

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 15,131

IN THE MATTER OF:

Served October 21, 2014

Application of ZEREYAKOB ASSEFA) Case No. AP-2014-139
HAYLEMARIAM, Trading as SHALOM)
TRANSPORTATION SERVICE, for a)
Certificate of Authority --)
Irregular Route Operations)

This matter is before the Commission on applicant's response to Order No. 14,794, served May 28, 2014, 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.

I. CAUSE FOR DISMISSAL AND GROUNDS FOR REOPENING

Under the 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.¹ An applicant may be required to furnish any supplemental information necessary for a full and fair examination of the application.² Failure to comply with the Commission's application requirements warrants dismissal.³

By email sent May 7, 2014, applicant was required to furnish supplemental information, pursuant to Commission Regulation No. 54-04(b), no later May 21, 2014. Applicant did not comply. Accordingly, the application was dismissed May 28, 2014.

On June 19, 2014, applicant filed a request to reopen this proceeding. The request is supported by the required information. For good cause shown, this proceeding shall be reopened under Commission Rule No 26.⁴

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.

¹ Compact, tit. II, art. XI, § 8; Regulation No. 54-02.

² Regulation No. 54-04(b).

³ *In re One, LLC, t/a Bon Voyage*, No. AP-04-103, Order No. 8212 (Aug. 5, 2004).

⁴ *See In re Abdelrazig Hassan Shawkat*, No. AP-13-076, Order No. 13,865 (Apr. 12, 2013) (same).

Article XI, Section 7(a), of the Washington Metropolitan Area Transit Regulation Compact⁵ provides that the Commission shall issue a certificate of authority to any qualified applicant, authorizing all or any part of the transportation covered by the application, if the Commission finds that: (i) 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; and (ii) the transportation is consistent with the public interest. An applicant must establish financial fitness, operational fitness, and regulatory compliance fitness.⁶

Applicant verifies that it: (1) 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) 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) 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 be sufficient to establish an applicant's fitness,⁷ but this applicant has a history of regulatory violations.

A. PAST VIOLATIONS

Applicant formerly held WMATC Certificate No. 1952. Said certificate was automatically suspended under Regulation No. 58-12 on December 6, 2013, when the \$1.5 million WMATC Certificate of Insurance and Policy Endorsement on file for applicant, as required by Commission Regulation No. 58, expired by its own terms.

Order No. 14,389, served December 6, 2013, directed applicant to cease operating and gave applicant 30 days to comply with Regulation No. 58 and pay a \$100 late fee in accordance with Regulation No. 67-03(c), or face revocation of Certificate No. 1952.⁸ Applicant failed to comply, and Certificate No. 1952 was revoked on February 26, 2014, in Order No 14,597.⁹

⁵ 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).

⁶ *In re My Own Place, Inc.*, No. AP-12-267, Order No. 13,694 (Jan. 23, 2013); *In re Metro Homes, Inc.*, No. AP-10-004, Order No. 12,729 (Feb. 15, 2011).

⁷ Order No. 13,694; Order No. 12,729 at 2.

⁸ *In re Zereyakob Assefa Haylemariam, t/a Shalom Transp. Serv.*, No. MP-13-146, Order No. 14,389 (Dec. 6, 2013).

⁹ *In re Zereyakob Assefa Haylemariam, t/a Shalom Transp. Serv.*, No. MP-13-146, Order No. 14,597 (Feb. 26, 2014).

The revocation order stipulated that the \$100 late fee would remain due and gave applicant 30 days to surrender Certificate No. 1952 and file an affidavit and supporting photographs verifying removal of vehicle markings. Applicant did not comply.

Instead, applicant filed the instant application on May 5, 2014. The application is supported by a \$1.5 million WMATC Insurance Endorsement with an effective date of December 6, 2013, payment of the \$100 late fee, the surrender of Certificate No. 1952, and a statement explaining that no markings appear on applicant's vehicles.

In addition, the application is supplemented by a printout of applicant's bank transactions from January 1, 2014, through May 16, 2014, showing the direct deposits received by applicant from Uber Technologies, Inc., for passenger carrier service rendered during the suspension and revocation of Certificate No. 1952 and by a printout of applicant's Uber manifest for the period beginning December 2, 2013, and ending May 3, 2014, which shows that applicant operated on 94 days during the suspension/revocation of Certificate No. 1952.

Applicant states that he was not aware of the suspension and revocation of Certificate No. 1952 until May of this year.

We find applicant's excuse for operating during the suspension period unavailing. First, the record shows that the Commission served a copy of the suspension order, Order No. 14,389, on applicant by Certified First-Class Mail sent December 6, 2013, and that the U.S. Postal Service attempted delivery, but applicant failed to sign for it. Applicant cannot evade a Commission order by failing to accept service or frustrating the means of service.¹⁰ Second, under Commission Regulation No. 58-11:

When a WMATC carrier's insurance has terminated or is about to terminate the carrier must contact the Commission to ascertain whether the necessary WMATC Insurance Endorsement has been filed before continuing to operate on and after the termination date. Proof a WMATC carrier has satisfied its duty to verify shall consist of contemporaneous written verification from the Commission.

No such written verification has been produced. Indeed, if as applicant says he was unaware of the suspension of Certificate No. 1952 until May of this year, then clearly it follows that applicant failed to contact the Commission before continuing to operate when the WMATC Insurance Endorsement on file for applicant expired on December 6, 2013.

B. ASSESSMENT OF FORFEITURE

Under the Compact, 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

¹⁰ *In re NUR Corp.*, No. AP-10-178, Order No. 12,730 (June 15, 2010); *In re Jet Tours USA, Inc.*, No. AP-09-130, Order No. 12,443 (June 15, 2010).

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.¹¹ Each day of the violation constitutes a separate violation.¹²

The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.¹³ 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.¹⁴ Employee negligence is no defense.¹⁵ "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.¹⁶

Applicant's bank account printout shows in pertinent part a list of 18 deposits over the course of 17 weeks, from January 1, 2014, through April 30, 2014, and applicant's Uber manifest shows that applicant operated on 94 days during the suspension/revocation of Certificate No. 1952, as noted above.

Based on the foregoing evidence, we conclude that applicant knowingly and willfully violated Article XI, Section 6(a), of the Compact, Regulation No. 58-12, and Order No. 14,389 by transporting passengers for hire between points in the Metropolitan District while suspended/revoked.

In situations similar to this one - operating while suspended but not while uninsured - the Commission has assessed a civil forfeiture of \$250 for each day of unauthorized operations.¹⁷ We shall assess a civil forfeiture of \$250 per day, for 94 days, or \$23,500.

We will suspend all but 15 percent of the forfeiture, rounded to the nearest \$100, or \$3,500, based on the presence of two reduction factors: applicant's production of inculpatory records and voluntary filing of this application.¹⁸ Failure to pay the net forfeiture in a timely fashion shall result in reinstatement of the full \$23,500.

¹¹ Compact, tit. II, art. XIII, § 6(f)(i).

¹² Compact, tit. II, art. XIII, § 6(f)(ii).

¹³ Order No. 13,694 at 3; Order No. 12,729 at 5.

¹⁴ Order No. 13,694 at 3; Order No. 12,729 at 5.

¹⁵ Order No. 13,694 at 3; Order No. 12,729 at 5.

¹⁶ *United States v. Illinois Cent. R.R.*, 303 U.S. 239, 243, 58 S. Ct. 533, 535 (1938).

¹⁷ *In re L&J Limo Servs. LLC*, No. MP-10-017, Order No. 12,658 at 4 (Dec. 17, 2010).

¹⁸ See Order No. 13,694 (15% reduction for two factors - admission of wrongdoing and filing of application); Order No. 12,729 (same); see also *In re Malek Investment, Inc., t/a Montgomery Airport Shuttle, & Malek Investment of VA., Inc., & Assadollah malekzadeh*, No. MP-98-53, Order No. 5707 (Sept. 22, 1999) (reduction for producing inculpatory records).

C. 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.¹⁹

Operating without authority is a serious violation. We find no mitigating circumstances. On the other hand, we do not find that the violations were flagrant or persistent. That applicant filed an application of its own volition is some evidence of willingness and ability to comport with the Compact and rules and regulations thereunder in the future.²⁰

Upon payment of the forfeiture assessed herein, the record will support a finding of prospective compliance fitness, subject to a one-year period of probation.²¹

D. CONCLUSION

Based on the evidence in this record, and in consideration of the terms of probation and other conditions prescribed herein, 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.

THEREFORE, IT IS ORDERED:

1. That pursuant to Article XIII, Section 6(f), of the Compact, the Commission hereby assesses a net civil forfeiture against applicant in the amount of \$3,500 for knowingly and willfully violating Article XI, Section 6(a), of the Compact, Regulation No. 58-12, and Order No. 14,389 by transporting passengers for hire between points in the Metropolitan District on 18 separate days while Certificate No. 1952 was suspended/revoked.

2. That applicant is hereby directed to pay to the Commission within 30 days of the date of this order, by check or money order, the sum of three thousand five hundred dollars (\$3,500).

3. That the full forfeiture of \$23,500 assessed in this order shall be immediately due and payable if applicant fails to timely pay the net forfeiture.

4. That upon applicant's timely compliance with the requirements of this order, Certificate of Authority No. 1952 shall be

¹⁹ Order No. 13,694 at 4; Order No. 12,729 at 6.

²⁰ Order No. 13,694 at 5; Order No. 12,729 at 6.

²¹ Order No. 13,694 at 5; Order No. 12,729 at 7.

reissued to Zereyakob Assefa Haylemariam, trading as Shalom Transportation Service, 1215 East West Highway, #517, Silver Spring, MD 20910-6273.

5. That applicant may not transport passengers for hire between points in the Metropolitan District pursuant to this order unless and until Certificate No. 1952 has been reissued in accordance with the preceding paragraph.

6. 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 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.

7. That applicant shall be placed on probation for a period of one year commencing with the reissuance of Certificate No. 1952 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. 1952, regardless of the nature and severity of the violation.

8. 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 herein.

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



William S. Morrow, Jr.
Executive Director