

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 5837

IN THE MATTER OF:

Served March 14, 2000

Application of ADVENTURES BY DAWN)
L.L.C. for a Certificate of)
Authority -- Irregular Route)
Operations)

Case No. AP-99-68

Applicant seeks a certificate of authority to transport passengers in irregular route operations between points in the Metropolitan District. 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. If an 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.¹ A determination of compliance fitness is prospective in nature.² The purpose of the inquiry is to protect the public from those whose conduct demonstrates an unwillingness to operate in accordance with regulatory requirements.³ Past violations do not necessarily preclude a grant of authority but permit the inference that violations will continue.⁴ The past conduct of an applicant's owners and officers is relevant to a determination of applicant's compliance fitness.⁵

Applicant certifies it has access to, is familiar with, and will comply with the Compact and the Commission's rules and regulations thereunder, but applicant's owners -- William B. Adona and Mohammad R. Khan -- have a history of passenger carrier activities that call applicant's compliance pledge into question, and one of applicant's vehicles was observed displaying the letters "WMATC" while this application was pending.

¹ In re Regency Limo. Serv., Inc., No. AP-94-18, Order No. 4323 (June 21, 1994).

² Id. at 6; In re Madison Limo. Serv., Inc., No. AP-91-39, Order No. 3891 (Feb. 24, 1992).

³ Order No. 3891 at 4.

⁴ Id. at 4.

⁵ In re Miju Express, Inc., No. AP-91-36, Order No. 3865 (Dec. 19, 1991).

I. WILLIAM B. ADONA

William B. Adona is vice-president of applicant and a fifty-percent shareholder. His prior passenger carrier operations include working for Presidential Limousine Service, Inc., in 1994 and 1995. Presidential Limousine held WMATC Certificate No. 148 from 1989 to 1996, when it was revoked for willful failure to comply with a Commission order and Regulations Nos. 62 and 64.⁶

In 1997, the Commission named Mr. Adona and others as defendants in a complaint filed in the United States District Court for the District of Columbia. The complaint alleged that beginning in 1994 and extending into 1997 defendants from time to time transported passengers for hire in the Metropolitan District without authority in violation of the Compact and/or held themselves or their employers out to perform such transportation in violation of the Compact. In Mr. Adona's case the employer was alleged to be Presidential Coach, Inc., an affiliate of Presidential Limousine.

According to Commission records, Mr. Adona was served with a copy of the summons and complaint. The Commission later obtained a default judgment against the defendants who were served but did not respond, including Mr. Adona. Thus, as matters stood at the time this application was filed, Mr. Adona was deemed to have admitted the allegations in the complaint.

Mr. Adona has filed two affidavits in this proceeding in an attempt to explain why he failed to respond to the Commission's complaint and why he believes the allegations against him in the complaint are untrue. Mr. Adona admits receiving a copy of the complaint but asserts he paid no attention to it because he did not think it applied to him personally, even though he was named as a defendant in the caption. He also asserts he did not occupy a position of control over Presidential Coach by virtue of employment or ownership when, according to the complaint, Presidential Coach violated the Compact by transporting passengers for hire in the Metropolitan District in 1994 and 1995.

The evidence against Mr. Adona consists chiefly of corporate records from the files of Presidential Coach acquired by the Commission in 1996 during an investigation of Presidential Coach, Presidential Limousine and their affiliate, All-Star Presidential, LLC.⁷ The investigation resulted in a finding that Presidential Coach and its affiliates knowingly and willfully violated the Compact in 1995 through the unlawful transportation of passengers for hire by Presidential Coach and All-Star Presidential.⁸

⁶ In re All-Star Presidential, LLC, & Presidential Coach Co., & Presidential Limo. Serv., Inc., No. MP-95-82, Order No. 4961 (Oct. 29, 1996).

⁷ See In re All-Star Presidential, LLC, & Presidential Coach Co., & Presidential Limo. Serv., Inc., No. MP-95-82, Order No. 4774 (Feb. 27, 1996). Under Commission Rule No. 22-05, any portion of the record before the Commission in one proceeding may be incorporated by reference in another.

⁸ Order No. 4774.

The records obtained during the investigation include articles of incorporation, resolutions of the board of directors and minutes of meetings of directors and shareholders. The articles, resolutions and minutes were signed by Mr. Adona in 1994 and 1995 and identify him as a director, officer and shareholder of Presidential Coach before, during and after the violations were found to have occurred.

Mr. Adona does not contest the authenticity of the corporate papers bearing his signature but denies the connection they establish between him and Presidential Limousine's affiliate, Presidential Coach.

I will acknowledge that my signature on those documents appears genuine. However, I have no real recollection of signing the documents nor what they mean. Theartice M "Butch" Boyd⁹ was the essential owner of those companies and while we had certain discussions concerning the activities of Presidential Coach in connection with my employment with Presidential Limousine, I did not function in any management or ownership capacity for that company. I signed many documents that Mr. Boyd put before me and, mistakenly, paid little or no attention to them.

Affidavit of William B. Adona at 1 (Sept. 17, 1999).

We find Mr. Adona's testimony persuasive as to his lack of fitness to control a WMATC carrier. Mr. Adona's willingness to ignore the Commission's complaint at his own discretion implies a willingness generally to ignore the Commission and Commission directives, and now that he has attacked his own veracity by repudiating his prior oaths -- oaths used to advance Presidential Coach's unlawful interests in the Metropolitan District -- we can hardly credit his pledge of compliance with the Compact in the future.

II. MOHAMMAD R. KHAN

Mohammad R. Khan is president of applicant and a fifty-percent shareholder. The formation of applicant appears to be his third try at conducting passenger carrier operations in the Washington Metropolitan Area. He incorporated Dawn Limousine Service, Inc., in 1992 and obtained a limousine certificate from the Commonwealth of Virginia in 1996, but as discussed below, it does not appear that those previous attempts were very successful.

The question of Mr. Khan's fitness derives from Dawn Limousine having been named as one of the other defendants in the Commission's 1997 complaint against Mr. Adona. The complaint was dismissed against Dawn Limousine for failure of service of process, but the allegations still stand. Dawn Limousine, however, is not deemed to have admitted them as is Mr. Adona.

As it concerns Dawn Limousine, the complaint alleged in pertinent part:

⁹ Mr. Boyd was named as one of Mr. Adona's co-defendants in the Commission's 1997 complaint.

On July 17, 1997, a Commission staff member placed a phone call to All-Star Presidential using the telephone number in All-Star Presidential's advertisement in the current "Yellow Pages" for the District of Columbia. Theartice M. Boyd answered the phone. The staff member requested a rate for transporting 31 passengers between DC and Dulles airport. Mr. Boyd quoted a rate of \$240 for a one-way transfer and said he remembered talking to the staff member a couple of days earlier. Mr. Boyd also said that there were about five carriers at his location, including Dawn Limousine, All-Star Presidential, Stardome Bus Tours, All States Bus Tours and Presidential Limousine. He said they had more buses than anyone in the city and that they all had merged recently.

Complaint at 15, ¶ 42 (Oct. 16, 1997) (emphasis added). Commission records show that an ad was placed in the DC Yellow Pages at the same time for Dawn Limousine, as well. The ad offered service in sedans, stretches, minibuses and coaches, generally, and flat-rate service to airports, specifically. The telephone number listed in the ad connected callers with the offices occupied by Presidential Limousine and its affiliates.

In order to gain a more complete understanding of Dawn Limousine's activities during this period, we directed Mr. Khan to file an affidavit explaining the circumstances of Dawn Limousine being held out for hire as a passenger carrier in the DC area in 1997 and 1998, together with copies of any certificates authorizing Dawn Limousine to transport passengers for hire during that period.¹⁰ Mr. Khan responded with an affidavit and a copy of Limousine Certificate No. LM-371, issued by the Virginia Department of Motor Vehicles on June 26, 1996, in the name of Mohammad R. Khan.

In his affidavit, Mr. Khan describes his relationship with Presidential Limousine and the circumstances surrounding the Yellow Pages ad as follows:

Affiant incorporated Dawn Limousine Service in the Commonwealth of Virginia in 1995.¹¹ It was my intention to commence operations with a Sedan and a 16 passenger van as soon as I could obtain appropriate authority. It was about this time, late 1995 or early 1996 that I entered into a lease agreement with Presidential Limousine Inc., for the van. . . . Presidential Limousine Inc., was owned or controlled by Mr. Theartice M. "Butch" Boyd. Mr. Boyd informed me that he was going to place an ad in the D.C. Yellow Pages showing Dawn Limousine as a carrier. I did not know that this listing would be against the law or regulations, and Mr. Boyd assured me that he had all

¹⁰ Order No. 5763 (Dec. 8, 1999).

¹¹ According to records obtained from the Virginia State Corporation Commission, Dawn Limousine Service, Inc., actually was incorporated November 13, 1992.

appropriate operating authorities and was placing the ad so as to get an additional listing for a passenger carrier service. Dawn Limousine never had any authority in its own name during this period. . . .

Also at about this time Mr. Boyd proposed to purchase Dawn Limousine Service, Inc., from me and I agreed to acquire a minibus and to make that vehicle a part of the sale to Mr. Boyd. After I had arranged for the loan of money to purchase the minibus, Mr. Boyd backed out of the purchase agreement but agreed to lease the minibus and pay me a percent of the income derived from its use. I did not receive all of the income from this lease arrangement. When Mr. Boyd terminated operations as Presidential Limousine around August of 1998, the bus was returned with a severely damaged transmission.

Affidavit of Mohammad R. Khan at 2-3 (Dec. 22, 1999).

Mr. Khan elaborates on his arrangement with Presidential Limousine in a supplemental affidavit as follows:

[T]he lease arrangement for both [the van and minibus] was supposed to be on a percentage of gross revenues with respect to those vehicles generated by calls to "Dawn Limousine" telephone numbers. All maintenance, fuel, oil, and other expenses associated with the vehicles were paid by Presidential Limousine. Presidential Limousine was responsible for hiring, firing, and supervising drivers for both vehicles, and all trips booked with respect to those vehicles were booked by Presidential Limousine employees. I had nothing to do with the vehicles, except for the ownership interest in them.

Second Supplementary Affidavit of Mohammad R. Khan (Feb. 7, 2000).

We find the following facts troubling. Mr. Khan formed Dawn Limousine in 1992 but waited four years before acquiring operating authority. The operating authority was obtained in Mr. Khan's name, not Dawn Limousine's. The certificate authorizes passenger transportation in limousines, not vans and minibuses. Mr. Khan materially facilitated the unlawful operations of Presidential Limousine after its WMATC authority was revoked in October of 1996 by furnishing Presidential Limousine with a minibus from 1996 to 1998 and allowing Mr. Boyd to use Dawn Limousine's name as a marketing device during that period.

II. CONCLUSION

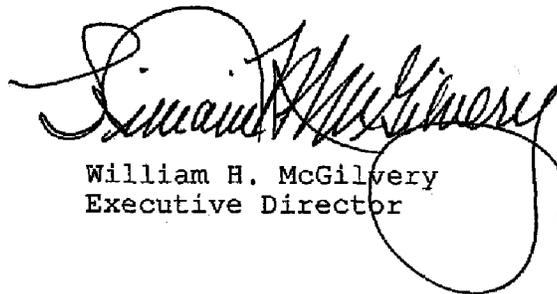
When an applicant has a record of violations, the Commission considers the following factors in assessing the likelihood of future compliance: (1) the nature and extent of the violations, (2) any mitigating circumstances, (3) whether the violations were flagrant and persistent, (4) whether applicant has made sincere efforts to correct its 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.¹²

The nature, extent and persistence of violations deemed admitted by Mr. Adona, an admission that we find has not been negated by Mr. Adona's testimony, together with the lack of mitigating circumstances and Mr. Adona's willingness to ignore Commission directives, warrant denial of this application.¹³ Adding Mr. Khan to the mix does not help. Each owner has demonstrated a willingness to associate himself with and profit from unlicensed passenger carrier operations in the Metropolitan District. This careless disregard for authority disqualifies each from controlling a WMATC carrier at this time. Parading their vehicle around town with the Commission's initials plastered on the side, as though approval of this application were a foregone conclusion -- or worse, a sign of having already received approval -- makes their lack of compliance fitness all the more apparent.¹⁴

THEREFORE, IT IS ORDERED that the application of Adventures By Dawn L.L.C., for a certificate of authority, irregular route operations, is hereby denied without prejudice.

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



William H. McGilvery
Executive Director

¹² Order No. 4323 at 6; Order No. 3891 at 4-5.

¹³ See Order No. 3891 (application denied where: violations were serious, flagrant and persistent; no mitigating circumstances; corrective efforts insincere; unwillingness to comply).

¹⁴ See In re Payne Trans., Inc., t/a Historic Tours, No. 349, Order No. 1645 (Feb. 1, 1977) (applicant not fit as to compliance because of "trial-run" operations conducted while application was pending and after temporary authority had been denied).