

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 20,058

IN THE MATTER OF:

Served January 25, 2023

Application of PALMER NON-MEDICAL) Case No. AP-2022-156
TRANSPORTATION LLC for a)
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, 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.

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.

I. HISTORY OF VIOLATIONS

Applicant previously held Certificate No. 3015 from June 22, 2017, until August 16, 2019, when it was revoked for applicant's failure to pay a \$100 late fee assessed under Regulation No. 67-03(c).¹ This marked the second time within a year that Certificate No. 3015 was suspended for an insurance violation.²

¹ See *In re Palmer Non-Med. Transp. LLC*, No. MP-19-107, Order No. 18,322 (Aug. 16, 2019).

² See *In re Palmer Non-Med. Transp. LLC*, No. MP-19-088, Order No. 18,195 (June 3, 2019).

The revocation order noted that the \$100 late fee would remain due and gave applicant 30 days to surrender Certificate No. 3015 and file a notarized affidavit and supporting photograph(s) verifying removal of WMATC markings from applicant's vehicle(s). Applicant did not comply.

In addition, in this case there is evidence that after Certificate No. 3015 was revoked in 2019, applicant advertised transportation services requiring a WMATC certificate of authority in violation of Regulation No. 63-04(a), which provides as follows:

No carrier regulated by the Commission or subject to such regulation shall advertise or hold itself out (a) to perform transportation or transportation-related services within the Metropolitan District unless such transportation or transportation-related services are authorized by the Commission.

The record shows that on January 21, 2022, the website www.palmerstransportation.com advertised wheelchair, stretcher, and ambulatory non-emergency transportation services "in the Washington Metropolitan Area." By letter dated January 24, 2022, staff directed applicant to immediately cease and desist from advertising passenger transportation subject to WMATC jurisdiction unless and until it obtains a WMATC certificate of authority. The letter was delivered to applicant by the United States Postal Service on January 26, 2022.

The record also shows that on December 16, 2022, the website www.palmerstransportation.com still displayed identical language advertising transportation services subject to WMATC jurisdiction. It should be noted, however, that after this issue was brought to applicant's attention during the course of this proceeding, applicant promptly removed language from its website holding itself out as a carrier transporting passengers for hire in the Metropolitan District.

II. ASSESSMENT OF FORFEITURE

A person who knowingly and willfully violates a provision of the Compact, or a rule, regulation, requirement, or order issued under it, or a term or condition of a certificate shall be subject to a civil forfeiture of not more than \$1,000 for the first violation and not more than \$5,000 for any subsequent violation.³ Each day of the violation constitutes a separate violation.⁴

"Knowingly" means with perception of the underlying facts, not that such facts establish a violation.⁵ "Willfully" does not mean with evil purpose or criminal intent; rather, it describes conduct marked by

³ Compact, tit. II, art. XIII, § 6(f).

⁴ Compact, tit. II, art. XIII, § 6(f)(ii).

⁵ *In re Hire Quality, Inc.*, No. AP-18-054, Order No. 17,610 at 3 (May 10, 2018).

careless disregard whether or not one has the right so to act.⁶ "To hold carriers not liable for penalties where the violations . . . are due to mere indifference, inadvertence, or negligence of employees would defeat the purpose of" the statute.⁷

When applicant filed its initial application in 2017, and again when it filed the instant application in November 2022, applicant professed familiarity with the Compact and the Commission's rules, regulations, and orders. Furthermore, on January 26, 2022, applicant received a notice directing it to cease and desist from advertising transportation services subject to WMATC jurisdiction. Accordingly, we find that applicant knowingly and willfully violated WMATC Regulation No. 63-04(a) on January 21, 2022, and December 16, 2022, by advertising passenger transportation service requiring a WMATC certificate of authority while it did not hold such authority.

We will assess a forfeiture of \$250⁸ for violating Regulation No. 63-04(a) on January 21, 2022, and \$500⁹ for violating Regulation No. 63-04(a) on December 16, 2022, after receiving a notice to cease and desist.

III. LIKELIHOOD OF FUTURE COMPLIANCE

When an applicant has a record of violations, 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.¹⁰

Applicant's failure to pay the late insurance fee in 2019 warranted revocation of Certificate No. 3015, and applicant's failure to respond to the revocation order by surrendering Certificate No. 3015 and confirming removal of vehicle markings persisted for several years.

On the other hand, in April 2022, applicant paid the insurance late fee, submitted photographs evidencing removal of WMATC markings from applicant's vehicles, and submitted a signed statement indicating

⁶ *Id.*

⁷ *United States v. Illinois Cent. R.R.*, 303 U.S. 239, 243, 58 S. Ct. 533, 535 (1938).

⁸ See Order No. 17,610 at 3 (assessing \$250 forfeiture for violating Reg. No. 63-04 by advertising on website).

⁹ See *In re Wash. DC Bus Charter LLC, t/a DC Limo World*, No. MP-11-025, Order No. 12,859 at 3 (doubling forfeiture for violating Reg. No. 63-04 after cease-and-desist order); *In re Skyhawk Logistics, Inc.*, No. MP-09-044, Order No. 12,101 (July 24, 2009) (doubling \$250 forfeiture for repeat violation).

¹⁰ Order No. 17,610 at 3.

Certificate No. 3015 cannot be located. The Commission has found other applicants fit under similar circumstances.¹¹

Advertising WMATC service without a WMATC certificate of authority is also a serious violation. In this case the violations may be regarded as persistent and there is no evidence of mitigating circumstances. But applicant's filing of the instant application and removal of the offending advertising from its website while this proceeding was pending are evidence of an effort to correct past mistakes. The Commission has approved applications in the past where applicants had violated Regulation No. 63-04(a) through unlawful website advertising but had promptly acted to end the violations.¹²

Upon payment of the forfeiture assessed herein, the record will support a finding of prospective compliance fitness, subject to a 1-year period of probation.¹³

Therefore, based on the evidence in this record, and in consideration of the terms of probation and other conditions prescribed herein, 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 pursuant to Article XIII, Section 6(f), of the Compact, the Commission hereby assesses a civil forfeiture against applicant in the amount of \$750 for knowingly and willfully violating Regulation No. 63-04(a).

2. That applicant is hereby directed to pay to the Commission within 30 days of the date of this order, by check or money order, the sum of seven hundred fifty dollars (\$750).

3. That upon applicant's timely compliance with the requirements of this order, Certificate of Authority No. 3015 shall be issued to Palmer Non-Medical Transportation LLC, 3410 Gateshead Manor Way, #201, Silver Spring, MD 20904-6114.

¹¹ 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).

¹² See Order No. 17,610; *In re US Limo World Inc.*, No. AP-16-222, Order No. 16,895 (Mar. 21, 2017).

¹³ See Order No. 17,610 (same); Order No. 16,895 (same).

4. 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.

5. 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.

6. That applicant shall be placed on probation for a period of one year commencing with the issuance of Certificate No. 3015 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.

7. 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 RICHARD AND LOTT:



Jeffrey M. Lehmann
Executive Director