

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 13,875

IN THE MATTER OF:

Served April 19, 2013

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

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

This matter is before the Commission on the request of Reliable Limousine and Bus Service, LLC, (RLBSL), and Reliable Bus, LLC, (RBL), (applicants), for reconsideration of Order No. 13,775, served February 28, 2013, denying without prejudice the above-captioned applications for WMATC operating authority.

**I. STANDARD FOR RECONSIDERATION**

Under Article XIII, Section 4, of the Compact, a party affected by a final order or decision of the Commission may file within 30 days of its publication a written application requesting Commission reconsideration of the matter involved.<sup>1</sup> The application must state specifically the errors claimed as grounds for reconsideration.<sup>2</sup> The Commission must grant or deny the application within 30 days after it has been filed.<sup>3</sup> If the Commission does not grant or deny the application by order within 30 days, the application shall be deemed denied.<sup>4</sup> If the application is granted, the Commission shall rescind, modify, or affirm its order or decision with or without a hearing, after giving notice to all parties.<sup>5</sup> Filing an application for reconsideration may not act as a stay upon the execution of a Commission order or decision, or any part of it, unless the Commission orders otherwise.<sup>6</sup>

Applicants' request for reconsideration of Order No. 13,775 was timely received for filing in this proceeding on March 29, 2013.

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<sup>1</sup> Compact, tit. II, art XIII, § 4(a).

<sup>2</sup> Compact, tit. II, art XIII, § 4(a).

<sup>3</sup> Compact, tit. II, art XIII, § 4(b).

<sup>4</sup> Compact, tit. II, art XIII, § 4(c).

<sup>5</sup> Compact, tit. II, art XIII, § 4(d).

<sup>6</sup> Compact, tit. II, art XIII, § 4(e).

## **II. ALLEGED ERROR AND ANALYSIS**

### **A. Failure to Respond in Prior Applications**

The instant applications are not the first filed by applicants. The first were dismissed. Applicants find "misleading, inaccurate and incomplete"<sup>7</sup> the statement on page 3 of Order No. 13,775 that the first applications were dismissed because applicants failed to disclose certain information in response to a Commission request. Applicants admit that they did not timely respond to the information request and explain that their president, Paul Rodberg, was out of town.

The Commission did not rely on this part of the order in denying the instant applications but rather on:

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.<sup>8</sup>

### **B. Continuing Violations**

As noted at page 2 of Order No. 13,775, 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.<sup>9</sup>

As noted at page 3 of Order No. 13,775, 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.<sup>10</sup> 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.<sup>11</sup> 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.

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<sup>7</sup> Motion for Recon. at 2-3.

<sup>8</sup> Order No. 13,775 at 5.

<sup>9</sup> *In re Reliable Limo. Serv., LLC*, No. MP-11-055, Order No. 12,942 (Aug. 11, 2011).

<sup>10</sup> *Id.*

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

As further noted at page 3 of Order No. 13,775, on February 6, 2013, the District Court entered judgment for WMATC and ordered Mr. Rodberg and RLBSL to, among other things, disable the website [www.reliablelimo.com](http://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 and RBL are both mentioned, and RLBSL is specifically identified as providing service.

Finally, as noted at page 4 of Order No. 13,775, during the District Court litigation, the Commission obtained by subpoena served on a third party copies of invoices issued in the names of RLBSL 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 found Mr. Rodberg's failure to heed the orders of WMATC and the court to be both flagrant and persistent.<sup>12</sup>

Applicants take issue with the statement at page 3 of Order No. 13,775 that Mr. Rodberg paid a civil forfeiture to WMATC on October 2, 2012. Applicants note that the check was drawn on the account of RLBSL.<sup>13</sup> Mr. Rodberg, however, signed the check. Furthermore, for purposes of noting the civil forfeiture, our perhaps not fully detailed description of the check does not matter. The operative fact is that RLBSL controlled by Mr. Rodberg committed a violation that was sanctioned with a civil forfeiture.

Applicants also take issue with the statement on page 3 of Order No. 13,775 that at the time the forfeiture was paid, Mr. Rodberg "verified that RLBSL and affiliates, other than RLBSL and RBL, had ceased all operations," but "Mr. Rodberg was silent as to the effective date of when such operations ceased." Applicants argue that they were under no duty at that time to say when operations ceased.<sup>14</sup> On the contrary, such a duty was implicit in the Commission's August 22, 2012, letter (resent September 18, 2012), directing applicants to state "whether and to what extent applicant[s] and [their] affiliates . . . conducted passenger transportation service between points in the Washington Metropolitan Area after August 2011."

Applicants further contend at pages 5-9 of their pleading that the Executive Director should have approved these applications under Regulation No. 54-07, "Routine Applications for Irregular Route Authority." But Regulation No 54-07 does not mandate that the Executive Director shall approve applications that meet the criteria

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<sup>12</sup> Order No. 13,775 at 4.

<sup>13</sup> Motion for Recon. at 3.

<sup>14</sup> Motion for Recon. at 3.

specified in that regulation, just that the Executive Director shall have the authority to do so.

In any event, Regulation No. 54-07(g) provides that approval under this regulation is available only if "the record contains no evidence tending to rebut the applicant's prima facie case." There is abundant evidence of illegal operations in this record. Although it is true that "operating without authority" is not among the list of factors following Regulation No. 54-07(g) that are explicitly deemed to rebut a prima facie case of fitness, that list is merely illustrative, not exhaustive.<sup>15</sup> To accept applicants' construction would permit the Executive Director to consider "other transportation regulatory agency findings of unfitness" but not evidence of illegal operations in WMATC's jurisdiction. That makes no sense and, therefore, would be arbitrary.

### **C. Layoffs**

Applicants say the Commission should have taken into consideration the injunction obtained by the Commission against Mr. Rodberg when commenting on Mr. Rodberg's allegation that ceasing operations in the Metropolitan District will force Mr. Rodberg to dismiss 115 employees.<sup>16</sup> We did not ignore the injunction, and we were commenting on Mr. Rodberg's allegation that ceasing operations in the Metropolitan District would cause him to terminate "all employees."<sup>17</sup> What we said was that inasmuch as applicants have authority from the Maryland Public Service Commission and the Federal Motor Carrier Safety Administration, "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."<sup>18</sup> (Emphasis in original).

### **D. Safety and Insurance**

Applicants claim at pages 4-5 of their pleading that Order No. 13,775 suggests applicants or Mr. Rodberg have a history of safety issues. We disagree. What we said was that Mr. Rodberg's claims about other agencies having found applicants fit as to safety lacked proof.<sup>19</sup> And applicants have proffered no further evidence on this issue. In any event, we made it clear that our decision to deny the instant applications did not rest on the presence or absence of any such evidence.<sup>20</sup>

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<sup>15</sup> See *In re Rulemaking to Amend Rules of Practice and Procedure and Regulations*, No. MP-11-091, Order No. 13,022 (Oct. 18, 2011) (noting that authority delegated to Executive Director only applies to "unprotested irregular-route applications that raise no genuine issue of fitness").

<sup>16</sup> Motion for Recon. at 4.

<sup>17</sup> Order No. 13,775 at 4.

<sup>18</sup> *Id.* at 4.

<sup>19</sup> *Id.* at 4-5.

<sup>20</sup> *Id.* at 5.

**E. Affiliates**

Applicants argue in conclusion that in assessing an applicant's fitness, the Commission may not consider violations committed by affiliates. The D.C. Circuit, the Commission's court of judicial review, disagrees.<sup>21</sup> Moreover, the Commission cited evidence of RLBSL's own violations as grounds for denying its application.<sup>22</sup>

**III. CONCLUSION**

Having considered and rejected the arguments put forth as grounds for rescinding the denial of these applications, the application for reconsideration shall be denied.

THEREFORE, IT IS ORDERED:

1. That the request for reconsideration is denied.
2. That Order No. 13,775 is not stayed.

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



William S. Morrow, Jr.  
Executive Director

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<sup>21</sup> See *Old Town Trolley Tours v. WMATC*, 129 F.3d 201, 205 (D.C. Cir. 1997) (finding that poor record of New York affiliate raised serious questions regarding applicant's fitness).

<sup>22</sup> Order No. 13,775 at 4.