

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 5808

IN THE MATTER OF:

Served February 9, ²⁰⁰⁰ 1999

Application of SAFE HAVEN, INC.,)
for a Certificate of Authority --)
Irregular Route Operations)

Case No. AP-99-73

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.

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.

An applicant for a certificate of authority must establish financial fitness, operational fitness, and regulatory compliance fitness.¹ Applicant's prima facie case consists of the following.

Applicant proposes commencing operations with three vans. Applicant's proposed tariff contains rates for transportation under the Medicaid program and a mileage rate for non-Medicaid shuttle service.

Applicant filed a balance sheet as of October 1, 1999, showing assets of \$56,554; liabilities of \$28,979; and equity of \$27,575. Applicant's projected operating statement for the first twelve months of WMATC operations shows WMATC revenue of \$87,600; expenses of \$79,345; and net income of \$8,255.

Applicant certifies it has access to, is familiar with, and will comply with the Compact and the Commission's rules and regulations thereunder.

Normally, a prima facie showing such as this would be sufficient for a grant of authority, but the prior operations of applicant's controlling shareholder, Cassandra White, have caused us to initiate a more thorough inquiry into applicant's fitness.²

¹ In re William J. Appell, t/a Tech Tours, No. AP-96-01, Order No. 4830 (May 8, 1996).

² The fitness of a controlling shareholder is relevant to a determination of a corporate applicant's fitness. In re D.C. Ducks, Inc., No. AP-94-21, Order No. 4361 (Aug. 9, 1994).

Ms. White previously conducted passenger carrier operations in the Metropolitan District through Safe Haven, Incorporated, a nonprofit corporation formed in the District of Columbia in 1993.³ Safe Haven, Incorporated, held WMATC Certificate of Authority No. 382 from March 18, 1997, until March 2, 1999, when it was revoked for willful violation of the Commission's insurance requirements.⁴ It was the third such revocation for Ms. White's company in the two years it held WMATC operating authority.⁵

The first order issued in this proceeding, Order No. 5738, noted our awareness that applicant had obtained a commercial auto insurance policy four months before filing an acceptable application for WMATC operating authority, raising the possibility that applicant had commenced operations before receiving proper authority. We therefore directed Ms. White to file an affidavit under oath stating whether she had continued operating as a passenger carrier, or caused any other person to operate as a passenger carrier -- including Safe Haven, Incorporated, and/or Safe Haven, Inc. -- since Certificate No. 382 was suspended and, if so, where and under what circumstances.

On November 9, Ms. White filed an affidavit stating that "Safe Haven vans have been out of commission for over six months." Her affidavit, however, failed to assure that neither she nor anyone acting at her direction operated as a passenger carrier after January 14, 1999, the date certificate No. 382 was suspended. We subsequently issued Order No. 5766 directing Ms. White to produce any and all records in her possession, custody or control relating to: (1) Safe Haven, Inc.; (2) the operations of Safe Haven, Incorporated, during 1999; and (3) Ms. White's personal finances. We also directed applicant to file documents supporting its balance sheet and projected operating statement.

The additional evidence filed by applicant and Ms. White shows that applicant was incorporated on May 21, 1999, the same day that Safe Haven, Incorporated, was dissolved. Applicant is certified by the U.S. Small Business Administration as a Small Disadvantaged Business and is registered in the District of Columbia's Local, Small, and Disadvantaged Business Program. Applicant has obtained a \$1.5 million insurance policy. Applicant has two vehicles available to commence service and both have recently passed safety inspection by the District of Columbia. Applicant has the support of Wesley Housing Development Corporation in Alexandria, Virginia, which has expressed a need for transportation service between Virginia and the District of Columbia. Ms. White generated over \$45,000 in revenue during 1999 from consulting services furnished through the two corporations.

³ The fitness of a commonly-controlled affiliate also is relevant to a determination of a corporate applicant's fitness. In re Double Decker Bus Tours, W.D.C., Inc., No. AP-95-21, Order No. 4642 (Aug. 9, 1995).

⁴ In re Safe Haven, Incorporated, No. MP-99-03, Order No. 5538 (Mar. 2, 1999).

⁵ See id.; In re Safe Haven, Inc., No. MP-98-46, Order No. 5417 (Sept. 25, 1998); In re Safe Haven, Inc., No. MP-97-71, Order No. 5189 (Sept. 4, 1997).

Although applicant does not explain why it was paying for commercial auto insurance for four months before filing an application for WMATC operating authority, there is no evidence in the record that Ms. White or either of her two corporations transported passengers for hire in the Metropolitan District without a WMATC Certificate of Authority.

In conclusion, based on the evidence in this record, 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.

One matter remains. Applicant has opted to finance the first year of insurance through a monthly payment plan instead of prepaying the entire year's premium in advance. Given Ms. White's insurance history, we will place applicant on probation for one year commencing with the re-issuance of Certificate No. 382.⁶ If at any time during the first year applicant fails to comply with the Commission's insurance requirements, Certificate of Authority No. 382 shall be subject to revocation on thirty days' notice.

THEREFORE, IT IS ORDERED:

1. That upon applicant's timely compliance with the requirements of this order, Certificate of Authority No. 382 shall be re-issued to Safe Haven, Inc., 4260 Clay Street, N.E., Washington, DC 20019.

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. 382 has been issued 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) a copy of the 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; (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; and (f) a notarized affidavit of identification of vehicles pursuant to Commission Regulation No. 61.

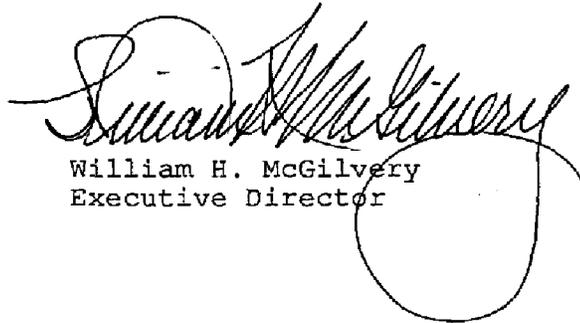
⁶ The Commission may attach to the issuance of a certificate and to the exercise of the rights granted under it any term, condition, or limitation that is consistent with the public interest. Compact, tit. II, art. XI, § 7(d). See In re District of Columbia Family Servs., Inc., No. AP-96-20, Order No. 4868 (June 10, 1996) (marginally fit carrier placed on one year probation with respect to insurance).

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 re-issuance prescribed herein.

5. That applicant is hereby placed on probation for one year, commencing with the re-issuance of Certificate No. 382.

6. That if at any time during the first year applicant fails to comply with the Commission's insurance requirements, Certificate of Authority No. 382 shall be subject to revocation on thirty days' notice.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS ALEXANDER, LIGON, AND MILLER:



William H. McGilvery
Executive Director