suspended again by operation of Regulation No. 58-12 on February 23, 2010, when the \$1.5 million WMATC Insurance Endorsement on file for applicant terminated without replacement. Order No. 12,314, served February 23, 2010, 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. 1314.⁹ 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).¹⁰

Applicant later paid all outstanding fees, filed an acceptable 2010 annual report, and submitted a \$1.5 million primary WMATC Endorsement, and the suspension was lifted on April 2, 2010, 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. 58-14.¹¹ 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.¹² Applicant did not respond.

⁵ *In re Addis Transp., Inc.*, No. MP-07-164, Order No. 10,703 (Aug. 13, 2007).

⁶ *In re Addis Transp., Inc.*, No. MP-07-164, Order No. 11,519 (Aug. 7, 2008).

⁷ *In re Addis Transp., Inc.*, No. MP-07-164, Order No. 11,573 (Sept. 12, 2008).

⁸ *In re Addis Transp., Inc.*, No. MP-09-067, Order No. 12,023 (June 3, 2009).

⁹ *In re Addis Transp., Inc.*, No. MP-10-013, Order No. 12,314 (Feb. 23, 2010).

¹⁰ *Id.*

¹¹ *In re Addis Transp., Inc.*, No. MP-10-013, Order No. 12,353 (Apr. 2, 2010).

¹² *Id.*

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, Section 6(a), of the Compact, Regulation No. 58, and the orders issued in that proceeding.¹³

Certificate No. 1314 thereafter became suspended again by operation of Regulation No. 58-12 on June 16, 2010, when the \$1.5 million WMATC Insurance Endorsement on file for applicant terminated without replacement.¹⁴ Certificate No. 1314 was then revoked on June 24, 2010, primarily because applicant failed to respond to Order No. 12,395 but also because applicant had yet to file a replacement WMATC Endorsement.¹⁵

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 eventually complied with all outstanding Commission orders and reapplied for a certificate of authority on November 12, 2010. But finding some evidence that applicant had continued transporting passengers under a contract with Medical Transportation Management, Inc., (MTM), while suspended from February 23, 2010, to April 2, 2010, and finding strong evidence that applicant might have continued operating under the MTM contract while suspended on and after June 16, 2010, and while revoked on and after June 24, 2010, the Commission denied the 2010 application without prejudice on February 15, 2011, for applicant's failure to establish compliance fitness.¹⁶ Applicant thereafter filed the instant application on August 24, 2011.

During the course of this proceeding, applicant was instructed to augment the record by producing its 2010 business records in order that the Commission might more knowledgeably address the issues raised but not resolved in the 2010 application proceeding. Applicant complied, and it now appears that the record does not support a

¹³ *In re Addis Transp., Inc.*, No. MP-10-013, Order No. 12,395 (May 6, 2010).

¹⁴ *In re Addis Transp., Inc.*, No. MP-10-013, Order No. 12,450 (June 17, 2010).

¹⁵ *In re Addis Transp., Inc.*, No. MP-10-013, Order No. 12,456 (June 24, 2010).

¹⁶ *In re Addis Transp., Inc.*, No. AP-10-167, Order No. 12,725 (Feb. 15, 2011).

finding that applicant continued operating while suspended from February 23, 2010, to April 2, 2010, but the record does support a finding that applicant continued operating while suspended on and after June 16, 2010, and while revoked on and after June 24, 2010.

II. APPLICANT'S 2010 BUSINESS RECORDS

The record shows that checks from applicant's customer of record, MTM, were deposited into applicant's checking account during the February 23, 2010, to April 2, 2010, suspension period. Applicant has produced copies of invoices to MTM showing that those checks represent payment for services rendered before the suspension period began, and MTM has filed a statement confirming that applicant "did not operate as a transportation provider under the DC Medicaid contract with [MTM] from February 23, 2010 - May 12, 2010." In addition, applicant has satisfactorily accounted for other checking account deposits during the February 23, 2010, to April 2, 2010, period.

Other MTM invoices and related payment summaries, however, show that applicant resumed operations under the MTM contract in late May 2010 and continued operating while suspended on and after June 16, 2010, and while revoked on and after June 24, 2010.

III. ASSESSMENT OF FORFEITURE

A person who knowingly and willfully violates a provision of the Compact, or a rule, regulation, requirement or order issued under it, or a term or condition of a certificate shall be subject to a civil forfeiture of not more than \$1,000 for the first violation and not more than \$5,000 for any subsequent violation.¹⁷

The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.¹⁸ The terms "willful" and "willfully" do not mean with evil purpose or criminal intent; rather, they describe conduct marked by careless disregard of whether or not one has the right so to act.¹⁹ Employee negligence is no defense.²⁰ "To hold carriers not liable for penalties where the violations . . . are due to mere indifference, inadvertence, or negligence of employees would defeat the purpose of" the statute.²¹

Since 2007, MTM has managed the District of Columbia Medicaid (DC Medicaid) transportation program on behalf of the District of Columbia Department of Health. MTM does not directly provide transportation but manages scheduling, invoicing, and other administrative functions. MTM relies on WMATC-certificated carriers

¹⁷ Compact, tit. II, art. XIII, § 6(f)(i).

¹⁸ *In re Couples, LLC, t/a Couples Limos.*, No. MP-09-134, Order No. 12,330 at 3 (Mar. 8, 2010).

¹⁹ *Id.* at 3.

²⁰ *Id.* at 3.

²¹ *United States v. Illinois Cent. R.R.*, 303 U.S. 239, 243, 58 S. Ct. 533, 535 (1938).

and the District of Columbia Office on Aging to furnish the transportation. The transportation services provided under these contracts fall within WMATC jurisdiction.

Applicant's attorney claims that applicant was unaware of the June 16, 2010, suspension order and the June 24, 2010, revocation order because allegedly applicant did not receive them. The record shows that even before those orders were issued, the Commission issued an advance warning to applicant by email on June 11, 2010, that Certificate No. 1314 would be suspended if applicant did not file a new WMATC Endorsement before June 16, 2010. Under Regulation No. 58-11:

When a WMATC carrier's insurance has terminated or is about to terminate the carrier must contact the Commission to ascertain whether the necessary WMATC Insurance Endorsement has been filed before continuing to operate on and after the termination date. Proof a WMATC carrier has satisfied its duty to verify shall consist of contemporaneous written verification from the Commission.

Applicant has produced no such written verification. Moreover, a copy of the revocation order, Order No. 12,456, was sent by Certified Mail to applicant on June 24, 2010. According to U.S. Postal Service records, the order was delivered on June 30, 2010, after being forwarded to an alternate address. Applicant has produced no testimony or other evidence to demonstrate that the order was not delivered to applicant at that address. Mailing an order to the address of record constitutes constructive notice, in any event.²²

We shall assess a forfeiture against respondent in the amount of \$250 per day²³ for 57 days, or \$14,250. We will suspend all but 25 percent, rounded to the nearest \$100, or \$3,600, based on the presence of one reduction factor: respondent's voluntary filing of this application.²⁴ Failure to pay the net forfeiture in a timely fashion shall result in reinstatement of the full \$14,250.

IV. 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

²² See *In re Annie Gardner t/a Gardner Transp.*, No. MP-06-115, Order No. 10,456 (May 8, 2007) (finding constructive notice where U.S. Postal Service attempted delivery of Commission orders).

²³ See *In re W & T Travel Servs. LLC, t/a WTTS*, No. AP-08-162, Order No. 11,933 at 8 (Apr. 9, 2009) (same).

²⁴ See *id.* at 8 (suspending all but 24.59% for voluntary filing); see also *In re Angel Enter. Inc, t/a The Angels*, No. MP-10-028, Order No. 12,761 at 5 (Mar. 14, 2011) (suspending all but 25%, rounded to nearest \$100, based on presence of one reduction factor).

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.²⁵

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.

We do not believe that applicant's professed ignorance mitigates any of the violations occurring after June 16, 2010. Whatever the reason the insurance company had for issuing a cancellation notice on May 12, 2010, with an effective date of June 16, 2011, once the Commission notified applicant by email that a notice of cancellation had been received from applicant's insurance company, the onus was on applicant under Regulation No. 58 to ensure that a replacement Endorsement was filed before June 16, 2011, to avoid suspension under Regulation No. 58-12. Applicant did not do that.

Looking forward, prompt payment of the forfeiture assessed herein may be considered a correction of past mistakes, but there is little evidence that applicant has "put in place personnel and/or process sufficient to prevent recurring violations of routine regulatory requirements."²⁶ Applicant's attorney advises that "[i]n order to avoid problems dealing with non-receipt of communications from the Commission, Applicant has retained an attorney and has changed its business mailing address to that of its president's primary residence." How hiring an attorney helps applicant receive mail is not explained. Moreover, applicant's alleged failure to receive mail is not the source of applicant's regulatory shortcomings. Applicant has twice allowed its auto liability insurance coverage to lapse: the first time for 32 days from August 13, 2007, through September 13, 2007;²⁷ the second time for 45 days from February 23, 2010, through April 8, 2010.²⁸ These lapses were not the result of any communication mishaps but, rather, a fundamental failure to promptly renew coverage upon termination of the underlying policy. This failure to comprehend the true nature of the problem and accept responsibility prevents us from finding that applicant has demonstrated prospective compliance fitness.

²⁵ *In re Adesina Adegbe Ganiyu*, No. AP-10-107, Order No. 12,637 (Nov. 29, 2010).

²⁶ *In re HP Transp. Servs., Inc.*, No. AP-07-257, Order No. 11,242 at 2 (Mar. 31, 2008).

²⁷ Order No. 11,519 at 2.

²⁸ Order No. 12,456 at 1-2.

THEREFORE, IT IS ORDERED:

1. That pursuant to Article XIII, Section 6(f), of the Compact, the Commission hereby assesses a net civil forfeiture against Addis Transportation, Inc., in the amount of \$3,600 for knowingly and willfully violating Article XI, Section 6(a), of the Compact by transporting passengers for hire between points in the Metropolitan District on 57 separate days while Certificate No. 1314 was suspended/revoked.

2. That Addis Transportation, Inc., is hereby directed to pay to the Commission within 30 days of the date of this order, by check or money order, the sum of three thousand six hundred dollars (\$3,600).

3. That the full forfeiture of \$14,250 assessed in this order shall be immediately due and payable if Addis Transportation, Inc., fails to timely pay the net forfeiture.

4. 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 AND HOLCOMB:



William S. Morrow, Jr.
Executive Director