

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 13,545

IN THE MATTER OF:

Served October 19, 2012

Application of BELETE KEFARGIE)
TESHAWERK, Trading as SHALOM) Case No. AP-2012-106
TRANSPORTATION, 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, 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.

I. FITNESS AND PROPOSED TRANSPORTATION

Applicant previously held WMATC Certificate of Authority No. 1739 from March 3, 2011, until May 9, 2011, when it was terminated at applicant's request.¹ Applicant proposes recommencing operations with one van. Applicant proposes operating under a tariff containing rates for mileage and/or hourly priced transportation, airport shuttle rates, rates for Medicaid transportation, and rates for transportation under contracts with government agencies and private entities.

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.

¹ *In re Belete Kefargie Teshawerk, t/a Shalom Transp.*, No. AP-11-052, Order No. 12,847 (May 9, 2011).

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.

II. PROPOSED TRADE NAME

The Commission does not find applicant's proposed trade name, "Shalom Transportation", to be consistent with the public interest.

After the Commission granted applicant's request to terminate WMATC Certificate No. 1739 in May 2011, and before the instant application was filed, the Commission approved the use of a similar trade name by another applicant, Zereyakob Assefa Haylemariam, trading as Shalom Transportation Service.² The Commission is concerned that approving applicant's proposed trade name for use under WMATC authority may well lead to confusion in the public mind.

The Compact states that the Commission may attach to the issuance of a certificate and to the exercise of the rights granted under it any term, condition, or limitation that is consistent with the public interest. The Commission has used this power in the past to deny the use of a particular trade name where the public otherwise might be confused.

In re Coach One, Inc., t/a Executive Coach, No. AP-98-06, Order No. 5268 (Feb. 5, 1998).

"Thus, while denying an application is not the appropriate remedy for potential name confusion, it is grounds for ordering an applicant to propose a different name for use in the Metropolitan District as a condition of approval."³

Applicant makes three arguments in opposition to any condition requiring applicant to propose a different trade name for use under WMATC authority.

First is applicant's claim of ownership in the name "Shalom Transportation". Applicant may believe it possesses some superior legal right in the "Shalom Transportation" name, "but the Commission's mandate does not include vindicating a carrier's private rights in a name."⁴ "The courts of law are open to competitors for the settlement

² *In re Zereyakob Assefa Haylemariam, t/a Shalom Transp. Serv.*, No. AP-12-082, Order No. 13,328 (June 26, 2012). Certificate No. 1952, bearing the "Shalom Transportation Service" trade name, was issued to Mr. Haylemariam on August 31, 2012.

³ *In re D C Tours Inc*, No. AP-02-113, Order No. 7047 (Feb. 25, 2003).

⁴ *In re CSL LLC*, No. AP-10-056, Order No. 12,545 at 5 (Sept. 14, 2010) (citing *American Airlines, Inc.*, 351 U.S. at 83, 76 S. Ct. at 604 (passenger

of their private legal rights, one against the other.”⁵ The Commission’s jurisdiction in this matter is limited to protecting the public interest.⁶

Second, applicant argues that it was first in time. The right that applicant once possessed to use the trade name “Shalom Transportation” in WMATC operations vanished when the Commission terminated Certificate No. 1739 in May 2011 at applicant’s request.

Third, applicant contends that the names “Shalom Transportation” and “Shalom Transportation Service” are not identical and that Shalom Transportation Service operates out of Maryland, whereas applicant operates out of the District of Columbia. While not identical, the two trade names are obviously similar enough to confuse the public, and because the tariff on file for Shalom Transportation Service includes airport shuttle rates, both carriers apparently would be competing for the same customers.

Therefore, in the absence of any evidence that applicant and Shalom Transportation Service have competed under these names in the same market in the past without creating any confusion,⁷ applicant will be directed to either propose another WMATC trade name or conduct WMATC operations without a trade name.

THEREFORE, IT IS ORDERED:

1. That applicant shall have 30 days to propose an alternative trade name for use in WMATC operations, as supported by proof of registration of said trade name with the District of Columbia Department of Consumer and Regulatory Affairs.

2. That upon applicant’s timely compliance with the requirements of this order, Certificate of Authority No. 1739 shall be reissued to Belete Kefargie Teshawerk, 1440 Rock Creek Ford Road, N.W., #411, Washington, DC 20011-1703, with such alternative trade name as may be approved for use in WMATC operations in accordance with the preceding paragraph.

3. 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.

carrier regulatory agency may not employ its powers to vindicate private rights)).

⁵ *American Airlines, Inc.*, 351 U.S. at 83, 76 S. Ct. at 604.

⁶ Order No. 12,545 at 5; see 351 U.S. at 82-84, 76 S. Ct. at 603-04 (passenger carrier regulatory agency’s consideration of name confusion limited to protecting public interest).

⁷ See *D C Tours Inc*, No. AP-02-113, Order No. 7139 (Apr. 18, 2003) (allowing simultaneous use of similar trade names where carriers competed in the past without creating confusion).

4. 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; (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.

5. 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 BRENNER, HOLCOMB, AND BELLAMY:



William S. Morrow, Jr.
Executive Director