

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 16,721

IN THE MATTER OF:

Served December 7, 2016

Application of 3MH SERVICES LTD.)
for a Certificate of Authority --)
Irregular Route Operations)

Case No. AP-2016-011

This matter is before the Commission on applicant's response to Order No. 16,575, served September 15, 2016, which dismissed this proceeding for applicant's failure to comply with the Commission's application requirements. 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 January 22, 2016, applicant was required to furnish a list of owners on or before February 5, 2016, pursuant to Commission Regulation No. 54-04(b). Applicant failed to do so, and the application was dismissed September 15, 2016.

On September 28, 2016, applicant filed a request to reopen this proceeding. The request is accompanied by said list. 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).

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. 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.⁵ A determination of compliance fitness is prospective in nature.⁶ The purpose of the inquiry is to protect the public from those whose conduct demonstrates an unwillingness to operate in accordance with regulatory requirements.⁷ Past violations do not necessarily preclude a grant of authority but permit the inference that violations will continue.⁸

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 an applicant's fitness,⁹ but this applicant has a history of regulatory violations.

A. History of Violations

According to Commission records, applicant held WMATC Certificate No. 2065 from March 28, 2013, to July 21, 2015, when it was revoked in Case No. MP-15-020 for the failure of 3MH Services to produce documents as directed.¹⁰

According to the revocation order, 3MH Services experienced a six-day insurance gap, and the Commission directed 3MH Services to produce copies of all business records from November 1, 2014, to February 5, 2015, to corroborate applicant's claims that it timely ceased operating when Certificate No. 2065 became suspended. In

⁵ *In re Metro Transcare LLC*, No. AP-15-268, Order No. 16,243 (Mar. 9, 2016).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *In re 3MH Services Ltd.*, No. MP-15-020, Order No. 15,751 (July 21, 2015).

response, 3MH Services produced bank statements only, and only for two months.¹¹ In addition, the two bank statements were designated respondent's "MAIN ACCOUNT," which implied the existence of one or more other accounts maintained by respondent at the same bank.¹²

When asked why the Commission should approve this application when 3MH Services still has not produced all of the records ordered in Case No. MP-15-020, rather than produce said records, 3MH Services merely pledged to comply with WMATC requirements in the future.

B. 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.¹³

Applicant's ongoing failure to produce the business records ordered in Case No. MP-15-020 leaves open the question of whether applicant continued operating in 2015 while suspended and uninsured, and it calls into question applicant's current willingness and ability to comply with Commission requirements.

Consequently, we cannot say that applicant has carried its burden of establishing regulatory compliance fitness.¹⁴

THEREFORE, IT IS ORDERED that the application of 3MH Services Ltd. for a certificate of authority, irregular route operations, is hereby denied without prejudice.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS HOLCOMB, DORMSJO, AND RICHARD:



William S. Morrow, Jr.
Executive Director

¹¹ *Id.*

¹² *Id.*

¹³ Order No. 16,243.

¹⁴ See *id.* (denying application where applicant had yet to produce records requested in insurance gap investigation).