

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 17,648

IN THE MATTER OF:

Served June 1, 2018

Application of ENE TOURS, LLC, for)
a Certificate of Authority --)
Irregular Route Operations)

Case No. AP-2018-029

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. If the applicant does not make the required showing, the application must be denied under Section 7(b).

An applicant for a certificate of authority must establish financial fitness, operational fitness, and regulatory compliance fitness.¹ A determination of compliance fitness is prospective in nature.² The purpose of the inquiry is to protect the public from those whose conduct demonstrates an unwillingness to operate in accordance with regulatory requirements.³ Past violations do not necessarily preclude a grant of authority but permit the inference that violations will continue.⁴

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 George Towne Trolley Tours & Transp. LLC*, No. AP-17-135, Order No. 17,335 (Dec. 5, 2017).

² *Id.*

³ *Id.*

⁴ *Id.*

Normally, such evidence would establish an applicant's fitness,⁵ but applicant is under common control with a carrier that has a history of regulatory violations.

I. COMMON CONTROL

For the purposes of this proceeding, "[t]he term 'control' means more than mere legal control; it encompasses every type of control in fact; all pertinent facts and circumstances are considered."⁶ "A presumption of common control arises where an officer of one carrier is closely related to an officer of another carrier."⁷

The record shows that applicant's president, Tikdem Tadele, is married to Esaias Dessie, the owner of George Towne Trolley Tours and Transportation LLC. George Towne Trolley once held WMATC Certificate of Authority No. 1833 but lost it in 2016 for violating the Commission's insurance regulation, Regulation No. 58.⁸ When questioned about applicant's relationship to George Towne Trolley, Ms. Tadele explained that George Towne Trolley "is owned by my husband and I have decided to open my own business."

Ms. Tadele's phrasing creates the impression that her decision to open her own business was independent and one of recent vintage. But Attachment A to the application, a Certificate of Fact issued by the Virginia State Corporation Commission (SCC), shows that applicant was formed as a Virginia LLC in 2015, and Ene Tours' interaction with the SCC at key moments in 2017 suggest that the decision to file an application with WMATC began forming last August in response to developments in an application proceeding initiated by George Towne Trolley in an effort to revive Certificate No. 1833.

According to the SCC website, August 7, 2017, marks the date of Ene Tours' first post-formation interaction with the SCC in the form of a \$50 annual registration fee. This is the same date that Mr. Dessie tendered in the George Towne Trolley application proceeding his admission that George Towne Trolley had continued operating while suspended/revoked in 2016 and 2017. It would have been apparent to him at that time that George Towne Trolley's application was in jeopardy of being denied and that a backup plan involving Ene Tours might be necessary. Such a plan might not be viable if Ene Tours' legal status was in question, say for failure to pay an annual registration fee.

By itself, the timing of Ene Tours' payment of an annual registration fee could be viewed as coincidental, but a second alignment of dates must be considered, as well. The date that Ene Tours obtained its Certificate of Fact from the SCC was December 7, 2017. This was two days after the Commission issued Order No. 17,335

⁵ *Id.*

⁶ *In re Washington Shuttle, Inc., t/a SuperShuttle*, No. AP-96-13, Order No. 4801 at 2 (Mar. 28, 1996); *In re Peter Pan Bus Lines, Inc.*, No. AP-93-19, Order No. 4130 (July 12, 1993) (citations omitted).

⁷ *In re Ontime Transp. Inc.*, No. AP-00-18, Order No. 5866 (Apr. 21, 2000).

⁸ *In re George Towne Trolley Tours & Transp. LLC*, No. MP-16-023, Order No. 16,260 (Mar. 21, 2016).

denying George Towne Trolley's reinstatement application. The significance of this event is that WMATC will not process an application from a Virginia LLC without a Certificate of Fact from the SCC as evidence of the applicant's active legal status. One coincidence might be nothing more than that. Two are harder to explain.

The timing of Ene Tours' SCC transactions relative to the timing of events in the 2017 George Towne Trolley application proceeding, and the nature of those transactions, makes the connection between the denial of George Towne Trolley's application in December 2017 and ENE Tours' application for WMATC authority the following month seem all but inescapable. We therefore find that the presumption of common control created by the close family relationship holds.

II. GEORGE TOWNE TROLLEY HISTORY OF VIOLATIONS

George Towne Trolley held WMATC Certificate No. 1833 from January 11, 2012, to March 21, 2016, when it was revoked in Case No. MP-16-023 after having been suspended on February 16, 2016, for George Towne Trolley's willful failure to maintain compliance with the Commission's insurance requirements in Regulation No. 58.⁹

As noted above, George Towne Trolley reapplied for WMATC operating authority in 2017 in WMATC Case No. AP-2017-135. The record in that proceeding shows that George Towne Trolley conducted WMATC operations on 17 dates after the suspension and revocation of Certificate No. 1833

The record in that proceeding also shows that George Towne Trolley had yet to fully remove its WMATC number from all vehicles as required by Regulation No. 61-04 and as directed by Order No. 16,260.

Finally, the record in that proceeding shows that George Towne Trolley continued advertising service requiring a WMATC certificate of authority.¹⁰ A visit to George Towne Trolley's website reveals that this is still the case.

For obvious reasons, the George Towne Trolley application was denied without prejudice on December 5, 2017. The denial order stipulated that George Towne Trolley may reapply after removing all WMATC markings from its vehicles and discontinuing its unlawful operations and advertising. The order provided that in the event George Towne Trolley reapplied for operating authority, it would be required to show cause why the Commission should not assess a civil forfeiture against George Towne Trolley for committing the foregoing violations.

III. LIKELIHOOD OF ENE TOURS' FUTURE COMPLIANCE

When an applicant or a person controlling an applicant has a record of violations, or a history of controlling companies with such

⁹ Order No. 16,260.

¹⁰ See www.alllimotour.com.

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.¹¹

The seriousness and persistence of George Towne Trolley's violations are readily apparent. Given Mr. Dessie's control over both entities and failure to redress past violations, we cannot say that applicant has established regulatory compliance fitness.¹²

IV. CONCLUSION

The path forward for Ene Tours and George Towne Trolley is set out in Order No. 17,335:

- permanently remove WMATC vehicle markings
- discontinue unlawful operations and advertising
- answer for past violations

Until these commonly-controlled carriers take the foregoing steps, the Commission will not approve any application that would directly or indirectly profit George Towne Trolley.¹³

THEREFORE, IT IS ORDERED: that the application of Ene Tours, LLC, for a certificate of authority, irregular route operations, is hereby denied without prejudice.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS RICHARD, MAROOTIAN, AND HOLCOMB:



William S. Morrow, Jr.
Executive Director

¹¹ Order No. 13,775 at 3-4.

¹² See *Old Town Trolley Tours v. WMATC*, 129 F.3d 201, 205 (D.C. Cir. 1997) (not arbitrary for WMATC to consider affiliate's misdeeds).

¹³ See *In re Gloria Sodipo t/a Right Way Transp.*, No. AP-04-75, Order No. 8532 (Jan. 28, 2005) (denying reconsideration where issuance of authority would profit person not in good standing with WMATC); see also *In re Adventures By Dawn L.L.C.*, No. AP-00-89, Order No. 6087 at 3 (Jan. 16, 2001) (application not approved until after applicant terminated leasehold relationship possibly benefitting one or more persons not in good standing with WMATC).