

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 14,181

IN THE MATTER OF:

Served August 23, 2013

Application of SKYHAWK LOGISTICS,) Case No. AP-2012-070
INC., for a Certificate of)
Authority -- Irregular Route)
Operations)

This matter is before the Commission on applicant's failure to respond to WMATC Order No. 13,539, served October 18, 2012, which gave applicant 15 days to request an oral hearing and 30 days to: (1) supplement the record with evidence regarding its apparent illegal operations from July 24, 2009, through September 20, 2009; (2) show cause why the Commission should not assess a civil forfeiture for such operations; and (3) submit evidence of any changes applicant has made in personnel and/or process since the revocation of Certificate No. 406 on July 24, 2009.

I. APPLICATION

Applicant seeks a certificate of authority to transport passengers in irregular route operations between points in the Metropolitan District. The application is unopposed.

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 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

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 Nur Corp.*, No. AP-10-178, Order No. 12,730 (Feb. 15, 2011).

³ *Id.*

⁴ *Id.*

necessarily preclude a grant of authority but permit the inference that violations will continue.⁵

II. HISTORY OF VIOLATIONS

Applicant previously held WMATC Certificate of Authority No. 406 from February 26, 1998, until July 19, 2001, when the Commission revoked Certificate No. 406 for applicant's willful failure to comply with: (1) Article XI, Section 7(g), of the Compact and Commission Regulation No. 58, governing insurance; (2) Article IV, Section 4(a), of the Compact, Regulation No. 67 and Order No. 3601, governing annual fees; (3) Article XII, Section 1(a), of the Compact and Regulation No. 60-01, governing annual reports; and (4) Article XI, Section 14, of the Compact and Regulation No. 55, governing tariffs.⁶

Applicant reapplied for operating authority later in 2001, and the application was approved in early 2002 in substantial part on the basis of applicant's representation that it had access to, was familiar with, and would comply with the Compact and the Commission's rules and regulations thereunder.⁷ Certificate No. 406 was reissued to applicant on February 22, 2002, and suspended four times over the next five and one-quarter years for willful failure to comply with Regulation No. 58, governing insurance.⁸ The Commission lifted the suspension the first three times⁹ and revoked Certificate No. 406 the fourth.¹⁰

Applicant reapplied for WMATC operating authority in 2007. During the course of the application proceeding, the Commission discovered applicant had committed new violations and assessed a civil forfeiture against applicant in the amount of \$45,000 for 163 days of admitted operations in 2007 while suspended/revoked, including 17 days while uninsured.¹¹ The Commission suspended all but \$7,500 in recognition of applicant's admission of guilt and having voluntarily reapplied for WMATC authority.¹²

⁵ *Id.*

⁶ *In re Skyhawk Logistics, Inc.*, No. MP-01-042, Order No. 6291 (July 19, 2001).

⁷ *In re Skyhawk Logistics, Inc.*, No. AP-01-100, Order No. 6503 (Jan. 29, 2002).

⁸ *In re Skyhawk Logistics, Inc.*, No. MP-07-072, Order No. 10,406 (Apr. 16, 2007); *In re Skyhawk Logistics, Inc.*, No. MP-05-043, Order No. 8653 (Apr. 19, 2005); *In re Skyhawk Logistics, Inc.*, No. MP-05-032, Order No. 8607 (Mar. 22, 2005); *In re Skyhawk Logistics, Inc.*, No. MP-04-077, Order No. 7887 (Mar. 22, 2004).

⁹ *In re Skyhawk Logistics, Inc.*, No. MP-05-043, Order No. 9653 (June 15, 2006); *In re Skyhawk Logistics, Inc.*, No. MP-05-032, Order No. 8619 (Mar. 30, 2005); *In re Skyhawk Logistics, Inc.*, No. MP-04-077, Order No. 8059 (June 3, 2004).

¹⁰ *In re Skyhawk Logistics, Inc.*, No. MP-07-072, Order No. 10,681 (Aug. 8, 2007).

¹¹ *In re Skyhawk Logistics, Inc.*, No. AP-07-195, Order No. 11,693 at 4 (Nov. 19, 2008).

¹² *Id.* at 4.

The 2007 application was approved on November 19, 2008, on the basis of evidence showing that applicant had subcontracted its government contracts to a WMATC carrier in good standing while applicant's application was pending and on the condition that applicant timely pay the \$7,500 net forfeiture and serve a one year period of probation.¹³ Applicant paid the forfeiture, and Certificate No. 406 was reissued on January 27, 2009, but it was suspended not two months later for applicant's failure to maintain proof of adequate insurance on file with the Commission.¹⁴ Applicant later admitted to conducting passenger carrier operations in the Metropolitan District while suspended and without adequate insurance under the second option year (March 1, 2009, through February 28, 2010) of a Defense Intelligence Agency (DIA) contract.¹⁵ The Commission subsequently assessed a \$26,000 civil forfeiture against applicant and revoked Certificate No. 406 in Order No. 12,101, served July 24, 2009.¹⁶

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.¹⁷

As of October 18, 2012, the record showed that applicant had promptly paid the \$26,000 forfeiture on October 7, 2009, and that according to a statement filed in this proceeding by applicant's President-CEO, O. Jimmy Ogunniyi, applicant had "filed an affidavit in accordance with Rules Nos. 28 and 58-14 verifying cessation of operations as of July 24, 2009." Mr. Ogunniyi further asserted that applicant's "operations were subcontracted to Reston Limousine Services under WMATC No. 241." But the sole affidavit in the record merely verifies removal of vehicle markings, and applicant's subcontract with Reston Limousine to perform applicant's contract with DIA did not commence until September 21, 2009.

In addition, as of October 18, 2012, we did not see any evidence that applicant had "put in place personnel and/or process

¹³ *Id.* at 4-6.

¹⁴ *In re Skyhawk Logistics, Inc.*, No. MP-09-044, Order No. 11,895 (Mar. 17, 2009).

¹⁵ *In re Skyhawk Logistics, Inc.*, No. MP-09-044, Order No. 12,101 (July 24, 2009).

¹⁶ *Id.*

¹⁷ *In re Exec. Tech. Solutions, LLC*, No. AP-12-033, Order No. 13,250 (May 3, 2012).

sufficient to prevent recurring violations of routine regulatory requirements."¹⁸

IV. OPPORTUNITY TO SUPPLEMENT RECORD

Accordingly, in the interest of ensuring a full and fair determination of this application, WMATC Order No. 13,539, served October 18, 2012, gave applicant 30 days to supplement the record with evidence regarding its apparent performance of the DIA contract from July 24, 2009, through September 20, 2009, and to otherwise show cause why the Commission should not assess a forfeiture against applicant for performing the DIA contract during that period in violation of Article XI, Section 6(a), of the Compact.

WMATC Order No. 13,539 further gave applicant 30 days to supplement the record with evidence regarding any changes applicant might have made in personnel and/or process since the revocation of Certificate No. 406.

Finally, WMATC Order No. 13,539 gave applicant 15 days to submit a written request for oral hearing that specifies the grounds for the request, describes the evidence to be adduced, and explains why such evidence cannot be adduced without an oral hearing.

Applicant has yet to respond.

V. ASSESSMENT OF FORFEITURE

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.¹⁹ Each day of the violation constitutes a separate violation.²⁰

The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.²¹ 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.²² Employee negligence is no defense.²³ "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.²⁴

¹⁸ Order No. 13,539 at 3 (citing *In re HP Transp. Servs., Inc.*, No. AP-07-257, Order No. 11,242 at 2 (Mar. 31, 2008)).

¹⁹ Compact, tit. II, art. XIII, § 6(f).

²⁰ Compact, tit. II, art. XIII, § 6(f)(ii).

²¹ Order No. 11,693 at 3.

²² *Id.* at 3.

²³ *Id.* at 4.

²⁴ *United States v. Illinois Cent. R.R.*, 303 U.S. 239, 244, 58 S. Ct. 533, 535 (1938).

The record supports a finding that applicant's DIA contract calls for passenger transportation for hire between points in the Metropolitan District, that applicant performed the DIA contract on 40 days from July 24, 2009 through September 20, 2009, without WMATC authority, and that applicant did so knowingly and willfully.

We shall assess a forfeiture of \$1,000 for each of the 40 days of unlawful operations, or \$40,000. We have doubled the amount of forfeiture from the \$500 per day we assessed against respondent for the same violations in 2009 because apparently \$500 per day is not enough of a deterrent to dissuade respondent from operating unlawfully.²⁵

VI. CONCLUSION

The record contains evidence of persistent unlawful operations of a repeat nature, and applicant has not presented any evidence that it has put in place personnel and/or process sufficient to prevent recurring violations of routine regulatory requirements in the future.

On this record, we cannot say that applicant has established regulatory compliance fitness.

THEREFORE, IT IS ORDERED:

1. That the application of Skyhawk Logistics, Inc., for a certificate of authority, irregular route operations, is hereby denied.

2. That pursuant to Article XIII, Section 6(f), of the Compact, the Commission hereby assesses a civil forfeiture against respondent in the amount of \$40,000 for knowingly and willfully violating Article XI, Section 6(a), of the Compact.

3. That respondent is hereby directed to pay to the Commission within 30 days of the date of this order, by money order, certified check, or cashier's check, the sum of forty thousand dollars (\$40,000).

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



William S. Morrow, Jr.
Executive Director

²⁵ See Order No. 12,101 at 5 (doubling forfeiture assessed against applicant in 2008).