

STATE OF MICHIGAN  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

IN THE MATTER OF:

Michigan Department  
of Transportation,  
Petitioner

v

Entertainment Express, Inc.  
& Patrick Misfud  
d/b/a Entertainment Limousine,  
Respondent

Docket No.: 15-050944

Case No.: MDOT # 483 and 609

Agency: Michigan Department  
of Transportation

Case Type: DOT RED Highway

Filing Type: Appeal

RECEIVED

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Issued and entered  
this 5<sup>th</sup> day of November, 2015  
by:  
Shawn Downey  
Administrative Law Judge

OFFICE OF PASSENGER TRANSPORTATION  
REGULATORY UNIT

DECISION AND ORDER OF ADMINISTRATIVE LAW JUDGE

Procedural History

This matter arose following a September 8, 2015, request for a hearing by Petitioner, Michigan Department of Transportation. Petitioner sought a hearing concerning its proposed revocation of authority issued to Respondents pursuant to the Motor Bus Transportation Act, 432 P.A. 1982, being MCL 474.101 *et seq.* and the Limousine Transportation Act, 271 P.A. 1990, being MCL 257.1901 *et seq.*

Following receipt of the request for hearing, the Michigan Administrative Hearing System issued a Notice of Hearing, dated September 10, 2015, scheduling a formal administrative hearing for Thursday, October 22, 2015, commencing at 9:00 A.M.

On October 17, 2015, Respondent's wife forwarded correspondence by facsimile to the Michigan Administrative Hearing System. The correspondence reported that Respondent Patrick Misfud sought an adjournment of the scheduled hearing because he has experienced seizures and was undergoing medical tests to determine the cause. Respondent failed to provide a copy of the correspondence to counsel for the Petitioner. Respondent's correspondence was considered a Motion for Adjournment. On October 20, 2015, Respondent's Motion for Adjournment was denied. The Order of Denial was sent by facsimile to Petitioner's counsel and to Respondent at the facsimile number shown on Respondent's correspondence of October 20, 2015.

On October 21, 2015, Respondent commenced a campaign by telephone to the Michigan Administrative Hearing System staff insisting that he must be granted an adjournment and demanding to speak directly to the assigned Judge. Additional demands for an adjournment were received by facsimile which were denied.

On the morning of October 22, 2015, Respondent telephoned several times demanding to speak with the assigned judge's superior. On the morning of October 22, 2015, a facsimile was discovered as having been sent the evening of October 21, 2015, from Anthony A. Emmer, D.O., asserting that he was a physician who was caring for Patrick Mifsud under Emmer's neurologic care and reporting that Mr. Mifsud had experienced seizures and was receiving medication and exhibiting side effects and could not travel greater than thirty miles.

A hearing was conducted on October 22, 2015, and was held at the Michigan Administrative Hearing System, Ottawa Building, 611 W. Ottawa Street, Lansing, Michigan. The opening of the record on this matter was delayed more than 35 minutes because the Respondent failed to appear in person or by representation.

The record commenced at 9:36 A.M.

Appearances:

Petitioner, Michigan Department of Transportation was represented by Mary A. Waddell, Assistant Attorney General. Ms. Waddell called Rob Pearson, Manager of the Bus and Limousine Regulatory Division of the Michigan Department of Transportation.

Respondents, Entertainment Express, Inc. and Patrick Misfud, individually and doing business as Entertainment Limousine, did not appear in person or by representation.

Upon opening of the record, Petitioner moved that the hearing continue in the absence of Respondents, and further, that a default be entered against the Respondents for their failure to appear.

Both motions by Petitioner were granted.

Exhibits

Petitioner submitted the following items which were admitted to the record:

1. Copy of correspondence issued to Mr. Patrick Mifsud, Resident Agent, Entertainment Limo, dated: September 3, 2015, providing notice that the Michigan Department of Transportation intended to seek the revocation of all certificates of authority issued by the State of Michigan because of the willful violations incurred.

2. Copy of correspondence issued to Mr. Patrick Mifsud, Resident Agent, Entertainment Express, Inc., dated: September 3, 2015, providing notice that the Michigan Department of Transportation intended to seek the revocation of all certificates of authority issued by the State of Michigan because of the willful violations incurred.

3. Driver/Vehicle Examination Report(s), commencing January 21, 2015, through September 22, 2015, issued by the Michigan State Police to Respondents for various violations of the Motor Bus Transportation Act and/or the Limousine Transportation Act. Exhibit 3 consists of sixteen (16) pages, plus the Certification of Records, prepared by Jeanette West, Department Technician, Michigan State Police, dated: October 19, 2015.

Respondent did not submit items for admission to the record.

Upon admission of the above items, the record was closed for the submission of exhibits.

#### Issues and Applicable Law

The issue presented is whether the Certificates of Authority issued to the Respondents may be revoked by the Michigan Department of Transportation?

The following provisions of the Motor Bus Transportation Act, Act 432 of 1982, MCL 474.100 *et seq.*, apply to some vehicles owned or used by the Respondent:

#### **474.101 Short title.**

##### Sec. 1.

This act shall be known and may be cited as the "motor bus transportation act".

#### **474.105 Motor carrier of passengers; compliance with act; certificate of authority.**

##### Sec. 5.

A motor carrier of passengers shall not operate a motor bus for the transportation of persons for hire on a public highway in this state except in accordance with this act. A motor carrier of passengers shall not operate upon a public highway without first having obtained from the department a certificate of authority.

**474.109 Determination of eligibility for certificate of authority; consideration; acquisition of insurance; waiver; failure to satisfy subsections (1) and (2) or (3).**

Sec. 9.

(1) In determining the fitness, willingness, and ability of an applicant for a certificate of authority to provide transportation service, the department shall consider all of the following before issuing the original certificate of authority:

(a) The applicant's safety record.

(b) The character and condition of each motor bus and whether it may be operated safely upon the public highways based on an inspection conducted by the department under section 16.

(c) The applicant's financial ability to provide continuous insurance coverage as required by subsection (2) or (3) and to have adequate financial resources in order to pay for damage claims against the applicant.

(2) An applicant shall acquire the following liability insurance coverage for acts or omissions of the applicant as a motor carrier of passengers:

(a) Bodily injury and property damage liability insurance with a minimum combined single limit of \$5,000,000.00 for all persons injured or for property damage.

(b) Personal protection insurance and property protection insurance as required by chapter 31 of the insurance code of 1956, 1956 PA 218, MCL 500.3101 to 500.3119. A motor common carrier of passengers shall maintain the insurance described in this subsection as a condition of maintaining a certificate of authority issued under this act.

(3) The insurance requirements of subsection (2) are waived if the applicant qualifies for and obtains a certificate of self-insurance from the commissioner of the office of financial and insurance regulation under section 3101d of the insurance code of 1956, 1956 PA 218, MCL 500.3101d.

(4) An applicant that does not satisfy subsection (1) and either subsection (2) or subsection (3) shall not be issued a certificate of authority to provide transportation service under this act.

**474.116 Inspections.**

Sec. 16.

(1) Each motor carrier of passengers who holds a certificate of authority issued under this act shall permit the department to inspect each motor bus once annually, or more frequently if necessary to determine the current character and condition of the motor bus.

(2) Each motor bus operated by the motor carrier of passengers under its certificate of authority shall pass the safety inspection which meets the department's specifications for safe operating character and condition for the renewal of certificate.

(3) A motor bus that does not pass a required departmental inspection under this section shall not be operated over the public highways of this state.

(4) Instead of an inspection by the department under subsection (1), an applicant for a certificate of authority or a renewal of a certificate of authority may provide evidence of a current year motor bus inspection by a state, district, or province that has standards comparable to the federal motor carrier safety periodic inspection standards. The department shall issue a list of the states, districts, or provinces that have standards comparable to the federal standards promulgated under 49 C.F.R. part 396.

It is noteworthy that the State of Michigan has adopted Title 49 of the Code of Federal Regulations pertaining to the safety regulations. See immediately below.

**474.131 Code of federal regulations; adoption; exceptions.**

Sec. 31.

This state adopts the following provisions of title 49 of the code of federal regulations on file with the office of the

secretary of state except where modified by this act, to provide for the safe transportation of persons, with the intent of following the policies and procedures of the United States department of transportation as they relate to title 49 of the code of federal regulations and the North American standard inspection uniform driver/vehicle inspection out of service criteria and inspection procedures: Motor carrier safety regulations, being 49 CFR part 356, part 365, part 374, part 382, part 387, parts 390 through 393, and parts 395 through 397, including appendices B and G, except for the following:

(a) Where the terms "United States department of transportation", "federal highway administration", "federal highway administrator", "director", "bureau of motor carrier safety", "office of motor carrier safety", and "federal motor carrier safety administration" appear, they shall be construed to refer to the state transportation department.

(b) Where "interstate" appears, it means intrastate or interstate, or both, as applicable, except as otherwise specifically provided in this act.

(c) Where "special agent of the federal highway administration", "special agent of the office of motor carrier safety", "special agent of the federal motor carrier safety administration", or "administration personnel" appears, it shall be construed to mean a peace officer or an enforcement member or a commercial vehicle safety inspector of the state transportation department.

#### **474.132 Administration and enforcement of act.**

##### **Sec. 32.**

The department may use any and all available legal and equitable remedies of a civil nature to enforce this act, an order issued, or a rule promulgated pursuant to this act. The department may employ such experts, assistants, inspectors, and other personnel as may be necessary subject to civil service rules, to enable it to administer and enforce this act. An employee of the department shall not ask or receive any fee from a person for the taking of acknowledgments or any other service. State and local police officers shall enforce this act and the rules

promulgated pursuant to this act. A peace officer may arrest, on sight or upon warrant, any person found violating or having violated a provision of this act or a rule promulgated pursuant to this act. The attorney general of the state and the prosecuting attorneys of the counties of this state shall prosecute all violations of this act. When this act is violated, the offense may be prosecuted in any jurisdiction in or through which a motor bus implicated was present at the time of the violation.

**474.135 Alteration, suspension, or revocation of certificate of authority.**

Sec. 35.

The department may alter, suspend, or revoke a certificate of authority issued under this act if the department determines in a contested case hearing held pursuant to chapter 4 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, as amended, being sections 24.271 to 24.287 of the Michigan Compiled Laws, that a person to whom a certificate of authority has been issued has willfully violated or refused to comply with this act.

Any defects or deficiencies found during the inspection should be repaired to meet or exceed Original Equipment Manufacturer (OEM) Standards. If the carrier operates in interstate commerce, under the requirements of the United States Department of Transportation Federal Highway Administration, this inspection shall serve as the carrier's annual inspection requirement under CFR 396.17.

\* \* \*

If defects or deficiencies are found, the motor bus shall have failed the annual inspection requirement. **No bus shall be operated over the highways of this state unless the motor bus has passed an annual inspection within the previous 12 months.** After the repairs of all defects or deficiencies found, the carrier shall contact the department to arrange an inspection of the motor bus.

The following provisions of the **Limousine Transportation Act, Act 271 of 1990, MCL 257.1900 et seq.**, are applicable to some of the vehicles owned and or used by Respondent:

**257.1901 Short title.**

Sec. 1.

This act shall be known and may be cited as the "limousine transportation act".

\* \* \*

**257.1903 Definitions.**

Sec. 3.

As used in this act:

(a) "Certificate of authority" means a certificate of authority issued under the terms of this act unless the context indicates otherwise.

(b) "Department" means the state transportation department.

(c) "For hire" means the remuneration or reward of any kind, paid or promised, either directly or indirectly.

(d) "Lessor" means a person who leases a limousine to any other person for the transportation of passengers for hire over the public highways of this state.

(e) "Limousine" means a self-propelled motor vehicle used in the carrying of passengers and the baggage of the passengers for hire upon a public highway of this state with a seating capacity of 15 passengers or less, including the driver. Limousine does not include a self-propelled motor vehicle having a seating capacity of 15 passengers or less that is used by or on behalf of an employer to transport its employees to and from their place of employment.

\* \* \*

**257.1907 Operation of limo carrier of passengers on public highway; conditions; conditional effective date; definitions.**

Sec. 7.

(1) A limo carrier of passengers shall not operate a limousine for the transportation of persons for hire on a public highway

in this state except in accordance with this act. A limo carrier of passengers that operates class B limousines for the purpose of picking up passengers within a city with a population of 750,000 or more shall also comply with the vehicle for hire ordinance of that city with respect to those limousines. However, a limo carrier of passengers may remain in the city during a given trip for the sole purpose of picking up the same passengers that the limo carrier of passengers originally brought into the city on that trip. A limo carrier of passengers shall not operate upon a public highway without first having obtained from the department a certificate of authority. A certificate of authority may be obtained for operation of either class A limousines or class B limousines or both.

\* \* \*

**257.1911 Certificate of authority; qualifications; terms and conditions.**

**Sec. 11.**

The department shall issue without a hearing a certificate of authority to a limo carrier of passengers authorizing that carrier to provide transportation services subject to the jurisdiction of the department under this act, if the department finds pursuant to section 13(1) that the carrier is fit, willing, and able to provide the transportation service authorized by the certificate of authority and to comply with this act and if the applicant presents evidence of the acquisition of personal injury protection and property damage liability insurance as required by section 13(2). The department may attach to the exercise of the privilege granted by a certificate of authority terms or conditions as the department considers appropriate.

\* \* \*

**257.1919 Annual inspection.**

**Sec. 19.**

(1) Each limo carrier of passengers who holds a certificate of authority issued under this act shall have each limousine inspected annually by a mechanic certified under the motor

vehicle service and repair act at a motor vehicle repair facility registered under the motor vehicle service and repair act that is designated by the department as an inspection station.

(2) Each limousine operated by the limo carrier of passengers under its certificate of authority shall pass the safety inspection which meets the department's specifications for safe operating character and condition for the renewal of certificate.

(3) A limousine that does not pass a required inspection shall not be operated over the public highways of this state.  
**257.1913 Determination of fitness, willingness, and ability to provide transportation service; insurance coverage; failure to satisfy both subsections (1) and (2).**

Sec. 13.

(1) In determining the fitness, willingness, and ability of an applicant for a certificate of authority to provide transportation service, the department shall consider all of the following before the issuance of the original certificate of authority:

(a) The applicant's safety record.

(b) The character and condition of each limousine is such that it may be operated safely upon the public highways based on an inspection required pursuant to section 19 and conducted by a mechanic certified under the motor vehicle service and repair act at a motor vehicle repair facility registered under the motor vehicle service and repair act that is designated by the department as an inspection station or by a county, city, village, or township pursuant to section 14. Any limousine that does not pass the required departmental safety inspection shall not be operated over the public highways of this state.

(c) The applicant's financial ability to provide continuous insurance coverage.

\* \* \*

**257.1933 Alteration, suspension, or revocation of certificate of authority.**

Sec. 33.

The department may alter, suspend, or revoke a certificate of authority issued under this act if the department determines in a contested case hearing held pursuant to chapter 4 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.271 to 24.287 of the Michigan Compiled Laws, that a person to whom a certificate of authority has been issued has willfully violated or refused to comply with this act.

#### **DEFAULT**

Effect of default entered by the Court and its and upon the pending matter pursuant to the Michigan Administrative Procedures Act:

Section 72 of the APA provides, in pertinent part:

(1) If a party fails to appear in a contested case, after proper service of notice, the agency, if no adjournment is granted, may proceed with the hearing and make its decision in the absence of the party.

Furthermore, Section 78 of the APA states in pertinent part:

(2) Except as otherwise provided by law, disposition may be made of a contested case by....default...

**Under Section 72 of the APA, there is no requirement to provide a full evidentiary hearing when all the alleged facts are taken as true. *Smith v Lansing School District*, 428 Mich 248; 406 N.W.2d 825 (1987).**

#### **Conclusions of Law**

In this instant matter, the burden of proof falls upon the Michigan Department of Transportation. It requires that MDOT show, by a preponderance of evidence, that the Respondent has failed to adhere to the provisions of the Limousine Transportation Act and/or the Motor Bus Transportation Act.

A "preponderance of evidence" has been defined to mean that evidence which carries the greatest weight.

MDOT has shown that the Respondents operate a motor bus and/or limousine service which provides transportation to members of the public. Clearly, this activity falls within the purview and control of the two statutory provisions above; the Limousine Transportation Act and the Motor Bus Transportation Act. The legislature has directed that the Michigan Department of Transportation shall be the agency empowered to enforce these two statutory provisions.

Furthermore, MDOT has submitted copies of numerous citations issued by the Michigan State Police to the named Respondents for violations of both safety and regulatory provisions of both of the involved regulatory Acts, above.

Mr. Rob Pearson, Manager of the Bus and Limousine Regulatory Department, testified that the Respondents have repeatedly failed to adhere to the safety and regulatory provisions. In some instances, the Respondent received a citation for operating a vehicle without any operating authority for that vehicle. Clearly, the Respondents are fully aware that all vehicles must have valid, current operating authority. MDOT has shown that these Respondents were cited for operating the same vehicle without its valid authority within days of an earlier citation for the same offence.

MDOT has shown, by relevant, material and substantial evidence that these acts by the Respondent were clearly willful and intentional and were intended by the Respondent as intentional efforts to evade the safety and well-being of the citizens of this State. Rob Pearson testified that it is the knowing and intentional acts by this Respondent that results in MDOT's request to revoke all certificates of authority issued to the Respondents. I am persuaded that the Respondents are knowingly and intentionally attempting to evade compliance with the mandatory legislative acts which are specifically intended by the legislature to protect the health, safety and welfare of the citizens of this state.

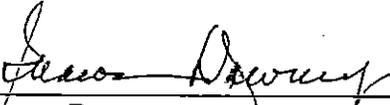
I specifically find that there are sufficient facts submitted by MDOT to demonstrate, by more than a preponderance of evidence, that these Respondents are knowingly and intentionally attempting to operate their commercial enterprises in violation of the above acts.

Furthermore, I specifically find that these Respondents intentionally failed to appear for the hearing of October 22, 2015. I reject, in total, Respondent's claims that he was unable to attend the hearing because of his inability to travel to the site of the hearing. I find that the Respondent's acts are another effort to thwart the operation of law and avoid compliance with the legislative acts above. A default was entered against these Respondents. However, I specifically find that MDOT has shown more than ample evidence notwithstanding Respondent's default. A full evidentiary hearing was conducted on October 22, 2015.

As a result of my findings:

**DECISION AND ORDER:**

All Certificates of Authority issued by the Michigan Department of Transportation issued to Entertainment Express, Inc. and Patrick Mifsud, dba: Entertainment Limousine are hereby revoked and shall remain revoked until such time as the Respondents demonstrate full compliance with the appropriate statutory authority and new Certificates of Authority, bearing a date later than this order, are issued.

  
\_\_\_\_\_  
Shawn Downey  
Administrative Law Judge

PROOF OF SERVICE

I hereby state, to the best of my knowledge, information and belief, that a copy of the foregoing document was served upon all parties and/or attorneys of record in this matter by Inter-Departmental mail to those parties employed by the State of Michigan and by UPS/Next Day Air, facsimile, and/or by mailing same to them via first class mail and/or certified mail, return receipt requested, at their respective addresses as disclosed below this 5<sup>th</sup> day of November, 2015.



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