

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 17,466

IN THE MATTER OF:

Served February 23, 2018

Application of SWIFTLIMOUSINE,) Case No. AP-2017-140
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. 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.

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 establish an applicant's fitness,¹ but in this case applicant's president, Tarik Oualla, was president of Swift Sedans LLC, former WMATC Carrier No. 2446, when the Commission assessed a civil forfeiture against Swift Sedans for operating while suspended/revoked.

I. PAST VIOLATIONS

Certificate No. 2446 was suspended on January 30, 2016, and revoked on March 8, 2016, for Swift Sedans' failure to maintain an effective WMATC Insurance Endorsement on file with the Commission as required by WMATC Regulation No. 58.² Swift Sedans eventually submitted

¹ *In re Admiral Limo. Transp. Serv., Inc.*, No. AP-17-079, Order No. 17,194 (Sept. 8, 2017).

² *In re Swift Sedans LLC*, No. MP-16-015, Order No. 16,241 (Mar. 8, 2016).

the necessary WMATC Endorsement and filed a timely application for reconsideration, and Certificate No. 2446 was reinstated on March 25, 2016.³

However, because the effective date of the replacement endorsement was March 11, 2016, instead of January 30, 2016 - thereby creating a 41-day gap in required insurance coverage - the reinstatement order continued the investigation and directed Swift Sedans to verify timely cessation of operations, and produce certain business records, in accordance with Regulation No. 58-14(a).⁴

Swift Sedans produced a statement and the requisite business records shortly thereafter. The records clearly established that Swift Sedans had continued operating under Certificate No. 2446 while suspended/revoked.⁵

Later, Swift Sedans submitted a new \$1.5 million WMATC Endorsement with an effective date of January 30, 2016, and an expiration date of April 13, 2016, eliminating the 41-day gap in required coverage.⁶

Consistent with WMATC precedent, the Commission declined to suspend or revoke Certificate No. 2446. Instead, it assessed a net civil forfeiture of \$2,700 against Swift Sedans and placed Swift Sedans on probation for one year effective March 1, 2017.⁷

Certificate No. 2446 remained active until July 25, 2017, when it was terminated at Swift Sedans' request.⁸

II. LIKELIHOOD OF FUTURE COMPLIANCE

When a person controlling an applicant has a record of violations, or a history of controlling companies with such a record, the Commission considers the following factors in assessing the likelihood of applicant's future compliance: (1) the nature and extent of the violations, (2) any mitigating circumstances, (3) whether the violations were flagrant and persistent, (4) whether the controlling party has made sincere efforts to correct past mistakes, and (5) whether the controlling party has demonstrated a willingness and ability to comport with the Compact and rules and regulations thereunder in the future.⁹

Operating while suspended/revoked is a serious violation, but that violation was not serious enough to warrant revocation in Swift

³ *In re Swift Sedans LLC*, No. MP-16-015, Order No. 16,266 (Mar. 25, 2016).

⁴ *Id.*

⁵ *In re Swift Sedans LLC*, No. MP-16-015, Order No. 16,855 (Mar. 1, 2017).

⁶ *Id.*

⁷ *Id.*

⁸ *In re Swift Sedans LLC*, No. AP-17-136, Order No. 17,117 (July 25, 2017).

⁹ Order No. 17,194.

Sedans' case in light of Swift Sedan having mitigated the harm by eliminating the 41-day gap in required insurance coverage.

Swift Sedans' unlawful operations were persistent in that Swift Sedan continued operating after receiving the suspension order directing Swift Sedans to cease and desist. But we cannot say that those operations were flagrant. There was no finding in the forfeiture proceeding that Swift Sedans harbored a "willful intent" or "firm determination" to "flout the provisions of the Compact."¹⁰ And there is no evidence in this proceeding to suggest that such an intent or determination existed.

As for correcting past mistakes, Commission records show that the Commission approved Swift Sedans' request for a nine-month forfeiture payment plan beginning June 1, 2017,¹¹ and that the Commission has received all nine payments.

Finally, Swift Sedans' prompt compliance with Commission Order No. 17,117, approving voluntary termination and directing Swift Sedans to surrender Certificate No. 2446 and verify removal of WMATC markings from Swift Sedans' vehicles, is evidence of Mr. Oualla's willingness and ability to ensure that applicant will comport with the Compact and rules and regulations thereunder in the future.

On these facts, requiring applicant to serve out the remainder of the one-year probation levied against Swift Sedans, which expires March 1, 2018, would be consistent with the public interest.

III. CONCLUSION

Based on the evidence in this record, and considering 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 upon applicant's timely compliance with the requirements of this order, Certificate of Authority No. 2446 shall be issued to Swiftlimousine, Inc., 2701 Park Center Drive, #B201, Alexandria, VA 22302-1412.

2. That applicant may not transport passengers for hire between points in the Metropolitan District pursuant to this order

¹⁰ See *In re Edwards Trucking Co.*, No. 394, Order No. 1824 at 2 (Mar. 29, 1978) (willful intent to flout); *In re Vincent Ferguson Gibson, t/a Continental Limo.*, No. 366, Order No. 1765 at 9 (Nov. 1, 1977) (firm determination to flout).

¹¹ *In re Swift Sedans LLC*, No. MP-16-015, Order No. 16,969 (Apr. 25, 2017).

unless and until a certificate of authority has been issued in accordance with the preceding paragraph.

3. 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.

4. That applicant is hereby placed on probation until March 1, 2018, such 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.

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 RICHARD, MAROOTIAN, AND HOLCOMB:



William S. Morrow, Jr.
Executive Director