

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 13,287

IN THE MATTER OF:

Served May 25, 2012

Application of READY EAGER DRIVERS )  
INC for a Certificate of Authority )  
-- Irregular Route Operations )

Case No. AP-2012-003

Pursuant to Commission Rule No. 26-04, the Commission hereby reopens the record in this proceeding to determine whether Certificate of Authority No. 1895 was granted in error in Order No. 13,146, served February 6, 2012.

Commission Rule No. 26-04 provides that:

If, after the hearing in a proceeding, the Commission shall have reason to believe that conditions of fact or of law have so changed as to require, or that the public interest requires, the reopening of such proceeding, the Commission will issue an order reopening.

The Commission has used this rule, or rather its precursor, to reopen the pre-decision record at a time when, as here, the issuance of operating authority was still pending and where, as here, the decision to reopen was based on the receipt of new evidence bearing on the decision.<sup>1</sup>

Under Title II of the Compact, Article XIII, Section 3(a), the Commission may later rectify an error committed during the course of granting or issuing a certificate of authority.<sup>2</sup> The possible error in this case concerns the Commission's finding in Order No. 13,146 that applicant is a fit candidate for WMATC operating authority.

Licensing proceedings such as this involve predictive judgments.<sup>3</sup> In particular, "[a] determination of compliance fitness is prospective in nature."<sup>4</sup> The purpose of the inquiry is to protect the

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<sup>1</sup> See *In re P&T Transp. Co., Inc.*, No. AP-87-28, Order No. 3131 (Mar. 8, 1988) (reopening pre-decision record under then Rule No. 27-02).

<sup>2</sup> *In re Double Decker Bus Tours, W.D.C., Inc.*, No. AP-95-21, Order No. 5963 (Aug. 15, 2000); *In re V.I.P. Tours*, No. MP-94-02, Order 4266 (Mar. 28, 1994).

<sup>3</sup> *In re A & J Limo Servs., Inc.*, No. AP-09-048, Order 12,104 at 4 (July 27, 2009) (citing *Old Town Trolley Tours v. WMATC*, 129 F.3d 201, 205 (D.C. Cir. 1997)).

<sup>4</sup> *In re Exec. Tech. Solutions, LLC*, No. AP-12-033, Order No. 13,250 (May 3, 2012).

public from those whose conduct demonstrates an unwillingness to operate in accordance with regulatory requirements.<sup>5</sup>

Applicant was conditionally granted operating authority in Order No. 13,146 based on the following holding:

Based on the evidence in this record, 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.

As is customary when approving an application for a WMATC certificate of authority, the issuance of a certificate was expressly made contingent on applicant filing additional documents and passing a vehicle inspection conducted by Commission staff. It was during the course of applicant's efforts to satisfy those conditions that certain facts came to the Commission's attention and placed previously known facts in a different light.

First, in the application itself, there is applicant's designation of "12138 Central Ave, Suite 214, Bowie, MD 20721" as applicant's "Street Address" and "Mailing Address". In a letter dated January 12, 2012, Commission staff questioned applicant as to whether this was the location of applicant's office or "a mail box at the UPS Store in Mitchellville Plaza". Staff also requested a list of officers, directors and shareholders. Applicant's CEO, Clarence E. Woodrow, Jr., responded that applicant's principal place of business is "815 Darien Place Upper Marlboro, MD 20774," Mr. Woodrow's personal residence. The response also included a list of officers, directors and shareholders naming Mr. Delorian Cheeks of "800 Darien Place Upper Marlboro, MD 20774" as applicant's treasurer.

After the application was conditionally approved in Order No. 13,146 on February 6, 2012, the Commission received a call regarding a scheduled inspection of applicant's proposed WMATC vehicle. The caller ID function on the Commission's phone identified the caller as "CHEEKS ESTH", which Commission staff recognized as a possible abbreviation of the name "Cheeks, Esther".

Commission records show that Esther Lewis Cheeks held WMATC Certificate No. 415 under the trade name of Cheeks & Son from January 12, 1998, to September 23, 1999, when the certificate was transferred to Cheeks & Son Transportation, Inc., which held WMATC Certificate No. 415, until December 13, 2007, when it was revoked for Cheeks &

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<sup>5</sup> *Id.*

Son's violation of the Commission's insurance requirements.<sup>6</sup> Cheeks & Son has yet to return Certificate No. 415 and verify Cheeks & Son's removal of vehicle markings as required by the revocation order. And Cheeks & Son has yet to verify timely cessation of operations as required by Commission Rule No. 28.

Ms. Cheeks was the president of Cheeks & Son when Certificate No. 415 was revoked, and the street address on file with the Commission at that time was "12138 Central Ave, #214, Mitchellville, MD 20721-1910", which as noted above is the initial address given by applicant as the location of its office.

At about the time of Ms. Cheeks' phone call, the Commission obtained a copy of applicant's motor vehicle insurance application. The insurance application names "Hester Joy Lewis-Cheeks" as applicant's sole driver. Initially, it appeared that "Hester" might be a relative of "Esther", but the Commission later determined that the driver license number entered on the insurance application for "Hester Joy Lewis-Cheeks" actually belongs to "Esther Joy Lewis-Cheeks", as noted below.

The office address issues, caller ID information, insurance application information, and knowledge that applicant's fax number matched the fax number on record for Cheeks & Son, prompted staff to question applicant about its relationship with Ms. Cheeks and her company, Cheeks & Son. Staff also questioned applicant about applicant's articles of incorporation designating applicant as a non-profit organization formed to "Provide Free Transportation Services" and about the phone number for applicant listed on the cover form of applicant's proposed initial tariff, a number not listed in the application.

The Commission received the following email in response. Although the email was transmitted from applicant's email address, it is clearly the statement of Ms. Cheeks (typos in original).

Myself and Mr. Woodrow have been neighbors for over 20 years. Mr woodrow knew that I had operated (which I no longer operate) within the trasonportation business for over 20 years and he asked for my assistance in the filings of the required paperwork in regards to the various agencies. My main operating office was located within my house so I have various business and office equipment that me woodrow doesn't have and he asked could he use my office to send various required documents to various agencies. Mr. Woodrow lives at 815 Darien Place and I live at 800 Darien Place. These are two completely different address and if supporting documents are necessary I can supply documents if need be.

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<sup>6</sup> *In re Cheeks & Son Transp. Inc.*, No. MP-07-223, Order No. 10,998 (Dec. 13, 2007).

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Now in regards to the general tariff, Mrs. Cheeks called the WMATA office on the behalf of Mr. Woodrow as well as visited the coporate website for WMATA, which instructed him to include a fee/cost sheet because there are no contract. He was complying with what I was informed to do.

When the company originally filed the articles of agreement, this is the paper that the agency of "department of assessments and taxation" informed me that he wanted and needed The article of agreement to be for "a non-stock corporation" and NOT a "not for profit". The agency told him that the only way it could become a not-for-profit is if the company filed a 501C with the internal revenue and filled the proper associated paper with the internal revnue as well. At no point have Ready Eager Drivers Incorporated ever and/or intend to become a not-for-profit organizations.

Now inregards to phone number 202-957-4941 not being associated with the application, that is almost impossible for it not to be associated with the company. It was clearly indicated on the listing paperwork of Pursuant to regulation, application # 54-04(b) which was indicated on the paperwork receievd via postal on Janurary 12, 2012 from the WMATA. The only other number that can be assoaited with this could be (301) 466-6670.

Mr. Woodrow later resubmitted this statement as his own after making a few minor alterations.

From this it is clear that applicant's office is currently located in Ms. Cheek's residence and that Ms. Cheeks has been instrumental in forming applicant and has been overseeing applicant's WMATC application. And considering that the driver license number given on applicant's insurance application for "Hester Joy Lewis-Cheeks" actually belongs to "Esther Joy Lewis-Cheeks" according to the Maryland Motor Vehicle Administration, it is also clear that applicant proposes that Ms. Cheeks will be operating applicant's sole WMATC vehicle. It is thus clear that Ms. Cheeks is in a position to benefit from her involvement with applicant. The Commission has denied the issuance of conditionally-approved authority in the past where issuing the certificate would benefit a third party not in good standing with the Commission.<sup>7</sup>

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<sup>7</sup> See *In re Gloria Sodipo t/a Right Way Transp.*, No. AP-04-75, Order No. 8532 (Jan. 28, 2005) (denying reconsideration where issuance of authority would profit person not in good standing); see also *In re Adventures By Dawn L.L.C.*, No. AP-00-89, Order No. 6087 at 3 (Jan. 16, 2001) (application not

Under the circumstances, we believe that it would be in the public interest to stay the execution of Order No. 13,146 until such time as applicant has had an opportunity to comment on this evidence.<sup>8</sup>

THEREFORE, IT IS ORDERED:

1. That the pre-decision record in this proceeding is hereby re-opened under Rule No. 26-04.

2. That the execution of Order No. 13,146 is stayed until further order.

3. That applicant shall have 30 days to show cause why Certificate No. 1895 should be issued to applicant notwithstanding applicant's affiliation with Esther Lewis Cheeks and apparent affiliation with Cheeks & Son Transportation, Inc.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS BRENNER AND HOLCOMB:



William S. Morrow, Jr.  
Executive Director

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approved until after applicant terminated leasehold relationship that may have benefited one or more persons not in good standing with Commission).

<sup>8</sup> See *In re Double Decker Bus Tours, W.D.C., Inc.*, No. AP-95-21, Order No. 4658 (Sept. 6, 1995) (staying execution of conditional grant order).