

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 4830

IN THE MATTER OF:

Served May 8, 1996

Application of WILLIAM J. APPELL,)
Trading as TECH TOURS, for a)
Certificate of Authority --)
Irregular Route Operations)

Case No. AP-96-01

By application filed January 2, 1996, William J. Appell, a sole proprietor trading as Tech Tours, seeks a certificate of authority to transport passengers in irregular route operations between points in the Metropolitan District. Applicant once held Certificate of Authority No. 130. That certificate was revoked for respondent's willful violations of the Compact and Commission regulations and orders thereunder.¹

Notice of this application was served on January 23 and March 13, 1996, in Orders Nos. 4749 and 4789, and applicant was directed to publish further notice in a newspaper and file an affidavit of publication. Applicant complied. The application is opposed by Winn Bus Lines, Inc., trading as Winn Transportation, Carrier No. 302.

SUMMARY OF EVIDENCE

The application includes information regarding, among other things, applicant's facilities, proposed tariff, finances, and regulatory compliance record.

Applicant proposes commencing operations with one minibus. Applicant's proposed tariff contains per capita rates for sightseeing tours.

Applicant filed a balance sheet as of December 31, 1995, showing assets of \$42,161; liabilities of \$10,230; and equity of \$31,931. Applicant's projected operating statement for the year ending January 31, 1997, shows WMATC operating income of \$120,000; operating expenses of \$63,937; and net income of \$56,063.

Applicant certifies he has access to, is familiar with, and will comply with the Compact, the Commission's rules and regulations, and United States Department of Transportation regulations relating to transportation of passengers for hire. Applicant further certifies that neither applicant nor any person controlling, controlled by, or under common control with applicant has any control relationship with a carrier other than applicant.

¹ In re Bill Appell, t/a Personal Pace Tours/Tech Tours
Washington, Nos. MP-95-18 & MP-95-40, Order No. 4618 (June 26, 1995).

DISCUSSION

This case is governed by the Compact, Title II, Article XI, Section 7(a), which provides in relevant part that:

. . . the Commission shall issue a certificate to any qualified applicant . . . if it finds that --

- (i) the applicant is fit, willing, and able to perform [the] transportation properly, conform to the provisions of this Act, and conform to the rules, regulations, and requirements of the Commission; and
- (ii) that the transportation is consistent with the public interest.

The burden is on applicant to establish his financial fitness, operational fitness, and regulatory compliance fitness.² Once an applicant has made his prima facie case, the burden shifts to protestant to contravene that showing, which includes demonstrating that protestant's operations will be endangered or impaired contrary to the public interest.³ The protest must be accompanied by all available evidence on which protestant would rely.⁴ The protest must be served on applicant and a certificate of service filed with the Commission.⁵

The protest only challenges applicant's compliance fitness, and we find that applicant has made a prima facie case of financial fitness and operational fitness. Although we cannot entertain the protest -- protestant failed to file a certificate of service and produce evidence of the harm it might experience from a grant of authority to applicant -- applicant's compliance fitness, nonetheless, is an issue.

Applicant once held Certificate of Authority No. 130. That certificate was revoked for respondent's willful violations of the Compact and Commission regulations and orders thereunder.⁶ Applicant subsequently was assessed a civil forfeiture for continuing to operate without authority.⁷ We must take these violations into consideration in reaching a determination of applicant's compliance fitness.

² In re Capitol Bus Rental, Inc., t/a Capitol Tours, No. AP-95-50, Order No. 4719 at 2 (Dec. 14, 1995).

³ In re Double Decker Bus Tours W.D.C., Inc., t/a Double Decker Bus Wash., D.C., No. AP-95-21; Order No. 4642 at 3 (Aug. 9, 1995).

⁴ Commission Regulation No. 54-04(a).

⁵ Commission Rule No. 4-07; Orders Nos. 4749 & 4789.

⁶ Order No. 4618.

⁷ In re Bill Appell, t/a Personal Pace Tours/Tech Tours Washington, Nos. MP-95-18 & MP-95-40, Order No. 4762 (Feb. 8, 1996). Applicant's March 7 petition for reconsideration of Order No. 4762 having not been ruled on within thirty days is deemed denied. Compact, tit. II, art. XIII, § 4(c).

An evaluation of compliance fitness is prospective in nature.⁸ 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 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.⁹

Applicant has engaged in a pattern of violations dating back to January 31, 1995. First, applicant failed to timely file his annual report for 1994 and pay his annual fee for 1995.¹⁰ Then, applicant failed to timely comply with Commission Orders Nos. 4513 and 4514, which directed applicant to file the annual report, pay the annual fee and pay a combined civil forfeiture of \$100.¹¹ Applicant's failure to comply with those orders resulted in the automatic suspension of Certificate No. 130 and, ultimately, culminated in its revocation.¹² The revocation order directed applicant to file an affidavit verifying removal of all indicia of WMATC operating authority from applicant's vehicle.¹³ Applicant failed to timely comply with that order, and the Commission initiated an investigation.¹⁴ The investigation revealed that applicant had continued operating while suspended and while revoked -- for a total of 102 days.¹⁵ A civil forfeiture of \$25,500 was assessed, with all but \$1,500 suspended in recognition of the negligible profit realized from the unlawful operations and respondent's cooperation with the investigation.¹⁶ The deadline for payment of the \$1,500 has been extended to June 7, 1996.¹⁷

Willful failure to timely comply with an order of the Commission is a serious violation, as is operating without authority. Our failure to curb and punish such violations would promote anarchy.

⁸ Order No. 4719 at 4.

⁹ Id. at 4.

¹⁰ In re Bill Appell, t/a Personal Pace Tours/Tech Tours Washington, Nos. MP-95-18 & MP-95-40, Orders Nos. 4513 & 4514 (Mar. 7, 1995).

¹¹ Order No. 4618.

¹² Id.

¹³ Id.

¹⁴ In re Bill Appell, t/a Personal Pace Tours/Tech Tours Washington, Nos. MP-95-18 & MP-95-40, Order No. 4696 (Nov. 14, 1995).

¹⁵ Order No. 4762.

¹⁶ Id.

¹⁷ In re Bill Appell, t/a Personal Pace Tours/Tech Tours Washington, Nos. MP-95-18 & MP-95-40, Order No. 4790 (Mar. 13, 1996).

We find applicant's defiance of our orders disturbing, to say the least. Applicant's unlawful conduct sets the standard for flagrance and persistence. We find no mitigating circumstances.

On the other hand, applicant filed a sworn affidavit on December 29, 1995, verifying removal of WMATC indicia from his vehicle and confirming his cessation of operations within our jurisdiction. There is no evidence to the contrary in the record before us. Applicant's removal of WMATC indicia and cessation of unlawful activities evinces a willingness and ability to comport with the Compact in the future. Upon payment of the forfeiture assessed in Order No. 4762, applicant's correction of past mistakes will be complete. Accordingly, subject to a period of probation as prescribed below, we believe the record supports a finding of prospective compliance fitness.

CONCLUSION

Based on the evidence in this record, the Commission finds applicant to be fit, willing, and able to perform the proposed transportation properly and to conform with applicable regulatory requirements. The Commission further finds that the proposed transportation is consistent with the public interest, subject to the following conditions.

Pursuant to Article XI, Section 7(d), we will condition reissuance of Certificate No. 130 as follows. We shall place applicant on probation for 90 days, commencing with the reissuance of Certificate No. 130. A subsequent finding that applicant has willfully violated the Compact, or the Commission's rules, regulations or orders thereunder, during the period of probation shall constitute grounds for suspension and/or revocation of Certificate No. 130, regardless of the nature of the violation. Upon applicant's failure to timely pay the \$1,500 net forfeiture assessed in Order No. 4762, Certificate No. 130 shall stand suspended, and the full forfeiture of \$25,500 shall be automatically reinstated and become immediately due and payable, and applicant shall have thirty days thereafter to show cause why Certificate No. 130 shall not be revoked.

THEREFORE, IT IS ORDERED:

1. That the protest is denied.
2. That William J. Appell, trading as Tech Tours, 235 Chatham Lane, Annapolis, MD 21403, is hereby granted authority to transport passengers in irregular route operations between points in the Metropolitan District, subject to the following conditions.
3. That applicant is hereby directed to file the following documents with the Commission: (a) evidence of insurance pursuant to Commission Regulation No. 58 and Order No. 4203; (b) an original and four copies of a tariff or tariffs in accordance with Commission Regulation No. 55; (c) an equipment list stating the year, make, model, serial number, vehicle number, license plate number (with jurisdiction) and seating capacity of each vehicle to be used in revenue operations; (d) evidence of ownership or a lease as required by Commission Regulation No. 62 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.

4. That applicant shall identify his vehicle(s) in accordance with Commission Regulation No. 61, for which purposed WMATC No. 130 is hereby reassigned, and present said vehicle(s) for inspection by Commission staff.

5. That upon timely compliance with the requirements of the preceding paragraphs and acceptance of the documents required by the Commission, Certificate of Authority No. 130 shall be issued to applicant.

6. That applicant may not transport passengers for hire between points in the Metropolitan District pursuant to this order unless and until Certificate of Authority No. 130 has been reissued in accordance with the preceding paragraph.

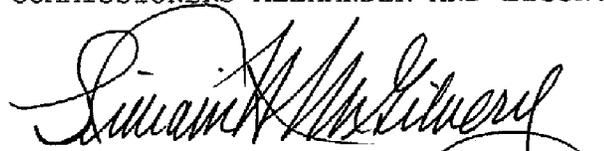
7. That unless applicant complies with the filing requirements of this order within 30 days from the date of its issuance, or such additional time as the Commission may direct or allow, the grant of authority herein shall be void and the application shall stand denied in its entirety effective upon the expiration of said compliance time.

8. That applicant shall be on probation for 90 days, commencing with the reissuance of Certificate No. 130.

9. That a subsequent finding that applicant has willfully violated the Compact, or the Commission's rules, regulations or orders thereunder, during the period of probation shall constitute grounds for suspension and/or revocation of Certificate No. 130, regardless of the nature of the violation.

10. That upon applicant's failure to timely pay the \$1,500 net forfeiture assessed in Order No. 4762, Certificate No. 130 shall stand suspended, and the full forfeiture of \$25,500 shall be automatically reinstated and become immediately due and payable, and applicant shall have thirty days thereafter to show cause why Certificate No. 130 shall not be revoked.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS ALEXANDER AND LIGON:


William H. McGilvery
Executive Director