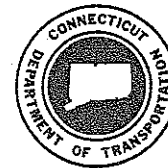


STATE OF CONNECTICUT
DEPARTMENT OF TRANSPORTATION



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NEWINGTON, CONNECTICUT 06131-7546

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(860) 594-2875

DOCKET NO. 1005-N-34-L

RE: APPLICATION OF LEANN WARMOUTH, CHANTHA M. KHEN
D/B/A C & L TRANSPORTATION TO OPERATE THREE (3) MOTOR
VEHICLES, HAVING A SEATING CAPACITY TEN (10) ADULTS OR
LESS, IN GENERAL LIVERY SERVICE BETWEEN ALL POINTS IN
CONNECTICUT FROM A HEADQUARTERS IN EAST WINDSOR.

FINAL DECISION

October 12, 2010

I. INTRODUCTION

A. Application

By application filed on May 7, 2010 with the Department of Transportation (hereinafter "department"), pursuant to Section 13b-103 of the Connecticut General Statutes, as amended, Leann Warmouth, Chantha M. Khen d/b/a C & L Transportation (hereinafter "C & L" or "applicant") seeks authorization to operate three (3) motor vehicles, having a seating capacity of ten (10) adults or less, in general livery service between all points in Connecticut from a headquarters in the East Windsor.

B. Hearing

Pursuant to Connecticut General Statutes, Section 13b-103(a), as amended, a public hearing on this application was held on August 12 and September 7, 2010.

Notice of the application and of the hearing to be held thereon was given to the applicant and to such other parties as required pursuant to General Statutes Section 13b-103(a)(1), as amended. Notice to the public was given by publication on the department website at www.ct.gov/dot.

Laila A. Mandour, Esq. was designated by the Commissioner to conduct the hearing on this matter and to render a final decision, pursuant to Connecticut General Statutes Section 13b-17.

C. Appearances

C & L Transportation appeared through Leann Warmouth and Chantha M. Khen and was represented by its manager, Debra Small. The applicant's mailing address is 148 Prospect Hill Road, East Windsor, Connecticut.

Ace Taxi Service d/b/a Ace Transportation, holder of livery permit number 2699 and Abdelaziz M. Youssef d/b/a Leila Limousine, holder of livery permit number 3043, appeared through their owners Michael Olschafskie and Abdelaziz M. Youssef, respectively. Both Ace Transportation and Leila Limousine were represented by Mary Alice Moore Leonhardt, Esq. of the law firm of Moore Leonhardt and Associates, LLC whose mailing address is 102 Oak Street, Hartford, Connecticut. Both companies petitioned for, and were granted, intervenor status.

Allied Rehabilitation Centers, holder of livery permit number 2695, petitioned for, and was granted, intervenor status. Allied Rehabilitation Centers appeared through Fran Walenta, its vice president of operations, and has a mailing address of Three Pearson Way, Enfield, Connecticut.

Lindsey Limousine, holder of livery permit number 2488, petitioned for, and was granted, intervenor status. Lindsey Limousine's mailing address is 170 Strong Road, South Windsor, Connecticut.

Sheldon Lubin, utilities examiner for the Regulatory and Compliance Unit attended the hearing.

D. Administrative Notice

Administrative notice was taken of the following:

1. Transcript (tape) and final decision in The Application of David M. Small/Leann Warmouth d/b/a Americab to Operate Two (2) Motor Vehicles, in Taxicab Service Within and To and From the Town of Enfield, Somers, Suffield and East Windsor to All Points in Connecticut (Department of Transportation Docket No. 1005-AV-33-T, Final Decision August 26, 2010.) with regard to evidence relative to headquarters and use by the applicant's owner of private vehicles to provide livery service.
2. Permit No. 2699 standing in the name of Ace Transportation.
3. Permit No. 3043 standing in the name of Abdelaziz Yousef d/b/a Leila Limousine.
4. Permit No. 2695 standing in the name of Allied Rehabilitation Center.
5. Permit No. 2488 standing in the name of Lindsey Limousine, Inc. d/b/a Lindsey Limousine.

II. FINDINGS OF FACT

1. The applicant is owned by Leann Warmouth, Chantha Khen. Warmouth is a partner/co-owner, with David Small of Americab a taxicab company that holds authority to operate in East Windsor, Enfield, Somers and Suffield, Connecticut.
2. Chantha Khen is a driver for the Americab taxicab company in addition to a part-time employee working with mentally challenged and disabled/elderly people. He will also drive for the applicant company.
3. Warmouth drives for the Americab taxicab company, in addition to another job she holds. Warmouth will also drive for the applicant company.
4. The applicant company is managed by Debra Small, who also manages and drives for Americab.

5. David Small/Leann Warmouth d/b/a Americab filed an application for additional taxicab vehicles at the same time the instant application was filed. The application for additional taxicabs was denied.
6. The applicant wants to be able to assist the taxicab company by getting livery authority.
7. The applicant seeks to transport passengers to Massachusetts with the livery service, because presently Americab cannot pick up passengers out of state and bring them into Connecticut.
8. Americab's financial information was presented to satisfy the financial suitability aspect of the livery application.
9. Although the applicant represented that it receives many calls for livery service through the Americab telephone line, no substantive evidence was introduced to prove that the calls received on the taxicab line were for livery service.
10. The calls to Americab for livery service are directed to the telephone book to look for livery services and the record is silent as to whether the referred people were accommodated.
11. Debra Small, the manager of the applicant, will take calls and dispatch from 4 Coslin Road in Enfield.
12. Warmouth wants to offer the livery service to her taxicab clients because the taxicab business is unable to service all of its clients.
13. Warmouth wants to offer livery service to her clients so that she can bring them back from over the state line because she cannot do so with her taxicab.
14. Warmouth is unaware of the type of license that she holds that enables her to drive a taxicab or livery vehicle.
15. Chantha Khen, the other owner of the company provided livery service with passenger plated vehicles to a dialysis appointment for an elderly woman on two occasions. The client, who used to use Allied Rehabilitation Centers transportation, became a client of Americab. The witness in question did not attend the hearing.
16. Insurance is estimated at \$4,500 per vehicle for the statutory coverage.
17. The owners of the company have little or no personal knowledge about the tariff and the financial aspect of the business being proposed.

18. The applicant does not have a telephone in the name of the company at the headquarters address.

19. The owners of the company have little or no personal knowledge about the business decisions because those decisions are left up to the manager.

III. DISCUSSION

The department has jurisdiction over each person, association, limited liability company or corporation owning or operating a motor vehicle in livery service, pursuant to General Statutes Section 13b-102, as amended.

In determining whether a livery permit should be granted, the department shall take into consideration the present or future public convenience and necessity. The applicant must prove that the public's convenience and necessity will be improved by the proposed service. Additionally, the applicant must show the suitability of the applicant or the suitability of the management if the applicant is a limited liability company or corporation, the financial responsibility of the applicant, the ability of the applicant efficiently and properly to perform the service for which authority is requested and the fitness, willingness and ability of the applicant to conform to the provisions of the statutes and the requirements and regulations of the department thereunder, in accordance with General Statutes Section 13b-103.

With regard to financial wherewithal, Warmouth owns a home in which she has equity of approximately \$19,900. Warmouth, however is a partner in a taxicab business, therefore only half of her equity will be considered for this application – providing an amount of \$9,950 in equity toward the proposed livery service. Khen has personal assets in the amount of \$1,000 and an IRA in the amount of \$28,809. He is attributed half of a savings and checking account which are held jointly, for a total of approximately \$5,282. The record is silent as to liquid funds owned by Warmouth.

The applicant provided evidence of its estimated insurance premium, which would cost approximately \$4,500 per vehicle per year. Its estimated costs for a six month period per vehicle would include insurance at \$2,250, repairs and maintenance of \$4,200, marketing and telephone \$600 and start up costs at \$500, fuel at \$9,360 and property taxes at \$240 for a total of \$17,150. Two vehicles would cost approximately \$34,976. Based on the financial evidence and based on the liquid assets available to the applicant, the applicant is financially suitable to operate two motor vehicles in livery service.

On the issue of public convenience and necessity, the applicant introduced into evidence two letters of support, which are given no weight as the signatories were not present to confirm their statements and were not subject to cross-examination. See Norwalk Yellow Cab, Inc. v. Department of Transportation, et. al., CV 93-0704676 – Memorandum of Decision, Judicial District of Hartford/New Britain (1994.) The one witness that appeared, however, was unable to speak and understand English, and the

applicant did not arrange for a certified interpreter, therefore the witness was not allowed to testify.

As to the livery business, there was no evidence supporting public convenience and necessity. The only evidence entered into the record of any public convenience and necessity or its improvement was the testimony of Warmouth, her family and co-owner Khen's that Americab gets lots of calls for livery. Such testimony by the applicant is self-serving and was not supported by any independent evidence. There was no evidence introduced into the record that corroborated the applicant's representations, other than support letters which carry no weight.

One of the requirements that the applicant has to prove is that it is suitable to operate the proposed service. There were several statements made by the owners of the business that raise concerns as to the suitability of the owners to operate the proposed service. Both Khen and Warmouth made statements that showed that they were unfamiliar with the basic requirements of the regulations and statutes that govern livery service. Khen's testimony that the business would maintain a headquarters in East Windsor, but that the manager of the business would operate the business and dispatch from the Enfield "office" of the taxicab company Americab raises concern because it is not in compliance with the livery headquarters requirement of Regulations of Connecticut State Agencies Section 16-325-1.

Warmouth's testimony was that the applicant applied for livery service to enable them to bring back customers that Americab would take over state lines and that the proposed business "would assist" with the taxicab business also. In its totality, Warmouth's testimony led the undersigned to believe that the livery company is being sought to complement the taxicab business.

In addition to the above, while it is understandable, and acceptable, that a company would have a manager to "manage" the business, Warmouth and Khen had very little *basic* knowledge about the proposed business, its plans, its operation and the requirements that the business must meet to be in compliance with the statutes and regulations that governs it. The applicant's lack of understanding of the basic operations, such as a headquarters requirement, supports a conclusion that the applicant is not suitable to operate the service proposed.

Moreover, Khen's testimony and his testimony at a taxicab hearing, of which administrative notice was taken, showed that Khen provided livery service -- "a ride" -- on two occasions to a person who was from a nursing home or home for the elderly. Khen testified that he provided the rides as a favor to the woman. He used two different passenger plated vehicles for the ride and miraculously, the client, who was once a client of Allied, now uses Americab. This begs the question of whether the service was provided as an incentive to the client. The evidence is inconclusive regarding these incidents, however it casts doubt on the applicant's veracity.

IV. CONCLUSION OF LAW

The evidence of record supports a conclusion that the proposed business will not improve the public's convenience and necessity and that the applicant does not possess the suitability to operate the proposed service as required by Section 13b-103 of the Connecticut General Statutes, although the applicant meets the financial suitability requirement. Because the applicant failed to meet its burden on all requirements, the application fails.

V. ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, the application of Leann Warmouth, Chantha M. Khen d/b/a C & L Transportation is hereby denied.

Dated at Newington, Connecticut, this the 12th day of October 2010.

CONNECTICUT DEPARTMENT OF TRANSPORTATION



Laila A. Mandour
Staff Attorney III
Administrative Law Unit
Bureau of Finance and Administration