

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 16,934

IN THE MATTER OF:

Served April 11, 2017

Application of GIRON'S LIMO)
SERVICE, INC., for a Certificate of) Case No. AP-2017-017
Authority -- Irregular Route)
Operations)

Applicant seeks a certificate of authority to transport passengers in irregular route operations between points in the Metropolitan District. 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 Dereje Bogale Worbello, t/a Worbello Limo Serv.*, No. AP-16-023, Order No. 16,264 (Mar. 23, 2016); *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 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. 1915. Said certificate was automatically suspended under Regulation No. 58-12 on August 24, 2016, when the \$5 million, excess of \$1.5 million, WMATC Certificate of Insurance and Policy Endorsement on file for applicant terminated without replacement.

Order No. 16,531, served August 24, 2016, directed applicant to cease WMATC operations and noted that Certificate No. 1915 would be subject to revocation if respondent failed to file the necessary insurance endorsement(s) and pay a \$100 late fee within 30 days. Applicant did not respond. Accordingly, Certificate No. 1915 was revoked on September 26, 2016, in Order No. 16,590, pursuant to Regulation No. 58-15(a).

Applicant later filed a new WMATC Endorsement on September 30, 2016, in the amount of \$3.5 million, excess of \$1.5 million, effective August 24, 2016, and applicant paid the \$100 late fee on October 20, 2016, but applicant did not request reconsideration of Order No. 16,590. Applicant filed this application instead.

As part of the application process, applicant was directed to produce additional information necessary to a full and fair determination of the application in accordance with Regulation No. 54-04(b). In response, applicant produced business records that show applicant continued operating after the suspension and revocation of Certificate No. 1915, transporting passengers for hire in the Metropolitan District in September through November of 2016 and in February of 2017.

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

³ Order No. 16,264 at 2; Order No. 15,131 at 2; 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).

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

The record shows that applicant operated in the Metropolitan District on six separate days after notice of the suspension was delivered to applicant by certified mail on August 25, 2016.

We therefore find that applicant knowingly and willfully violated Article XI, Section 6(a), of the Compact, Regulation No. 58-12, and Order No. 16,531 by transporting passengers for hire between points in the Metropolitan District on six separate days while Certificate No. 1915 was 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 6 days, or \$1,500.

We will suspend all but 15 percent of the forfeiture, rounded to the nearest \$100, or \$200, based on the presence of two reduction factors: applicant's production of inculpatory records and voluntary filing of this application.¹¹ Failure to pay the net forfeiture in a timely fashion shall result in reinstatement of the full \$1,500.

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

⁶ Order No. 16,264 at 2; Order No. 15,131 at 4; Order No. 13,694 at 3; Order No. 12,729 at 5.

⁷ Order No. 16,264 at 2; Order No. 15,131 at 4; Order No. 13,694 at 3; Order No. 12,729 at 5.

⁸ Order No. 16,264 at 2; Order No. 15,131 at 4; 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).

¹⁰ Order No. 16,264 at 3; Order No. 15,131 at 4; *In re L&J Limo Servs. LLC*, No. MP-10-017, Order No. 12,658 at 4 (Dec. 17, 2010).

¹¹ See Order No. 16,264 at 3 (85% reduction for two factors - admission of wrongdoing and filing of application); Order No. 15,131 at 4 (85% reduction for two factors - production of inculpatory records and filing of application); Order No. 13,694 (85% reduction for two factors - admission of wrongdoing and filing of application); Order No. 12,729 (same).

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.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 \$200 for knowingly and willfully violating Article XI, Section 6(a), of the Compact, Regulation No. 58-12, and Order No. 16,531 by transporting passengers for hire between points in the Metropolitan District on 6 separate days while Certificate No. 1915 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 hundred dollars (\$200).

3. That the full forfeiture of \$1,500 assessed in this order shall be immediately due and payable if applicant fails to timely pay the net forfeiture.

¹² Order No. 16,264 at 3-4; Order No. 15,131 at 5; Order No. 13,694 at 4; Order No. 12,729 at 6.

¹³ Order No. 16,264 at 4; Order No. 15,131 at 5; Order No. 13,694 at 5; Order No. 12,729 at 6.

¹⁴ Order No. 16,264 at 4; Order No. 15,131 at 5; Order No. 13,694 at 5; Order No. 12,729 at 7.

4. That upon applicant's timely compliance with the requirements of this order, Certificate of Authority No. 1915 shall be reissued to Giron's Limo Service, Inc., 2308 Spencerville Road, Spencerville, MD 20868-9745.

5. That applicant may not transport passengers for hire between points in the Metropolitan District pursuant to this order unless and until Certificate No. 1915 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. 1915 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. 1915, 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, DORMSJO, AND RICHARD:



William S. Morrow, Jr.
Executive Director