

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 10,639

IN THE MATTER OF:

Served July 18, 2007

SECOND TO NONE TOUR & TRAVEL INC.,)
Suspension and Investigation of)
Revocation of Certificate No. 1154)

Case No. MP-2006-135

This matter is before the Commission on respondent's response to Order No. 10,417, served April 20, 2007, which directed respondent to show cause why the Commission should not assess a civil forfeiture against respondent, and/or revoke Certificate No. 1154, for knowingly and willfully violating Article XI, Section 6(a), of the Compact and Commission Order No. 9876 by conducting operations on two days while suspended.

Certificate No. 1154 was automatically suspended on August 30, 2006, when the \$5 million primary WMATC Insurance Endorsement on file for respondent expired without replacement. Order No. 9876, served August 30, 2006, noted the automatic suspension of Certificate No. 1154 pursuant to Regulation No. 58-02 and directed respondent to, among other things, and cease transporting passengers for hire under Certificate No. 1154 unless and until otherwise ordered by the Commission. The record shows that respondent transported passengers for hire in the Metropolitan District on September 7, 2006, and December 8, 2006, while Certificate No. 1154 was still suspended.

Respondent's president, Starnard Dandridge, does not deny respondent operated while suspended; rather, he contends that respondent did not do so "knowingly and willfully". Mr. Dandridge states that after he received "the order" he "immediately called [his] insurance agent" and faxed her a copy of the order and that she called back "and said everything was taken care of." Mr. Dandridge further states that he called the Commission on or about September 1 and was informed that the Commission "had received the insurance documents from the insurance co.", that they "seemed ok", and that respondent was "good with WMATC". We have a number of concerns with this explanation.

First, the statement is not under oath as required by Rule No. 4-06. Second, we take Mr. Dandridge's "good with WMATC" to be a conclusory paraphrase of what he was actually told, making it impossible to separate what he was told from what he understood he was told. Third, his statement is not supported by the record.

The record shows that respondent switched insurance companies in August 2006 and that Certificate No. 1154 was suspended after the new insurance company failed to file the necessary WMATC Insurance

Endorsement. Several months later, with revocation of Certificate No. 1154 looming, Commission staff contacted Mr. Dandridge on December 21, 2006, and informed him that the filing still had not been made. A WMATC Insurance Endorsement was subsequently filed on respondent's behalf on January 4, 2007, but with an effective date of December 21, 2006.

Although the effective date was later revised to August 30, 2006, the December 21 effective date on the January 4 filing is telling. It suggests that the request for a WMATC Endorsement was first placed with the new insurance company on December 21, the date of staff's call to Mr. Dandridge. An initial effective date of December 21 is not consistent with Mr. Dandridge's assertion that a WMATC Endorsement request was first transmitted to the new insurance company on or about September 1. Without some contemporaneous documents or statement from the insurance company in support, we are disinclined to accept a version of events based on a recollection nine months old and at odds with the record.

In any event, it appears Mr. Dandridge misapprehends the meaning of "knowingly and willfully". "Knowingly" means with perception of the underlying facts, not that such facts establish a violation.¹ "Willfully" does not mean with evil purpose or criminal intent; rather, it describes conduct marked by careless disregard.²

Mr. Dandridge admits he received the suspension order. Indeed, the record shows that on September 1, 2006, he paid the \$50 late fee mentioned in the order and wrote the case number on the check. Hence, as of September 1, 2006, he was aware, or should have been aware, of the admonition in Order No. 9876 not to operate unless and until otherwise ordered by the Commission. Also, Mr. Dandridge does not claim Commission staff advised him an order had been issued lifting the suspension. To the extent his statement is meant to imply that he had formed such a belief, we find for the reasons stated above that he had no reasonable basis for reaching that conclusion. Accordingly, we find that respondent knowingly and willfully violated the Compact and Order No. 9876.

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.³ We shall follow the same course here and assess a civil forfeiture of \$250 per day for 2 days, for a total of \$500.

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

¹ In re Annie Gardner, t/a Gardner Transp., No. MP-06-115, Order No. 10,456 (May 8, 2007).

² *Id.*

³ See *id.*

THEREFORE, IT IS ORDERED:

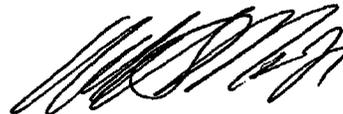
1. That pursuant to Article XIII, Section 6(f), of the Compact, the Commission hereby assesses a net civil forfeiture against respondent in the amount of \$500 for knowingly and willfully violating Article XI, Section 6(a), of the Compact by transporting passengers for hire between points in the Metropolitan District on 2 separate days, one in September 2006 and one in December 2006, while Certificate No. 1154 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 five hundred dollars (\$500).

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. 1154, 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. 1154 without further proceedings, regardless of the nature and severity of the violation.

4. That Certificate No. 1154 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