

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 14,184

IN THE MATTER OF:

Served August 26, 2013

Application of JUNIOR'S MULTI) Case No. AP-2013-209
ENTERPRISES, INC., for a)
Certificate of Authority --)
Irregular Route Operations)

This matter is before the Commission on applicant's response to Order No. 14,102, served July 23, 2013, which dismissed this proceeding for applicant's failure to furnish all information necessary for a full and fair examination of the application. Applicant has filed a request to reopen this proceeding.

This is applicant's second application. The first was denied without prejudice for applicant's failure to demonstrate fitness for WMATC operating authority.¹

I. CAUSE FOR DISMISSAL AND GROUNDS FOR REOPENING

Under the Washington Metropolitan Area Transit Regulation Compact,² (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.³ An applicant may be required to furnish any supplemental information necessary for a full and fair examination of the application.⁴ Failure to comply with the Commission's application requirements warrants dismissal.⁵

By letter sent July 8, 2013, applicant was required to furnish supplemental information pursuant to Commission Regulation No. 54-04(b) on or before July 22, 2013. Applicant failed to comply. Accordingly, the application was dismissed July 23, 2013, in Order No. 14,102.

On August 2, 2013, applicant filed a request to reopen this proceeding. The request is accompanied by and supplemented with the

¹ *In re Junior's Multi Enters., Inc.*, No. AP-12-028, Order No. 13,595 (Nov. 27, 2012).

² 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).

³ Compact, tit. II, art. XI, § 8; Regulation No. 54-02.

⁴ Regulation No. 54-04(b).

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

required information. For good cause shown, this proceeding shall be reopened under Commission Rule No 26.⁶

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. An applicant for a certificate of authority must establish financial fitness, operational fitness, and regulatory compliance fitness.⁷

Applicant proposes commencing operations with one van. Applicant proposes operating under a tariff containing rates for Medicaid transportation.

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.

Normally, such evidence would establish applicant's fitness,⁸ but applicant's president has a history of regulatory violations.

III. PAST VIOLATIONS

Applicant's president, Horace Green, Jr., was the president of Junior's Enterprises, Inc., during the time it held WMATC Certificate No. 401 from December 4, 1997, to May 11, 2009, when Certificate No. 401 was terminated at his request.

While Horace Green, Jr., was at the helm, WMATC Carrier No. 401 was suspended three times for insurance violations.⁹ And the

⁶ See *In re Abdelrazig Hassan Shawkat*, No. AP-13-076, Order No. 13,865 (Apr. 12, 2013) (same).

⁷ *In re Pantio Med. Transp.: LLC*, No. AP-11-023, Order No. 12,799 (Apr. 8, 2011).

⁸ *Id.* at 2.

⁹ *In re Junior's Enters., Inc.*, No. MP-09-057, Order No. 11,940 (Apr. 13, 2009); *In re Junior's Enters., Inc.*, No. MP-08-076, Order No. 11,266

Commission assessed a civil forfeiture against WMATC Carrier No. 401 and against Horace Green, Jr., for knowingly and willfully operating an unsafe vehicle, transferring Certificate No. 401 without Commission approval, and disobeying a Commission order.¹⁰

In addition, WMATC Carrier No. 401 failed to verify removal of WMATC vehicle markings and surrender Certificate No. 401 within 30 days as required by the order approving voluntary termination of WMATC Certificate No. 401.¹¹

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.¹²

As noted above, this is applicant's second application. The first was denied without prejudice for applicant's failure to demonstrate fitness for WMATC operating authority. After reviewing the record, the Commission concluded: "Given the record of violations for which applicant's president has been directly responsible, we cannot say that applicant has demonstrated a willingness and ability to comport with the Compact and rules and regulations thereunder in the future." In this proceeding, however, we must weigh the instant application on the record before us, not the record before us when we denied applicant's first application.

The above safety and insurance violations, for which applicant's president was found directly responsible, are serious violations, and applicant's president has offered no evidence of mitigating circumstances. On the other hand, applicant's president paid the forfeiture assessed for those violations, and his company was allowed to resume operations.¹³ Furthermore, payment of a forfeiture may be viewed as evidence of correcting a past mistake,¹⁴ and filing an application for operating authority is some evidence of a willingness and ability to comport with the Compact and rules and regulations

(Apr. 11, 2008); *In re Junior's Enters., Inc.*, No. MP-03-165, Order No. 7567 (Dec. 1, 2003).

¹⁰ *In re Junior's Enters., Inc.*, No. MP-01-103, Order No. 6549 (Feb. 21, 2002).

¹¹ See *In re Junior's Enters., Inc.*, No. AP-09-044, Order No. 11,978 (May 11, 2009).

¹² Order No. 12,799 at 2-3.

¹³ *In re Junior's Enters., Inc.*, No. MP-01-103, Order No. 6554 (Feb. 28, 2002).

¹⁴ Order No. 12,799 at 3.

thereunder in the future.¹⁵ The record on these factors has not changed since the first application.

That leaves one question to be addressed: whether the record before us supports a finding that applicant's president has "put in place personnel and/or process sufficient to prevent recurring violations of routine regulatory requirements."¹⁶ This is where the record appears to have changed.

During the course of applicant's first application, the Commission became concerned that Horace Green, Sr. - the father of Horace Green, Jr. - was involved in the formation and/or operation of Junior's Multi Enterprises, Inc. Like son, father had a history of operating WMATC carriers with a record of regulatory violations.¹⁷ When asked to indicate the extent to which Horace Green, Sr., assisted in the formation of Junior's Multi Enterprises, Inc., Horace Green, Jr., replied that "no outside influences from third parties or from my father, etc had any input in the formation of my company"

However, applicant's articles of incorporation identified 4111 Kilbourne Drive, Fort Washington, MD 20744, as applicant's principal place of business and resident agent address. This is the same address on file with the Commission as the principal place of business of the father's company, Green's Transportation Company, Inc., former WMATC No. 320.¹⁸

In addition to the evidence of shared address with Green's Transportation Company, Inc., the record also shows that applicant has been sharing a fax machine with Green's Transportation Company, Inc., as well.

After the first application was denied, applicant hired counsel to seek reconsideration of the denial. The application for reconsideration, however, was not filed until well after the 30-day statutory deadline for such applications had run. An exchange of correspondence between applicant's counsel and the Commission's Executive Director resulted in applicant's counsel advising applicant to reapply. Applicant did so, but apparently without further guidance from counsel.

When this application was dismissed for applicant's failure to submit all required information, applicant rehired said counsel to submit a request to reopen this proceeding, as discussed above. The

¹⁵ *In re My Own Place, Inc.*, No. AP-12-267, Order No. 13,694 at 4-5 (Jan. 23, 2013).

¹⁶ Order No. 12,799 at 3.

¹⁷ See e.g., *In re Green's Transp. Co., Inc.*, No. MP-11-038, Order No. 13,043 (Nov. 8, 2011) (assessing forfeiture and revoking WMATC Certificate No. 320).

¹⁸ In addition, a comparison of the handwriting in applicant's articles of incorporation, on file with the Maryland Department of Assessments and Taxation, with the handwriting in an annual report filed with this Commission by Horace Green, Jr.'s, father revealed an apparent match.

involvement of applicant's counsel in this application appears to have resulted in applicant severing all ties with Green's Transportation Company, Inc. Therefore, it would appear that applicant has put in place personnel sufficient to prevent recurring violations of routine regulatory requirements.

V. CONCLUSION

Based on the evidence in this record, and subject to the following conditions, 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.

Applicant shall be placed on probation for one year commencing with the issuance of the certificate of authority conditionally granted herein.¹⁹ Further, given the safety violation for which applicant's president was directly responsible, the Commission shall monitor applicant's safety compliance.²⁰ To that end, during the one-year probationary period, applicant shall file a quarterly list of drivers and vehicles employed during each 3-month period, which Commission staff shall use in sampling the following records applicant will be required to keep under Regulation No. 64: driver motor vehicle records, medical examiner certificates, hours-of-service records, vehicle maintenance records, and driver vehicle inspection reports.

THEREFORE, IT IS ORDERED:

1. That this proceeding is hereby reopened under Commission Rule No 26.

2. That upon applicant's timely compliance with the requirements of this order, Certificate of Authority No. 401 shall be issued to Junior's Multi Enterprises, Inc., 9123 Fox Park Road, Clinton, MD 20735-3041.

3. That applicant may not transport passengers for hire between points in the Metropolitan District pursuant to this order unless and until a certificate of authority has been issued in accordance with the preceding paragraph.

4. That applicant is hereby directed to present its revenue vehicle(s) for inspection and file the following documents within the 180-day maximum permitted in Commission Regulation No. 66: (a) evidence of insurance pursuant to Commission Regulation No. 58; (b) an original and four copies of a tariff or tariffs in accordance with Commission Regulation No. 55; (c) a vehicle list stating the year, make, model, serial number, fleet number, license plate number (with jurisdiction) and seating capacity of each vehicle to be used in revenue operations; (d) a copy of the for-hire vehicle registration

¹⁹ See Order No. 13,694 (same); Order No. 12,799 (same).

²⁰ See *In re Washington Shuttle, Inc., t/a SuperShuttle*, No. MP-11-099, Order No. 13,726 (Feb. 5, 2013) (same).

card, and a lease as required by Commission Regulation No. 62 if applicant is not the registered owner, for each vehicle to be used in revenue operations; and (e) proof of current safety inspection of said vehicle(s) by or on behalf of the United States Department of Transportation, the State of Maryland, the District of Columbia, or the Commonwealth of Virginia.

5. That the grant of authority herein shall be void and the application shall stand denied upon applicant's failure to timely satisfy the conditions of issuance prescribed in the immediately preceding paragraph.

6. That applicant shall be placed on probation for a period of one year commencing with the issuance of Certificate No. 401 as approved in this order, such that a willful violation of the Compact, or of the Commission's rules, regulations or orders thereunder, during the period of probation shall constitute grounds for immediate suspension and/or revocation of Certificate No. 401, regardless of the nature and severity of the violation.

7. That during the one-year probationary period prescribed herein, applicant shall file a quarterly list of drivers and vehicles employed during each 3-month period, which Commission staff shall use in sampling driver motor vehicle records, medical examiner certificates, hours-of-service records, vehicle maintenance records, and driver vehicle inspection reports. The lists shall be produced within 10 days following the end of each 3-month period, and sample documents requested by Commission staff shall be produced within 10 days of each request.

- a. Each vehicle list shall identify the 3-month period and include the following information for each vehicle used in WMATC operations during that period: year, make, model, serial number, fleet number, license plate number (with jurisdiction), and seating capacity.
- b. Each driver list shall identify the 3-month period and include the following information for each driver that operated a vehicle under respondent's WMATC authority during that period: full name, date hired, vehicle(s) operated, and date terminated (as applicable).

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



William S. Morrow, Jr.
Executive Director