

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 10,817

IN THE MATTER OF:

Served October 10, 2007

HANOI-PRO TRANSPORTATION, INC.,) Case No. M~i2007-060
Suspension and Investigation of)
Revocation of Certificate No. 301)

This matter is before the Commission on respondent's response to Order No. 10,717, served August 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. 301 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. 301 was rendered invalid on March 28, 2007, when the \$1 million primary and \$500,000 excess WMATC Insurance Endorsements on file for respondent terminated without replacement. Order No. 10,361, served March 28, 2007, noted the automatic suspension of Certificate No. 301 pursuant to Regulation No. 58-02, directed respondent to cease transporting passengers for hire under Certificate No. 301, and gave respondent thirty days to replace the cancelled endorsements and pay the \$50 late fee due under Regulation No. 67-03(c) or face revocation of Certificate No. 301.

Respondent failed to timely pay the \$50 late fee but timely submitted a \$1.5 million primary WMATC Insurance Endorsement on April 16, 2007. The effective date of the new endorsement is April 10, 2007 - thus creating a coverage gap of twelve days, from March 28, 2007, through April 9, 2007.

Under Commission Rule No. 28, respondent is required to verify that it ceased transporting passengers for hire under Certificate No~ 301 as directed by Order No. 10,361. Order No. 10,515 accordingly

¹ Compact, tit. II, art. XI, § 6(a).

² Compact, tit. II, art. XI, § 7(9).

gave respondent thirty days to pay the \$50 late fee and verify that respondent ceased operations as of March 28, 2007. 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), the verification was to be corroborated by written confirmation from DC Medicaid.

Thereafter respondent paid the \$50 late fee and submitted a statement from its president, Vincent Anderson, asserting that respondent "ceased delivery of customers" during the gap period "between March 28, 2007 and April 09, 2007." But Mr. Anderson's statement was contradicted by a statement from ACS State Healthcare, DC Medicaid's agent for processing carrier invoices, noting that respondent had submitted three claims for service rendered during the gap period. In addition, because filing an endorsement does not automatically terminate a suspension,³ Mr. Anderson's statement should have addressed whether respondent continued operating after the endorsement was filed but while respondent was still suspended.⁴

Order No. 10,717, accordingly directed respondent to show cause why the Commission should not assess a civil forfeiture against respondent, and/or revoke Certificate No. 301, for knowingly and willfully violating Article XI, Section 6(a), of the Compact, Regulation No. 58, and Order No. 10,361 by conducting operations under an invalid/suspended certificate of authority.

In addition, Order No. 10,717 granted respondent fifteen days to submit a request for oral hearing on the condition that respondent specify the grounds for the request, describe the evidence to be adduced, and explain why such evidence cannot be adduced without an oral hearing.

II. FINDINGS, ASSESSMENT OF FORFEITURE AND REVOCATION

Respondent has responded by filing another statement from its President, Vincent Anderson, but no request for oral hearing. Mr. Anderson now admits that his earlier statement that respondent had ceased operations from March 28 to April 9 was wrong. He now says that he was unaware of the suspension until June 2007 and blames a faulty memory for the earlier misstatement. This does not make any sense. If Mr. Anderson did not become aware until June that respondent's authority was suspended in March for noncompliance with the Commission's insurance requirements, there would have been no reason for respondent to stop operating in March and, hence, no reason for Mr. Anderson to think that respondent had stopped operating in March. And this latest explanation does not square with the facts, as noted below. In any event, now that respondent has retracted its

³ In *re Sydne*' Shuttle? ILC/ NG. MP-07-064; Order },Jc, 10:792 (Sept~ 28: 20(7) .

⁴ See *In re Special People Transp., LLC*, No. MP-06-103; Order 10,347 (Mar. 23, 2007) (directing respondent to show cause for not producing statement on post-gap operations) .

verification and admitted the violations, the question then is what sanctions, if any, are warranted on this record.

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.⁵

Under Article XI, Section 10(c), of the Compact, the Commission, after notice and hearing, may suspend or revoke a certificate of authority for a carrier's willful failure to comply with a provision of the Compact or an order, rule or regulation of the Commission. As noted, respondent did not request an oral hearing.

The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.⁶ The terms "willful" and "willfully" do not mean with evil purpose or criminal intent; rather, they describe conduct marked by careless disregard whether or not one has the right so to act.⁷

The record shows that the endorsements on file for respondent were cancelled on February 20, 2007, effective March 28, for nonpayment of premium.

If a carrier fails to make the premium payments necessary to maintain coverage under the WMATC Endorsement, the onus is on that carrier to ascertain when coverage will terminate and refrain from operating thereafter until such time as the carrier has obtained confirmation from the Commission that a replacement WMATC Insurance Endorsement has been filed and accepted.⁸

Notwithstanding that the burden was on respondent to ascertain when coverage would terminate, the Commission issued two cancellation notices to respondent on March 5, 2007, advising respondent of the March 28 effective date. Each notice read as follows.

Pursuant to notice received February 20, 2007, your WMATC Certificate of Insurance and Policy Endorsement has been cancelled effective March 28, 2007.

If a new WMATC Certificate of Insurance and Policy Endorsement is not filed BEFORE the effective

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

⁶ *In re Rehoboth Transp. Servs. LLC*, No. MP-04-155, Order No. 8684, (May 4, 2005); *In re Elijah Jehovah Inc.*, No. MP-03-178, Order No. 7899 (Mar. 25, 2004); *In re Advance Care SerVE, Inc.*, N(L MP-Q3-46: Ord@r No. 7332 (July 24, 2003) .

⁷ Order Nos. 8684; 7899; 7332.

⁸ *In re Cheeks & Son Transp., Inc.*, No. MP-04-195, Order No. 8650 (Apr. 14, 2005) .

cancellation date, your Certificate of Authority will be automatically SUSPENDED. you will be assessed a \$50 late filing fee, and you must IMMEDIATELY cease all operations.

DO NOT assume we have received a new WMATC Certificate of Insurance and Policy Endorsement. Call the Commission at 202-331-1671 to verify timely filing.

Finally, the record shows that respondent switched insurance companies after the cancellation notices had issued instead of simply rectifying the nonpayment problem.⁹ Switching companies was respondent's prerogative, but the effective date on the replacement endorsement indicates that respondent did not apply for coverage with the new company until April 10. Respondent's insurance application should have been filed thirteen days before the previous endorsements terminated on March 28, not thirteen days after.¹⁰

We find that respondent was careless in failing to timely pay the February 2007 premium installment, careless in waiting until April 10 to replace the cancelled coverage, and careless in operating while uninsured.

Consequently, we find that respondent knowingly and willfully violated Article XI, Section 6(a), of the Compact by conducting operations under an invalid/suspended certificate of authority. We shall assess a forfeiture of \$250 inasmuch as the violations may have all occurred on a single day.¹¹

On the issue of revocation, we note that when the signatories and Congress approved the Compact, they designated noncompliance with Commission insurance requirements as the single offense that would automatically invalidate a certificate of authority. They could not have sent a clearer message that maintaining proper insurance coverage is of paramount importance under the Compact.¹² Further, this is not the first time respondent has violated the Commission's insurance requirements. Respondent was suspended on two other occasions for insurance infractions.¹³ Against this backdrop and considering that

⁹ The policies underlying the cancelled endorsements were issued by National Casualty Company and Scottsdale Insurance Co. The policy underlying the replacement endorsement was issued by Empire Fire and Marine Insurance Company.

¹⁰ See *In re ACEP Group Inc.*, No. MP-02-128, Order No. 7137 (Apr. 18 2003) (policy application should have been filed nine days before expiration not nine days after).

¹¹ See Order Nos. 8684 (assessing civil forfeiture at \$250 per day for operating un-ge invalid certificate of authority); 7899 (same); 7332 (same).

¹² **Order Nos. S6S4/ 7332.**

¹³ *In re Handi-Pro Transp., Inc.*, No. MP-04-95, Order No. 8000 (May 10, 2004); *In re Handi-Pro Transp., Inc.*, No. MP-03-32, Order No. 7133 (Apr. 15, 2003).

respondent operated not only without authority but without insurance, we shall revoke Certificate No. 301.

THEREFORE, IT IS ORDERED:

1. That pursuant to Article XIII, Section 6(f), of the Compact, the Commission hereby assesses a civil forfeiture against respondent in the amount of \$250 for knowingly and willfully violating Article XI, Section 6(a), of the Compact.

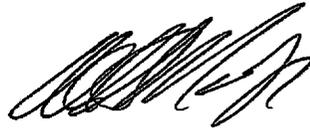
2. That respondent is hereby directed to pay to the Commission within thirty days of the date of this order, ^{By} money order, certified check, or cashier's check, the sum of two hundred fifty dollars (\$250).

3. That pursuant to Article XI, Section 10(c), of the Compact, Certificate of Authority No. 301 is hereby revoked for respondent's willful failure to comply with Article XI, Section 6(a), of the Compact.

4. That within 30 days from the date of this order respondent shall:

- a. remove from respondent's vehicle(s) the identification placed thereon pursuant to Commission Regulation No. 61;
- b. file a notarized affidavit with the Commission verifying compliance with the preceding requirement; and.
- c. surrender Certificate No. 301 to the Commission.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS YATES AND CHRISTIE:



William S. Morrow, Jr.
Executive Director