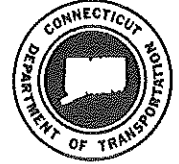


STATE OF CONNECTICUT
DEPARTMENT OF TRANSPORTATION



2800 BERLIN TURNPIKE, P.O. BOX 317546
NEWINGTON, CONNECTICUT 06131-7546

Phone:

(860) 594-2875

DOCKET NO. 1102-EXP-11-T

RE: APPLICATION OF A/USA LATIN TAXI, LLC (SUBSEQUENTLY RE-ENTITLED, AND HEREINAFTER REFERRED TO AS ADA'S TAXI, LLC) TO OPERATE ONE (1) ADDITIONAL MOTOR VEHICLE, IN TAXICAB SERVICE, WITHIN AND TO AND FROM CHESHIRE, HAMDEN, NEW HAVEN, AND WEST HAVEN TO ALL POINTS IN CONNECTICUT.

FINAL DECISION

October 8, 2014

I. INTRODUCTION

A. Application

On February 24, 2011, A/USA Latin Taxi, LLC (subsequently known as Ada's Taxi, LLC), through one of its owners, Julio Acevedo, filed with the Department of Transportation (hereinafter "department") an application for one additional motor vehicle in taxicab service without hearing (through expedited process) in accordance with Connecticut General Statutes §13b-97(a) and Regulations of Connecticut State Agencies §13b-96-8.¹ The additional vehicle was requested for the territory of Cheshire, Hamden, New Haven, and West Haven.

A/USA Latin Taxi, LLC was re-entitled Ada's Taxi, LLC on January 25, 2012, and the applicant will hereinafter be referred to by its re-entitled name.

B. Hearing

Pursuant to Connecticut General Statutes §13b-97(a), as amended, a public hearing on this application was held at the administrative offices of the Department in Newington, Connecticut, on August 8, 2013, January 9 and 23, and February 6, 2014.

Notice of the application and of the hearing to be held thereon was given to the applicant and to such other parties as required by §13b-97(a) of the General Statutes, as amended. Notice to the public was given by publication on the department website at www.ct.gov/dot.

A hearing officer was designated by the Commissioner of Transportation to conduct the hearing on this matter, pursuant to General Statutes §13b-17.

C. Appearances

Ada's Taxi, LLC appeared on August 8, 2013 through its owner Ada Sanchez and was represented by W. Martyn Philpot, Jr., Esq. Thereafter, Edward L. Marcus, Esq. and Mark L. Bergamo, Esq., of the Marcus Law Firm, entered an appearance for the

¹ Connecticut General Statutes §13b-97(a) provides in pertinent part: "...[N]otwithstanding any provisions of this subsection to the contrary, the department may, upon receipt of a written application, amend an existing certificate without holding a hearing on the application, provided the department issues a legal notice of such application in a daily newspaper in accordance with the provisions of § 1-2, gives written notice of the pendency of such application to any common carrier operating within the territory specified and no objection is filed with the department within thirty days of each such notice."

Regs., Conn. State Agencies §13b-17-121a provides: "The agency shall maintain a calendar of all hearings. Hearings shall be placed on the hearing calendar in the order in which they are docketed, unless otherwise directed by the commissioner. Hearings shall be placed on docket only when the application has been deemed complete by the commissioner."

applicant in lieu of Martyn Philpot, Jr. The Marcus Law Firm's mailing address is 275 Branford Road, North Branford, Connecticut 06471.

Transportation General, Inc. d/b/a Metro Taxi (hereinafter "Metro Taxi") filed for, and was granted, intervenor status in this matter. Metro Taxi is holder of taxicab Certificate No. 86 and is authorized to operate taxicabs within and to and from Hamden, New Haven and West Haven. Metro Taxi has a mailing address of P.O. Box 26094, West Haven, Connecticut 06516. Metro Taxi appeared through its owner William Scalzi, and was represented by Jeffrey A. Zyjeski, Esq. of the Law Offices of Jay F. Malcynsky, P.C. whose address is One Liberty Square, New Britain, Connecticut 06051.

D. Administrative Notice

This hearing officer took administrative notice of the following:

1. Application of Glory Taxi, LLC d.b.a. Glory Taxi to Operate Three (3) Motor Vehicles in Taxicab Service Within and to and From East Haven, Hamden, New Haven, North Haven and West Haven to All points in Connecticut, Department of Transportation Final Decision, Docket No. 1101-N-01-T (May 1, 2013.)

II. BACKGROUND

When this case was received for hearing in June 2011, it came with many problems, some of which included:

1. The wrong territory of West Haven, in which the applicant is not authorized to operate;
2. The application was completed by one of the staff of the Regulatory and Compliance Unit. The staff member filled out the application incorrectly.
3. The application was sent to the Administrative Law Unit by the Regulatory and Compliance Unit for hearing based on opposition. The file was retrieved by the Regulatory and Compliance Unit and was approved for a grant of authority without hearing by the manager of said unit. There was no activity on the instant application from June 2011, when the file was in line for hearing until February 5, 2013, when the manager of the Regulatory and Compliance Unit issued a grant for one (1) additional taxicab to the applicant.

These problems made it difficult to determine how many taxicabs were actually authorized, how many taxicabs were actually registered, and in what towns the applicant was actually authorized to operate. The applicant's owners believed that the instant hearing was for a third taxicab, when in reality, it is a hearing to make permanent the expedited additional vehicle issued on February 5, 2013, if the facts so support.

On the first day of hearing, based on the inconsistencies and discrepancies in the information presented, a cease and desist order was issued for the expedited vehicle that was granted to the applicant until such time as the facts were determined.

III. FINDINGS OF FACT

1. On January 8, 2010 as a result of the partial sale and transfer from Easy One Taxi, LLC, holder of taxicab Certificate No. 1159, Taxicab Certificate No. 1215, for the operation of one (1) taxicab within and to and from Cheshire, Hamden and New Haven, was issued to A/USA Latin Taxi, Inc. See Docket No. 0100-PS-77-T, Department of Transportation Final Decision (January 8, 2010.)
2. The sale and transfer of the applicant's original authority did not include the city of West Haven because Easy One Taxi, LLC never held authority to operate in the city of West Haven.
3. On February 24, 2011 A/USA Latin Taxi, LLC filed an application, given Docket No. 1102-EXP-11-T, for one (1) additional taxicab without hearing (through the expedited process), in the towns of Cheshire, Hamden and West Haven. (The application added West Haven and omitted New Haven.)
4. Regulatory and Compliance Unit manager and staff accept and approve applications for expedited taxicabs as a function of their unit.
5. The applicant's original authority includes the territory of New Haven but does not include West Haven.
6. Ada's Taxi, LLC operated in West Haven in reliance of the carrier report. (The evidence shows that the carrier report included West Haven in the applicant's authorized service area, but the record is silent as to how, why and by whom the city of West Haven was added to the applicant's carrier report.)
7. Carrier reports are internal documents, generated by the Regulatory and Compliance Unit for each taxicab company, that track the transactions that occur for each company.

8. Carrier reports can be incorrect and unreliable in that not each and every transaction is noted on the carrier report.
9. The Regulatory and Compliance Unit staff expects that certificate holders will rely on the carrier reports they receive from the Unit, even though the carrier reports may not be up to date.
10. On April 10, 2011, pursuant to Section 13b-97 of the Connecticut General Statutes a notice of the application for one additional taxicab without hearing was published in the New Haven Register, a newspaper having circulation in the area of concern.
11. On May 2, 2011, Transportation General, Inc. d/b/a Metro Taxi filed with the Regulatory and Compliance Unit a letter in opposition to the expedited grant of authority requested by the applicant.
12. On June 13, 2011, Ken Gambardella, the supervisor of the Regulatory and Compliance Unit at that time, sent the application and hearing file to the Administrative Law Unit for hearing based upon the opposition filed by Transportation General, Inc. d/b/a Metro Taxi.
13. On June 14, 2011, Administrative Law Unit sent a letter to applicant advising that its application was placed in queue for hearing because there were several cases for the same territory scheduled to be heard before the applicant's case.
14. There was no action taken on the application between June 14, 2011 and February 5, 2013.
15. On February 5, 2013, the manager of the Regulatory and Compliance Unit, rendered a final decision in this case (Docket No. 1102-EXP-11-T) granting to the applicant, Ada's Taxi, LLC, one (1) additional taxicab, without hearing, in the territories of Cheshire, Hamden, New Haven, and West Haven.
16. On February 13, 2013, the applicant registered one (1) vehicle pursuant to the final decision issued in Docket No. 1102-EXP-11-T.
17. On April 26, 2013, Regulatory and Compliance manager Dennis King noted on the last page of his February 5, 2013 final decision "*Final Decision Rendered erroneously – Metro opposes- See May 2, 2011 LTR- Goes To Hearing! 4-26-13*" and the application and hearing file was, again, received by the Administrative Law Unit between the dates of April 26, 2013 and May 2, 2013.

18. The application was docketed for the instant hearing, which commenced on August 8, 2013.
19. Celeste Martinez, license and applications analyst with the Regulatory and Compliance Unit, completed in her handwriting the application for an additional taxicab without hearing for A/USA Latin Taxi, LLC (subsequently re-entitled as Ada's Taxi, LLC).
20. Martinez completed the application incorrectly by requesting taxicab authority for a territory (West Haven) for which the applicant does not hold authority.
21. Martinez did not check the applicant's existing certificate when completing the application for Ada's Taxi, LLC.
22. After the expedited authority was granted on February 5, 2013, the applicant registered a vehicle on February 13, 2013 and was issued marker plate number T5505T.
23. The applicant had one vehicle in taxicab service until February 13, 2013 (when its second taxicab was registered.) The applicant's first vehicle was registered with marker plate T5168T. The car bearing said marker plate was stolen and that registration was cancelled. In its place, marker plate number T5483T was issued to the applicant.
24. On February 13, 2013, the applicant registered a second taxicab pursuant to the February 5, 2013 final decision issued by Dennis King granting authority for one (1) additional taxicab in the towns of Cheshire, Hamden, New Haven, and West Haven. The applicant was issued marker plate T5505T for the expedited vehicle.
25. On August 8, 2013 a cease and desist order was issued to the applicant by the undersigned for the taxicab registered pursuant to the February 5, 2013 final decision.
26. The marker plate T5505T was returned to the Department of Motor Vehicles on August 9, 2013 pursuant to the cease and desist order.
27. The applicant's second vehicle was in operation for almost six months prior to hearing.

28. The applicant's trip records for the months of February, March and May 2013 show that since the expedited grant of authority, each of the two vehicles in the applicant's fleet each provided approximately twelve to fourteen trips in an average 8 to 10-hour day.
29. Some of the applicant's trip sheets are incomplete because they are missing odometer start and end readings, start and end dates and times, and they list incorrect marker plate numbers (some marker plate numbers listed are not those registered to the applicant) thus these specific trip sheets were not considered.
30. The owners of the applicant company are Hispanic.
31. Several witnesses support the applicant's taxicab service, use the service and would like to continue using the service primarily because the owners are Hispanic.
32. Many witnesses who appeared at the hearing use the applicant's service, sometimes Ada's takes longer than other times; other companies may or may not show up to provide these people transportation. Many of the witnesses have come to rely upon the applicant for transportation.
33. Transportation General, Inc. d/b/a Metro Taxi holds taxicab Certificate No. 86 and is authorized to operate taxicabs in Hamden, New Haven, and West Haven.
34. Metro Taxi has 24 drivers who speak Spanish.
35. Members of the public in Cheshire, Hamden and New Haven relied on the applicant's two taxicabs when they were both in service.
36. The bank statements entered into evidence are not in the name of the applicant, but rather in the name of the managers of the applicant.
37. The applicant's total assets are estimated at \$42,904, with \$32,764 of this amount as cash in the bank. The cash in the bank is held in the individual names of the managers of the applicant and thus cannot be attributed to the applicant, making the applicant's total assets approximately \$10,000.
38. As of August 2013, the applicant's liabilities are estimated at \$19,000 with stockholders equity of \$23,904.

39. Eight months ended August 31, 2013, the applicant's gross profits were \$60,898; its operating expenses were \$44,069; its projected operating expenses for two vehicles for a six month period was \$44,000 and its net/operating income was \$16,828.

IV. DISCUSSION

The Department of Transportation has jurisdiction over common carriers, which includes each person, association, limited liability company or corporation owning or operating a taxicab in the State of Connecticut in accordance with Connecticut General Statutes §13b-96, as amended. The department is authorized to prescribe regulations with respect to fares, service, operation and equipment, as it deems necessary for the convenience, protection and safety of the passengers and the public.

Pursuant to section 13b-97(a), as amended, any person who applies for authority to operate a taxicab shall obtain from the department a certificate of public convenience and necessity certifying that the public's convenience and necessity requires the operation of a taxicab or taxicabs for the transportation of passengers. No certificate shall be issued unless the department finds that the person is suitable to operate a taxicab service. In so doing the department must take into consideration any convictions of the applicant under federal, state or local laws relative to safety, motor vehicle or criminal violations, the number of taxicabs to be operated under the certificate, the adequacy of the applicant's financial resources to operate the service, the adequacy of insurance coverage and safety equipment and the availability of qualified operators.

Connecticut General Statutes §13b-97 continues with "Notwithstanding the above, the department may, upon receipt of a written application, amend an existing certificate to increase the number of taxicabs which may be operated pursuant to the certificate without holding a hearing on the application, provided legal notice of such application is issued in a daily newspaper in accordance with the provisions of section 1-2, gives written notice of the pendency of such application to any common carrier operating within the territory specified and no objection is filed with the department within thirty days of such notice."

The facts show that on February 5, 2013 the applicant purchased authority for one taxicab within and to and from Cheshire, Hamden and New Haven. After approximately a year in operation with one vehicle, the applicant applied for another taxicab through the expedited application process.

A review of the department records revealed that the applicant purchased its authority from Easy One Taxi, LLC. As a result, the applicant operated only one taxicab until the time that it received authorization for an additional taxicab on February 5, 2013. The record is also clear the applicant does not hold authority to operate in the city of West Haven; and that the Regulatory and Compliance Unit approved and issued such authority, in error.²

With regard to public convenience and necessity, looking at the fully completed trip sheets and taking into consideration the witness testimony, there is substantial evidence that shows the general public had come to rely on the additional taxicab and the public convenience and necessity requires the grant of authority. The applicant established a clientele for the second vehicle, even though it should not have been issued without hearing. Prior to the cease and desist order, the applicant had been providing approximately 12 to 15 trips per an 8 to 10-hour shift with the additional vehicle according to the fully completed trip sheets used in the analysis. (The trips to West Haven and incomplete trip sheets were not used in this hearing officer's analysis.) Members of the public relied on this taxicab that was placed in service. It would be a disservice and an inconvenience to the general public to deny the permanent grant of this second vehicle.

Several witnesses testified at the hearing that they use the applicant's services and the applicant provides good service. The trip records show that the applicant's vehicles were in operation four months prior to hearing.

Several of the witnesses' primary language is Spanish and the applicant is Hispanic and has represented that the applicant's drivers will be Spanish-speaking. The applicant argued in support of public convenience and necessity that the Spanish population has increased significantly in New Haven and continues to be on the rise. The applicant argued that all of its drivers speak Spanish. The applicant also argued that there is a need for its additional taxicab to service the Spanish speaking population in the area of concern. However, Connecticut General Statutes § 13b-97 does not contain language "that would suggest that whenever a proposed service would be of benefit to a particular segment of the community, then the DOT is obligated to issue a certificate." See USA Taxi of Norwalk, Inc. v. State of Connecticut Department of Transportation et al, Judicial District of New Britain at New Britain (Superior Court, March 13, 2014). Moreover, there was testimony on the record showing that the intervenor has Spanish speaking drivers.

Public convenience and necessity means "the benefits to be derived from the

² The discrepancies in the evidence presented at the hearing included the possibility that there was a third vehicle for which the applicant was applying. However, the records show that the applicant had only two vehicles in operation at any given time and that the second vehicle, issued without hearing, was erroneously issued and was in operation until the issuance of the cease and desist order.

operation [of the motor vehicle] will not be limited to a few persons in a particular locality. It means benefit to the public generally, and, in the determination of public convenience and necessity, the effect of the commissioner's action upon the whole public instead of a small part of it must be considered." Rudy's Limousine Service, Inc. v. Department of Transportation et al. 78 Conn. App. 80, 97 (2003).

As to the applicant's suitability to operate an additional taxicab, the applicant's management has no criminal conviction history within the past 20 years. The intervenor brought to light that some of the applicant's trip sheets showed trips that were out of the applicant's territory. With regard to West Haven, even though the applicant's management should have known that its original authority did not include West Haven, it was in possession of a final decision from the department that included the West Haven territory and it relied upon said information.

The record shows that the territory of West Haven was included in the applicant's territory prior to February 5, 2013; this territory was added by Regulatory and Compliance staff as early as December 16, 2012, as shown by Applicant's Exhibit No. 10, a carrier report which includes said territory, and supported by Celeste Martires. Regardless, operating within and to and from West Haven will not be held against the applicant's suitability as the applicant does not appear culpable of wrong-doing. This incongruity is the work of the Regulatory and Compliance Unit staff errors.

While the applicant also introduced into evidence several final decisions relative to citations against taxicab operators in the territory of concern, this evidence carries little weight. It is irrelevant for the most part that other operator may have violated the statutes and regulations governing taxicab industry as related to this case. It is the burden of the applicant to show *its* suitability, and deflecting attention from its own problems to other operators does not make the applicant any more suitable.

In support of financial wherewithal, the applicant provided the requisite balance sheet. A statement for the bank account was provided to show a bank balance in the collective amount of approximately \$18,251. The statement is in the name of the taxicab company's managers, not in the name of the company and therefore cannot be attributed to the company. The applicant must provide proof of monies in the name of the applicant prior to registering the additional vehicle if a grant of authority is approved.

Eight months ended 2013, the applicant's gross profits was estimated at \$60,898; its operating expenses were \$44,069; its projected operating expenses for two vehicles for a six month period was \$44,000 and its net/operating income was \$16,828. The applicant currently operates a taxicab service. The expenses of an additional vehicle will not negatively impact the applicant. If the applicant can show its cash on hand, it will be financially suitable to operate the proposed service.

V. CONCLUSIONS OF LAW

Based on the foregoing, the applicant is suitable to operate the proposed additional vehicle in taxicab service. The applicant possesses the financial wherewithal to operate the proposed service and the public's convenience and necessity requires an additional taxicab, in accordance with Connecticut General Statutes §13b-97.

The applicant is reminded that it is not, and has never been, authorized to provide service in West Haven. Accordingly, West Haven will not be included into its certificate. If at some point in the future the applicant wishes to operate within and to and from West Haven, it must apply for the territory. Moreover, the applicant is put on notice, however, that the trip sheets must be completed in their entirety. Failure to keep the trip sheets accurately in the future could result in a citation.

VI. ORDER

Therefore, based upon the foregoing and pursuant to Connecticut General Statutes §13b-97, as amended, the application is approved and issued as follows:

TAXICAB CERTIFICATE NO.1215 FOR THE OPERATION OF MOTOR VEHICLES IN TAXICAB SERVICE

Ada's Taxi, LLC is hereby permitted and authorized to operate TWO (2) motor vehicles in taxicab service within and to and from Cheshire, Hamden, and New Haven to all points in Connecticut.

CONDITIONS:

Prior to registering the additional vehicle granted in this Final Decision and within thirty (30) days from the date of this Final Decision, the applicant must produce proof showing that it has established a bank account in its name, containing the cash on hand for operation of the company. Failure to provide this information may result in the revocation of the additional authority granted herein.

This final decision constitutes notice in accordance with Connecticut General Statutes §4-182.

RESTRICTIONS

The additional vehicle authorized herein must be registered within thirty (30) days from the date of this final decision.

This Certificate may not be sold or transferred until it has been operational, i.e., a

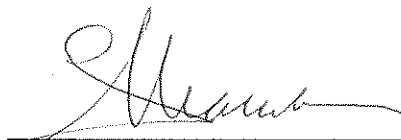
vehicle registered with a taxi plate thereunder, for not less than twenty-four (24) consecutive months. This Certificate is transferable only with the approval of the Department.

This Certificate shall remain in effect until it is amended, suspended or revoked by the Department. Failure of the Certificate Holder to maintain proper insurance and/or to comply with all pertinent motor vehicle laws and other State statutes and/or the rules, regulations and orders of the Department shall be considered sufficient cause to amend, suspend or revoke this Certificate.

This Certificate is transferable only with the approval of the Department and is issued subject to compliance by the holder hereof with all motor vehicle laws of the State of Connecticut, and with such rules, regulations and orders as this Department may from time to time prescribe.

Dated at Newington, Connecticut, on this 8th day of October 2014.

CONNECTICUT DEPARTMENT OF TRANSPORTATION



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