

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 20,483

IN THE MATTER OF:

Served November 17, 2023

Application of KTS SOLUTIONS, INC., )  
for a Certificate of Authority -- )  
Irregular Route Operations )

Case No. AP-2023-042

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.

An applicant for a certificate of authority must establish financial fitness, operational fitness, and regulatory compliance fitness.<sup>1</sup>

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 applicant is in Chapter 11 bankruptcy and has a history of regulatory violations.

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<sup>1</sup> *In re Four Points Transp. and Moving Inc.*, No. AP-12-111, Order No. 13,695 (Jan. 23, 2013).

## I. FINANCIAL FITNESS

Applicant is in a Chapter 11 bankruptcy proceeding. This calls into question applicant's ability to sustain operations for one year,<sup>2</sup> the standard for determining financial fitness.<sup>3</sup> While applicant's status in bankruptcy does not necessarily preclude a finding of financial fitness, it is cause for looking behind applicant's fitness averment before making a determination that applicant is indeed financially fit.<sup>4</sup>

We take official notice that the bankruptcy court has approved applicant's plan of reorganization, which calls for applicant's projected disposable income to be paid over a period of five years. The court found that there is a reasonable likelihood that applicant will be able to make all of the payments due under the plan. In the absence of evidence that applicant has failed to comply with the terms of its court-approved reorganization plan, we find no basis for concluding that applicant will be unable to sustain operations for one year. Accordingly, we find that the instant record supports a finding of financial fitness.<sup>5</sup>

## II. COMPLIANCE FITNESS

A determination of compliance fitness is prospective in nature.<sup>6</sup> The purpose of the inquiry is to protect the public from those whose conduct demonstrates an unwillingness to operate in accordance with regulatory requirements.<sup>7</sup> Past violations do not necessarily preclude a grant of authority but permit the inference that violations will continue.<sup>8</sup>

Applicant was first issued WMATC Certificate of Authority No. 2315 on October 28, 2013, and held it until July 7, 2016, when it was voluntarily terminated at applicant's request.<sup>9</sup> Applicant reapplied and Certificate No. 2315 was again issued to applicant on October 24, 2017, and held by applicant until August 6, 2019, when it was revoked in Case No. MP-19-103 for applicant's failure to maintain a WMATC Insurance Endorsement on file with the Commission as required by

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<sup>2</sup> See *In re Darryl Anthony Lawson*, No. AP-07-102, Order No. 10,721 (Aug. 23, 2007) (applicant's bankruptcy status raises question of financial fitness).

<sup>3</sup> *In re US VIP Limo., LLC*, No. AP-14-085, Order No. 14,951 (July 28, 2014).

<sup>4</sup> See Order No. 10,721 (applicant's bankruptcy status cause for further inquiry).

<sup>5</sup> See *We Care Project Inc.*, No. AP-95-45, Order No. 4703 (Nov. 27, 1995) (applicant found financially fit despite pending Chapter 11 bankruptcy proceeding); see also Order No. 14,951 (LLC applicant found fit where owner's Chapter 13 bankruptcy repayment plan approved); *In re Legacy 2 Limo., LLC*, No. AP-13-048, Order No. 14,163 (Aug. 19, 2013) (same).

<sup>6</sup> Order No. 13,695.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *In re KTS Sols., Inc.*, No. AP-16-116, Order No. 16,455 (July 7, 2016).

Regulation No. 58 and for applicant's failure to pay a \$100 late insurance fee.<sup>10</sup>

The revocation order noted that the late insurance fee would remain due and gave applicant 30 days to surrender Certificate No. 2315 and file a notarized affidavit and supporting photograph(s) verifying removal of WMATC markings from applicant's vehicle(s). Applicant did not comply.

Furthermore, the Commission assessed a \$250 forfeiture against applicant on October 16, 2019, in Case No. MP-18-094, for failure to produce a statement verifying cessation of operations and failure to produce business records as directed.<sup>11</sup> In that proceeding, Certificate No. 2315 was rendered invalid on June 9, 2018, when the \$1.5 million primary WMATC Insurance Endorsement on file for applicant terminated without replacement. While applicant later filed a replacement endorsement, the replacement endorsement did not take effect until July 3, 2018, instead of June 9, 2018, leaving a 24-day gap in required insurance coverage. Accordingly, the Commission directed applicant to submit a statement verifying cessation of operations as of June 9, 2018, and produce corroborating business records.<sup>12</sup> Applicant failed to comply, resulting in the forfeiture.

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 applicant has made sincere efforts to correct past mistakes, and (5) whether applicant has demonstrated a willingness and ability to comport with the Compact and rules and regulations thereunder in the future.<sup>13</sup>

The violations listed above were serious enough to warrant revocation of Certificate No. 2315 and the assessment of a civil forfeiture. Furthermore, applicant's failure to respond to the revocation order and pay the civil forfeiture persisted for several years. On the other hand, since filing the instant application, applicant has belatedly complied with Commission requirements by paying the outstanding \$100 late insurance fee and \$250 civil forfeiture, surrendering Certificate No. 2315, and filing a notarized affidavit and supporting photographs evidencing removal of WMATC markings from applicant's vehicle. Applicant has also filed a signed statement verifying applicant "did not conduct any operations in the Metropolitan District from June 9, 2018, to July 9, 2018," the period when Certificate No. 2315 was suspended in Case No. MP-18-094 during and after the gap in insurance coverage. Applicant explains that its sole transportation

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<sup>10</sup> *In re KTS Sols., Inc.*, No. MP-19-103, Order No. 18,307 (Aug. 6, 2019).

<sup>11</sup> *In re KTS Sols., Inc.*, No. MP-18-094, Order No. 18,433 (Oct. 16, 2019).

<sup>12</sup> *In re KTS Sols., Inc.*, No. MP-18-094, Order No. 17,715 (July 9, 2018).

<sup>13</sup> *In re Ring & Ride, LLC*, No. AP-21-043, Order No. 19,389 (June 3, 2021).

operations in the Metropolitan District were provided pursuant to a contract with the U.S. Department of Housing and Urban Development, and the contract terminated February 29, 2016. Applicant has produced business records corroborating its statement.

Applicant has complied with outstanding Commission requirements and there is no evidence in the record of post-suspension or post-revocation operations within the Metropolitan District, or other unauthorized operations. On this record, we find that applicant has demonstrated regulatory compliance fitness and shall approve this application, subject to a 1-year period of probation as a means of ensuring prospective compliance.<sup>14</sup>

### **III. CONCLUSION**

Based on the evidence in this record, and considering 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 upon applicant's timely compliance with the requirements of this order, Certificate of Authority No. 2315 shall be issued to KTS Solutions, Inc., 12733 Torrington Street, Woodbridge, VA 22192-3017.

2. 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.

3. 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.

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<sup>14</sup> See Order No. 19,389 (approving application subject to 1-year period of probation, where previously-revoked applicant had accounted for vehicle markings, surrendered certificate, paid outstanding civil forfeiture, verified cessation of operations since insurance gap, and produced corroborating business records).

4. That applicant shall be placed on probation for a period of one year commencing with the reissuance of Certificate No. 2315 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.

5. 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, LOTT, AND LACKEY:

A handwritten signature in blue ink, reading "Jeffrey M. Lehmann". The signature is fluid and cursive, with the first name "Jeffrey" being the most prominent.

Jeffrey M. Lehmann  
Executive Director