

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 10,456

IN THE MATTER OF:

Served May 8, 2007

ANNIE GARDNER, Trading as GARDNER)
TRANSPORTATION, Suspension and)
Investigation of Revocation of)
Certificate No. 1084)

Case No. MP-2006-115

This matter is before the Commission on respondent's response to Order No. 10,348, served March 23, 2007.

I. BACKGROUND

Under the Compact, a WMATC carrier may not engage in transportation subject to the Compact if the carrier's certificate of authority is not "in force."¹ A certificate of authority is not valid unless the holder is in compliance with the Commission's insurance requirements.²

Commission Regulation No. 58 requires respondent to insure the revenue vehicles operated under Certificate No. 1084 for a minimum of \$1.5 million in combined-single-limit liability coverage and maintain on file with the Commission at all times proof of coverage in the form of a WMATC Certificate of Insurance and Policy Endorsement (WMATC Insurance Endorsement) for each policy comprising the minimum.

Certificate No. 1084 was rendered invalid on July 18, 2006, when the \$1.5 million primary WMATC Insurance Endorsement on file for respondent terminated without replacement. Order No. 9750, served July 18, 2006, noted the automatic suspension of Certificate No. 1084 pursuant to Regulation No. 58-02, directed respondent to cease transporting passengers for hire under Certificate No. 1084, and gave respondent thirty days to replace the cancelled endorsement or face revocation of Certificate No. 1084. Respondent submitted a \$1.5 million primary WMATC Insurance Endorsement on August 1, 2006.³ The effective date of the new endorsement is August 4, 2006. This means that respondent was without insurance coverage for seventeen days, from July 18, 2006, through August 3, 2006.

Under Commission Rule No. 28, respondent is required to verify that it ceased transporting passengers for hire under Certificate

¹ Compact, tit. II, art. XI, § 6(a).

² Compact, tit. II, art. XI, § 7(g).

³ The August 1 endorsement was cancelled by respondent's insurance company on August 30, 2006, effective October 4, 2006. Respondent subsequently filed an unacceptable replacement endorsement on February 13, 2007, effective October 4, 2006. Respondent eventually filed an acceptable replacement.

No. 1084 as directed by Order No. 9750. Accordingly, Order No. 9877 gave respondent thirty days to verify that it ceased operations as of July 18, 2006. Inasmuch as respondent's only tariff is for service rendered to clients of the District of Columbia Department of Health, Medical Assistance Administration (DC Medicaid), such proof was to include confirmation from DC Medicaid.

Respondent failed to comply with Order No. 9877. Accordingly, Order No. 10,348 gave respondent thirty days to show cause why the Commission should not assess a civil forfeiture and/or revoke Certificate No. 1084.

II. RESPONSE AND ASSESSMENT OF FORFEITURE

Respondent filed an affidavit on March 26, 2007, admitting to transporting clients in the Metropolitan District on two days in November 2006 and one day in December 2006, while Certificate No. 1084 was invalid/suspended.

A person who knowingly and willfully violates a provision of the Compact, or a rule, regulation, requirement, or order issued under it, or a term or condition of a certificate shall be subject to a civil forfeiture of not more than \$1,000 for the first violation and not more than \$5,000 for any subsequent violation.⁴ Each day of the violation constitutes a separate violation.⁵

"Knowingly" means with perception of the underlying facts, not that such facts establish a violation.⁶ "Willfully" does not mean with evil purpose or criminal intent; rather, it describes conduct marked by careless disregard.⁷

The record shows that respondent had constructive notice of the suspension of Certificate No. 1084 on July 19 & 24, 2006; August 3, 2006; and September 2, 7, & 16, 2006. These are the dates that the U.S. Postal Service attempted delivery, three times each, of first Order No. 9750 and then Order No. 9877, issued in this proceeding on July 18 and August 31, 2006, respectively. We thus find that the violations in November and December 2006 were knowing and willful.

In situations similar to this one - operating while suspended but not while uninsured - the Commission has assessed a civil forfeiture of \$250 for each day of unauthorized operations and placed carriers on probation for one year.⁸ We shall follow the same course here and assess a civil forfeiture of \$250 per day for 3 days, for a total of \$750.

⁴ Compact, tit. II, art. XIII, § 6(f)(i).

⁵ Compact, tit. II, art. XIII, § 6(f)(ii).

⁶ *In re Northstar Transp. LLC*, No. MP-06-122, Order No. 9901 (Sept. 11, 2006); *In re Wheelchair Mobile Transp., Inc.*, No. MP-05-186, Order No. 9899 (Sept. 11, 2006).

⁷ Order No. 9901; Order No. 9899.

⁸ See e.g., Order No. 9901; Order No. 9899.

Once respondent has paid the forfeiture, the Commission shall issue an order lifting the suspension.

THEREFORE, IT IS ORDERED:

1. That pursuant to Article XIII, Section 6(f), of the Compact, the Commission hereby assesses a net civil forfeiture against respondent in the amount of \$750 for knowingly and willfully violating Article XI, Section 6(a), of the Compact by transporting passengers for hire between points in the Metropolitan District on 3 separate days during November and December 2006 while Certificate No. 1084 was invalid/suspended.

2. That respondent is hereby directed to pay to the Commission within thirty days of the date of this order, by money order, certified check, or cashier's check, the sum of seven hundred fifty dollars (\$750).

3. That upon timely compliance with the requirements of this order, and provided respondent is in compliance with Commission Regulation No. 58, the Commission shall issue an order reinstating Certificate No. 1084, subject to a one-year period of probation. A willful violation of the Compact, or of the Commission's rules, regulations or orders thereunder, during the period of probation shall constitute grounds for immediate suspension and/or revocation of Certificate No. 1084 without further proceedings, regardless of the nature and severity of the violation.

4. That Certificate No. 1084 shall be subject to revocation pursuant to Article XI, Section 10(c) of the Compact if respondent fails to timely comply with the requirements of this order.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS YATES AND CHRISTIE:



William S. Morrow, Jr.
Executive Director