

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 19,222

IN THE MATTER OF:

Served January 27, 2021

Application of KIRK NATHANIEL)
PROCTOR, Trading as KC)
TRANSPORTATION, for a Certificate)
of Authority -- Irregular Route)
Operations)

Case No. AP-2020-168

This matter is before the Commission on applicant's response to Order No. 19,153, served November 19, 2020, which dismissed this proceeding for applicant's failure to comply with the Commission's application requirements. Applicant has filed a request to reopen this proceeding.

I. CAUSE FOR DISMISSAL AND GROUNDS FOR REOPENING

Under the Compact, an application to obtain a certificate of authority shall be made in writing, verified, and shall contain the information required by the application form and accompanying instructions.¹ An applicant may be required to furnish any supplemental information necessary for a full and fair examination of the application.² Failure to comply with the Commission's application requirements warrants dismissal.³

By email sent November 2, 2020, applicant was required to furnish supplemental information on or before November 16, 2020, pursuant to Commission Regulation No. 54-04(b). Applicant failed to respond. Accordingly, the application was dismissed November 19, 2020.

On December 1, 2020, applicant filed a request to reopen this proceeding. The request is accompanied by the required information. For good cause shown, this proceeding shall be reopened under Commission Rule No. 26.⁴

II. APPLICATION

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

¹ Compact, tit. II, art. XI, § 8; Regulation No. 54-02.

² Regulation No. 54-04(b).

³ *In re One, LLC, t/a Bon Voyage*, No. AP-04-103, Order No. 8212 (Aug. 5, 2004).

⁴ See *In re Abdelrazig Hassan Shawkat*, No. AP-13-076, Order No. 13,865 (Apr. 12, 2013) (same).

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.

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, but this applicant has a history of regulatory violations.

A. HISTORY OF VIOLATIONS

Applicant previously held Certificate No. 1027 from December 7, 2005, until May 9, 2007, when it was revoked for applicant's failure to comply with the Commission's insurance requirements in Regulation No. 58 and pay a \$50 late insurance fee.⁵

The revocation order, Order No. 10,460, noted that the \$50 late fee would remain due and gave applicant 30 days to: (1) remove from its vehicles the identification placed thereon pursuant to Commission Regulation No. 61; (2) file a notarized affidavit with the Commission verifying removal; and (3) surrender Certificate No. 1027 to the Commission. Applicant did not comply.

Prior to the events in 2007, Certificate No. 1027 was suspended one other time for insurance violations.⁶

B. LIKELIHOOD OF FUTURE COMPLIANCE

When an applicant or 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

⁵ See *In re Kirk N. Proctor, t/a K C Transp.*, No. MP-06-182, Order No. 10,460 (May 9, 2007).

⁶ See *In re Kirk N. Proctor, t/a K C Transp.*, No. MP-06-107, Order No. 9715 (July 6, 2006).

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.⁷

Applicant's failure to maintain compliance with Regulation No. 58 and failure to pay the late insurance fee warranted revocation of Certificate No. 1027, and applicant's failure to respond to the revocation order persisted for several years. On the other hand, while the application was pending, applicant paid the \$50 outstanding insurance late fee, surrendered Certificate No. 1027, and accounted for his previous vehicles. There is no evidence in the record of post-suspension or post-revocation operations within the Metropolitan District, or other unauthorized operations.

The Commission has found other applicants fit under similar circumstances.⁸ Applicant shall serve a 1-year period of probation as a means of ensuring prospective compliance.⁹

III. CONCLUSION

Based on the evidence in this record, 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 this proceeding is hereby reopened under Commission Rule No. 26.

2. That upon applicant's timely compliance with the requirements of this order, Certificate of Authority No. 1027 shall be issued to Kirk Nathaniel Proctor, trading as KC Transportation, 4417 Falls Terrace, S.E., #2, Washington, DC 20019-5071.

3. That applicant may not transport passengers for hire between points in the Metropolitan District pursuant to this order unless and until a certificate of authority has been issued in accordance with the preceding paragraph.

⁷ *In re Angel Loving Care 1 Inc.*, No. AP-18-053, Order No. 17,686 at 3 (June 20, 2018).

⁸ See, e.g., *In re Galaxy Limo. Servs., LLC*, No. AP-15-099, Order No. 16,044 (Dec. 11, 2015) (timely cessation of affiliate operations, surrender of affiliate certificate, payment of outstanding affiliate fees, confirmation of no vehicle markings); *In re Henka Int'l, Inc., t/a Worldwide Tours & Travel*, No. AP-03-184, Order No. 8035 (May 27, 2004) (no evidence of post-suspension operations and satisfactory accounting for vehicles and vehicle markings).

⁹ See Order No. 16,044 (same); Order No. 8035 (same).

4. 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.

5. That applicant shall be placed on probation for a period of one year commencing with the reissuance of Certificate No. 1027 in accordance with the terms of this order and 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.

6. 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 RICHARD:



Jeffrey M. Lehmann
Executive Director