

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 13,895

IN THE MATTER OF:

Served May 7, 2013

Application of SUPPER LD) Case No. AP-2012-203
TRANSPORTATION LLC for a)
Certificate of Authority --)
Irregular Route Operations)

This matter is before the Commission on applicant's response to Order No. 13,701, served January 23, 2013, directing applicant to furnish an explanatory statement regarding the title history of the vehicle applicant proposes operating, as supplemented by vehicle history reports from Autocheck.com or CARFAX.

I. BACKGROUND

Licensing proceedings such as this involve predictive judgments.¹ In particular, "[a] determination of compliance fitness is prospective in nature."² The purpose of the inquiry is to protect the public from those whose conduct demonstrates an unwillingness to operate in accordance with regulatory requirements.³

Applicant was conditionally granted operating authority in Order No. 13,484 based on the following holding:

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.

As is customary when approving an application for a WMATC certificate of authority, the issuance of a certificate was expressly made contingent on applicant filing additional documents and passing a vehicle inspection conducted by Commission staff. It was during the course of applicant's efforts to satisfy those conditions that certain

¹ *In re Ready Eager Drivers Inc*, No. AP-12-003, Order No. 13,287 (May 25, 2012); *In re A & J Limo Servs., Inc.*, No. AP-09-048, Order No. 12,104 at 4 (July 27, 2009) (citing *Old Town Trolley Tours v. WMATC*, 129 F.3d 201, 205 (D.C. Cir. 1997)).

² Order No. 13,287; *In re Exec. Tech. Solutions, LLC*, No. AP-12-033, Order No. 13,250 (May 3, 2012).

³ Order No. 13,287; Order No. 13,250.

facts came to the Commission's attention and placed previously known facts in a different light.

Among the conditions stipulated in Order No. 13,484 were the requirements that applicant present for WMATC staff inspection the vehicle(s) applicant intends to operate under WMATC authority, that applicant produce a copy of the for-hire registration card(s) for said vehicle(s), and that applicant produce a lease for any vehicle not registered in applicant's name.

On October 5, 2012, applicant presented a 2007 Cadillac Escalade with no Vehicle Identification Number (VIN) plate. The WMATC staff member performing the inspection was informed that the vehicle had been stolen and sold at auction. The inspector was shown a sticker on the driver's side door jamb with the number "NY70968", which matches the VIN on the current Maryland registration. The registration identifies the owner as "Lidia Mihreteab Tesfazgi".

Commission staff advised applicant to file a lease for the Escalade from Ms. Tesfazgi to applicant, and staff requested a copy of the bill of sale and a copy of Ms. Tesfazgi's driver's license. Applicant complied.

From an examination of the bill of sale (issued by Z & G Auto Sale), the lease, Ms. Tesfazgi's driver's license, and other documents filed in this proceeding, it appeared that what purported to be Ms. Tesfazgi's signature on the bill of sale and on the lease were printed renditions of her name.

The so-called signatures did not appear to match the signature on Ms. Tesfazgi's driver's license, but they did match the printed version of her name on the first page of the lease and the printed version of her name on a handwritten list of applicant's officers signed and submitted by applicant's manager, Mr. Dejene Haye, on September 4, 2012, in support of this application.

We also noted that the bill of sale displays a 17-character VIN instead of the 7-character VIN on the registration. And although Mr. Haye is listed as the co-buyer on the bill of sale, his driver's license information is missing from the co-owner box on the Maryland registration.

II. ORDER TO REOPEN

Commission Rule No. 26-04 provides that:

If, after the hearing in a proceeding, the Commission shall have reason to believe that conditions of fact or of law have so changed as to require, or that the public interest requires, the reopening of such proceeding, the Commission will issue an order reopening.

The Commission has used this rule to reopen the pre-conditional grant record in an application proceeding at a time when, as here, the issuance of operating authority was still pending and where, as here, the decision to reopen was based on the receipt of new evidence bearing on the decision to approve the application.⁴

Under Title II of the Compact, Article XIII, Section 3(a), the Commission may later rectify an error committed during the course of granting or issuing a certificate of authority.⁵ The possible error in this case concerns the Commission's finding in Order No. 13,484 that applicant is a fit candidate for WMATC operating authority.

Under the circumstances, we believed that it would be in the public interest to stay the execution of Order No. 13,484 until such time as applicant had an opportunity to comment on the above evidence.⁶

Accordingly, Order No. 13,611, served November 29, 2012, gave applicant 30 days to show cause why Certificate No. 2037 should be issued to applicant notwithstanding the signature discrepancies and registration/bill-of-sale discrepancies in the record.

III. RESPONSE TO ORDER NO. 13,611 AND FINDINGS

Applicant responded by submitting additional documents on December 12, 2012, including a New York motor vehicle title for the Escalade and the following Escalade documents apparently signed by Ms. Tesfazgi: (1) a Maryland motor vehicle title application; (2) a Maryland motor vehicle registration application; and (3) a notarized WMATC Contract of Lease. Applicant also submitted a notarized statement from Ms. Tesfazgi on January 2, 2013.

Regarding the signature discrepancy, Ms. Tesfazgi explained that she routinely signs legal documents by printing her name. We were not entirely satisfied that this fully explained the various iterations of her signature before us. It did appear, however, from a comparison of the various signatures on the Escalade documents filed December 12 that the signature on the Maryland title application, the Maryland registration renewal, and the WMATC Contract of Lease is Ms. Tesfazgi's.

Regarding the VIN discrepancy, we found that her statement and supporting documents did not adequately explain the circumstances

⁴ Order No. 13,287; See *In re P&T Transp. Co., Inc.*, No. AP-87-28, Order No. 3131 (Mar. 8, 1988) (reopening pre-decision record under then Rule No. 27-02).

⁵ Order No. 13,287; *In re Double Decker Bus Tours, W.D.C., Inc.*, No. AP-95-21, Order No. 5963 (Aug. 15, 2000); *In re V.I.P. Tours*, No. MP-94-02, Order No. 4266 (Mar. 28, 1994).

⁶ See Order No. 13,287 (staying execution of conditional grant order); *In re Double Decker Bus Tours, W.D.C., Inc.*, No. AP-95-21, Order No. 4658 (Sept. 6, 1995) (same).

surrounding assignment of the "NY70968" VIN to the Escalade that applicant intends to operate under WMATC authority.

As noted above, when said vehicle was presented for inspection by WMATC staff, the driver informed Commission staff that the vehicle had been stolen. Maryland MVA records for this vehicle, however, indicate that it was not stolen. A New York title issued July 12, 2012, and filed in this proceeding by applicant on December 12 classifies the Escalade as "REBUILT SALVAGE".

In her statement filed January 2, 2013, Ms. Tezfagi offered this explanation:

I traced back the history of the car and learnt (sic) that the VIN number has been changed by a New York based department of Motor Vehicle/DMV/, who has the power and authority to change VIN number of cars to be sold to dealers, like Z & G auto sale.

We noted that what is missing from this statement is an explanation of how a vehicle sold in March 2012 in New Jersey to two buyers from Maryland came to be titled four months later in New York by only one of the buyers and with a shortened VIN, and only then re-titled in Maryland by that buyer two weeks later.

Accordingly, Order No. 13,701, served January 23, 2013, gave applicant 30 days to explain:

- a) why the Escalade sold to applicant's two officers in New Jersey on March 7, 2012, was not titled until July 12, 2012;
- b) why the Escalade was titled in New York;
- c) why the Escalade was titled by only one owner; and
- d) why the Escalade was titled with a shortened VIN.

The order also gave applicant 30 days to produce two vehicle reports from Autocheck.com, CARFAX, or comparable source tracing ownership of the Escalade sold to applicant's officers in New Jersey on March 7, 2012. One report was to be based on the 17-digit VIN on the Z & G Auto bill of sale, and one report was to be based on the shortened VIN on the New York title.

IV. RESPONSE TO ORDER NO. 13,701 AND CONCLUSION

On February 27, 2013, applicant filed a statement from Mr. Hays that addresses each of the four questions, but applicant has yet to file any vehicle reports from Autocheck.com, CARFAX, or comparable source.

In addition, the order mailed to applicant at the only address listed for applicant in the application was returned by the U.S. Postal Service marked: "RETURN TO SENDER", "VACANT", "UNABLE TO FORWARD".

We therefore conclude that the prior finding of fitness was in error and shall rescind the fitness finding and conditional grant and deny the application.⁷

THEREFORE, IT IS ORDERED:

1. That the fitness finding and conditional grant of authority in Order No. 13,484 are rescinded.

2. That the application of Supper LD Transportation LLC for an irregular-route certificate of authority is denied.

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



William S. Morrow, Jr.
Executive Director

⁷ See *Ready Eager Drivers*, No. AP-12-03, Order No. 13,536 (Oct. 18, 2012) (rescinding fitness finding and conditional grant and denying application).