

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 7645

IN THE MATTER OF:

Served January 5, 2004

Application of ULTIMATE )  
TRANSPORTATION INC. to Acquire )  
Certificate No. 565 from ULTIMATE )  
HEALTH CARE SERVICES, INC. )

Case No. AP-2003-93

ULTIMATE HEALTH CARE SERVICES, )  
INC., WMATC NO. 565, and ULTIMATE )  
TRANSPORTATION INC., Investigation) )  
of Unauthorized Transfer )

Case No. MP-2003-63

Ultimate Transportation Inc. seeks Commission approval to acquire Certificate No. 565 from Ultimate Health Care Services, Inc. Both are under investigation to determine whether they violated the compact by transferring the assets and operations of Ultimate Health Care Services, Inc., and/or Certificate of Authority No. 565, to Ultimate Transportation Inc. without Commission approval.

The two proceedings are being consolidated because the question of whether respondents violated the Compact is relevant to a determination of whether Ultimate Transportation Inc. is fit to receive a certificate of authority.

**I. THE INVESTIGATION**

Under Article XI, Section 11(a), of the Compact, a person may not transfer a certificate of authority unless the Commission approves the transfer as consistent with the public interest. Under Article XI, Section 11(b), a person other than the person to whom an operating authority is issued by the Commission may not lease, rent, or otherwise use that operating authority. Under Article XII, Section 3(a), a carrier or any person controlling, controlled by, or under common control with a carrier shall obtain Commission approval to (i) consolidate or merge any part of the ownership, management, or operation of its property or franchise with a carrier that operates in the Metropolitan District; (ii) purchase, lease, or contract to operate a substantial part of the property or franchise of another carrier that operates in the Metropolitan District; or (iii) acquire control of another carrier that operates in the Metropolitan District through ownership of its stock or other means.

Ultimate Health Care Services, Inc., is the owner of Certificate of Authority No. 565. On January 31, 2003, Ultimate Health Care filed its 2002 annual report in the name of "Ultimate Transportation Inc." According to the report, "the company changed by separating from Ultimate Health Care Services Inc."

Commission staff advised respondents to file a transfer application on or before March 25, 2003. On March 27, 2003, Ultimate Transportation, Inc. requested additional time to gather the necessary

supporting documents for filing a transfer application. Three months went by with no filing. This investigation ensued.

The initial order in this proceeding, Order No. 7275, served June 26, 2003, directed respondents to produce any and all records and documents in their possession, custody or control relating to transportation of passengers for hire between points in the Metropolitan District during the period beginning November 27, 2002,<sup>1</sup> and ending on June 26, 2003.<sup>2</sup> The order also directed respondents to present their vehicles for inspection.<sup>3</sup>

Respondents readily admit that during the investigation period all revenue from transportation operations in the Metropolitan District was deposited in Ultimate Transportation's bank account and that Ultimate Health Care's expenses were paid from that account,<sup>4</sup> but respondents deny that Ultimate Transportation conducted those operations, and there is scant evidence to the contrary. There is ample evidence, on the other hand, that Ultimate Health Care directed and insured those operations. Respondents produced vehicle registration, insurance and customer billing records in Ultimate Health Care's name. Some of the vehicles produced by respondents displayed Ultimate Health Care's name.<sup>5</sup> None displayed Ultimate Transportation's name. Ultimate Health Care reported revenue from transportation operations on its 2002 federal income tax return and has maintained active corporate status with Virginia.

In conclusion, there is insufficient evidence to support a finding at this time that Ultimate Health Care transferred Certificate No. 565, or that Ultimate Transportation operated under color of Certificate No. 565, in violation of Article XI, Section 11, of the Compact. Likewise, the record does not support a finding that Ultimate Health Care violated Article XII, Section 3(a), of the Compact by transferring its assets or operations to another carrier that operates in the Metropolitan District.

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<sup>1</sup> Ultimate Transportation Inc. was incorporated on November 27, 2002.

<sup>2</sup> See Compact, tit. II, art. XIII, § 1(c),(e) (Commission may investigate whether a person has violated the Compact and for the purpose of an investigation may "require the production of books, papers, correspondence, memoranda, contracts, agreements, or other records or evidence which the Commission considers relevant to the inquiry"); art. XII, § 1(b) (Commission shall have access at all times to accounts, records, and memoranda of any carrier for inspection purposes).

<sup>3</sup> See Compact, tit. II, art. XII, § 1(b) (Commission shall have access at all times to equipment of any carrier for inspection purposes).

<sup>4</sup> The record shows that the Ultimate Transportation account has been closed and a new "Transportation" account opened by Ultimate Health Care.

<sup>5</sup> Ultimate Health Care has pared its fleet from six vehicles in 2002 to one vehicle as of October 21, 2003, by donating two, leasing two and returning one to its owner.

## II. THE APPLICATION

By application accepted for filing July 14, 2003, applicant, Ultimate Transportation Inc., seeks Commission approval to acquire Certificate No. 565 from Ultimate Health Care Services, Inc. Applicant is a newly created Virginia corporation. Both corporations are owned and managed by Sarah Gwangwa'a and Arangu Ngundam.

Notice of the application was published by the Commission in Order No. 7347 on August 7, 2003, and by applicant in a newspaper of general circulation in the Metropolitan District on August 14, 2003. The application is unopposed.

Under Title II of the Compact, Article XI, Section 11(a), a person may not transfer a certificate of authority unless the Commission approves the transfer as consistent with the public interest. The transfer of a certificate of authority to a newly created affiliate raises fitness issues only.<sup>6</sup>

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

Applicant verifies that: (1) applicant owns or leases, or has the means to acquire through ownership or lease, one or more motor vehicles meeting the Commission's safety requirements and suitable for the transportation proposed in this application; (2) applicant owns, or has the means to acquire, a motor vehicle liability insurance policy that provides the minimum amount of coverage required by Commission regulations; and (3) applicant has access to, is familiar with and will comply with the Compact, the Commission's rules, regulations and orders, and Federal Motor Carrier Safety Regulations as they pertain to transportation of passengers for hire.

Based on the evidence in this record, the Commission finds that applicant is fit, willing, and able to perform the proposed transportation properly and conform with applicable regulatory requirements and that the transfer of Certificate No. 565 to applicant, therefore, is consistent with the public interest.

Applicant is admonished to keep its assets, books, finances and operations completely separate from those of Ultimate Health Care Services, Inc. Sharing of office space will be allowed, but this should not be construed as permission to share revenue vehicles or operating authority.<sup>7</sup>

THEREFORE, IT IS ORDERED:

1. That Cases Nos. MP-2003-63 and AP-2003-93 are hereby consolidated.

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<sup>6</sup> In re Fleet Transportation, L.L.C., & Fleet Transportation, No. AP-03-38, Order No. 7262 (June 26, 2003).

<sup>7</sup> In re Alterna-Trans Inc., No. AP-03-36, Order No. 7245 (June 16, 2003).

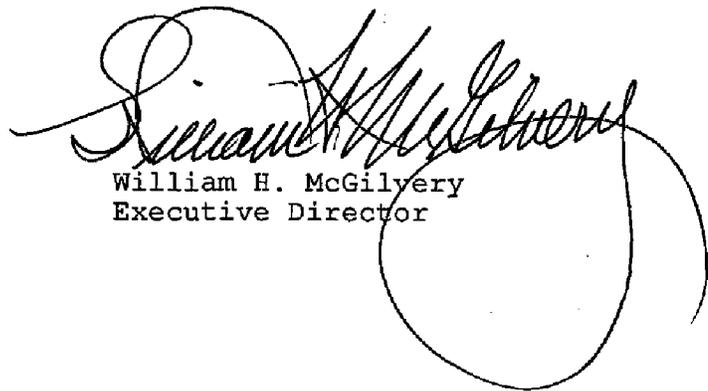
2. That upon applicant's timely compliance with the requirements of this order, Certificate of Authority No. 565 shall be reissued to Ultimate Transportation Inc., 3536 Carlin Springs Road, Falls Church, VA 22041.

3. 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. 565 has been reissued in accordance with the preceding paragraph.

4. 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 for-hire 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.

5. That the approval of transfer herein shall be void and the application shall stand denied upon applicant's failure to timely satisfy the conditions of reissuance prescribed herein.

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



William H. McGilvery  
Executive Director