

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 10,742

IN THE MATTER OF:

Served September 5, 2007

SYDNEY SHUTTLE, LLC, Suspension and)
Investigation of Revocation of)
Certificate No. 489)

Case No. MP-2007-064

This matter is before the Commission on respondent's response to Order No. 10,520, served June 1, 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. 489 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. 489 was rendered invalid on April 6, 2007, when the \$1.5 million primary WMATC Insurance Endorsement on file for respondent terminated without replacement. Order No. 10,390, served April 6, 2007, noted the automatic suspension of Certificate No. 489 pursuant to Regulation No. 58-02, directed respondent to cease transporting passengers for hire under Certificate No. 489, and gave respondent thirty days to replace the expired endorsement and pay the \$50 late fee due under Regulation No. 67-03(c) or face revocation of Certificate No. 489.

Respondent timely paid the \$50 late fee and submitted a \$1.5 million primary WMATC Insurance Endorsement with an effective date of April 20, 2007, which, at the time it was filed, created a coverage gap of fourteen days, from April 6, 2007, through April 19, 2007.

Under Commission Rule No. 28, respondent is required to verify that it ceased transporting passengers for hire under Certificate No. 489 as directed by Order No. 10,390. Acting on advice from WMATC staff, respondent's president, Sidney M. Purnell, filed a statement

¹ Compact, tit. II, art. XI, § 6(a).

² Compact, tit. II, art. XI, § 7(g).

asserting that respondent did not transport any clients from April 6, 2007, to April 26, 2007. Respondent also caused to be filed a statement from ACS State Healthcare, the claims agent for the District of Columbia Department of Health, Medical Assistance Administration (DC Medicaid), one of respondent's clients. ACS's statement asserts respondent has not filed any claims for payment "from 04/06/07 to present." Unfortunately, the ACS statement is not dated.

Also acting on advice from Commission staff, respondent produced copies of its checking account statement for the March-April 2007 period. But instead of corroborating respondent's assertion that respondent stopped operating on April 6, the deposit and debit activity is consistent with continued operations on behalf of clients other than DC Medicaid. Indeed, respondent has rates on file for non-Medicaid clients.

Order No. 10,520 accordingly directed respondent to verify continued cessation of operations, file a valid confirmation from DC Medicaid or its agent, and produce copies of respondent's business records for the period beginning January 1, 2007, and ending June 1, 2007.³

II. RESPONSE

Respondent has submitted a revised \$1.5 million WMATC Insurance Endorsement. The revised endorsement is effective April 6, 2007. This eliminates the 14-day gap in coverage created by the initial replacement endorsement filed April 13. Respondent also has submitted copies of its business records and another statement from its president, Sidney M. Purnell. But respondent has not submitted any further statement from ACS or DC Medicaid.

Among respondent's business records are copies of invoices for trips between points in the Metropolitan District on twenty-four separate days after Certificate No. 489 was suspended: April 20, 25-26, and 30; and on May 1, 2, 4-5, 7-12, 14-17, 19, 21-24, and 30. These invoices are important because although respondent succeeded in closing the 14-day insurance gap, closing the gap did not terminate the suspension. On the contrary, Order No. 10,390 - which the record shows respondent received on April 7, 2007 - clearly states that "respondent shall not transport passengers for hire under Certificate No. 489, unless and until otherwise ordered by the Commission." No such order has issued as yet.

It appears the invoices were submitted to United Cerebral Palsy of Washington, D.C. and Northern Virginia, Inc. (UCP). Indeed, also among respondent's business records are copies of checks from UCP to respondent, as well as some UCP check stubs. UCP's executive director, Ted Bergeron, explains in a statement filed July 2, 2007, that UCP hired respondent to transport UCP's clients. Thus, it would appear that respondent transported UCP clients for hire in the Metropolitan District while suspended.

³ See *In re Special People Transportation, LLC*, No. MP-06-103, Order No. 9849 (Aug. 18, 2006) (requiring records and Medicaid corroboration).

III. SHOW CAUSE

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 The Commission may suspend or revoke all or part of any certificate of authority for willful failure to comply with a provision of the Compact, an order, rule, or regulation of the Commission, or a term, condition, or limitation of the certificate.⁶

Respondent shall have thirty days to show cause why the Commission should not assess a civil forfeiture against respondent, and/or revoke Certificate No. 489, for knowingly and willfully violating Article XI, Section 6(a), of the Compact and Order No. 10,390, by conducting operations under an invalid/suspended certificate of authority,⁷ and for knowingly and willfully violating Order No. 10,520 by not producing a revised statement from ACS or DC Medicaid.

THEREFORE, IT IS ORDERED:

1. That respondent shall have thirty days to show cause why the Commission should not assess a civil forfeiture against respondent for knowingly and willfully violating Article XI, Section 6(a), of the Compact, and Order Nos. 10,390 and 10,520.

2. That respondent shall have thirty days to show cause why the Commission should not revoke Certificate No. 489 for respondent's willful failure to comply with Article XI, Section 6(a), of the Compact, and Order Nos. 10,390 and 10,520.

3. That respondent may submit within 15 days from the date of this order a written request for oral hearing, specifying the grounds for the request, describing the evidence to be adduced and explaining why such evidence cannot be adduced without an oral hearing.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS YATES AND CHRISTIE:



William S. Morrow, Jr.
Executive Director

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

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

⁶ Compact, tit. II, art. XI, § 10(c).

⁷ See *In re Rehoboth Transp. Servs. LLC*, No. MP-04-155, Order No. 8521, served (Jan. 24, 2005) (carrier that submitted invoices to client for service during suspension period required to show cause).