

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 19,223

IN THE MATTER OF:

Served January 27, 2021

Application of AN TRANSPORTATION)
LLC for a Certificate of Authority)
-- Irregular Route Operations)

Case No. AP-2019-175

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

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,

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.*

and Federal Motor Carrier Safety Regulations as they pertain to transportation of passengers for hire.

Normally, such evidence would establish an applicant's fitness,⁵ but applicant's sole officer and owner, Almaz Redahgne, is associated with two companies with a history of regulatory violations, Nigussie G. Mogus, trading as Batmn (Batmn) and Happy Star Transportation LLC (Happy Star).

I. HISTORY OF VIOLATIONS OF BATMN

Batmn held WMATC Certificate No. 596 from March 21, 2001, to December 18, 2019, when it was voluntarily terminated at Batmn's request.⁶ While Batmn held Certificate No. 596, it was suspended three times for insurance violations.⁷ In one of these proceedings, Batmn had a 28-day gap in required insurance coverage, but the proceeding was eventually terminated after Batmn filed a statement verifying cessation of operations during the gap, which was corroborated by Medical Transportation Management, Inc., (MTM), Batmn's only client, and the suspension was lifted.⁸

II. HISTORY OF VIOLATIONS OF HAPPY STAR

Happy Star held WMATC Certificate No. 2169 from July 18, 2013, to January 23, 2020, when it was revoked for Happy Star's willful failure to maintain compliance with the Commission's insurance requirements in Regulation No. 58 and willful failure to pay a \$100 late fee in accordance with Regulation No. 67-03(c).⁹ The revocation order stipulated that the \$100 late fee along with Happy Star's unpaid \$175 annual fee for 2020 and unfiled annual report for 2020 would remain due and directed Happy Star to remove the identification markings from its vehicles, file an affidavit and supporting photographs verifying removal of those markings, and surrender Certificate No. 2169 within 30 days. Applicant did not comply within the time allowed.

Prior to these events in 2020, Happy Star was suspended two other times for insurance violations.¹⁰ In one of these proceedings, Happy Star had a 29-day gap in required insurance coverage. Accordingly, Happy Star was directed in Order No. 18,310 to verify cessation of WMATC

⁵ *Id.*

⁶ *In re Nigussie G. Mogus, t/a Batmn*, No. AP-19-210, Order No. 18,570 (Dec. 18, 2019).

⁷ *In re Nigussie G. Mogus, t/a Batmn*, No. MP-08-083, Order No. 11,289 (Apr. 21, 2008); *In re Nigussie G. Mogus, t/a Batmn*, No. MP-19-101, Order No. 18,234 (July 1, 2019); *In re Nigussie G. Mogus, t/a Batmn*, No. MP-19-152, Order No. 18,388 (Sept. 27, 2019).

⁸ *In re Nigussie G. Mogus, t/a Batmn*, No. MP-08-083, Order No. 11,422 (June 23, 2008).

⁹ *In re Happy Star Transp. LLC*, No. MP-19-200, Order No. 18,627 (Jan. 23, 2020).

¹⁰ *In re Happy Star Transp. LLC*, No. MP-19-074, Order No. 18,147 (May 3, 2019); *In re Happy Star Transp. LLC*, No. MP-19-096, Order No. 18,223 (June 24, 2019).

operations from the first day of suspension on June 24, 2019, to August 6, 2019, when the suspension was lifted, and to corroborate its verification with copies of Happy Star's pertinent business records from April 1, 2019, to August 6, 2019, and a written statement from MTM, a principal client of record.¹¹

In Order No. 18,423, the Commission found Happy Star's response lacking because: 1) Happy Star's statement was not signed or verified under oath as required by Commission Rule No. 4; 2) Happy Star's statement did not clearly address whether respondent transported passengers for hire during the suspension period; 3) Happy Star did not produce bank statements for the period beginning August 1, 2019, and ending August 6, 2019; and 4) Happy Star failed to produce a statement from MTM addressing whether Happy Star operated for MTM during the suspension period.¹² Accordingly, Order No. 18,423 gave Happy Star 30 days to show cause why the Commission should not assess a civil forfeiture against it, and/or suspend or revoke Certificate No. 2169.¹³ Happy Star has yet to respond to Order No. 18,423.

III. 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."¹⁴ "A presumption of common control arises where an officer of one carrier is closely related to an officer of another carrier."¹⁵

In two signed statements, submitted December 11, 2019, Ms. Redahgne states that she is the wife of Batmn (Nigussie Mogus) and the mother of Tsion Mogus, who controlled Happy Star. Because applicant's sole owner and officer is closely related to Batmn and the owner of Happy Star, there is a presumption that applicant is under common control with companies with a history of regulatory violations.

The timing of events reinforces the presumption of common control. According to records from the District of Columbia Department of Consumer and Regulatory Affairs, applicant was formed on August 19, 2019, less than two weeks after Happy Star was directed by the Commission in Order No. 18,310 to file a statement verifying cessation of operations during a period when it was uninsured and suspended, and to produce corroborating records. Furthermore, the instant application was filed

¹¹ *In re Happy Star Transp. LLC*, No. MP-19-096, Order No. 18,310 (Aug. 6, 2019).

¹² *In re Happy Star Transp. LLC*, No. MP-19-096, Order No. 18,423 (Oct. 10, 2019).

¹³ *Id.*

¹⁴ *In re Ene Tours, LLC*, No. AP-18-029, Order No. 17,648 at 2 (June 1, 2018); *In re Wash. Shuttle, Inc., t/a Super Shuttle*, 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).

¹⁵ Order No. 17,648; *In re Ontime Transp. Inc.*, No. AP-00-18, Order No. 5866 (Apr. 21, 2000).

on November 4, 2019, just days before Happy Star's November 12, 2019, deadline to show cause why its certificate of authority should not be revoked or a civil forfeiture should not be assessed in response to Order No. 18,423.

Furthermore, on February 3, 2020, and February 12, 2020, Nigussie Mogus visited the Commission's office to inquire about the status of applicant's application. Although applicant asserts in a signed statement that it and Batmn have no financial ties, Mr. Mogus' efforts to expedite the application process on behalf of applicant establish that he has taken some interest in applicant's affairs.

The circumstances surrounding this proceeding are consistent with a scenario in which, after Happy Star became involved in an insurance gap proceeding and realized its actions put it in jeopardy of civil forfeiture or other sanctions, the family members involved resolved to abandon Happy Star and to carry on a transportation business through applicant, a newly formed entity.

We therefore find that the presumption of common control created by the close family relationships holds.

IV. 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 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.¹⁶

The failure of Happy Star to maintain compliance with Regulation No. 58 and pay the late insurance fee was serious enough to warrant revocation of Certificate No. 2169. While the instant application was pending, Happy Star paid the insurance late fee, paid the 2020 annual fee, filed a 2020 annual report, and surrendered Certificate No. 2169. However, Happy Star has yet to pay \$300 in outstanding late fees, remove the identification markings from its vehicles, and file an affidavit and supporting photographs verifying removal of those markings. Importantly, Happy Star's failure to verify cessation of WMATC operations while it was suspended and uninsured in 2019, and to provide corroborating business records, persists to this day.

¹⁶ Order No. 17,335 at 2.

We find no other evidence of mitigating circumstances or sincere efforts to correct these past mistakes. The Commission has denied other applications in the past under similar circumstances.¹⁷

V. CONCLUSION

On this record, we cannot say that applicant has carried its burden of establishing regulatory compliance fitness.

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

BY DIRECTION OF THE COMMISSION; COMMISSIONERS HOLCOMB AND RICHARD:



Jeffrey M. Lehmann
Executive Director

¹⁷ See *In re Rolifa Inc.*, No. AP-05-172, Order No. 9376 (Mar. 6, 2006) (denying application by applicant under common control with previously revoked WMATC carrier).