

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application) Application No. B-1538
of A Class Act Limousine Service,))
Omaha, Nebraska, seeking to) APPLICATION GRANTED AS
acquire, through transfer, the) MODIFIED; CERTIFICATE
authority granted to Veronica) B-1523 REVOKED
Fiore dba Affordable Limousine))
Service in Certificate B-1523.) ENTERED: November 21, 2000

BY THE COMMISSION:

On August 3, 2000, A Class Act Limousine Service ("Applicant") filed an application with this Commission seeking to acquire, through transfer, the authority granted to Veronica Fiore dba Affordable Limousine Service ("Affordable Limousine") in Certificate B-1523. On August 4, 2000, notice of the application was published in The Daily Record, Omaha, Nebraska, pursuant to the Rules of Commission Procedure. On August 23, 2000, a Protest to the Application was filed by Old Market Limousine Service and Accent Limousine Service ("Protestants") through their attorney, Marshall Becker. On October 10, 2000, a hearing was held in the Commission Library, 1200 N Street, Lincoln, Nebraska. Notice of the hearing was mailed to interested parties on September 20, 2000.

On August 15, 2000, a temporary authority was granted by this Commission to A Class Act Limousine Service and a temporary lease of equipment was approved which allowed the Applicant to operate under the authority granted to Affordable Limousine.

At the October 10, 2000, hearing, the Applicant was represented by Jack Schultz. The Protestants were represented by Marshall Becker and Michael Loeffler appeared for the Commission.

The first witness for the Applicant was Veronica Fiore, owner and operator of Affordable Limousine. She testified that her husband had been in the limousine business for between 18-20 years in California. She has operated the business for the last four months. She further testified that the business had been operated continuously since the granting of the authority under Certificate B-1523. Ms. Fiore testified that she and her husband had separated and that her husband had taken one of the limousines with him. Ms. Fiore further testified that as a result of his moving, she had entered a contract for the sale of the authority contingent upon the approval of the transfer of the authority by the Commission.

Ms. Fiore testified that her company advertises through flyers, newspapers, and calling card distribution. Her company also advertised in the Norfolk phone book and had intended to advertise in other phone books throughout their service territory.

B-1538

Page 2

Plans had also been developed for web site advertising, radio advertising, and other newspapers.

Ms. Fiore also stated that she did not believe that the granting of authority would hurt competitors or enlarge competition, and that the transfer of authority would be in the public interest.

On cross-examination, Ms. Fiore testified that her company had provided transportation services into Omaha and the metropolitan Omaha area on some occasions. On redirect, she further indicated that her authority was not restricted against the provision of transportation into Omaha and that she would have replied and offered service to any inquiries from the Omaha area.

Cindy Petersen, owner of A Class Act Limousine Service, also testified on behalf of the application. A Class Act Limousine Service is the applicant seeking to acquire authority. She operates the business in partnership with her sister, Diane Clark. Together they have been in the limousine business for over four years. The company owns one 14-passenger limousine and one 10-passenger limousine. These limousines were previously under lease to Star Limousine. Those leases, and all other connections with Star Limousine have been terminated. The vehicles operated by Star Limousine were operated in the Omaha area for the entire three-year period during which they were leased to Star Limousine.

Ms. Petersen further testified that she has already started extensive advertising in the Omaha area including radio, newspapers, and the telephone book. She further stated that, should the application for permanent authority be granted, she would offer her service throughout the Omaha area. Her company currently employs four drivers who are checked out by the insurance company and are trained before they are allowed to drive the vehicles.

Ms. Petersen also testified that the service she would be offering under this application, if granted, would be no different than the service she offers under the authority granted to Affordable Limousine and that the end result would be the same in terms of the number of vehicles operating and in terms of the territory served. Such a proposal, she testified, would not enlarge competition and should not hurt competitors. She presented evidence that indicated her financial condition was adequate for the operation of the vehicles and testified that she believes that she has the financial ability to offer the services described in the application. Her company has, in the past, accepted runs from Embassy Limousine and Luxor Limousine when these companies have had requests for service that exceed their resources.

Appearing in opposition to the application was Thomas Schreckenberger, owner of Accent Limousine for a little over six years. He testified that it was his belief that, at the time Affordable Limousine made their initial application with the Commission, they did not intend to come into the Omaha area and therefore did not file a protest to that application. He testified that his concern was with any limousine transportation that would originate or terminate in the counties of Douglas, Sarpy and Washington. His concern was that the authority, if granted, would add additional competition to the Omaha metropolitan area. He further testified that while he generally has good weekends, during the rest of the week he generally has cars available for customer use. He further stated that he did not object to the application insofar as it pertained to the use of a 14-passenger vehicle. He stated that his concern was not with the number of vehicles in the area but with the number of competitors.

Jody Jones, vice-president of Old Market Limousine Service, testified that she has been with that company since 1992. Old Market Limousine, located in Papillion, has the authority to transport passengers to all points in the state. She currently operates eighteen vehicles which are housed in two large garages. These vehicles range in size from six-passenger sedans to 10-passenger limousines. She also testified that she was mostly concerned with potential increase in competition for business in the Omaha area should the application be granted. Her records showed that there were times when some of her vehicles were idle, even on busy weekends.

On cross-examination, she testified that she did not protest the original application of Affordable Limousine nor did her company seek a restriction against the application. She stated on cross-examination that she gets calls from other limousine companies who do not have the capacity to handle the demand for service. She further testified that her company did not operate a 14-passenger limousine.

FINDINGS AND OPINIONS

Based on the evidence adduced, we find that the application for transfer of authority should be granted. The granting of a certificate of public convenience and necessity is governed by Neb. Rev. Stat. § 75-311 (Reissue 1996) which states,

A certificate shall be issued to any qualified applicant authorizing the whole or any part of the operations covered by the application of it is found after notice and hearing that (a) the applicant is fit, willing, and

B-1538

Page 4

able properly to perform the service proposed.. Neb.
Rev. Stat. §75-311(1) (Reissue 1996).

In other words, the Commission must determine if an applicant is "fit, willing, and able." We find that the applicant has met the fitness test of § 75-311. The Applicant has been in the limousine business for over three and one-half years and is partnered with another person that has broad experience in all aspects of running a limousine business. This experience is credible evidence of their managerial fitness. The applicant presented evidence of her financial capability to operate and maintain the business. Further, there is a developed plan for the promotion of the business. We find, therefore, that the Applicant is "fit, willing, and able" to provide the service applied for in this application.

The second test to be applied by the Commission is found in Neb. Rev. Stat. § 75-318 which governs transfers of authority. The provisions set by that statute requires us to examine if the proposed transfer of authority is consistent with the public interest and does not unduly restrict competition. Here, the transferor has already been operating a continuous and successful business and we find that it is in the public interest that the presence of this service continue. In order to ensure that the public interest will be met, we grant this transfer of authority on the condition that the transferee continue to maintain a presence in the Dakota City area. Therefore, we are requiring the applicant to maintain a yellow page listing in the appropriate telephone directory serving the Dakota City area.

Further, we find that the application is consistent with the public interest because the applicant stands in unique position to serve clients in the Siouxland (i.e., Dakota City) area as well as Omaha based on the scope of the geographic authority granted. None of the parties protesting the application operates a 14-passenger vehicle. It is significant to note that none of the Protestants protested the original grant of authority that included points within a 250-mile radius of Dakota City even though that grant includes the Omaha metropolitan area which is geographic area of service primarily opposed by Protestants. The Protestants plainly state that they do not object to the authority if it were limited to the Siouxland area.

It must be further noted that this transfer does not mean that there will be additional vehicles transporting in the geographic area of the Protestants because the present authority already operates in the area. Because the transferor has authority in the Omaha area and has provided transportation in and to the Omaha

B-1538

Page 5

area, we find that the transfer of authority does not represent a new or different operation. As such, we find that the transfer of authority does not unduly restrict competition and should be granted pursuant to the conditions set forth in Neb. Rev. Stat. § 75-318(3).

Based on the evidence adduced, and in conjunction with all of the other evidence heard in the instant application, we find that this grant of transfer of authority does not represent any impairment of the operations of existing carriers and that there was no demonstration that the grant of this transfer of authority was not in the public interest. Accordingly, we find that the application should be granted.

AUTHORITY GRANTED

We find that the acquisition of the authority granted to Veronica Fiore dba Affordable Limousine Service, in Certificate B-1523, by the Applicant should be granted.

SERVICE AND TERRITORY AUTHORIZED:

Operation as a common carrier in Nebraska intrastate commerce in the transportation of passengers by luxury limousine between points within a 250-mile radius of Dakota City over irregular routes. RESTRICTIONS: 1) The transportation of railroad train crews and their baggage is not authorized; and, 2) The certificate holder shall maintain a listing of its services in the yellow pages of the telephone directory serving Dakota City.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application B-1538 be, and is hereby, granted as modified and that, upon compliance with the terms and conditions as set forth in this Order, a Certificate of Public Convenience and Necessity shall be issued to A Class Act Limousine Service, Omaha, Nebraska, authorizing the operations as set forth in the foregoing findings.

IT IS FURTHER ORDERED that the applicant shall not be issued the Certificate of Public Convenience and Necessity authorized by the Commission unless and until applicant has fully complied, within a reasonable time from the effective date of this Order, with Neb. Rev. Stat. §75-305 (fees), 75-307 (insurance), and 75-308 (rates), and with the rules and regulations of the Commission; and if upon expiration of such time applicant has not complied with

B-1538

Page 6

such terms and conditions, this Order shall, after reasonable notice to applicant, be of no further force and effect.

IT IS FURTHER ORDERED that applicant shall not conduct operations until a Certificate of Public Convenience and Necessity is issued.



IT IS FURTHER ORDERED that applicant shall render reasonably continuous and adequate service to the public pursuant to the authority authorized.

IT IS FURTHER ORDERED that the Certificate of Public Convenience and Necessity authorized shall be subject to the terms, conditions, and limitations which have been, or may hereafter be, prescribed by the Commission.


IT IS FINALLY ORDERED that the authority granted under Certificate B-1523 which is transferred under this order should be, and is hereby, revoked.

MADE AND ENTERED in Lincoln, Nebraska on this 21st day of November, 2000.

COMMISSIONERS CONCURRING:

NEBRASKA PUBLIC SERVICE COMMISSION


Chairman

ATTEST:



Executive Director