

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 13,694

IN THE MATTER OF:

Served January 23, 2013

Application of MY OWN PLACE, INC., )  
for a Certificate of Authority -- )  
Irregular Route Operations )

Case No. AP-2012-267

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.

Article XI, Section 7(a), of the Washington Metropolitan Area Transit Regulation Compact<sup>1</sup> provides that the Commission 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.<sup>2</sup>

Applicant verifies that it: (1) 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) 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) 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 be sufficient to establish an applicant's fitness,<sup>3</sup> but this applicant has a history of regulatory violations.

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<sup>1</sup> 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).

<sup>2</sup> *In re Metro Homes, Inc.*, No. AP-10-004, Order No. 12,729 (Feb. 15, 2011).

<sup>3</sup> *Id.* at 2.

## I. PAST VIOLATIONS

Applicant formerly held WMATC Certificate No. 1345. Said certificate was revoked on June 22, 2012, in Order No. 13,323 for applicant's willful failure to comply with Commission Regulation Nos. 60 and 67 and Commission Order No. 13,252. The revocation order directed applicant to file within 30 days an affidavit and supporting photographs verifying removal of vehicle markings. Applicant did not comply. Instead, applicant reapplied for WMATC operating authority by filing an application on August 3, 2012.

By letter dated August 14, 2012, applicant was directed to file a statement explaining why approving the application would be consistent with the public interest when applicant had yet to comply with the terms of Order No. 13,323 and yet to verify in accordance with WMATC Rule No. 28 that applicant ceased transporting passengers as of the date Certificate No. 1345 was suspended for the infractions mentioned above, which under WMATC Regulation No. 60-03 was May 1, 2012.

Applicant produced a notarized statement verifying removal of WMATC markings from applicant's vehicles, and the statement was supported by photos of said vehicles. The statement also confirmed that applicant "is no longer transporting individuals as a certified WMATC transportation provider." The statement did not indicate, however, when applicant's carrier operations ceased.

Based on that record, the Commission found that applicant's statement: (1) did not exclude the possibility that applicant continued operating after the suspension of Certificate No. 1345; (2) did not exclude the possibility that applicant was still transporting passengers for hire in the Metropolitan District; (3) only excluded the possibility of operations that were not WMATC certified; and (4) did not exclude the possibility of operations that were no longer certified but should be.<sup>4</sup>

Accordingly, the Commission could not say that applicant had satisfied its burden of demonstrating regulatory compliance fitness and denied the application without prejudice on October 19, 2012.<sup>5</sup> Applicant thereafter initiated this proceeding by filing a new application on November 26, 2012.

In support of the instant application, applicant has submitted statements from its CEO, Ms. Kimberly Scott-Hopkins. Ms. Scott-Hopkins admits that "My Own Place, Inc. did not cease to operate as a transportation carrier by May 1, 2012 . . . ." <sup>6</sup> She states that applicant "ceased operating as a transportation provider as of July 1,

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<sup>4</sup> *In re My Own Place, Inc.*, No. AP-12-157, Order No. 13,544 (Oct. 19, 2012).

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

<sup>6</sup> Statement of Dec. 6, 2012, at 2.

2012.”<sup>7</sup> The application is further supported by statements from several WMATC carriers acknowledging their provision of transportation services to applicant’s clients since July 1, 2012.

## II. ASSESSMENT OF FORFEITURE

Under the Compact, 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.<sup>8</sup> Each day of the violation constitutes a separate violation.<sup>9</sup>

The term “knowingly” means with perception of the underlying facts, not that such facts establish a violation.<sup>10</sup> The term “willfully” does not mean with evil purpose or criminal intent; rather, it describes conduct marked by careless disregard whether or not one has the right so to act.<sup>11</sup> Employee negligence is no defense.<sup>12</sup> “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.<sup>13</sup>

According to Ms. Scott-Hopkins, applicant did not stop operating on or before May 1, 2012, because

My Own Place had not seen any of the WMATC communications sent directing the company to file its annual report and pay its annual dues or the subsequent communications outlining other follow up steps, actions and mandates. They were all lost in the [landlord’s] mail system and not retrieved until after WMATC had taken the decertification action.

At this point it is helpful to review the communications at issue. First is the letter sent December 23, 2011, advising applicant of the option to file its annual report and pay its annual fee electronically through the WMATC website. Second is the invoice and accompanying prepopulated annual report mailed January 4, 2012. Third is the overdue notice mailed February 2, 2012. Fourth is the Final Notice mailed April 5, 2012. Fifth is the suspension order mailed May 7, 2012.

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<sup>7</sup> Statement of Nov. 23, 2012.

<sup>8</sup> Compact, tit. II, art. XIII, § 6(f)(i).

<sup>9</sup> Compact, tit. II, art. XIII, § 6(f)(ii).

<sup>10</sup> Order No. 12,729 at 5.

<sup>11</sup> *Id.* at 5.

<sup>12</sup> *Id.* at 5.

<sup>13</sup> *United States v. Illinois Cent. R.R.*, 303 U.S. 239, 243, 58 S. Ct. 533, 535 (1938).

Ms. Scott-Hopkins does not explain why mail addressed to applicant is funneled through its landlord, and it seems incredible that none of the five written Commission communications to applicant over a four-and-a-half month period were delivered to applicant prior to revocation of Certificate No. 1345 on June 22, 2012. Surely, these five pieces of mail were not the only ones "lost" by the landlord. At some point well before June 22, 2012, it should have dawned on applicant that not all mail was being passed through by the landlord.

Applicant would have been better served renting a post office box. Applicant has had this option since the first date applicant learned that its landlord would be acting as a conduit for applicant's mail. Applicant chose not to rent a lockbox and must now accept the consequences of that choice.

A WMATC carrier cannot claim ignorance of the annual fee and annual report deadlines in Regulation Nos. 60 and 67, in any event.<sup>14</sup>

We shall assess a forfeiture against applicant in the amount of \$250 per day<sup>15</sup> for 61 days,<sup>16</sup> or \$15,250. We will suspend all but 15 percent, rounded to the nearest \$100, or \$2,300, based on the presence of two reduction factors: admission of wrongdoing and voluntary filing of this application.<sup>17</sup> Failure to pay the net forfeiture in a timely fashion shall result in reinstatement of the full \$15,250.

### III. 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 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.<sup>18</sup>

Operating without authority is a serious violation. We find no mitigating circumstances. On the other hand, we do not find that the violation was flagrant or persistent. That applicant filed an

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<sup>14</sup> *In re RT&T, LLC*, No. MP-10-042, Order No. 12,399 (May 10, 2010); see also *In re Tilly's Limo. & Sedan Servs., Inc.*, No. MP-12-028, Order No. 13,227 (Apr. 10, 2012) (carrier with authority for six years cannot claim ignorance of annual fee/annual report deadline).

<sup>15</sup> See Order No. 12,729 at 5 (\$250 per day of unauthorized operations).

<sup>16</sup> May 1, 2012, through June 30, 2012.

<sup>17</sup> See *id.* at 5 (15% rounded based on admission of guilt and voluntary filing of application); *In re Skyhawk Logistics, Inc.*, No. AP-07-195, Order No. 11,693 (Nov. 19, 2008) (net of 16.67% based on same); *In re Melwood Horticultural Training Center, Inc.*, No. AP-08-014, Order No. 11,692 (Nov. 19, 2008) (net of 10.64% based on same).

<sup>18</sup> Order No. 12,729 at 6.

application of its own volition is some evidence of willingness and ability to comport with the Compact and rules and regulations thereunder in the future,<sup>19</sup> as is applicant's hiring of licensed carriers to assume responsibility for transporting applicant's clients<sup>20</sup> as of July 1, 2012.

We are somewhat concerned that applicant apparently continues to receive its mail through a landlord that has proven unreliable as an agent for receiving mail. On the other hand, it would appear that all of the communications issued in this proceeding have been timely delivered.

Upon payment of the forfeiture assessed herein, the record will support a finding of prospective compliance fitness,<sup>21</sup> subject to a one-year period of probation.<sup>22</sup>

#### **IV. 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 pursuant to Article XIII, Section 6(f), of the Compact, the Commission hereby assesses a net civil forfeiture against applicant in the amount of \$2,300 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 61 separate days while Certificate No. 1345 was suspended/revoked.

2. That applicant 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 two thousand three hundred dollars (\$2,300).

3. That the full forfeiture of \$15,250 assessed in this order shall be immediately due and payable if applicant fails to timely pay the net forfeiture.

4. That upon applicant's timely compliance with the requirements of this order, Certificate of Authority No. 1345 shall be reissued to My Own Place, Inc., 817 Varnum Street, N.E., #132, Washington, DC 20017-2144.

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<sup>19</sup> *Id.* at 6.

<sup>20</sup> *Id.* at 6.

<sup>21</sup> *Id.* at 7.

<sup>22</sup> *Id.* at 7.

5. That applicant may not transport passengers for hire between points in the Metropolitan District pursuant to this order unless and until Certificate No. 1345 has been reissued in accordance with the preceding paragraph.

6. 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 and Order No. 4203; (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.

7. That applicant shall be placed on probation for a period of one year commencing with the reissuance of Certificate No. 1345 as approved in this order, such that a willful violation of the Compact, or of the Commission's rules, regulations or orders thereunder, during the period of probation shall constitute grounds for immediate suspension and/or revocation of Certificate No. 1345, regardless of the nature and severity of the violation.

8. That should applicant fail to timely satisfy the conditions of issuance prescribed herein, this grant of authority shall be void and applicant's application shall stand denied.

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



William S. Morrow, Jr.  
Executive Director