

# SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

## BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application ) APPLICATION NO. B-1690  
of SDG Transportation, Inc., )  
Omaha, Nebraska, seeking )  
acquire, through transfer, the )  
certificate held by A & R ) DENIED  
Klassic Cars Limousine Service, )  
L.L.C., in Certificate B-1599. )  
ENTERED: FEBRUARY 27, 2007

### APPEARANCES:

For the Commission Staff:

Mark Breiner  
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P.O. Box 94927  
Lincoln, NE 68509

BY THE COMMISSION:

### B A C K G R O U N D

By application filed November 30, 2005, SDG Transportation, Inc., Omaha, Nebraska seeks to acquire through transfer the held by A & R Klassic Kars Limousine Service, L.L.C., Omaha, Nebraska, in Certificate No. B-1599. Notice of the application was published in The Daily Record, Omaha, Nebraska, on April 11, 2006. Timely protests to the application were filed by VIP Limousine, LLC, Omaha, A-1 Transportation, LLC of Omaha, A-1 Limousine, LLC of Omaha, and A Class Act Limousine Service, Inc., Omaha,

The Applicant filed an action against Karla Archer and A & R Klassic Kars (transferor) in the District Court of Douglas County, Nebraska, and a temporary restraining order enjoining the transferor from taking any future action to transfer the certificate was ordered on July 7, 2006. On September 27, 2006, the Commission was notified by the transferor that its objection to this transfer was withdrawn and this application was subsequently processed.

In November of 2006, this application and the application in B-1685 were scheduled to be heard on January 18, 2007. A Motion to Continue was filed by the applicant, which was granted and the matters were rescheduled to February 7, 2007. A second

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motion to continue these matters was filed by the applicant on February 5, 2007. That motion was denied.

A hearing on the application was held on February 7, 2007, with appearances listed above. Notice of the hearing was sent to all interested parties on January 21, 2007.

## P R E L I M I N A R Y M A T T E R S

At the hearing in this matter, several exhibits were filed by the protestants. At the time of the hearing, rulings on admissibility were reserved. This Order hereby makes the following rulings on the offered exhibits: Exhibits 5, 6, 10, 11, 12, 13, 14, 15 and 16 are received into evidence, and exhibits 7, 8, 9 and 17 are not received. Exhibits 1, 2, 3, and 4 were offered and received at the hearing.

## E V I D E N C E

### **APPLICANT'S EVIDENCE**

The witness called by the applicant was Joseph A. Higgins, president of SDG Transportation, Inc. He stated that he had requested a continuance of the hearing on the grounds that he had lack of notice of the hearing, is ill and under treatment and has not had time to adequately prepare for this hearing nor hire legal counsel. Mr. Higgins then proceeded to offer evidence.

Mr. Higgins testified that he had entered into a contract with Karla Archer for the sale and transfer of A & R Klassic cars to his company. He procured insurance in December for the transaction, but an issue arose regarding temporary authority which caused Ms. Archer to object to the transfer. Mr. Higgins did apply for and receive a temporary restraining order that prevented Ms. Archer from transferring the certificate. That suit was subsequently settled.

Mr. Higgins stated that he filed an amended application that listed another person as the ninety percent owner of SDG Transportation, but that he would remain on as president. He stated that he would play a role in management as well as conduct office duties for the company.

SDG Transportation has operated in an interstate manner for a period of time, and did so without proper federal Department of Transportation registrations before he became aware of such requirements and applied for and received the required numbers.

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On cross-examination by commission counsel, Mr. Higgins stated that he has two residences, one in Omaha which is his place of residence and a second in Carson, Iowa. He testified that he has lived at the Omaha address for five years, but has never applied for a Nebraska drivers license as required by state law.

Mr. Higgins admitted under questioning by Commission counsel that his drivers license in Iowa was suspended in January until April of 2007 for being an habitual offender with too many traffic violations. He also did not deny an allegation of Driving While Intoxicated and a Driving with a Suspended License charges in 1997.

On cross-examination by Commissioner Boyle, Mr. Higgins stated that he had four employees working for the company. He also stated in response to an inquiry from Commissioner Boyle that he had not done background checks on these employees despite his admission that such checks were important.

## **Protestant's Evidence**

The first protestant called was Bill Alford. Mr. Alford is the owner of VIP Limousine and A-1 Transportation. Mr. Alford testified as to some problems that he had experienced with Mr. Higgins in the past. These problems included Mr. Higgins alleged removal of records belonging to Mr. Alford, that Mr. Higgins hid vehicles that he had damaged from the company that Mr. Alford was purchasing at the time of the incidents, and that he was making runs with customers of Mr. Alford's company and receiving payments in cash and not reporting the runs to the company.

Mr. Alford also submitted exhibits that showed Mr. Higgins contacts with law enforcement agencies as well as civil litigation as a defendant. He summarized his position as being against the transfer to Mr. Higgins due to a pattern of activity and behavior that he believes is not fit.

The next protestant called was Diane Clark. Ms. Clark is the owner of A Class Act Limousine in Omaha. Ms. Clark testified to a call that she felt was threatening from Mr. Higgins the day before the hearing as well as a letter from him stating that legal action would be taken against her if she continued with her protest in this matter. The other fact of interest is that Ms. Clark alleged that Mr. Higgins has been operating in Waterloo, Nebraska from a bar known as the Well and has been doing so for some time.

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The last protestant called was Jim Joneson. Mr. Joneson is the owner of Leisure Limousine and Sedan Service in Lincoln. His company is also involved in a transfer of B-1599 in Docket No. B-1685 and was affected by the temporary restraining order placed against Ms. Archer. Mr. Joneson offered evidence of a public records search that shows that Mr. Higgins is cited in these records as being a defendant in five criminal cases, eleven civil matters and six traffic violations.

## O P I N I O N   A N D   F I N D I N G S

In this matter, the Applicant is seeking to transfer of an authority. Transfers are governed by Neb. Rev. Stat. Sec. 75-318. It states that an application must be filed, notification to other carriers must be made, and the Commission must find after a hearing that the proposed transaction is consistent with the public interest and does not unduly restrict competition and that the applicant is fit, willing and able to properly perform the proposed service.

The evidence before the Commission shows that the applicant, through its president Mr. Higgins, did not show that it is fit, willing and able to perform the proposed service to be transferred. Mr. Higgins presented no evidence to the Commission regarding financial fitness. No evidence as to bank statements or a balance sheet detailing assets and liabilities of the applicant were presented.

The Commission also finds that Mr. Higgins record does not support a finding of fitness. He testified that he has lived in Nebraska for five years without complying with the statutory requirement that a Nebraska resident have a Nebraska license. His Iowa drivers license has been suspended as a habitual offender. He therefore does not have a valid license anywhere until April of 2007.

The record further shows that Mr. Higgins has extensive contacts with the legal system in both the criminal and civil arenas. Exhibit 11 shows that court records have Mr. Higgins as being a defendant in four civil suits, five criminal matters and six traffic offenses. This is not a record that allows the Commission to find Mr. Higgins as a fit person to be president of a certificate holder.

The Commission finds that this application should be denied on the basis of the lack of fitness of the Applicant in this matter.

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From the evidence adduced and being fully informed in the premises, the Commission is of the opinion and finds that the application for transfer to the applicant in this case should be denied.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application B-1690, be, and it is hereby, denied.

MADE AND ENTERED at Lincoln, Nebraska, this 27<sup>th</sup> day of February, 2007.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

*Gerald L. Ugg*

*Anne C. Boyle*

*Frank E. Landis*

//s// Rod Johnson

//s// Frank E. Landis

Chairman

*Rod Johnson*

ATTEST:

*And B. Pollock*

Executive Director