

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 7001

IN THE MATTER OF:

Served January 21, 2003

Application of NEVAH TRANSPORTS,)
LLC, for a Certificate of)
Authority -- Irregular Route)
Operations)

Case No. AP-2002-121

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. 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 is controlled by Cassandra White. Ms. White previously conducted passenger carrier operations in the Metropolitan

¹ In re Adventures By Dawn L.L.C., No. AP-99-68, Order No. 5837 (Mar. 14, 2000).

² Id.

³ Id.

⁴ Id.

⁵ Id.

District through Safe Haven, Incorporated, (Safe Haven I), a nonprofit corporation formed in the District of Columbia in 1993.⁶ Safe Haven I held WMATC Certificate of Authority No. 382 from March 18, 1997, until March 2, 1999, when it was revoked for Safe Haven I's, willful violation of the Commission's insurance requirements.⁷ It was the third such revocation for Safe Haven I in the two years it held WMATC operating authority.⁸

Ms. White subsequently incorporated Safe Haven, Inc., (Safe Haven II), in the District of Columbia on May 21, 1999, and caused that corporation to file an application for a certificate of authority on October 27, 1999.⁹ The application was approved on February 9, 2000, subject to a one-year period of probation.¹⁰ Certificate No. 382 was reissued on February 28, 2000, and Safe Haven II held it until March 27, 2002, when it was revoked for Safe Haven II's willful violation of the Commission's insurance requirements.¹¹

Reinstatement of Certificate No. 382 was denied on August 7, 2002, in Order No. 6762. The evidence showed that Safe Haven II operated for 98 days while suspended or revoked and without the minimum amount of insurance required by Commission Regulation No. 58.¹²

When a person controlling an applicant has a record of violations, or a history of controlling companies with such a record, the Commission considers the following factors in assessing the likelihood of applicant's 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.¹³

⁶ See In re Safe Haven, Incorporated, No. AP-96-70, Order No. 5018 (Feb. 4, 1997) (conditionally granting Certificate No. 382).

⁷ In re Safe Haven, Incorporated, No. MP-99-03, Order No. 5538 (Mar. 2, 1999).

⁸ See id.; In re Safe Haven, Incorporated, No. MP-98-46, Order No. 5417 (Sept. 25, 1998); In re Safe Haven, Incorporated, No. MP-97-71, Order No. 5189 (Sept. 4, 1997).

⁹ In re Safe Haven, Inc., No. AP-99-73, Order No. 5738 (Nov. 3, 1999).

¹⁰ In re Safe Haven, Inc., No. AP-99-73, Order No. 5808 (Feb. 9, 2000).

¹¹ In re Safe Haven, Inc., No. MP-02-14, Order No. 6589 (Mar. 27, 2002), reconsideration denied, In re Safe Haven, Inc., No. MP-02-14, Order No. 6682 (June 4, 2002); reinstatement denied, In re Safe Haven, Inc., No. MP-02-14, Order No. 6762 (Aug. 7, 2002).

¹² Order No. 6762.

¹³ Order No. 5837.

We find that the violations committed by Safe Haven II under Ms. White's control, as described above, were serious, extensive, flagrant and persistent. We further find no mitigating circumstances. The question is whether Ms. White has made sincere efforts to correct these past mistakes and demonstrated a willingness and ability to comport with the Compact and rules and regulations thereunder in the future. We do not believe the record in this proceeding supports such a finding.

On the plus side, an addendum to the application states that applicant retained an attorney to provide necessary guidance. The addendum further states that applicant's management team consists of Mr. Richard Russell, who will provide financial expertise and counseling, and Ms. White, who will be responsible for generating sales. Mr. Russell states in a separate affidavit that he is the owner and CEO of a real estate firm in McLean, Virginia, and that he is an equity shareholder in applicant. The affidavit further states that Mr. Russell is applicant's executive vice president of financial operations and in that capacity will be responsible for managing the affairs of the company, including its insurance program. Finally, the affidavit states that Mr. Russell will be directly responsible for ensuring compliance with Commission rules and regulations.

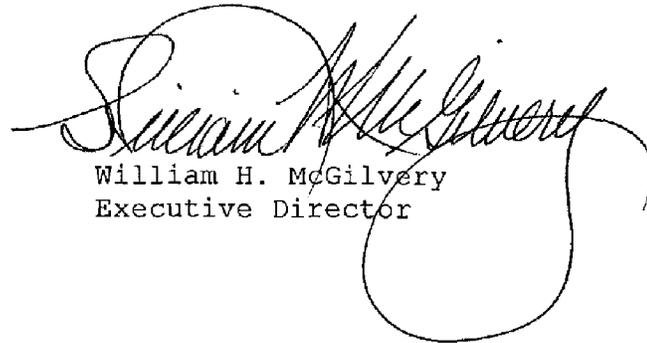
Offsetting that picture is the fact that Ms. White is firmly in control of applicant. Ms. White is named in the application as the person responsible for receiving communications concerning the application. When applicant's attorney later substituted his name for Ms. White's in that capacity, Ms. White countered by unilaterally reappointing herself without evidence of concurrence from Mr. Russell. The attorney has now withdrawn as applicant's counsel.

There has been no further communication from Mr. Russell and no evidence of the size of his stake in the company. Ms. White's stake on the other hand is considerable. Of the four vehicles that applicant proposes operating in the Metropolitan District, two are registered to Ms. White, and two are registered to Safe Haven. Thus, as between the two owners, Ms. White is the one with transportation experience, a demonstrated financial interest in the company and the responsibility for generating sales. There can be little doubt, therefore, that Ms. White will be running the company on a daily basis -- without benefit of counsel from anyone with a demonstrated knowledge of Commission requirements or meaningful risk of loss.

Accordingly, on this record, we are unable to find applicant prospectively fit as to regulatory compliance.

THEREFORE, IT IS ORDERED that the application of Nevah Transports, LLC, for a certificate of authority, irregular route operations, is hereby denied without prejudice.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS YATES, MILLER AND MCDONALD:



William H. McGilvery
Executive Director