

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 16,264

IN THE MATTER OF:

Served March 23, 2016

Application of DEREJE BOGALE)
WORBELO, Trading as WORBELO LIMO) Case No. AP-2016-023
SERVICE, 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.

Article XI, Section 7(a), of the Washington Metropolitan Area Transit Regulation Compact¹ 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.²

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 Pub. L. No. 101-505, § 1, 104 Stat. 1300 (1990), amended by Pub. L. No. 111-160, 124 Stat. 1124 (2010) (amending tit. I, art. III).

² *In re My Own Place, Inc.*, No. AP-12-267, Order No. 13,694 (Jan. 23, 2013); *In re Metro Homes, Inc.*, No. AP-10-004, Order No. 12,729 (Feb. 15, 2011).

Normally, such evidence would be sufficient to establish an applicant's fitness,³ but this applicant has a history of regulatory violations.

I. PAST VIOLATIONS

Applicant formerly held WMATC Certificate No. 2290. Said certificate was automatically suspended under Regulation No. 58-12 at 12:01 a.m. on October 22, 2015, when the \$1.5 million WMATC Certificate of Insurance and Policy Endorsement on file for applicant terminated without replacement.

Order No. 15,923, served October 22, 2015, directed applicant to cease WMATC operations and noted that Certificate No. 2290 would be subject to revocation if respondent failed to file the necessary insurance endorsement(s) and pay a \$100 late fee within 30 days. Respondent filed the necessary insurance endorsement later that same day but failed to pay the late fee. Accordingly, Certificate No. 2290 was revoked on December 2, 2015, in Order No. 16,015, pursuant to Regulation No. 58-15(a).

Applicant admits operating from October 22, 2015, until January 4, 2016, while Certificate No. 2290 was suspended/revoked.

II. ASSESSMENT OF FORFEITURE

Under the Compact, 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.⁴ Each day of the violation constitutes a separate violation.⁵

The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.⁶ 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.⁷ Employee negligence is no defense.⁸ "To hold carriers not liable for penalties where the violations . . . are due to mere indifference, inadvertence, or negligence of employees would defeat the purpose of" the statute.⁹

³ Order No. 13,694; Order No. 12,729 at 2.

⁴ Compact, tit. II, art. XIII, § 6(f)(i).

⁵ Compact, tit. II, art. XIII, § 6(f)(ii).

⁶ Order No. 13,694 at 3; Order No. 12,729 at 5.

⁷ Order No. 13,694 at 3; Order No. 12,729 at 5.

⁸ Order No. 13,694 at 3; Order No. 12,729 at 5.

⁹ *United States v. Illinois Cent. R.R.*, 303 U.S. 239, 243, 58 S. Ct. 533, 535 (1938).

Applicant states that he was unaware of the suspension of Certificate No. 2290 prior to January 4, 2016, but Commission Regulation No. 58-11 provides:

When a WMATC carrier's insurance has terminated or is about to terminate the carrier must contact the Commission to ascertain whether the necessary WMATC Insurance Endorsement has been filed before continuing to operate on and after the termination date. Proof a WMATC carrier has satisfied its duty to verify shall consist of contemporaneous written verification from the Commission.

No such written verification has been produced.

In addition, the record shows that applicant paid the late fee on December 9, 2015, and thus clearly was aware of the revocation at that time, but by his own admission applicant continued operating until January 4, 2016, even though the revocation had not been lifted.

Based on applicant's admission, we find that applicant knowingly and willfully violated Article XI, Section 6(a), of the Compact, Regulation No. 58-12, and Order No. 15,923 by transporting passengers for hire between points in the Metropolitan District while suspended/revoked.

In situations similar to this one - operating while suspended but not while uninsured - the Commission has assessed a civil forfeiture of \$250 for each day of unauthorized operations.¹⁰ We shall assess a civil forfeiture of \$250 per day, for 74 days, or \$18,500.

We will suspend all but 15 percent of the forfeiture, rounded to the nearest \$100, or \$2,800, based on the presence of two reduction factors: applicant's admission of unlawful operations and voluntary filing of this application.¹¹ Failure to pay the net forfeiture in a timely fashion shall result in reinstatement of the full \$18,500.

III. LIKELIHOOD OF FUTURE COMPLIANCE

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 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

¹⁰ *In re Zereyakob Assefa Haylemariam, t/a Shalom Transp. Serv.*, No. AP-14-139, Order No. 15,131 at 2 (Oct. 21, 2014); *In re L&J Limo Servs. LLC*, No. MP-10-017, Order No. 12,658 at 4 (Dec. 17, 2010).

¹¹ See Order No. 13,694 (15% reduction for two factors - admission of wrongdoing and filing of application); Order No. 12,729 (same).

willingness and ability to comport with the Compact and rules and regulations thereunder in the future.¹²

Operating without authority is a serious violation, and while not necessarily flagrant, the violations in this case were persistent. On the other hand, that applicant's operations were fully insured at all times mitigates in applicant's favor, and the instant application is some evidence of applicant's ultimate willingness and ability to comport with the Compact and rules and regulations thereunder in the future.¹³

Upon payment of the forfeiture assessed herein, the record will support a finding of prospective compliance fitness, subject to a one-year period of probation.¹⁴

IV. 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 net civil forfeiture against applicant in the amount of \$2,800 for knowingly and willfully violating Article XI, Section 6(a), of the Compact, Regulation No. 58-12, and Order No. 15,923 by transporting passengers for hire between points in the Metropolitan District on 74 separate days while Certificate No. 2290 was suspended/revoked.

2. That applicant is hereby directed to pay to the Commission within 30 days of the date of this order, by check or money order, the sum of two thousand eight hundred dollars (\$2,800).

3. That the full forfeiture of \$18,500 assessed in this order shall be immediately due and payable if applicant fails to timely pay the net forfeiture.

4. That upon applicant's timely compliance with the requirements of this order, Certificate of Authority No. 2290 shall be reissued to Dereje Bogale Worbelo, trading as Worbelo Limo Service, 2727 Duke Street, #1411, Alexandria, VA 22314-4541.

¹² Order No. 13,694 at 4; Order No. 12,729 at 6.

¹³ Order No. 13,694 at 5; Order No. 12,729 at 6.

¹⁴ Order No. 13,694 at 5; Order No. 12,729 at 7.

5. That applicant may not transport passengers for hire between points in the Metropolitan District pursuant to this order unless and until Certificate No. 2290 has been reissued in accordance with the preceding paragraph.

6. That applicant is hereby directed to file the following documents and present its revenue vehicle(s) for inspection 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.

7. That applicant shall be placed on probation for a period of one year commencing with the reissuance of Certificate No. 2290 as approved in this order, such that a willful violation of the Compact, or of the Commission's rules, regulations or orders thereunder, during the period of probation shall constitute grounds for immediate suspension and/or revocation of Certificate No. 2290, regardless of the nature and severity of the violation.

8. 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 HOLCOMB AND DORMSJO:



William S. Morrow, Jr.
Executive Director