

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 6848

IN THE MATTER OF:

Served October 9, 2002

Application of ANDRE TCHOKOUANI,)
Trading as SUNSHINE TRANSPORTATION)
COMPANY, for a Certificate of)
Authority -- Irregular Route)
Operations)

Case No. AP-2002-87

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. Initially, applicant proposes operations confined to transportation under the DC Medicaid program.

Notice of the application was published by the Commission in Order No. 6765 on August 9, 2002. The order established a deadline of September 13, 2002, for filing protests, comments, applications for intervention, and requests for formal hearing.

On September 11, 2002, the Commission received a "comment" from Ibrahim El-Agib El-Amin, trading as Sunrise Transport, WMATC Carrier No. 469. The comment expresses Mr. El-Amin's concern that inasmuch as he already transports DC Medicaid passengers under the trade name "Sunrise Transport," allowing applicant to transport DC Medicaid passengers under the trade name "Sunshine Transportation Company" will cause confusion.

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 bears the burden of establishing fitness and consistency with the public interest.¹ Once applicant has made a prima facie case, the burden shifts to protestant to show the contrary, including that its operations would be endangered or impaired contrary to the public interest.² The protest must be accompanied by all available evidence on which the protestant would rely.³

Applicant proposes commencing operations with one van. Applicant's proposed tariff contains rates for transportation under the DC Medicaid program.

¹ In re Tesfaye A. Wondimu, t/a U.S. Airport Express Shuttle, No. AP-96-48, Order No. 4955 (Oct. 24, 1996).

² Id.

³ Id.

Applicant filed a statement of net worth as of July 22, 2002, showing assets of \$230,078; liabilities of \$156,260; and net worth of \$73,818. Applicant's projected operating statement for the first twelve months of WMATC operations shows WMATC revenue of \$87,246; expenses of \$60,746; and net income of \$26,500.

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

We find that applicant has met his burden of making a prima facie case of fitness and consistency with the public interest.⁴ Mr. El-Amin, on the other hand, has not met his burden of showing that his operations would be endangered or impaired if we approve applicant's use of the "Sunshine Transportation Company" trade name in the Metropolitan District, including use of that trade name while performing transportation under the DC Medicaid program. Mr. El-Amin's comment is not sworn as required by Commission Rule No. 4-06 and is not supported by any evidence of potential confusion, such as an affidavit from an official in the DC Medicaid program. We believe that the two trade names are sufficiently dissimilar as not to create confusion in the minds of reasonably careful people, in any event.⁵

As a practical matter, DC Medicaid program officials should be able to distinguish one carrier from the other on the basis of legal name, WMATC number, federal Taxpayer ID number and mailing address. A Medicaid passenger should be able to ascertain the identity of the carrier operating a particular vehicle by observing the WMATC number displayed on that vehicle.

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.

⁴ See In re John Carmin Cadet, t/a Reliable Transp., No. AP-02-79, Order No. 6809 (Sept. 20, 2002) (approving application of Medicaid carrier on similar evidence); In re DALIA'S Corp., No. AP-02-78, Order No. 6808 (Sept. 20, 2002) (same).

⁵ See Patton Paint Co. v. Sunset Paint Co., 290 F. 323 (D.C. Cir. 1923) ("Sun-Proof" sufficiently dissimilar from "Sun-Glo"). In the event confusion does occur once applicant commences operations, Mr. El-Amin may file a complaint for appropriate relief under Article XIII, Section 1(a), of the Compact. See In re Omojola M. Ogunlegan, t/a Precious Care Transportation, No. MP-00-67, Order No. 6052 (Dec. 4, 2000) (sole proprietor ordered not to use "inc." in trade name because of confusion); In re William E. Gillison, t/a Quiana Tours, & Quiana Tours, Inc., No. MP-98-16, Order No. 5359 (June 25, 1998) (same); In re Great American Tours, Inc., & The Airport Connection, Inc., II, & Airport Baggage Carriers, Inc., No. MP-96-54, Order No. 5007 (Jan. 23, 1997) (carrier ordered to remove unauthorized trade name from vehicles where trade name confusingly similar to commonly-controlled carrier whose WMATC authority had been revoked).

THEREFORE, IT IS ORDERED:

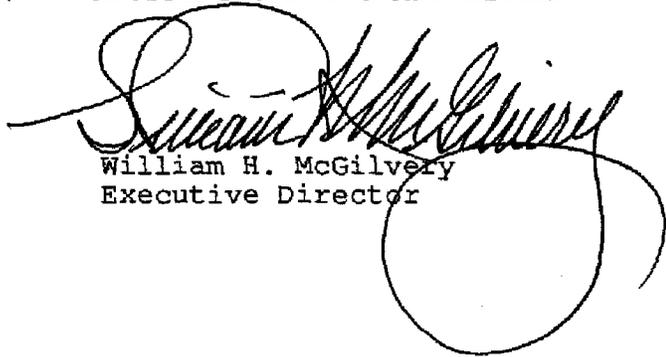
1. That upon applicant's timely compliance with the requirements of this order, Certificate of Authority No. 741 shall be issued to Andre Tchokouani, trading as Sunshine Transportation Company, 7307 Sara Street, New Carrollton, MD 20784.

2. That applicant may not transport passengers for hire between points in the Metropolitan District pursuant to this order unless and until a certificate of authority 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.

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 YATES AND MILLER:



William H. McGilver
Executive Director

