

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 13,727

IN THE MATTER OF:

Served February 5, 2013

Application of ANTHONY AMBROSE)
ACHORONYE, Trading as PVFP MEDICAL)
GROUP, for a Certificate of)
Authority -- Irregular Route)
Operations)
Case No. AP-2012-289

This matter is before the Commission on applicant's response to Order No. 13,683, served January 11, 2013, which dismissed this proceeding for applicant's failure to comply with the Commission's application requirements. Applicant has filed a request to reopen this proceeding.

I. CAUSE FOR DISMISSAL AND GROUNDS FOR REOPENING

Under the Compact, an application to obtain a certificate of authority shall be made in writing, verified, and shall contain the information required by the application form and accompanying instructions.¹ An applicant may be required to furnish any supplemental information necessary for a full and fair examination of the application.² Failure to comply with the Commission's application requirements warrants dismissal.³

Applicant previously controlled God's Will Transportation Inc., (GWT), which held WMATC Certificate No. 1139 from April 11, 2007, until March 25, 2008, when it was revoked in WMATC Order No. 11,230.⁴ By letter dated December 13, 2012, applicant was directed to submit, among other things, a statement indicating when GWT ceased WMATC operations and whether those operations had recommenced. Applicant responded to the letter on December 17, 2012, but the response did not include said statement. Accordingly, the application was dismissed.

On January 18, 2013, applicant filed a statement declaring that "God's Will Transportation ceased operation in January 26, 2007" and "has not recommenced since then." For good cause shown, this proceeding shall be reopened under Commission Rule No 26.⁵

¹ Compact, tit. II, art. XI, § 8; Regulation No. 54-02.

² Regulation No. 54-04(b).

³ *In re One, LLC, t/a Bon Voyage*, No. AP-04-103, Order No. 8212 (Aug. 5, 2004).

⁴ *In re God's Will Transp. Inc.*, No. MP-08-011, Order No. 11,230 (Mar. 25, 2008).

⁵ See *In re Assisted Multicare Transp. Inc.*, No. AP-12-250, Order No. 13,631 (Dec. 14, 2012) (same).

II. APPLICATION

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.⁶ A determination of compliance fitness is prospective in nature.⁷ The purpose of the inquiry is to protect the public from those whose conduct demonstrates an unwillingness to operate in accordance with regulatory requirements.⁸ Past violations do not necessarily preclude a grant of authority but permit the inference that violations will continue.⁹

Applicant proposes commencing operations with one van. Applicant proposes operating under a tariff containing 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.

⁶ *In re Four Points Transp. & Moving Inc.*, No. AP-12-111, Order No. 13,695 (Jan. 23, 2013); *In re Metroexpress LLC*, No. AP-12-236, Order No. 13,637 (Dec. 21, 2012); *In re Pantio Med. Transp.: LLC*, No. AP-10-124, Order No. 12,631 (Nov. 19, 2010); *In re Care Transp. Inc.*, No. AP-08-068, Order No. 11,551 (Sept. 4, 2008).

⁷ Order Nos. 13,695; 13,637; 12,631.

⁸ Order Nos. 13,695; 13,637; 12,631.

⁹ Order Nos. 13,695; 13,637; 12,631.

Normally, such evidence would establish an applicant's fitness,¹⁰ but applicant has a history of controlling a company with regulatory violations, as indicated above.

III. HISTORY OF VIOLATIONS

As noted, applicant previously controlled GWT, WMATC Carrier No. 1139. Certificate No. 1139 was automatically suspended on January 9, 2008, when the WMATC Insurance Endorsements on file for GWT expired without replacement. Order No. 11,069, served January 9, 2008, noted that Certificate No. 1139 would be subject to revocation if respondent failed to file the necessary insurance endorsement(s) and pay a \$50 late fee within 30 days.¹¹ GWT also was directed to file a new tariff because the preexisting tariff was no longer effective.¹² GWT did not respond, and Certificate No. 1139 was revoked in Order No. 11,230 on March 25, 2008, pursuant to Article XI, Section 10(c), of the Compact.

The revocation order stipulated that the \$50 late fee would remain due and that in accordance with Commission Regulation Nos. 60 and 67, GWT's unpaid \$150 annual fee for 2008, unfiled 2008 annual report, and another \$200 in late fees, would also remain due.¹³

The revocation order further gave GWT 30 days to remove all WMATC markings from its vehicle(s), file an affidavit confirming removal, and surrender Certificate No. 1139.¹⁴

GWT did not respond.

IV. LIKELIHOOD OF FUTURE COMPLIANCE

When an applicant or a person controlling an applicant has a record of violations, or a history of controlling companies with such a record, 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 the controlling party has made sincere efforts to correct past mistakes, and (5) whether the controlling party has demonstrated a willingness and ability to comport with the Compact and rules and regulations thereunder in the future.¹⁵

Failing to comply with the Commission's insurance regulation is a serious violation. When the signatories and Congress approved the Compact, they designated noncompliance with Commission insurance requirements as the single offense that would automatically invalidate

¹⁰ Order Nos. 13,695; 11,551.

¹¹ *In re God's Will Transp. Inc.*, No. MP-08-011, Order No. 11,069 (Jan. 9, 2008).

¹² *Id.*

¹³ Order No. 11,230.

¹⁴ *Id.*

¹⁵ Order Nos. 13,695; 12,631.

a certificate of authority.¹⁶ They could not have sent a clearer message that maintaining proper insurance coverage is of paramount importance under the Compact.¹⁷

Applicant's assertion in his January 18, 2013, statement that GWT ceased operating January 26, 2007, offers little comfort. First, GWT did not receive its WMATC operating authority until April 11, 2007, in WMATC Case No. AP-2006-111 (2006 Application Proceeding). Prior to that, according to the application filed in the 2006 Application Proceeding on June 22, 2006, GWT had no passenger carrier authority from any agency. So the assertion that GWT ceased operating in January 2007 would appear to represent an admission of unlawful operations prior thereto.

Second, according to applicant's January 18, 2013, statement, after GWT ceased operating January 26, 2007, "the markings on the vehicle were removed, and the vehicle sold on February 1, 2007." Commission records contradict this assertion. Records from the 2006 Application Proceeding show that Commission staff inspected GWT's only listed vehicle, a 2001 Dodge van, on March 19, 2007, and that the van was marked "God's Will Transportation, Inc" and "WMATC 1139".

Applicant's January 18, 2013, statement also conflicts with his earlier affidavit filed in this proceeding on December 17, 2012, in which he states that "any and all vehicles of God's Will bearing WMATC markings were sold in 2009."

As for GWT's failure to maintain compliance with WMATC requirements, applicant pleads personal incapacity. According to applicant's January 18, 2013, statement, applicant suffered massive strokes on January 19, 2007, March 31, 2007, and August 19, 2008, and as a result was personally unable to ensure that GWT maintained compliance with WMATC requirements. But according to the letter transmitting applicant's December 17, 2012, affidavit, the strokes occurred on January 1, 2007, March 31, 2007, and August 3, 2008.

In any event, applicant acknowledges in both his January 18, 2013, statement and his December 17, 2012, letter that he "returned to work" as a "police officer with the Prince Georg's (sic) Police Department" after the January 2007 stroke, that he was so employed when the second stroke occurred in March 2007, and that he was "in service training" when the third stroke occurred in August 2008. Having returned to work after the two strokes in 2007, and having suffered no further attack until August 2008, his statements do not establish personal incapacity in early 2008 when the GWT violations took place.

¹⁶ Compact, tit. II, art. XI, § 7(g).

¹⁷ Order No. 12,631.

Consequently, on this record, we cannot say that applicant has demonstrated a willingness and ability to comport with the Compact and rules and regulations thereunder in the future.

V. CONCLUSION

Regardless of whether and when applicant was incapacitated in 2007 and 2008, applicant's incapacity does not constitute good cause for GWT's failure to comply with WMATC requirements. The duty to comply with Commission requirements falls on the carrier, not its individual officers.¹⁸ The record in the 2006 Application Proceeding shows that the co-owner of GWT, Hope Achoronye, was able to prosecute the application in that proceeding, seemingly without any assistance from applicant. This included filing a vehicle list, vehicle registration, vehicle safety inspection certificates, and several DC Medicaid tariffs on behalf of GWT in March and April 2007. There is nothing in the record that would call into question her ability to ensure GWT maintained compliance with WMATC insurance requirements and thus no reason to excuse GWT's failure to pay all outstanding fees.

As applicant correctly states, GWT no longer exists. According to the Maryland Department of Assessments and Taxation website,¹⁹ GWT's charter was forfeited in October 2008 for GWT's failure to file a 2007 property return. Under Maryland law, a corporation ceases to exist upon forfeiture of its charter, and all assets owned by a corporation at the time of forfeiture are transferred by operation of law to the corporation's directors.²⁰ Applicant admits in his December 17, 2012, affidavit to being a director of GWT. Applicant's failure to satisfactorily account for GWT's assets and operations and for GWT's failure to pay outstanding fees owed to the Commission lead us to conclude that applicant has not sustained his burden of demonstrating regulatory compliance fitness at this time.

THEREFORE, IT IS ORDERED that the application of Anthony Ambrose Achoronye, trading as PVFP Medical Group, for a certificate of authority, irregular route operations, is hereby denied without prejudice.

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



William S. Morrow, Jr.
Executive Director

¹⁸ *In re M & M Medvan, Inc.*, No. MP-12-054, Order No. 13,276 (May 18, 2012).

¹⁹ <http://sdatcert3.resiusa.org/ucc-charter/>.

²⁰ *Cloverfields Improvement Ass'n, Inc., v. Seabreeze Poperties, Inc.*, 362 A.2d 675 (Md. Ct. Spec. App. 1976), *aff'd*, 373 A.2d 935 (Md. 1977).