

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 17,866

IN THE MATTER OF:

Served October 15, 2018

Application of FAMILY FIRST)
LOGISTICS, LLC, for a Certificate)
of Authority -- Irregular Route)
Operations)

Case No. AP-2018-077

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. 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 The past conduct of an applicant's owners and officers is relevant to a determination of applicant's compliance fitness.⁵

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

¹ *In re EMK Servs. Inc.*, No. AP-05-05, Order No. 8921 (Aug. 19, 2005).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

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,⁶ but in this case applicant's president, Mr. Ekpo Umoh, has a history of controlling a carrier with regulatory violations.

I. HISTORY OF VIOLATIONS

Mr. Umoh was president of Family Logistics, Inc., (FLI), when it held WMATC Certificate of Authority No. 1090, which was suspended on May 25, 2006, for FLI's failure to maintain on file with the Commission proof of adequate insurance coverage.⁷ Replacement coverage was eventually submitted, effective June 27, 2006, leaving a period of time during which no coverage was in effect, in violation of Commission Regulation No. 58. The Commission later lifted the suspension and closed the investigation after determining that FLI had not yet commenced operations during the 2006 suspension period.⁸

Less than a year later, on April 16, 2007, FLI's certificate of authority was suspended once again for FLI's failure to maintain a WMATC Insurance Endorsement on file with the Commission, as noted in Order No. 10,408, which ordered FLI to cease operating.⁹

Mr. Umoh admits that FLI continued operating anyway until "the end of spring of 2007"¹⁰ - despite the Commission's cease and desist order and notwithstanding the ongoing insurance violation. FLI failed to cure the violation, and its operating authority eventually was revoked on July 5, 2007.¹¹

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,

⁶ *In re George Towne Trolley Tours & Transp. LLC*, No. AP-17-135, Order No. 17,335 (Dec. 5, 2017).

⁷ *See In re Family Logistics, Inc.*, No. MP-06-081, Order No. 9830 (Aug. 14, 2006).

⁸ *See Id.*

⁹ *See In re Family Logistics, Inc.*, No. MP-07-074, Order No. 10,408 (Apr. 16, 2007).

¹⁰ Mr. Umoh says the passengers were students. The Compact contains an exclusion for transporting students to or from grade school, but it applies only to vehicles "employed solely" for that purpose. Compact, tit. II, art. XI, §3(d). The exclusion "follows the vehicle". *In re McLean Transp. Serv., Inc.*, No. AP-87-22, Order No. 3122 (Feb. 2, 1988). "It is presumed that a carrier does not partition its fleet into exempt and non-exempt operations." *In re Green's Transp. Co.*, No. MP-11-038, Order No. 13,043 (Nov. 8, 2011).

¹¹ *In re Family Logistics, Inc.*, No. MP-07-074, Order No. 10,606 (July 5, 2007).

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.¹²

Failing to comply with the Commission's insurance regulation is a serious violation. Operating while suspended and uninsured or underinsured is worse still.

There is no evidence that applicant has taken any steps to prevent a recurrence of regulatory violations in the future. Indeed, documents recently obtained from the Maryland Department of Assessments and Taxation indicate that applicant has fallen out of good standing with the State of Maryland, applicant's state of formation, apparently for failing to file a 2018 property return while this application was pending. Failure to maintain good standing with one's state of formation is grounds for revoking a WMATC carrier's operating authority.¹³ Clearly, applicant has yet to "put in place personnel and/or process sufficient to prevent recurring violations of routine regulatory requirements."¹⁴

III. CONCLUSION

The history of violations by FLI while under the control of applicant's president and the absence of any evidence of significant steps taken to prevent a recurrence of regulatory violations lead us to conclude that applicant has not sustained its burden of demonstrating regulatory compliance fitness at this time.¹⁵

THEREFORE, IT IS ORDERED that the application of Family First Logistics, LLC, for a certificate of authority, irregular route operations, is hereby denied without prejudice.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS RICHARD AND HOLCOMB; MAROOTIAN, Vice-Chairman, not participating:



William S. Morrow, Jr.
Executive Director

¹² Order Nos. 17,335; 8921.

¹³ See *In re TSTG, LLC, t/a TNT Transp.*, No. MP-16-151, Order No. 16,697 (Nov. 22, 2016).

¹⁴ Order No. 8921.

¹⁵ See *id.* (denying application of applicant with history of insurance violations and no longer in good standing with state of incorporation).