

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 13,598

IN THE MATTER OF:

Served November 27, 2012

Application of NICK & FRANK STEIN)
LLC for a Certificate of Authority)
-- Irregular Route Operations)

Case No. AP-2012-202

Applicant seeks a certificate of authority to transport passengers in irregular route operations between points in the Metropolitan District. 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.

Applicant proposes commencing operations with one van. Applicant proposes operating under a tariff containing charter rates, rates for Medicaid transportation, rates for private pay ambulatory/wheelchair transportation, and rates for transportation under contracts with government agencies and private entities.

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 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,¹ but this applicant has a history of regulatory violations. When an applicant has a record of violations, 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 applicant has made sincere efforts to correct past mistakes, and (5) whether applicant has demonstrated a

¹*In re William Korblah Ayenson, t/a Minuteman Med. Transp. Servs.*, No. AP-11-014, Order No. 12,795 (Apr. 8, 2011).

willingness and ability to comport with the Compact and rules and regulations thereunder in the future.²

Applicant previously held Certificate No. 1044 from February 8, 2006, until December 1, 2008, when it was revoked for applicant's failure to comply with the Commission's insurance requirements in Regulation No. 58 and pay a \$50 late fee assessed under Regulation No. 67-03(c).³

The revocation order, Order No. 11,710, noted that the \$50 late fee would remain due and gave applicant 30 days to: (1) remove from its vehicles the identification markings placed thereon pursuant to Commission Regulation No. 61; (2) file a notarized affidavit with the Commission verifying removal; and (3) surrender Certificate No. 1044 to the Commission. Applicant did not comply within the time allowed, but the application is supported by payment of the \$50 late fee and an affidavit confirming removal of WMATC markings from applicant's vehicle. Applicant also has surrendered Certificate No. 1044 to the Commission and submitted proof of having surrendered the license plates for its sole vehicle on September 16, 2008, six days after its Certificate of Authority was suspended.⁴ There is no evidence of post-suspension operations in the record.

The Commission has found other applicants fit under similar circumstances.⁵ Applicant, however, shall serve a one year period of probation as a means of ensuring prospective compliance.⁶

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.

THEREFORE, IT IS ORDERED:

1. That upon applicant's timely compliance with the requirements of this order, Certificate of Authority No. 1044 shall be issued to Nick & Frank Stein LLC, 2118 Kearney Street, N.E., Washington, DC 20018-2812.

² *Id.*

³ See *In re Nick & Frank Stein LLC*, No. MP-08-203, Order No. 11,710 (Dec. 1, 2008).

⁴ See *In re Nick & Frank Stein LLC*, No. MP-08-203, Order No. 11,568 (Sept. 10, 2008).

⁵ See Order No. 12,795 (paid outstanding late fees, accounted for vehicle markings and Certificate of Authority, and verified cessation of operations with no evidence to the contrary); *In re Felicia Medlock, t/a I Get Around the DMV Shuttle*, No. AP-10-082, Order No. 12,512 (Aug. 19, 2010) (same); *In re Voneva Inc.*, No. AP-09-107, Order No. 12,240 (Dec. 1, 2009) (same).

⁶ See, e.g., Order No. 12,795 (same); Order No. 12,512 (same); Order No. 12,240 (same).

2. That applicant may not transport passengers for hire between points in the Metropolitan District pursuant to this order unless and until a certificate of authority has been issued 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.

4. That applicant shall be placed on probation for a period of one year commencing with the reissuance of a certificate of authority 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 BELLAMY:



William S. Morrow, Jr.
Executive Director