

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 13,536

IN THE MATTER OF:

Served October 18, 2012

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

Case No. AP-2012-003

This matter is before the Commission on applicant's response to Order No. 13,287, served May 25, 2012, reopening the record in this proceeding.

I. ORDER NO. 13,287

The Commission reopened the record in this proceeding Pursuant to Commission Rule No. 26-04 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.¹

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.² 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.³ In particular, "[a] determination of compliance fitness is

¹ 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).

² *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).

³ *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)).

prospective in nature.”⁴ The purpose of the inquiry is to protect the public from those whose conduct demonstrates an unwillingness to operate in accordance with regulatory requirements.⁵

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. The corporation held

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

⁵ *Id.*

WMATC Certificate No. 415, until December 13, 2007, when it was revoked for Cheeks & Son's violation of the Commission's insurance requirements.⁶ The revocation order directed Cheeks & Son to return Certificate No. 415 and verify removal of WMATC markings from Cheeks & Son's vehicles.⁷ Cheeks & Son's did not comply.⁸

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

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

⁷ *Id.*

⁸ As of May 25, 2012, the date the record in this proceeding was reopened in Order No. 13,287, Cheeks & Son had yet to return Certificate No. 415 and verify Cheeks & Son's removal of vehicle markings as required by the revocation order. And Cheeks & Son had yet to verify timely cessation of operations as required by Commission Rule No. 28.

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.

* * *

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 compliing 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 associaited 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 was clear to the Commission that applicant's office was located in Ms. Cheek's residence and that Ms. Cheeks had been instrumental in forming applicant and 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 was also clear to the Commission that applicant was proposing that Ms. Cheeks would be operating applicant's sole WMATC vehicle. It was thus clear to the Commission that Ms. Cheeks was 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.⁹

The Commission accordingly believed that it would be in the public interest to stay the execution of Order No. 13,146 until such time as applicant had an opportunity to comment on the foregoing evidence.

II. APPLICANT'S RESPONSE

Applicant's CEO, Clarence E. Woodrow, Jr., has filed a written response to Order No. 13,287. The response is dated June 22, 2012, and contains eight numbered paragraphs.

In Paragraph No. 8, Mr. Woodrow denies any affiliation with Cheeks & Son Transportation. He states in Paragraph No. 2 that Mr. DeLorean Cheeks has been replaced on applicant's board of directors. This is supported by a copy of applicant's articles of amendment filed with the Maryland Department of Assessments and Taxation. The response also is supported by a copy of a letter to applicant's insurance broker removing Ms. Cheeks and adding Mr. Woodrow as applicant's driver. Ms. Cheeks' removal has been confirmed by the broker.

On the face of it, this would appear to address the Commission's concern that Ms. Cheeks was in a position to benefit from her involvement with applicant. Applicant's response, however, must be evaluated in light of Mr. Woodrow's other assertions, both in the June 22 response and in previous filings.

First, there is the matter of applicant's address. As noted above, "12138 Central Ave, Suite 214, Bowie, MD 20721" is designated in the application as applicant's "Street Address" and "Mailing Address". In Paragraph No. 1 of his statement, Mr. Woodrow denies entering this address in the application as applicant's street address and offers an unsigned, partially-completed WMATC application form in support. Apparently, it is his contention that the exhibit is a copy of what applicant filed in this proceeding, but even a cursory comparison reveals obvious differences, not the least of which is that the application filed in this proceeding was date stamped "Received" by the Commission on January 9, 2012, but the signature page of the purported copy is dated January 26, 2012.

In any event, even Mr. Woodrow's "copy" lists the Central Ave. address as applicant's mailing address. Mr. Woodrow acknowledges in Paragraph No. 1 of his statement that this is Ms. Cheeks' mailing

⁹ 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 approved until after applicant terminated leasehold relationship that may have benefited one or more persons not in good standing with Commission).

address. He explains that he thought it would be more "more efficient" if the Commission communicated with him through Ms. Cheeks' address inasmuch as he would be seeking her advice on how to respond to said communications. This explanation does not hold up under closer examination.

In deconstructing Mr. Woodrow's explanation, it is important to note that his explanation is based on what appears in the "copy" of the WMATC application attached to his response as Exhibit 1. In Mr. Woodrow's "copy" of the application, the Central Ave. address has been entered as applicant's mailing address but not as Mr. Woodrow's address for receiving correspondence from the Commission in his role as applicant's contact. In Mr. Woodrow's "copy" of the application, the address designated for "correspondence regarding this application" is Mr. Woodrow's home address, not Ms. Cheek's mailing address. If we hold Mr. Woodrow to his "copy" of the application, then we must conclude that when he submitted the application he must have intended that correspondence be sent to him at his home address, not Ms. Cheeks' address, and his explanation of why Ms. Cheeks' address appears on the application falls apart.

The Central Ave. address also appears in the "purchaser's address" space on the money order used to pay the application fee. Mr. Woodrow's professed desire to make the communication process more efficient does not explain why Ms. Cheeks' mailing address appears on the money order used to pay applicant's \$250 application fee.

Mr. Woodrow states in attempted mitigation that when Ms. Cheeks became aware that mail for applicant was being sent to her private mail box, she advised him to "immediately" cease using that address and he complied.¹⁰ But the record is to the contrary. When questioned by the Commission in January of this year about whether the Central Avenue address was applicant's principal place of business or simply a private mail box, applicant responded on January 23 by designating Mr. Woodrow's home address as applicant's principal place of business, but no change of address was filed with the Commission at that time for either applicant's mailing address or Mr. Woodrow's mailing address. In fact, applicant continued using Ms. Cheeks' mailing address for several months, entering it on a general tariff cover form signed by Mr. Woodrow and filed with the Commission on April 6, 2012, and again on a vehicle lease signed by Mr. Woodrow and filed with the Commission on April 13, 2012. No change of mailing address was filed with the Commission until after the Commission issued Order No. 13,287 on May 25, 2012, reopening the record in this proceeding.

Indeed, according to the date entered on a copy of a U.S. Postal Service change-of-address form attached as Exhibit 2 to applicant's June 22 response, applicant did not file a change of address with the U.S. Postal Service until May 1, 2012, at the

¹⁰ June 22 response, ¶ 1.

earliest, after the Commission had begun questioning applicant about its relationship with Ms. Cheeks. Moreover, it is not clear that the form was ever filed inasmuch as according to U.S. Postal Service records, WMATC Order No. 13,287 was delivered to the Central Ave. address on May 26, 2012.

Then, there is the matter of Ms. Cheeks' role in applicant's business affairs. The June 22 response would reduce her status to that of friend, neighbor, adviser, consultant. But it is clear that Ms. Cheeks was more than that. Ms. Cheeks drafted the response to Commission staff's inquiries regarding her role in the company.¹¹ It was Ms. Cheeks who contacted the "department of assessments and taxation" regarding applicant's formation.¹² It was Ms. Cheeks who "called the WMATA (sic) office on the behalf of Mr. Woodrow" regarding a general tariff issue.¹³ It was Ms. Cheeks who leant her office to Mr. Woodrow.¹⁴ And Ms. Cheeks was the sole driver listed on applicant's insurance application. It is this last point that is particularly nettlesome.

Mr. Woodrow states in Paragraph No. 5 of his June 22 statement that "Ms. Cheeks never asked or agreed to drive for my business." And yet, Mr. Woodrow identified her in the insurance application as applicant's sole driver. This may fall short of insurance fraud, but it comes perilously close. Too close in our estimation.

III. CONCLUSION

A certain level of candor is required of applicants for WMATC operating authority.¹⁵ In retrospect, it appears that applicant has not been entirely candid with the Commission.

Mr. Woodrow's protestations to the contrary notwithstanding, listing Ms. Cheeks' private mail box at the UPS Store in Mitchellville Plaza as applicant's street address and mailing address and as Mr. Woodrow's mailing address and characterizing the mail receptacle as a "suite" was not merely "poor judgment" on his part.¹⁶ It was misleading.

Mr. Woodrow defends Ms. Cheeks' involvement by claiming that it "is not accurate that Ms. Cheeks planned to benefit from my company's

¹¹ See April 26, 2012, email from Clarence Woodrow, which begins "I'm sorry for the confusion and I hope I can solve these matters expeditiously. Myself and Mr. Woodrow have been neighbors for over 20 years."

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ See *In re Faith Servs. Transp., Inc., t/a Faith Transp.*, No. AP-03-61, Order No. 7458 at 4 (Oct. 7, 2003) (finding applicant failed to demonstrate candor expected of an applicant).

¹⁶ June 22 response, ¶ 1.

activities."¹⁷ Perhaps not. We do not have Ms. Cheeks' testimony on this. But surely applicant anticipated that she would benefit in her capacity as applicant's sole driver, as indicated on applicant's commercial auto insurance application - which applicant did not disclose but was discovered by Commission staff. We are not prepared to suppose that applicant presumed Ms. Cheeks would volunteer her services in that regard.

From the record before us, it thus appears that applicant initially concealed Ms. Cheeks' involvement in applicant's business affairs and then later attempted to obscure the full extent of that involvement.

Considering that applicant designated Ms. Cheeks on applicant's insurance application as applicant's sole driver even though Ms. Cheeks had not agreed to that position, applicant's misrepresentations to the Commission do not appear to be isolated but, rather, part of a pattern of behavior.

We therefore conclude that our prior finding of fitness was in error.

THEREFORE, IT IS ORDERED:

1. That the fitness finding and conditional grant of authority in Order No. 13,146 are rescinded.

2. That the application of Ready Eager Drivers Inc for an irregular-route certificate of authority is denied.

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



William S. Morrow, Jr.
Executive Director

¹⁷ *Id.*, ¶ 8.