

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 16,911

IN THE MATTER OF:

Served March 28, 2017

Application of CODY TRANSPORTATION)
SERVICES, INC., for a Certificate)
of Authority -- Irregular Route)
Operations)

Case No. AP-2016-212

This matter is before the Commission on applicant's response to Order No. 16,861, served March 2, 2017, 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 December 22, 2016, applicant was required to furnish supplemental information on or before January 5, 2017, pursuant to Commission Regulation No. 54-04(b). Applicant timely submitted some but not all of the required information. Accordingly, the application was dismissed March 2, 2017.

On March 3, 2017, applicant filed a request to reopen this proceeding. The request is accompanied by the remaining 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

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).

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.

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,⁵ but in this case applicant's owner and president, Ms. Zaida Gary, was president of Thornwell Transportation Co., Inc., when the Commission revoked Thornwell's WMATC Certificate No. 583 on May 9, 2007, for failing to comply with the Commission's insurance requirements,⁶ which marked the fourth time in five years that Certificate No. 583 was suspended for an insurance violation.

The revocation order gave Thornwell 30 days to verify removal of WMATC vehicle markings from its vehicle(s) and pay a \$50 late fee. Thornwell did not comply.

When 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

⁵ *In re Et Tran, L.L.C.*, No. AP-16-151, Order No. 16,688 (Nov. 17, 2016); *In re Galaxy Limo. Servs., LLC*, No. AP-15-099, Order No. 16,044 (Dec. 11, 2015); *In re Ives Transp.-Sales Auto Repair (TSAR) LLC, t/a Ives*, No. AP-14-329, Order No. 15,488 (Apr. 7, 2015); *In re Reliable Med. Transp., LLC.*, No. AP-08-180, Order No. 11,820 (Jan. 26, 2009); *In re Henka Int'l, Inc., t/a Worldwide Tours & Travel*, No. AP-03-184, Order No. 8035 (May 27, 2004).

⁶ *In re Thornwell Transp. Co., Inc.*, No. MP-07-031, Order No. 10,462 (May 9, 2007).

ability to comport with the Compact and rules and regulations thereunder in the future.⁷

Failure to comply with Commission insurance requirements is a serious offense, but Ms. Gary confirms that Thornwell ceased operations in the Washington Metropolitan Area as of the final suspension of Certificate No. 583, and she has verified that no WMATC markings were on the vehicles belonging to Thornwell when they were disposed of.

In addition, Ms. Gary has paid the \$50 late fee owed to the Commission by Thornwell.

The Commission has found other applicants fit under similar circumstances.⁸ Applicant shall serve a one year period of probation as a means of ensuring prospective compliance.⁹

Based on the evidence in this record, and in light of the one-year period of probation imposed 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 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. 3012 shall be issued to Cody Transportation Services, Inc., 4242 Suitland Road, #102, Suitland, MD 20746-2053.

3. That applicant may not transport passengers for hire between points in the Metropolitan District pursuant to this order

⁷ Order Nos. 16,688; 16,044; 15,488; 11,820; 8035.

⁸ See Order No. 16,688 (timely cessation of affiliate operations, pledge to pay outstanding affiliate fee, confirmation of no vehicle markings); Order No. 16,044 (timely cessation of affiliate operations, surrender of affiliate certificate, payment of outstanding affiliate fees, confirmation of no vehicle markings); Order No. 15,488 (timely cessation of affiliate operations, surrender of affiliate certificate, payment of outstanding affiliate fees); Order No. 11,820 (no evidence of post-suspension operations and no other outstanding issues); *In re Business Logistics Group, L.L.C., t/a ATS, L.L.C.*, No. AP-06-002, Order No. 9652 (June 15, 2006) (verification of no post-suspension operations and payment of outstanding fees and forfeitures); Order No. 8035 (no evidence of post-suspension operations and satisfactory accounting for vehicles and vehicle markings).

⁹ See Order No. 16,688 (assessing one year of probation); Order No. 16,044 (same) Order No. 11,820 (same); Order No. 9652 (same); Order No. 8035 (same).

unless and until a certificate of authority has been issued in accordance with the preceding paragraph.

4. That applicant is hereby directed to file the following documents and present its revenue vehicle(s) for inspection 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.

5. That applicant shall be placed on probation for a period of one year commencing with the issuance of a certificate of authority in accordance with the terms of this order and that a willful violation of the Compact, or of the Commission's rules, regulations or orders thereunder, by applicant or its members during the period of probation shall constitute grounds for immediate suspension and/or revocation of applicant's operating authority without further proceedings, regardless of the nature and severity of the violation.

6. 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.

FOR THE COMMISSION

A handwritten signature in black ink, appearing to read 'William S. Morrow, Jr.', written in a cursive style.

William S. Morrow, Jr.
Executive Director