

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 5427

IN THE MATTER OF:

Served October 1, 1998

Application of HAYMARKET)
TRANSPORTATION, INC. for a) Case No. AP-98-35
Certificate of Authority --)
Irregular Route Operations)

Applicant seeks a certificate of authority to transport passengers in irregular route operations between points in the Metropolitan District. Applicant is controlled by George Mouratidis, who, according to the application, currently operates as a federally licensed motor carrier under the trade name Hay Market Transportation and who recently held WMATC Certificate of Authority No. 277 under the trade name Haymarket Transportation. The application is unopposed.

This case is governed by the Compact, Title II, Article XI, Section 7, regarding applications for certificates of authority, and Article XII, Section 3, regarding applications for approval of common control.

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.

Article XII, Section 3(a)(iii) & (c), authorizes the Commission to approve common control of two or more carriers, through ownership of stock or other means, if the Commission finds the acquisition is consistent with the public interest. The public interest analysis normally focuses on the fitness of the controlling party, the resulting competitive balance, and the interest of affected employees.¹ When, as in this case, a sole proprietor operating as a carrier in the Metropolitan District exchanges substantially all of his transportation assets for a controlling interest in a corporate applicant, the only issue is fitness.² The burden is on applicant to

¹ DC Code Ann. § 1-2414 (1992); In re Cavalier Transp. Co., Inc., t/a Tourtime America, Ltd., & Tourtime America Motorcoach, Ltd., No. AP-96-21, Order No. 4926 (Sept. 12, 1996).

² In re Ira A. Austin, Sr., t/a Ira's Transp. Serv., & Ira's Transp. Serv., Inc., No. AP-97-42, Order No. 5193 (Sept. 9, 1997).

establish its financial fitness, operational fitness, and regulatory compliance fitness.³

Applicant proposes commencing operations with eleven vehicles acquired from its controlling shareholder, George Mouratidis. Applicant's proposed tariff contains hourly charter rates with minimum charges.

Applicant filed a balance sheet as of August 1, 1998, showing assets of \$179,219; liabilities of \$39,948; and equity of \$139,271. Applicant's projected operating statement for the first twelve months of WMATC operations shows WMATC operating income of \$797,112; other operating income of \$151; expenses and amortization of \$746,598; and net income of \$50,665.

The record establishes applicant's financial fitness and operational fitness. It does not establish applicant's compliance fitness.

Applicant and Mouratidis were the subjects of a Commission investigation into whether Mouratidis unlawfully transferred his WMATC operations to applicant without Commission approval.⁴ We gave respondents thirty days to file an acceptable transfer application or show cause why a civil forfeiture should not be assessed for knowing and willful violation of the Compact.⁵ Respondents did not comply and were assessed a civil forfeiture of five hundred dollars, ordered to cease all operations in the Metropolitan District, and directed to show cause within thirty days why Certificate No. 277 should not be revoked.⁶ No showing was made, and Certificate No. 277 was revoked.⁷

The civil forfeiture has since been paid, but no report has been filed pursuant to Commission Rule No. 28 affirming compliance with the directive in Order No. 5341 that respondents cease all operations in the Metropolitan District, and no affidavit has been filed in compliance with Order No. 5372 verifying that all indicia of WMATC operating authority were promptly removed from respondents' vehicles.

Once applicant has filed the requisite report and affidavit, the record will support a finding of compliance fitness.

³ In re Megaheds, Inc., t/a Megaheds Transp., No. AP-97-24, Order No. 5113 (June 26, 1997).

⁴ In re George Mouratidis, t/a Haymarket Transportation, & Haymarket Transportation, Inc., No. MP-98-15, Order No. 5308 (Apr. 7, 1998).

⁵ Id.

⁶ No. MP-98-15, Order No. 5341 (May 27, 1998).

⁷ No. MP-98-15, Order No. 5372 (July 14, 1998).

Based on the evidence in this record, and subject to applicant filing the aforementioned report and affidavit, the Commission finds that: (1) the proposed transportation is consistent with the public interest; (2) 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 (3) therefore, the proposed common control is consistent with the public interest.

Upon applicant's compliance with this order, Certificate No. 277 shall be reissued to applicant in consideration of the continuity of assets and management between applicant's proposed operations and the prior operations of its controlling shareholder.⁸

THEREFORE, IT IS ORDERED:

1. That upon applicant's timely compliance with the requirements of this order, Certificate of Authority No. 277 shall be reissued to Haymarket Transportation, Inc., 14416 Shelter Lane, Haymarket, VA 20169.

2. 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. 277 has been reissued in accordance with the preceding paragraph.

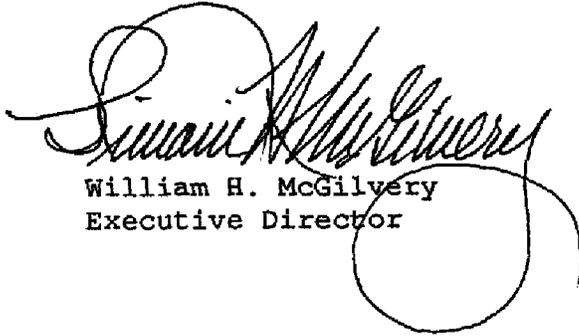
3. That applicant is hereby directed to file the following documents within thirty days: (a) evidence of insurance pursuant to Commission Regulation No. 58 and Order No. 4203; (b) an original and four copies of a tariff or tariffs in accordance with Commission Regulation No. 55; (c) a vehicle list stating 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) evidence of ownership or a lease as required by Commission Regulation No. 62 for each vehicle to be used in revenue operations; (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; (f) a notarized affidavit of identification of vehicles pursuant to Commission Regulation No. 61; (g) a report affirming that applicant

⁸ See In re HMC Acquisition Properties, Inc., t/a Westfields Int'l Conference Ctr. by Marriott, No. AP-95-07, Order No. 4573 (Apr. 12, 1995) (continuity of assets & operations); In re Ironsides Transport, Inc., No. AP-94-01, Order No. 4257 (Mar. 17, 1994) (continuity of assets, mgmt. & operations); In re WestScot Ltd. Ptrshp. & Conference Ctr. Interests, Inc., t/a Westfields Int'l Conference Ctr., No. AP-93-24, Order No. 4175 (Sep. 30, 1993) (continuity of mgt. & operations).

and its controlling shareholder timely complied with the directive in Order No. 5341 to cease all operations in the Metropolitan District; and (h) an affidavit verifying that applicant and its controlling shareholder timely complied with the directive in Order No. 5372 to remove all indicia of WMATC operating authority from vehicles operated by applicant and its controlling shareholder.

4. 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 ALEXANDER, LIGON, AND MILLER:



William H. McGilvery
Executive Director