

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 19,686

IN THE MATTER OF:

Served February 2, 2022

Application of BEST TIME)
TRANSPORTATION INC. for a) Case No. AP-2021-108
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. 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 incorporator and sole beneficial owner previously served as director of a carrier with a history of regulatory violations, and applicant has failed to substantiate that it is located at its stated business address.

I. HISTORY OF VIOLATIONS

According to records obtained from the District of Columbia Department of Consumer and Regulatory Affairs, (DCRA), Mr. Kenny Enueguna is applicant's sole beneficial owner, incorporator, and agent. Although Mr. Enueguna is not among the shareholders disclosed by applicant to WMATC, the DCRA records speak for themselves.

According to records obtained from the Maryland Department of Assessments and Taxation, (MDAT), Mr. Enueguna formed and served as director of To Fax Inc, (To Fax), which held WMATC Certificate of Authority No. 1588 from January 19, 2012, to November 14, 2014. The Commission revoked Certificate No. 1588 and assessed a \$250 civil forfeiture against To Fax for its failure to produce business records and other documents corroborating cessation of WMATC operations during two periods when To Fax failed to maintain the insurance coverage required under Commission Regulation No. 58, including a 23-day gap in coverage from December 12, 2012, to January 3, 2013, and a 60-day gap in coverage from January 4, 2014, to March 4, 2014.⁶ The revocation order directed To Fax to surrender Certificate No. 1588 to the Commission and submit an affidavit and supporting photograph(s) verifying removal of WMATC markings from To Fax's vehicle(s).⁷ To Fax has not complied.

II. APPLICANT'S OWNERSHIP

Applicant is a District of Columbia corporation formed on July 20, 2021. Under the laws of the District of Columbia, at the time of its formation, applicant was required to:

state the names, residence and business addresses of each person whose aggregate share of direct or indirect, legal or beneficial ownership of a governance or total distributional interest of the entity:

- (A) Exceeds 10%; or
- (B) Does not exceed 10%; provided that the

person:

⁵ *In re Wheels On The Go Transp. LLC*, No. AP-18-028, Order No. 17,796 (Sept. 10, 2018).

⁶ *In re To Fax Inc*, No. MP-14-019, Order No. 15,199 (Nov. 14, 2014).

⁷ *Id.*

- (i) Controls the financial or operational decisions of the entity; or
- (ii) Has the ability to direct the day-to-day operations of the entity.⁸

As noted above, applicant's sole beneficial owner identified in DCRA records is Kenny Enueguna. We are unable to reconcile those facts with applicant's statement in this proceeding identifying Olumide Fadebi as applicant's president and sole shareholder.

III. APPLICANT'S PRINCIPAL PLACE OF BUSINESS

Regulation No. 68 requires that any person holding or applying for a certificate of authority shall keep its official address on file with the Commission at all times. "Such address shall be the actual street location of the person's principal place of business."

On the application form, applicant listed 4326 14th Street, N.W., Washington, DC 20011 as its street address. Applicant was directed to produce a copy of an office lease or utility bill evidencing applicant's right to maintain an office at this location. Applicant responded by submitting a one-page lease agreement by and between Howard Poole, as landlord, and Olumide Fadebi as tenant, dated August 1, 2021. However, according to the District of Columbia Office of Tax and Revenue, (DCOTR), website, Howard Poole is not the owner of record of the building in question.

By e-mail dated October 8, 2021, the Commission noted this discrepancy and directed applicant to file a lease agreement between Howard Poole and the owner of record, showing that Howard Poole held an interest in the property. Applicant responded by submitting a statement indicating that it had moved its office to "2941 Queen Chapel Rd 20018." The statement was supported by a residential unit lease agreement by and between Ali Hassani, as landlord, and Best Time Transportation, as tenant. However, the lease was not signed by the tenant and the address on the lease, 2149 Queens Chapel Road, did not match the address on applicant's statement.

Accordingly, by e-mail dated October 29, 2021, the Commission directed applicant to file: (1) a signed statement explaining the address discrepancy; (2) a signed change of address form specifying the correct address of applicant's principal place of business; and (3) a copy of applicant's completed office lease or a utility bill evidencing applicant's right to maintain an office at 2149 Queens Chapel Road, N.E. In response, applicant submitted a change of address form listing 2149 Queens Chapel Road as its principal place of business and filed a residential unit lease agreement, substantially identical in form to the previous lease, and also dated October 19, 2021, but this time between Georgetown Total Service Center, as landlord, and Best Time Transportation, as tenant. However, according to the DCOTR website,

⁸ D.C. CODE § 29-102.01(a) (6) (2021).

Georgetown Total Service Center is not the owner of record of the building in question and applicant has furnished no evidence Georgetown Total Service Center holds a conveyable leasehold interest in the property.

On the record before us, we find applicant has failed to substantiate compliance with Regulation No. 68. In addition, several items in the record are cause for concern. Applicant submitted two leases for the same premises and with the same effective date, but with two different landlords, suggesting that at least one of these documents submitted by applicant is not in fact a bona fide lease. Furthermore, applicant misidentified its own business address twice in its October 21, 2021, statement, including once on its letterhead, casting doubt on the credibility of its assertion it is located there.

IV. CONCLUSION

A certain level of candor is required of applicants for WMATC operating authority.⁹ In light of applicant's connection with a carrier with a history of serious violations of Commission requirements and discrepancies in the record regarding applicant's ownership and the location of its office, we cannot say that applicant has met its burden of production and persuasion on the issue of fitness to serve the public.¹⁰

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

BY DIRECTION OF THE COMMISSION; COMMISSIONERS RICHARD AND LOTT:



Jeffrey M. Lehmann
Executive Director

⁹ *In re Diane Rena Prince*, No. AP-13-034, Order No. 14,076 at 3 (July 18, 2013).

¹⁰ See *id.* (denying application for misleading statements regarding office location).