

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 6709

IN THE MATTER OF:

Served June 21, 2002

Application of SHIRLINGTON )  
LIMOUSINE & TRANSPORTATION, INC., )  
for a Certificate of Authority -- )  
Irregular Route Operations )

Case No. AP-2002-20

Applicant seeks reissuance of Certificate of Authority No. 259, which was revoked December 18, 2001, for applicant's willful failure to file an annual report for 2000.

The application was accepted for filing on February 1, 2002. Notice of the application was published by the Commission in Order No. 6536 on February 8, 2002, and by applicant in a newspaper of general circulation in the Metropolitan District on February 13, 2002. 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.

#### **I. APPLICATION**

Applicant proposes commencing operations with seven motorcoaches, three minibuses, one van and two sedans. Applicant's proposed tariff contains hourly charter rates and airport transfer rates. The proposed rates do not include applicant's transportation contract with Howard University. However, we take notice of that contract in this case and discuss it later in this order. Applicant has expressed on this record its intention to resume operations under that contract if this application is granted.

Applicant filed a balance sheet as of December 31, 2001, showing assets of \$2,285,905; liabilities of \$2,137,606; and equity of \$148,299. Applicant's projected operating statement for the first twelve months of WMATC operations shows revenue of \$1,139,620; expenses of \$1,132,996; and net income of \$6,624.

Applicant certifies it has access to, is familiar with, and will comply with the Compact and the Commission's rules and regulations thereunder. Applicant, however, has a history of violating the Compact.

#### **II. PRIOR VIOLATIONS**

Certificate of Authority No. 259 was revoked December 18, 2001, for applicant's willful failure to file an annual report for the year

2000 in compliance with the annual report provisions of the Compact and regulations thereunder.<sup>1</sup>

In addition, applicant was suspended for noncompliance with the Commission's insurance requirements on several occasions during the time it held Certificate No. 259.<sup>2</sup> Four of those suspensions have particular relevance in this proceeding because they occurred at a time when applicant was obligated to perform transportation on a daily basis pursuant to a contract with Howard University, which applicant filed as its Contract Tariff No. CT-1.<sup>3</sup>

Contract Tariff No. CT-1 became effective August 24, 1999, and was still in effect on December 18, 2001, when Certificate No. 259 was revoked. After the revocation order was issued, applicant entered into a subcontract and lease agreement with Thomas Tours, Inc., WMATC Carrier No. 236, obligating Thomas Tours to perform the Howard University contract using applicant's vehicles until April 30, 2002.<sup>4</sup> Thomas Tours filed the subcontract as its Contract Tariff No. CT-1 on January 28, 2002, together with a copy of the lease. But no such tariff or lease was filed by Thomas Tours, or by any other WMATC carrier, during applicant's four insurance suspensions or during the first forty days of revocation.

Inasmuch as applicant is the only WMATC carrier with a Howard University contract tariff on file during the one-hundred-three days Certificate No. 259 was suspended and during the first forty days Certificate No. 259 was revoked, and considering that no other WMATC carrier was authorized to use applicant's Howard University vehicles during those periods, the record supports a finding that applicant operated the Howard University contract without proper authority for a total of one-hundred-forty-three days.

The Compact, Title II, Article XIII, Section 6(f), provides that a person who knowingly and willfully violates a provision of the Compact 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 and that each day of the violation constitutes a separate violation. The term "knowingly" means with perception of the

---

<sup>1</sup> In re Shirlington Limousine & Transportation, Inc., No. MP-01-79, Order No. 6459 (Dec. 18, 2001).

<sup>2</sup> Applicant held Certificate No. 259 from January 8, 1997, to December 18, 2001.

<sup>3</sup> The first suspension began September 8, 1999, and continued for twenty-eight days. In re Shirlington Limousine & Transportation, Inc., No. MP-99-55, Order No. 5722 (Oct. 5, 1999). The second commenced August 15, 2000, and continued for forty-nine days. In re Shirlington Limousine & Transportation, Inc., No. MP-00-27, Order No. 6001 (Oct. 2, 2000). The third commenced November 27, 2000, and continued for seventeen days. In re Shirlington Limousine & Transportation, Inc., No. MP-00-65, Order No. 6074 (Dec. 13, 2000). The fourth commenced November 27, 2000, and continued for nine days. In re Shirlington Limousine & Transportation, Inc., No. MP-01-111, Order No. 6436 (Dec. 4, 2001).

<sup>4</sup> The contract and lease subsequently were extended until May 31, 2002.

underlying facts, not that such facts establish a violation.<sup>5</sup> The term "willfully" does not mean with evil purpose or criminal intent; rather, it describes conduct marked by careless disregard whether or not one has the right so to act.<sup>6</sup>

When a carrier's insurance expires or is cancelled it is the responsibility of that carrier to ensure that an effective replacement WMATC insurance endorsement is filed with the Commission. There can be no excuse for operating without a proper endorsement on file with the Commission, just as there can be no excuse for operating while knowingly suspended or revoked for failing to file an annual report, or for any other reason. We therefore find that applicant knowingly and willfully violated the Compact, Article XI, Section 6(a)<sup>7</sup>.

We will assess a civil forfeiture against applicant in the amount of \$250 per day<sup>8</sup> for 143 days, for a total of \$35,750. We will suspend all but \$5,000, in recognition of the absence of any lapse in insurance coverage during the periods of suspension. Failure to pay the net forfeiture in a timely fashion shall result in reinstatement of the full \$35,750.

### III. PROSPECTIVE COMPLIANCE FITNESS

When an applicant has a record of violations, the Commission considers the following factors in assessing the likelihood of 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 its 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>9</sup>

Operating while suspended or revoked is a serious violation, and in this case the violations were clearly persistent. On the other hand, an assessment of compliance fitness is prospective in nature, and applicant's subcontracting arrangement with Thomas Tours is some evidence of applicant's willingness and ability to comport with the Compact and rules and regulations thereunder in the future. The absence of any lapse in insurance coverage during the periods of

---

<sup>5</sup> In re Megaheds, Inc., t/a Megaheds Transp., No. AP-97-24, Order No. 5113 (June 26, 1997).

<sup>6</sup> Id.

<sup>7</sup> Section 6(a) of Article XI provides that a person "may not engage in transportation subject to [the Compact] unless there is in force a 'Certificate of Authority' issued by the Commission authorizing the person to engage in that transportation." In addition, Section 7(g) of Article XI states that a certificate of authority "is not valid unless the holder is in compliance with the insurance requirements of the Commission."

<sup>8</sup> See Order No. 5113 at 8 (operating without authority assessed at \$250 per day); In re Phoenix Limo. & Tour Co., No. AP-98-10, Order No. 5304 (Apr. 6, 1998) (same).

<sup>9</sup> In re Adventures By Dawn L.L.C., No. AP-00-89, Order No. 6087 (Jan. 16, 2001).

suspension mitigates in applicant's favor, and applicant may correct its past mistakes by paying the assessed forfeiture.

In the past, we have approved the applications of errant carriers subject to the condition -- imposed under Article XI, Section 7(d), of the Compact -- that they serve a period of probation as a means of ensuring prospective compliance.<sup>10</sup> We believe that probation would be appropriate here, as well, given the circumstances.

Based on the evidence in this record, and in consideration of the terms of probation 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. 259 shall be reissued to Shirlington Limousine & Transportation, Inc., Ronald Reagan Washington National Airport, Signature Flight Support, Hangar #7, Room H-107, Washington, DC 20001.

2. That applicant may not transport passengers for hire between points in the Metropolitan District pursuant to this order unless and until Certificate No. 259 has been reissued in accordance with the preceding paragraph.

3. That within thirty days from the date of this order, applicant shall pay to the Commission, by money order, certified check, or cashiers check, the sum of five thousand dollars (\$5,000), for knowing and willful violations of the Compact.

4. That applicant is hereby directed to file the following documents within thirty days: (a) evidence of insurance pursuant to Commission Regulation No. 58 and Order No. 4203; (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 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; (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; and (f) a notarized affidavit of identification of vehicles pursuant to Commission Regulation No. 61.

5. That applicant shall be placed on probation for a period of one year commencing with the reissuance of Certificate of Authority No. 259 in accordance with the terms of this order and that a willful violation of the Compact, or of the Commission's rules, regulations,

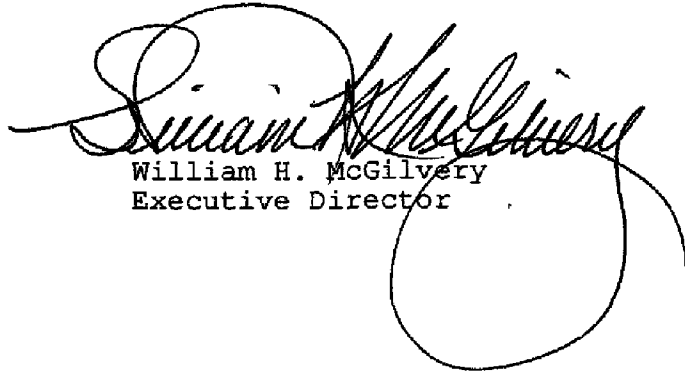
---

<sup>10</sup> E.g., Id. (one year); Order No. 5304 (90 days); In re William J. Appell, t/a Tech Tours, No. AP-96-01, Order No. 4830 (May 8, 1996) (same).

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 YATES, LIGON, AND MILLER:



William H. McGilvery  
Executive Director