

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 11,873

IN THE MATTER OF:

Served March 4, 2009

Application of HAYMARKET) Case No. AP-2008-181
TRANSPORTATION, INC., for a)
Certificate of Authority --)
Irregular Route Operations)

Applicant seeks a certificate of authority to transport passengers in irregular route operations between points in the Metropolitan District.

Article XI, Section 7(a), of the Compact provides that the Commission shall issue a certificate of authority to any qualified applicant, authorizing all or any part of the transportation covered by the application, if the Commission finds that: (i) 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; and (ii) the transportation is consistent with the public interest. An applicant must establish financial fitness, operational fitness, and regulatory compliance fitness.¹

This application is unopposed, but applicant has a history of regulatory violations.

I. PAST VIOLATIONS

Applicant's president, George Mouratidis, previously held WMATC Certificate of Authority No. 277 from January 6, 1995, until July 14, 1998, when the Commission revoked Certificate No. 277 for willful failure to comply with the certificate transfer provisions of the Compact and Commission regulations and orders.² Certificate No. 277 was reissued to applicant on January 4, 1999.³ Applicant held Certificate No. 277 until April 3, 2007, when the Commission revoked Certificate No. 277 for applicant's willful failure to pay a \$50 late insurance fee in compliance with Commission Regulation No. 67-03.⁴

¹ *In re Skyhawk Logistics, Inc.*, No. AP-07-195, Order No. 11,693 (Nov. 19, 2008).

² *In re George Mouratidis, t/a Haymarket Transp.*, No. MP-98-15, Order No. 5372 (July 14, 1998).

³ See *In re Haymarket Transp., Inc.*, No. AP-98-35, Order No. 5427 (Oct. 1, 1998).

⁴ *In re Haymarket Transp., Inc.*, No. MP-06-084, Order No. 10,375 (Apr. 3, 2007).

The revocation order, Order No. 10,375, noted that the \$50 late fee would remain due and gave applicant until May 3, 2007, to: (1) remove from its vehicles the identification placed thereon pursuant to Commission Regulation No. 61; (2) file a notarized affidavit with the Commission verifying removal; and (3) surrender Certificate No. 277 to the Commission.

Applicant subsequently reapplied for operating authority in March 2008 and during the course of that proceeding paid the late fee and submitted a copy of Certificate No. 277. But applicant failed to file an affidavit verifying removal of WMATC markings from applicant's vehicles, and applicant did not explain its failure to produce the original Certificate No. 277. Consequently, the Commission concluded that until such time as applicant complied with the requirements of Order No. 10,375, the Commission could not say that applicant had demonstrated prospective compliance fitness.⁵ The 2008 application was accordingly denied on November 19, 2008, without prejudice to applicant's right to reapply.⁵

Applicant responded to the denial order by filing two statements from one of its officers, Eddie Haile. One statement explained that the original Certificate No. 277 was lost. The other statement, dated November 21, 2008, acknowledged the obligation to remove WMATC markings but did not attest to their removal. On the contrary, the statement clearly argued that by asking applicant to remove the markings, the Commission was asking the "impossible".

Applicant subsequently filed this application on December 10 supported by Mr. Mouratidis's affidavit verifying removal of WMATC markings from applicant's vehicles and Mr. Mouratidis's affidavit confirming that the original Certificate No. 277 is lost.

A non-WMATC carrier may not, by advertisement or otherwise, hold itself out as authorized to provide services requiring a WMATC certificate of authority.⁷ This prohibition is codified in Commission Regulation No. 63-04(a), which provides that no carrier "regulated by the Commission or subject to such regulation shall advertise or hold itself out to perform transportation or transportation-related services within the Metropolitan District unless such transportation or transportation-related services are authorized by the Commission." Displaying an unauthorized WMATC carrier number thus violates Regulation No. 63-04(a).⁸

⁵ *In re Haymarket Transp., Inc.*, No. AP-08-043, Order No. 11,695 (Nov. 19, 2008).

⁶ *Id.*

⁷ *In re Union, Inc.*, No. AP-07-013, Order No. 10,482 (May 10, 2007); *In re Associated Community Servs., Inc.*, No. AP-02-88, Order No. 6839 (Oct. 3, 2002).

⁸ Order No. 10,482; Order No. 6839.

A person who knowingly and willfully violates a provision of the Compact, or a rule, regulation, requirement or order issued under it, or a term or condition of a certificate shall be subject to a civil forfeiture of not more than \$1,000 for the first violation and not more than \$5,000 for any subsequent violation.⁹

The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.¹⁰ The term "willfully" does not mean with evil purpose or criminal intent; rather, it describes conduct marked by careless disregard whether or not one has the right so to act.¹¹ Once a carrier is apprised of Compact requirements, the onus is on the carrier to determine whether its operations are in compliance.¹² Violations occurring thereafter are viewed as knowing and willful.¹³

We find that applicant knowingly and willfully violated Regulation No. 63-04(a) by failing to remove WMATC markings from its vehicles prior to November 2008. We shall assess a civil forfeiture of \$250.¹⁴

II. PROSPECTIVE COMPLIANCE

Applicant proposes commencing operations with two sedans, one limousine, two SUV's, seven vans, six minibuses, and ten motorcoaches. Applicant proposes operating under a tariff containing charter rates, individual and/or group sightseeing rates, rates for mileage and/or hourly priced transportation, and airport shuttle rates.

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.

Normally, such evidence would be sufficient to establish an applicant's fitness but not when an applicant has a history of regulatory violations.¹⁵ 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

⁹ Compact, tit. II, art. XIII, § 6(f)(i).

¹⁰ Order No. 10,482; Order No. 6839.

¹¹ Order No. 10,482; Order No. 6839.

¹² Order No. 10,482; Order No. 6839.

¹³ Order No. 10,482; Order No. 6839.

¹⁴ See Order No. 10,482 (assessing \$250 forfeiture for displaying unauthorized WMATC markings on vehicle); Order No. 6839 (same).

¹⁵ Order No. 11,693.

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.¹⁶

The Commission has approved applications in the past under similar circumstances.¹⁷ Upon payment of the forfeiture assessed herein, the record will support a finding of prospective compliance fitness,¹⁸ subject to a one-year period of probation.¹⁹

III. CONCLUSION

Based on the evidence in this record, and in consideration of the terms of probation and other conditions prescribed herein, 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.

THEREFORE, IT IS ORDERED:

1. That pursuant to Article XIII, Section 6(f), of the Compact, the Commission hereby assesses a civil forfeiture against applicant in the amount of \$250 for knowingly and willfully violating Commission Regulation No. 63-04.

2. That applicant is hereby directed to pay to the Commission within thirty days of the date of this order, by money order, certified check, or cashier's check, the sum of two hundred fifty dollars (\$250).

3. That upon applicant's timely compliance with the requirements of this order, Certificate of Authority No. 277 shall be reissued to Haymarket Transportation, Inc., 45580 Shepard Drive, #13, Sterling, VA 20164-4466.

4. That applicant may not transport passengers for hire between points in the Metropolitan District pursuant to this order unless and until Certificate No. 277 has been reissued in accordance with the preceding paragraph.

¹⁶ Order Nos. 11,693; 10,482; 6839.

¹⁷ See Order No. 10,482 (approving application despite unauthorized display of WMATC markings); Order No. 6839 (same); *In re Adventures By Dawn L.L.C.*, No. AP-00-89, Order No. 6087 (Jan. 16, 2001) (same).

¹⁸ See Order No. 10,482 (payment of forfeiture corrects error and supports fitness finding); Order No. 6839 (same).

¹⁹ See Order No. 10,482 (assessing one-year period of probation where "WMATC" observed on applicant's vehicle while previous application pending); Order No. 6087 (same).

5. That applicant is hereby directed to present its revenue vehicle(s) for inspection and file the following documents within the 180-day maximum permitted in Commission Regulation No. 66: (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; and (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.

6. That applicant shall be placed on probation for a period of one year commencing with the issuance of Certificate No. 277 in accordance with the terms of this order and that a willful violation of the Compact, or of the Commission's rules, regulations or orders thereunder, by applicant during the period of probation shall constitute grounds for immediate suspension and/or revocation of applicant's operating authority without further proceedings, regardless of the nature and severity of the violation.

7. 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 CHRISTIE AND BRENNER:



William S. Morrow, Jr.
Executive Director