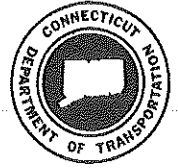


STATE OF CONNECTICUT
DEPARTMENT OF TRANSPORTATION



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

Phone:

(860) 594-2875

DOCKET NUMBER 1510-N-136-L

RE: APPLICATION OF DUNBAR PATIENT TRANSPORT CORP., DBA CALIBER PATIENT CARE TO OPERATE FIVE (5) MOTOR VEHICLES, EACH HAVING A SEATING CAPACITY OF LESS THAN ELEVEN (11) PASSENGERS, FOR THE EXPRESS PURPOSE OF PROVIDING REASONABLE LIVERY SERVICE TO HANDICAPPED AND ELDERLY PERSONS, TO ALL POINTS IN CONNECTICUT FROM A HEADQUARTERS IN STRATFORD.

FINAL DECISION

AUGUST 2, 2016

I. INTRODUCTION

A. General

By application filed on October 8, 2015, with the Department of Transportation (hereinafter "department"), pursuant to Section 13b-105 of the Connecticut General Statutes, as amended, Dunbar Patient Transport Corp., dba Caliber Patient Care ("applicant") with a mailing address of 140 Bayberry Lane, Stratford, Connecticut 06641 seeks authorization to operate five (5) motor vehicles, each having a seating capacity of less than eleven (11) passengers, for the express purpose of providing reasonable livery service to handicapped and elderly persons, to all points in Connecticut from a headquarters in Stratford.

B. Hearing Held

Pursuant to Connecticut General Statutes Section 13b-105, as amended, a public hearing on this application was held on May 3, 2016 and July 28, 2016.

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 the Connecticut General Statutes Section 13b-103. Legal notice to the public was given by publication on the department's website.

A hearing officer designated by the Commissioner, pursuant to Connecticut General Statutes Section 13b-17, conducted the hearing on this matter.

C. Appearances

Alberto Dunbar appeared on behalf of the applicant. The applicant was represented by Attorney Gregory S. Kimmel from the law firm of Berchem, Moses & Devlin with a mailing address of 9 Morgan Avenue, Norwalk, Connecticut 06880.

Joseph Miller appeared on behalf of Curtin Motor Livery Service, Inc. and Lasse's Livery Service, Inc. Both companies were granted intervenor status and represented by Mary Alice Leonhardt whose mailing address is 102 Oak Street, Hartford, CT 06106.

Saji Thomas appeared on behalf of Bethel Ambulette, Inc. and was granted intervenor status. Mr. Thomas mailing address is 727 Honeyspot Road, Stratford, CT 06615. On the second day of hearing, Mr. Thomas failed to appear at the hearing but instead sent Attorney Charles Harris from the law firm Harris, Harris and Schmid located at 101 Merritt 7 Corporate Park, Ste. 300, Norwalk, Connecticut 06851. Pursuant to Regulation Section 13b-17-111a, a person shall not receive intervenor status unless they are present at the hearing. Therefore, the intervenor status of Mr. Thomas is revoked by his failure to appear at the hearing on July 28, 2016.

D. State Investigation

Prior to the second day of hearing, the hearing officer was notified by Felipe Briseno, a supervisor in the Regulatory and Compliance Unit, that an investigator from the Department of

Public Health wanted to testify concerning the investigation that he had conducted on the applicant's livery service. Mr. Briseno notified the inspector's office of the date and time of the hearing however the inspector did not show up at the hearing on July 28, 2016 to testify.

E. Administrative Notice

Administrative Notice was taken of Connecticut General Statutes Section 14-1.

II. FINDING OF FACTS

1. The applicant seeks to operate five (5) vehicles in intrastate livery service from a headquarters in Stratford.
2. The applicant has operated a livery service for the elderly and handicapped since September 2014, when he purchased a Caliber franchise for approximately \$89,000.
3. The franchisor, Med X Patient Transport, failed to inform Mr. Dunbar that livery permits are required in the State of Connecticut to operate an intrastate livery service.
4. The applicant became aware that he was operating and illegal livery service in June 2015, when the Department of Motor Vehicles informed him he could not get livery plates without authorization from the Department of Transportation.
5. Mr. Dunbar subsequently filed an application with the department for intrastate livery service in October 2015.
6. The applicant received interstate livery authority effective June 1, 2015, but has not registered it with the department.
7. The applicant operates under contract with several entities including Access on Time, One Call Care, Pro Care and MTI. It is not known who actually pays for these trips and whether they would qualify as private pay. These contract trips are approximately 30 percent of the applicant's total trips.
8. Prior to purchasing the franchise, the applicant transported people for a retirement community called Meadow Ridge in Redding, Connecticut. He was also a school bus driver for many years. The applicant has a public service license.
9. The applicant is currently operating four Dodge Caravans with a handicapped conversion package. The applicant also owns one vehicle is not registered or in operation.
10. The applicant's total average daily trip volume is 14 trips per day.
11. The March 2016 trip records reflect a trip volume of 12 total trips per day.
12. The applicant typically operates one shift from 6 AM to 6 PM.

13. Three of the applicant's five drivers have a public service license. The other two drivers are in the process of securing a public service license.

14. The applicant's expenses for the first six months include insurance of \$12,000, property tax of \$845, repairs and maintenance of \$534, franchise payments of \$7,200 for dispatching and advertising, payroll expenses of \$30,000, vehicle payments of \$20,837 and workers compensation of \$4,770. The total expense is \$76,186 or \$15,237 per car.

15. The applicant has cash on hand of \$30,437 in the Fairfield County Bank.

16. The applicant is frequently overdrawn and has been infusing his own money into the company.

17. The applicant has an established customer base for his private pay transportation of the elderly and handicapped.

18. Elderly is defined by the applicant as clients over the age of 60.

19. No cease and desist order was ever issued to the applicant by the State of Connecticut.

III. DEPARTMENT ANALYSIS

In determining whether a livery permit should be granted, the department shall take into consideration whether there is an existing service or if the existing service is not adequate to properly serve the special needs of elderly persons on regular or irregular routes where the department finds no existing service or that the existing service is not adequate to properly serve the needs of elderly or handicapped persons. In determining the special needs of the handicapped and elderly, the department may take into consideration the convenience and physical and mental frailties of, and the care, safety and protection necessary for the best interest of, the handicapped and elderly and the general public.

Some factors to consider in granting a livery permit are whether the service will benefit the relevant class of users, whether the proposed service is more efficient, more economical, more convenient, more satisfactory, or different than the services offered by the existing service providers, whether the new service would create a potentially beneficial effect upon rates and customer service and whether the acquisition of equipment would be more suitable to customer needs, whether the population in the area that the applicant proposes to service is increasing, whether potential customers have requested a service like that suggested by the applicant and whether the proposed service will improve the existing mode of transportation as recently defined in *Steve Martorelli v. Department of Transportation* (SC19307).

In support of financial wherewithal, the applicant presented evidence that the applicant's first six months of expenses includes insurance costs of \$12,000, property tax of \$845, repairs and maintenance of \$534, franchise payments of \$7,200 for dispatching and advertising, payroll expenses of \$30,000, vehicle payments of \$20,837 and workers compensation of \$4,770 for a total expense of \$76,186 or \$15,237 per car. The applicant has cash on hand of \$30,437 in the Fairfield County Bank. Based on the evidence provided, the applicant has only enough cash to pay the expenses for

two livery vehicles.

The applicant's bank account records reflect several instances of overdrawn payments and insufficient funds indicating that the applicant is having difficulty paying bills. In addition, Mr. Dunbar is infusing the company with his own personal money which also indicates a financial instability. The applicant is not in a financial position to maintain five vehicles and has proven financial suitability to be granted only authorization for two (2) vehicles.

With regard to suitability of management, the applicant provided the requisite criminal conviction history for Alberto Dunbar which showed no criminal convictions. As part of his work experience Mr. Dunbar has been transporting clients of a retirement community and working as a school bus driver.

The department is very concerned that Mr. Dunbar was operating an illegal livery service from June 2015. At the outset, Mr. Dunbar has been extremely candid about operating an illegal livery service and continued to do so when he discovered from the Department of Motor vehicles that that he needed a livery permit from the Department of Transportation to perform this service legally. He then applied to the Department of Transportation for intrastate livery service in October 2015, and has been trying to become legal since that time. Unfortunately for Mr. Dunbar, Med X, gave him inaccurate information to secure his \$89,000 franchise payment.

This is a unique case in that Mr. Dunbar was already an established business and providing livery service at the time he found out that he wasn't legally operating. He had already paid an exorbitant \$89,000 fee to a dishonest franchisor and was caught up in their web of lies. It would have been very difficult for Mr. Dunbar to stop operating the business at that point. He had already invested a large sum of his personal money into the company and he had an established customer base relying on his livery service.

To his credit and what ultimately makes this case different is Mr. Dunbar's honest testimony concerning the illegal situation in which he found himself, much of which was caused by the franchisor. To further punish Mr. Dunbar and deny his request to operate a legal livery service would be unreasonable and cause unnecessarily harm to the public. For these reasons, the applicant will be deemed suitable to operate the proposed livery service.

With regard to the public convenience and necessity determination, the applicant is an established business with clientele. The applicant presented trip records for several months in 2015 and 2016. Taking the most recent month before the hearing, March 2016, the trip records show an average of 12 trips per day. Mr. Dunbar testified about an average of 14 total trips per day. Thirty percent of the trips performed by the applicant are under contracts. It is not clear who ultimately pays for these trips and whether they are truly private pay so they will be discounted.

Giving credit to Mr. Dunbar's testimony of 14 trips per day minus the 30 percent contract work, the applicant performs about 10 trips per day. Mr. Dunbar testified the average trip length is five miles and may take an hour at best. Given these facts, it appears that two vans can adequately handle the private pay work that the applicant receives. The applicant also presented several witnesses who have used his service. Based on the evidence presented, the applicant has proven public convenience and necessity for two vehicles.

While it may be a hardship on the applicant initially to only operate two vehicles in intrastate service, the applicant will still be able to operate the other three vehicles in interstate livery service. The department wants to make it clear to Mr. Dunbar that he is not to operate the other three vehicles in intrastate livery service until approved by the department.

Based on the evidence presented, the applicant has proven the required elements to be granted authorization for two livery permits.

IV. CONCLUSION AND ORDER

Based upon the above and pursuant to Connecticut General Statutes Section 13b-105, as amended, the application of Dunbar Patient Transport Corp., dba Caliber Patient Care is hereby granted in part and issued as follows:

LIVERY PERMIT NO. 3543 **FOR THE OPERATION OF LIVERY SERVICE**

Dunbar Patient Transport Corp., dba Caliber Patient Care is hereby permitted and authorized to operate two (2) motor vehicles, having a seating capacity of less than eleven (11) adults, to transport the elderly and handicapped from a headquarters in Stratford.

Dunbar Patient Transport Corp., dba Caliber Patient Care is permitted and authorized to operate motor vehicles as a common carrier of passengers, in charter and special operations, in interstate commerce under such authorizations as issued or amended by the Federal Motor Safety Administration in the issuance of certificate number MC-908502-C.

RESTRICTIONS:

The applicant must register the two (2) vehicles granted under this decision within thirty (30) days from the date of this final decision.

The authority granted under this permit may not be sold or transferred until it has been operational, i.e. a vehicle registered with livery plates thereunder for not less than twenty-four (24) months.

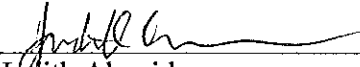
This permit may not be sold or transferred until it has been operation, i.e., a vehicle registered with livery plates thereunder, for not less than twenty-four (24) consecutive months.

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

A memorandum of this permit, bearing the seal of the department, shall be conspicuously posted in each motor vehicle operated under this permit.

Dated at Newington, Connecticut on this 2nd day of August 2016.

CONNECTICUT DEPARTMENT OF TRANSPORTATION



Judith Almeida
Staff Attorney III
Administrative Law Unit
Bureau of Finance and Administration