

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 13,775

IN THE MATTER OF:

Served February 28, 2013

Application of RELIABLE LIMOUSINE) Case No. AP-2012-183
AND BUS SERVICE, LLC, for a)
Certificate of Authority --)
Irregular Route Operations)

Application of RELIABLE BUS, LLC,) Case No. AP-2012-184
for a Certificate of Authority --)
Irregular Route Operations)

Applicant Reliable Limousine and Bus Service, LLC, (RLBSL), 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. Applicant Reliable Bus, LLC, (RBL), seeks a certificate of authority to transport passengers in irregular route operations between points in the Metropolitan District. Both applications are unopposed.

These applications are being consolidated under WMATC Rule No. 20-02 because of a common question of fitness for WMATC authority.

The Washington Metropolitan Area Transit Regulation Compact, (Compact),¹ 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.² A determination of compliance fitness is prospective in

¹ Washington Metropolitan Area Transit Regulation Compact, 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).

² *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).

nature.³ The purpose of the inquiry is to protect the public from those whose conduct demonstrates an unwillingness to operate in accordance with regulatory requirements.⁴ Past violations do not necessarily preclude a grant of authority but permit the inference that violations will continue.⁵

RLBSL proposes commencing operations with 23 sedans, 13 limousines, 7 SUVs, and 10 vans. RLBSL proposes operating under a tariff containing charter rates, individual and/or group sightseeing rates, rates for mileage and/or hourly priced transportation, airport shuttle rates, rates for private pay ambulatory/wheelchair transportation, and rates for transportation under contracts with government agencies and private entities.

RBL proposes commencing operations with 15 minibuses. RBL proposes operating under a tariff containing charter rates, individual and/or group sightseeing rates, rates for mileage and/or hourly priced transportation, airport shuttle rates, rates for private pay ambulatory/wheelchair transportation, and rates for transportation under contracts with government agencies and private entities.

Applicants each verify 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 an applicant's fitness,⁶ but applicants' president, Paul Rodberg, has a history of controlling companies with regulatory violations.

I. HISTORY OF VIOLATIONS

Commission records show that in 2011, Mr. Rodberg controlled Reliable Limousine Service, LLC, (RLSL), a Maryland limited liability company located at 11941 Tech Road, Silver Spring, Maryland, 20904. RLSL has never held WMATC operating authority. On August 11, 2011, the Commission found, in Order No. 12,942, that RLSL had knowingly and willfully violated WMATC Regulation No. 63-04 and Article XI, Section 6(a), of the Compact, by advertising and performing, respectively, passenger carrier service requiring WMATC operating authority.⁷

³ Order Nos. 13,695; 13,637; 12,631.

⁴ Order Nos. 13,695; 13,637; 12,631.

⁵ Order Nos. 13,695; 13,637; 12,631.

⁶ Order Nos. 13,695; 11,551.

⁷ *In re Reliable Limo. Serv., LLC*, No. MP-11-055, Order No. 12,942 (Aug. 11, 2011).

Order No. 12,942 assessed a combined civil forfeiture of \$1,750 and directed RLSL to cease and desist advertising and performing service requiring WMATC authority.⁸ The order also stipulated that in the event RLSL failed to cease providing and advertising service requiring WMATC operating authority within 30 days, Commission staff should bring an action in United States District Court to enjoin said service and said advertising and otherwise enforce compliance with Article XI, Section 6(a) of the Compact and Regulation No. 63-04.⁹ RLSL did not comply, and staff filed suit against RLSL and Mr. Rodberg in the United States District Court for the District of Columbia on April 12, 2012.

In the meantime, Mr. Rodberg formed RLBSL on December 7, 2011, and RBL on February 1, 2012. He then caused each to apply for WMATC authority on July 9, 2012, while the aforesaid litigation was pending. Those applications were dismissed on August 2, 2012, when RLBSL and RBL failed to disclose, among other things, whether and to what extent RLSL and/or other companies controlled by Mr. Rodberg conducted operations requiring WMATC authority after August 2011.¹⁰

The instant applications were filed on August 13, 2012. Acceptance letters were mailed on August 22, 2012. The letters noted that the \$1,750 forfeiture had not been paid and that RLSL had not verified cessation of operations requiring WMATC authority.

On October 2, 2012, Mr. Rodberg paid the \$1,750 forfeiture and verified that RLSL and affiliates, other than RLBSL and RBL, had ceased all operations. Mr. Rodberg was silent as to the effective date of when such operations ceased. In a supplemental filing on January 31, 2013, Mr. Rodberg states that as of January 1, 2013, the "only companies operating vehicles" were RLBSL and RBL.

Meanwhile, the litigation proceeded, and on February 6, 2013, the District Court entered judgment for WMATC and ordered Mr. Rodberg and RLSL to, among other things, disable the website www.reliablelimo.com. Defendants have yet to comply. The website continues to advertise service in the "Washington, D.C. Metropolitan area" in vehicles of various seating capacities, including vehicles seating more than 15 persons each. Such service requires WMATC authority. RLBSL is identified as the carrier currently providing this service.

II. 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

⁸ *Id.*

⁹ *Id.*

¹⁰ *In re Reliable Bus, LLC*, No. AP-12-101, Order No. 13,375 (Aug. 2, 2012); *In re Reliable Limo. & Bus Serv., LLC*, No. AP-12-099, Order No. 13,374 (Aug. 2, 2012).

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.¹¹

During the aforementioned litigation, the Commission obtained by subpoena served on a third party copies of invoices issued in the names of RLSL and RLBSL showing extensive passenger carrier operations in the Metropolitan District after August 2011. Copies of these invoices were provided to the court and defendants. Defendants do not contest their authenticity. Operating without authority is a serious violation, and we find Mr. Rodberg's failure to heed the orders of WMATC and the court to be both flagrant and persistent.

Mr. Rodberg asserts, apparently in mitigation, that RLBSL and RBL employ "115 people as of January 31, 2013."¹² He further asserts that if these applications are not approved "these individuals will be unemployed" and that "all employees will be terminated" if applicants are required to cease "operations during the application process."¹³ And yet, Mr. Rodberg further asserts that applicants are conducting lawful operations under authority issued by the Maryland Public Service Commission (MDPSC) and the Federal Motor Carrier Safety Administration (FMCSA). Thus, we do not see why all operations necessarily would have to cease and why all employees necessarily would have to be terminated. The only operations that must cease are those that are illegal. In any event, it may be reasonably inferred from Mr. Rodberg's argument in mitigation that if the Commission issues authority to applicants and then later suspends that authority for safety or insurance violations, Mr. Rodberg would be predisposed to elevate his private pecuniary interests, and those of his employees, above the public safety and dishonor the suspension rather than shut down any WMATC operations.

Mr. Rodberg assures us that both MDPSC and FMCSA "have conducted safety and insurance reviews and have found [applicants] to be in compliance and safe."¹⁴ But the purported proof of this as to MDPSC is a MDPSC letter reminding Mr. Rodberg to submit current safety inspection certificates for all limousines and a MDPSC letter scheduling an inspection of non-limousines. There is no evidence of any findings by the MDPSC. And the purported proof of this as to FMCSA is an FMCSA website printout for RLBSL showing that no safety rating had been assigned as of January 30, 2013, and an FMCSA website

¹¹ Order Nos. 13,695; 12,631.

¹² Affidavit of Paul Rodberg (Jan. 31, 2013). It is unclear whether it is 115 each or both.

¹³ *Id.*

¹⁴ *Id.*

printout for RBL showing a safety rating assigned to RBL's predecessor, Reliable Bus, Inc., over four years ago on December 16, 2008. In any event, the basis for our determination in this proceeding is Mr. Rodberg's continued operations of WMATC jurisdictional transportation without authority, and continued advertising of such operations, despite this Commission's repeated orders, and the recent order of the United States District Court for the District of Columbia, commanding Mr. Rodberg to cease and desist.

He further assures that he has "put new processes and procedures in place" to ensure future compliance.¹⁵ And yet, the violations continue.

Finally, the Commission has observed in the past that payment of a civil forfeiture assessed by the Commission may be viewed as a sincere effort to correct past mistakes, but Mr. Rodberg views payment, over a year late, of the \$1,750 forfeiture assessed in Order No. 12,942 as "a good will gesture to expedite the application."¹⁶

On this record, we cannot say that applicants RLBSL and RBL have demonstrated a willingness and ability to comport with the Compact and rules and regulations thereunder in the future.

THEREFORE, IT IS ORDERED:

1. That Case Nos. AP-2012-183 and AP-2012-184 are hereby consolidated under WMATC Rule No. 20-02.

2. That the applications of Reliable Limousine and Bus Service, LLC, and Reliable Bus, LLC, for a certificate of authority, irregular route operations, are hereby denied without prejudice.

3. That Commission staff shall take the necessary steps to enforce WMATC Order No. 12,942 and the above mentioned February 6, 2013, order of the United States District Court for the District of Columbia.

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



William S. Morrow, Jr.
Executive Director

¹⁵ *Id.*

¹⁶ Letter of Paul Rodberg (Oct. 2, 2012).