

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 11,304

IN THE MATTER OF:

Served April 24, 2008

Application of EMANCO TRANSPORTATION)
INC to Acquire Certificate No. 923)
from ABDELMAGID KAHLIEL HAMID)
KHALIEL, Trading as EMANCO TRANS)

Case No. AP-2007-016

EMANCO TRANSPORTATION INC and)
ABDELMAGID KAHLIEL HAMID KHALIEL,)
Trading as EMANCO TRANS,)
WMATC NO. 923, Investigation of)
Violation of the Compact,)
Article XI, Sections 5(a) and 11(b),)
and Regulation No. 58, and Order)
No. 10,504)

Case No. MP-2007-245

This matter is before the Commission on the response of Emanco Transportation Inc, (ETI), and Abdelmagid Kahliel Hamid Khaliel, trading as Emanco Trans, (Mr. Khaliel), (collectively respondents), to Order No. 10,925, served November 20, 2007, which directed respondents to show cause why the Commission should not assess a civil forfeiture against respondents and/or suspend or revoke Certificate No. 923.

I. BACKGROUND

ETI filed an application on January 30, 2007, seeking Commission approval to acquire Certificate No. 923 from Mr. Khaliel. Mr. Khaliel had agreed to transfer Certificate No. 923 and other assets in exchange for a controlling interest in ETI.

The application was approved in Order No. 10,504 on May 25, 2007, after a provisional finding of ETI's fitness based on the record before the Commission at that time. Issuance of Certificate No. 923 to ETI, however, was conditioned on, among other things, ETI filing a vehicle list, presenting its vehicles for inspection by Commission staff and submitting safety inspection certificates for said vehicles, a tariff, and proof of \$1.5 million liability insurance.

ETI responded by filing a vehicle list with one vehicle on it, a 1994 Ford van with a Vehicle Identification Number (VIN) ending in 22280, and presenting the vehicle for inspection by Commission staff. The vehicle passed inspection on September 7, 2007, which included observation of a current safety inspection sticker. ETI did not file a tariff until November 6, 2007; and ETI did not file an acceptable \$1.5 million WMATC Insurance Endorsement until November 7, 2007.

In the meantime, the Commission became aware of three other passenger vans that appeared to be in respondents' possession:

- 1) a 1994 Ford van with a VIN ending 11312;
- 2) a 1994 Ford van with a VIN ending 25864; and
- 3) a 1999 Chevy Astro with a VIN ending 112785.

As of November 20, 2007, the Chevy Astro van was being operated under a contract between ETI and Medical Transportation Management, Inc., (MTM). The Astro was not included on ETI's vehicle list and had not been reported to ETI's insurance company, Northland Insurance Company. In addition, it had not been presented for inspection by staff, and no proof of safety inspection had been filed. From this evidence, it appeared that ETI had already commenced operations without authority using a vehicle that was not properly insured and in questionable safety condition.

Order No. 10,925 accordingly gave respondents thirty days to show cause why the Commission should not assess a civil forfeiture and/or suspend or revoke Certificate No. 923 for knowingly and willfully violating Article XI, Sections 5(a) and 11(b), of the Compact, Regulation No. 58, and Order No. 10,504, by prematurely transferring operations to ETI, failing to report all vehicles to the proper insurance companies, failing to file safety inspection certificates for all vehicles, and failing to present all vehicles for staff inspection.

II. RESPONSE AND FINDINGS

A. Premature Transfer

Mr. Khaliel denies transferring operations to ETI. But the weight of the evidence is to the contrary. Mr. Khaliel has no valid MTM tariff on file. His only tariff is for service rendered to clients of the District of Columbia Department of Health, Medical Assistance Administration. These rates are no longer effective now that the Medical Assistance Administration has assigned all transportation contracts to MTM. MTM has identified ETI as one of its current contractors, not Mr. Khaliel. ETI has filed a tariff to conduct the MTM service. Mr. Khaliel has not. The Chevy Astro used to perform the MTM contract was registered to ETI when ETI reported it to MTM on October 16, 2007, and remained registered to ETI until December 14, 2007, when it was transferred to Mr. Khaliel. Although Mr. Khaliel reported this vehicle to his insurance company, he never filed a lease with the Commission as required by Regulation No. 62. In sum, ETI had the vehicle and the contract and the tariff during two months of MTM operations, not Mr. Khaliel. Thus, we find that Mr. Khaliel prematurely transferred operations to ETI.

B. Failure to Report

Respondents deny failing to report all vehicles to the proper insurance companies. Again, the record is to the contrary.

After Order No. 10,925 was issued, ETI filed an updated vehicle list on November 29, 2007. The new list includes the 1994 Ford van from ETI's first list and the 1999 Chevy Astro used to perform the MTM contract. As for the other two 1994 Ford vans noted in Order No. 10,925, the record shows that one has been sold and the other

reported stolen. In the meantime, the Commission has obtained records from the Virginia Department of Motor Vehicles showing that Mr. Khaliel owns three other vans that he has not disclosed in this proceeding or in his 2008 annual report:

- 1) a 1999 Chevrolet Express with a VIN ending 105674;
- 2) a 1998 Chevrolet Venture with a VIN ending 211228; and
- 3) a 1991 Toyota Previa with a VIN ending 005004.

The Chevy Express has for-hire plates, and Mr. Khaliel says he has no passenger carrier authority other than Certificate No. 923. Consequently, once the certificate transferred, only ETI would have authority to operate this for-hire vehicle. Accordingly, this vehicle should have been listed on ETI's vehicle list and reported to Mr. Khaliel's insurance company of record, National Continental Insurance Company, and to ETI's insurance company of record, Northland Insurance Company. At the very least, now that ETI has added the Chevy Astro to its vehicle list, ETI should have reported the Chevy Astro to its insurance company. There is no evidence in the record that ETI has done so.

C. Failure to File Inspection Certificates and Present Vehicles

As noted above, ETI has added the Chevy Astro to its vehicle list. But ETI has not filed any safety inspection certificate for this vehicle, and ETI has not presented the Astro for inspection by Commission staff. Nor has ETI filed a lease for this vehicle as required by Regulation No. 62 and Order No. 10,925, now that the registration has been transferred to Mr. Khaliel. Likewise, ETI should have produced a safety inspection certificate for the 1999 Chevrolet Express and produced that vehicle for inspection by staff.

III. Termination of Transfer Application

As noted above, ETI's application was conditionally granted in Order No. 10,504, served May 25, 2007. Order No. 10,504 stipulated that ETI would have the full 180 days available under Commission Regulation No. 66 to satisfy the conditions of the grant, including the conditions to "present its revenue vehicle(s) for inspection" and file "proof of current safety inspection of said vehicle(s)." ETI was required to satisfy these conditions on or before November 21, 2007. ETI did not do that.

The record is clear that ETI owned the 1999 Chevy Astro from July 31, 2007, to December 14, 2007, and that during this period the vehicle displayed for-hire plates. The record is also clear that ETI did not file its first vehicle list until September 7, 2007. The Chevy Astro was excluded from that list even though its for-hire plates clearly made it a revenue vehicle. In any event, at no time during the 180-day period while this vehicle was owned by ETI did ETI present it for inspection by Commission staff, and at no time did ETI file any proof of safety inspection for this vehicle. It is therefore clear that ETI failed to satisfy the conditions of the grant in Order No. 10,504 within the 180 days allowed under Regulation No. 66.

Regulation No. 66 states that "A conditional grant of authority shall be void on the 181st day following the date of the grant if full compliance has not been achieved at that time." The conditional grant of authority in this case thus became void on November 22.

The Commission has reopened application proceedings where the 180-day approval period has run, and the conditional grant is considered void, but in those cases the applicants satisfied the substantive conditions of the grant within the thirty-day window for seeking reconsideration.¹ That did not happen here. ETI has yet to present the Chevy Astro vehicle for inspection and has yet to file proof of safety inspection for that vehicle.

We therefore find that by operation of Regulation No. 66, the conditional grant of authority in Order No. 10,504 is void and the application proceeding terminated. Further, we find no basis for reopening that proceeding.

IV. Assessment of Forfeiture

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.² Each day of the violation constitutes a separate violation.³

The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.⁴ 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.⁵

Based on the evidence cited in Section II.A. above, we find that ETI operated the MTM contract from October 16, 2007, to December 14, 2007. Because we cannot determine the number of per-day violations on this record, we will direct respondents to produce copies of all invoices submitted to MTM for operations performed during this period.⁶

¹ *In re City Sightseeing Buses LLC*, No. AP-06-013, Order No. 10,305 at 4 (Mar. 6, 2007).

² Compact, tit. II, art. XIII, § 6(f).

³ Compact, tit. II, art. XIII, § 6(f)(ii).

⁴ *In re Zohery Tours Int'l, Inc.*, No. MP-02-46, Order No. 7005 (Jan. 21, 2003); *In re Safe Ride Servs., Inc.*, No. MP-97-83, Order No. 5269 (Feb. 5, 1998); *In re Megaheds, Inc., t/a Megaheds Transp.*, No. AP-97-24, Order No. 5113 (June 26, 1997); *In re All-Star Presidential, LLC, & Presidential Coach Co., & Presidential Limo. Serv., Inc.*, No. MP-95-82, Order No. 4774 (Feb. 27, 1996).

⁵ Order Nos. 7005; 5269; 5113; 4774.

⁶ See *In re Transcom, Inc.*, No. AP-05-113, Order No. 9907 at 6 (Sept. 13, 2006) (same).

IV. Suspension of Operations and Continuation of Investigation

In a statement through counsel filed January 22, 2008, Mr. Khaliel admits of his "failure to file the required safety inspection certificates and his failure to present all vehicles for inspection." Mr. Khaliel attributes his failures to "a misunderstanding on his part." Mr. Khaliel, however, has yet to cure these failures, despite ample opportunity to do so. Of particular concern is his failure to file the required safety inspection certificate for the one vehicle he admits is being used to perform the MTM contract, the 1999 Chevy Astro.

"Article XI, Section 5(a) of the Compact states that each authorized carrier shall provide safe and adequate transportation service, equipment, and facilities. Operation of a vehicle with an expired, invalid or missing safety inspection sticker violates Article XI, Section 5(a). Such a vehicle is presumptively unsafe and inadequate."⁷

Given the age of the Astro, the lack of proof of current safety inspection, and the absence of a tariff that would permit Mr. Khaliel to conduct operations under Certificate No. 923, we find that the public interest would be best served by suspending operations under the MTM contract until these issues have been resolved.⁸

THEREFORE, IT IS ORDERED THAT:

1. Case No. AP-2007-016 is terminated;
2. Neither respondent may conduct operations under contract with Medical Transportation Management, Inc., unless and until otherwise ordered by the Commission; and
3. Within thirty days, respondents shall produce copies of all invoices submitted to Medical Transportation Management, Inc., for operations performed during the period from October 16, 2007, to December 14, 2007.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS YATES AND CHRISTIE:



William S. Morrow, Jr.
Executive Director

⁷ *In re Junior's Enters., Inc.*, No. MP-01-103, Order No. 6549 at 3 (Feb. 21, 2002); *In re Safe Transp., Inc.*, No. MP-96-15, Order No. 4849 (May 17, 1996).

⁸ See *In re Chika Transport Serv., Inc.*, No. MP-02-124, Order No. 6933 (Dec. 4, 2002) (carrier with expired tariff directed to cease and desist); *In re Junior's Enters., Inc.*, No. MP-01-103, Order No. 6479 (Jan. 3, 2002) (suspending operations where not all vehicles presented and not all safety inspection certificates filed).