STATE OF CONNECTICUT
DEPARTMENT OF TRANSPORTATION

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DOCKET NO. 1005-AV-33-T

RE: APPLICATION OF DAVID M. SMALL/LEANN WARMOUTH D.B.A. AMERICAB TO OPERATE TWO (2) MOTOR VEHICLES, IN TAXICAB SERVICE WITHIN AND TO AND FROM THE TOWN OF ENFIELD, SOMERS, SUFFIELD AND EAST WINDSOR TO ALL POINTS IN CONNECTICUT.

FINAL DECISION

August 26, 2010

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I. INTRODUCTION

A. Applicant's Proposal

By application filed on May 7, 2010, with the Department of Transportation (hereinafter "Department"), pursuant to Section 13b-97 of the Connecticut General Statutes as amended, David M Small/ Leann Warmouth d.b.a. Americab (hereinafter "applicant"), seeks authorization to operate two (2) additional motor vehicles, in taxicab service within and to and from Enfield, Somers, Suffield and East Windsor to all points in Connecticut.

B. Hearing Held

Pursuant to Section 13b-97 of the Connecticut General Statutes, as amended, a public hearing on this application was held at the administrative offices of the Department in Newington, Connecticut on August 5, 2010.

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 Section 13b-97(a) of the Connecticut General Statutes, as amended. Notice to the public was given by publication in the Departments web site.

The hearing on this matter was conducted by a hearing officer, designated by the Commissioner of Transportation, pursuant to Connecticut General Statutes Section 13b-17.

C. Appearances

David Small and Leann Warmouth appeared pro se on behalf of the applicant. The applicant's address is 4 Coslin Road, Enfield, Connecticut 06082.

Mary Alice Moore Leonhardt, Esq. represented several companies that were granted intervenor status in the hearing. Ms. Leonhardt's mailing address is 67 Russ Street, Hartford, CT 06106. The following companies were granted intervenor status:

1. East Hartford Cab Company, Inc. d.b.a. Ace Taxi-Certificate Number 1145
2. United Cab company-Certificate Number 1078
3. Abdel Youseff d.b.a. Enfield Taxi-Certificate Number 1098
4. Ace Taxi Service, Inc. d.b.a. Ace Taxi-Certificate Number 1066

Sheldon Lubin, a Department staff member, appeared at the hearing.

D. Administrative Notice

Administrative notice was taken of the fact that there are approximately forty taxicab companies operating in the area the applicant is seeking. Administrative notice was also taken of Docket Number 1005-N-34-T, the application of Leann Warmouth and Chantha Khen d.b.a. C & L Transportation to operate a livery service.

II. FINDINGS OF FACT

1. The applicant currently operates one (1) taxicab in Enfield, Somers, East Windsor and Suffield.

2. The applicant is seeking to expand its current authority by adding two (2) additional taxicabs in its service area.

3. The applicant's taxicab is often at Bradley International Airport and not in its assigned service area. The applicant makes between one and ten trips per day out of the queue line. A taxicab must often wait at the queue up to five hours to get a taxicab trip.

4. Leann Warmouth, the co-applicant, is Mr. Small's daughter.

5. One of the applicant's drivers is Chantha Khen. Mr. Khen testified he transported an elderly client he is friendly with for gas money using his personal car and the car of Leann Warmouth.

6. When shown a picture of his daughter's car and the car owned by Chantha Khen, Mr. Small stated he did not know anything about the vehicles.

7. The applicant intends to put a wheelchair van on the road as a taxicab whether or not this application is granted.

8. Leann Warmouth is applying with Chantha Khen to start a livery company called C & L Transportation.

9. The applicant's residence is zoned for only one taxicab. The applicant cannot park additional taxicabs on his property.

10. Karen Mayette is a driver and the Transportation Manager for Allied Rehabilitation which operates a livery service. Ms. Mayette observed the applicant's driver, Chantha Khen, transporting one of her clients to a dialysis appointment in a passenger plated vehicle. She took photographs this event and also photographed another occasion when this client was transported is Leann Warmouth's personal car by Mr. Khen. When Ms. Mayette questioned the client, the client told her that this service was cheaper and gave her an Americab business card. She also told her that they were soon opening a livery service.

11. Scott Ryan testified that on a recent late Friday night he had difficulty getting a ride home from a bar called Chicago Sams.

12. The taxicab insurance will cost an annual premium of $4,500 per vehicle.

13. The applicant has cash in the amount of $12,639.

14. The applicant's annual expenses include fuel costs of $25,000, repairs of $2,500 and property tax of $152.

15. The applicant estimates an income of $70,000 annually per vehicle.

III. DEPARTMENT ANALYSIS

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 Section 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 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.

With regard to the drivers the applicant will be hiring, Mr. Small will be driving one cab. He also another driver available and his daughter, Leann may fill in.

In support of financial wherewithal to operate the proposed service, the applicant presented evidence that the taxicab insurance will cost an annual premium of $4,500 per vehicle. The applicant has cash in the amount of $12,639 which has been pledged to the business. Both Mrs. Small, Mr. Small's wife and Ms. Warmouth have pledged the use of their personal assets for the applicant's use. The applicant's annual expenses include fuel costs of $25,000, repairs of $2,500 and property tax of $152. The applicant estimates an income of $70,000 annually per vehicle. Also, since Ms. Warmouth has an application pending to operate a livery service, only half of her assets will be considered for this application. Although the family home is in the name of

Leann Warmouth, there was no evidence of the equity presented in the hearing, therefore, the possible equity in the home will not be considered. Based on the evidence presented, the applicant has the sufficient financial wherewithal to operate two vehicles as proposed.

The applicant submitted criminal record checks for both David Small and Leann Warmouth showing no criminal records. However, several issues came to light during the hearing which reflect negatively on the applicant's suitability. There was testimony from Ms. Karen Mayette who works for Allied Rehabilitation Centers regarding illegal livery activity performed by the applicant. Ms. Mayette witnessed one of the applicant's drivers, Chantha Khen, taking a client of hers in his own personal car to a medical appointment with license plate number 655UGD. This trip was photographed by Ms. Mayette. After the trip, the patron was questioned and she stated that she was using the service because it was cheaper than the other transportation services. When asked what service she used, she produced an Americab business card.

Mr. Khen, the driver of that trip, claims he was doing the trip for a friend and only took gas money. There are also photos of Mr. Khen taking this same woman to dialysis in a different vehicle with license plate 715YAY. This second vehicle turned out to be owned by Ms. Warmouth. Mr. Khen's testimony is not credible as he handed out the Americab business card and promoted his new livery company C & L Transportation which has an application pending. Ms. Warmouth is a principal in that application.

Mr. Small was asked whether he was aware of this situation and shown photos of a blue car with license 655UGD and a red car with license 715YAY. Mr. Small claimed no knowledge of the illegal trips or the two vehicles used in those trips. The second vehicle, with license plate 715YAY is the co-applicant's vehicle, who is Mr. Small's daughter Leann Warmouth. Ms. Warmouth testified that the vehicle is parked at the house where they all live. Mr. Small would have us believe that he could not recognize his daughter's vehicle, a red 1998 Lincoln Town Car. Mr. Small's testimony is not credible regarding this issue. Based on the evidence presented, the applicant is not suitable to operate the proposed taxicab service as it is operating an illegal livery service.

To receive a grant of authority, the applicant has the burden of proving that public convenience and necessity requires the grant of taxicab authority. At Mr. Small's last hearing he testified that he was not going to be at Bradley International Airport but instead servicing his local community. The opposition presented evidence that Mr. Small is primarily utilizing his one taxicab at the Bradley International Airport. The gate entrance reports at Bradley Airport from March 9, 2010 to August 2, 2010 were submitted as evidence. Only information generated in the past twelve months was examined as earlier dates are too remote in time.

The evidence shows that Mr. Small's taxicab visited the queue line between one and ten times a day with frequent trips of four or five times each day. Mr. Small claims that he goes to the airport daily to supplement his income when he is not servicing his local area. In fact, he is using the Airport queue line as his base of operation so he will leave the queue line when he needs to respond to local calls. This action speaks volumes as to the lack of need for taxicab service in his local service area. The airport does not need another taxicab in the queue line, nor

apparently does the applicant's service area as the applicant spends most of its time at the airport where it can take up to five hours to get a trip from the queue line.

The applicant is responsible for proving that there is a need for taxicab service in each of the towns listed in the application. The applicant provided only one witness who had difficulty getting a taxicab late at night at a bar. There was no proof offered to show the applicant's taxicab service is needed in any of towns it requested.

Based on the evidence presented, the applicant has not proven suitability or that public convenience and necessity requires a grant of this application, therefore, this application is denied.

Dated at Newington, Connecticut on this 26th day of August 2010.

CONNECTICUT DEPARTMENT OF TRANSPORTATION

Judith Almeida, Esq.

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