

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 11,413

IN THE MATTER OF:

Served June 13, 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. 11,304, served April 24, 2008, which terminated Case No. AP-2007-016, directed respondents to cease certain operations, and directed respondents to produce certain documents.

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 indicated ETI proposed transporting Medicaid passengers using one van, the work Mr. Khaliel was doing at the time the application was filed.

The application was assigned Case No. AP-2007-016 and 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 was conditioned on ETI filing a vehicle list and presenting its vehicles for inspection by Commission staff. ETI also was required to submit copies of the for-hire registration cards for the vehicles on the list, proof that the vehicles had passed a safety inspection within the past twelve months, proof of \$1.5 million motor vehicle liability insurance, and any leases required by Regulation No. 62. Order No. 10,504 noted that ETI would have the full 180 days permitted by Regulation No. 66, or until November 21, 2007, to satisfy the conditions of issuance.

ETI filed a vehicle list on September 7, 2007, with one vehicle on it, a 1994 Ford van registered to "Emanco Trans Inc" with a Vehicle Identification Number (VIN) ending in 22280. The vehicle passed

inspection by Commission staff that same day, which included observation of a current safety inspection sticker. ETI filed a general tariff on November 6 and a \$1.5 million WMATC Insurance Endorsement in the name of "Emanco Transportation Inc" on November 7.

In the meantime, on October 18, the Commission received an informal complaint alleging a hit and run accident involving a Ford van with Virginia License Plate No. KGL 3819. The passenger side of the van was marked "EMANCO TRANSPORTATION, INC". The Commission contacted the Virginia Department of Motor Vehicles (DMV) and traced the tag to Mr. Khaliel. Virginia DMV records indicated that although the model year was 1994, this van's VIN ended in 11312 and thus was not the 1994 Ford van identified in ETI's vehicle list.

On November 9, Medical Transportation Management, Inc., (MTM), the coordinator of Medicaid passenger transportation in the District of Columbia, informed the Commission that "Emanco Trans, Inc." had been approved to transport DC Medicaid passengers in a 1999 Chevy Astro van, VIN ending 112785.

The Commission contacted Mr. Khaliel's insurance company of record, National Continental Insurance Company, and ETI's insurance company of record, Northland Insurance Company, and discovered that the Chevy Astro was not listed on either policy. The only vehicle listed on either policy was the 1994 Ford van on ETI's September 7 vehicle list.

Thus, as matters stood on November 20, it appeared that ETI had failed to file a complete vehicle list and present all vehicles for inspection. It further appeared that ETI was transporting DC Medicaid passengers without authority in a vehicle, the 1999 Chevy Astro, not reported to ETI's insurance company and for which no proof of safety inspection had been filed with the Commission. Order No. 10,925 accordingly directed respondents to show cause why the Commission should not assess a civil forfeiture and/or suspend or revoke Certificate No. 923.

Respondents denied prematurely transferring operations to ETI but offered no evidence to controvert the record. As for ETI failing to list and present all vehicles, respondents produced evidence that they had reported the alleged hit-and-run vehicle stolen on July 26. That would account for ETI's failure to include that vehicle on the September 7 list. In addition, ETI eventually updated its vehicle list on November 29 to include the 1999 Chevy Astro, but respondents failed to explain why the Astro was not included on the September list.

As of April 24, 2008, ETI had not produced any proof of safety inspection for the Astro or added the Astro to its insurance policy. And ETI had not filed a lease for the Astro even though the Astro had been transferred from ETI to Mr. Khaliel on December 14, 2007. In the meantime, the Commission discovered yet another van registered to Mr. Khaliel with for-hire plates that respondents had failed to report to WMATC and respondents' insurance companies of record, a 1999 Chevrolet

Express, VIN ending 105674, bringing to four the number of vehicles controlled by Khaliel and displaying commercial license plates and/or vehicle markings.

On that record, Order No. 11,304 terminated the application proceeding on April 24, 2008, for applicant's failure to satisfy the conditions of the grant within the 180 days permitted by Regulation No. 66 and Order No. 10,504. The Commission also directed respondents to cease performing the MTM contract and directed respondents to produce copies of all invoices submitted to MTM for operations performed during the period from October 16, 2007, to December 14, 2007, in order to determine the number of days ETI apparently transported DC Medicaid passengers without authority.

II. RESPONSE AND INTERIM FINDINGS

Mr. Khaliel filed Contract Tariff No. CT-1 on April 28.¹ The contract states that it was "made and entered into this 19th day of October, 2007 by and between [MTM] a Missouri corporation . . . and Emanco Trans, a Virginia Business." The contract was signed by Mr. Khaliel on October 16, 2007, and MTM's Executive Vice President and General Counsel on March 19, 2008.

The tariff was rejected because it did not specify any rates as required by Article XI, Section 14(a), of the Compact and Regulation No. 55-08. Mr. Khaliel refiled the MTM contract tariff on May 27. This time it contained rates purportedly effective March 1, 2008, but it appeared the rates had not been accepted by MTM, even though the contract was signed by MTM on March 19, as noted above. The Commission Later obtained a signed version of the rates from MTM on May 29.

Respondents produced invoices submitted to MTM for services rendered in October, November and December 2007. The invoices identify the provider as "Emanco". Respondents also produced an MTM "PAYMENT HISTORY REPORT" showing seven checks disbursed by MTM to "Emanco Trans" from December 6, 2007, through April 10, 2008. The first two checks correspond to the October-December invoices. Bank records submitted by respondents show that one of the first two checks and one of the later checks were deposited into the account of "Eiman B Youssif dba Aiman Trans". The other five checks were deposited into Mr. Khaliel's account. Respondents' bank records also show an eighth check not listed in the MTM PAYMENT HISTORY REPORT. The eighth check is payable to "Emanco Trans" and dated April 24, 2008. It was deposited into an ETI bank account on April 30, 2008.

It would appear from the record as amended that ETI did not conduct any operations for MTM in October through December of 2007. The MTM contract is not with ETI, and none of the revenue from that

¹ We note that Mr. Khaliel's MTM contract tariff was filed within the deadline set for other MTM contractors. See *In re Investigation of Violation of Tit. II, Art. 14, of the Compact, and Comm'n Reg. No. 55, No. MP-08-085, Order No. 11,310 (April 25, 2008) (directing MTM contractors to file contract tariffs on or before May 25, 2008)*.

period was deposited into ETI's bank account. The only connection with ETI during this period is the Chevy Astro, which was registered to ETI at the time. But vehicle registration alone is insufficient information on which to base a finding that ETI performed the transportation in light of the new evidence.

However, because some MTM funds were deposited to an ETI bank account on April 30, 2008, and because it appears the Chevy Express was reported to ETI's insurance company in February of 2008, we shall direct respondents to produce copies of all ETI bank statements, copies of all documents pertaining to the Chevy Express, and copies of all documents pertaining to ETI's insurance policy with Northland Insurance Company before closing our inquiry into the issue of premature transfer of operations.

III. INSURANCE VIOLATIONS

Order No. 10,925, served November 20, 2007, noted that although the Astro was being used to perform the MTM contract, Mr. Khaliel had not reported it to the insurance company that issued his WMATC Insurance Endorsement, National Continental. The order also informed Mr. Khaliel that a carrier "may not possess more than one policy for any given layer of coverage" and gave Mr. Khaliel thirty days to show cause why the Commission should not assess a civil forfeiture or suspend or revoke Certificate No. 923 for "failing to report all vehicles to the proper insurance companies." Mr. Khaliel did not report the Astro to National Continental until January 20, 2008. In addition, the record shows that the Chevy Express was used to perform the MTM contract this past March and April and that it was not reported to National Continental.

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 "Knowingly" means with perception of the underlying facts, not that such facts establish a violation.⁴ "Willfully" does not mean with evil purpose or criminal intent; rather, it describes "conduct marked by careless disregard whether or not one has the right so to act."⁵ Employee negligence is no defense.⁶

Mr. Khaliel could not have reasonably believed that it was permissible for him to report a single vehicle to an insurance company to obtain a WMATC Insurance Endorsement in compliance with Regulation No. 58 and then not operate that vehicle but, rather, operate two

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

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

⁴ *In re L&N Transportation Company, Inc.*, No. MP-01-49, Order No. 6425 (Nov. 16, 2001).

⁵ *Id.*

⁶ *Id.*

other vehicles for several months under Certificate No. 923 without reporting them to that insurer. That simply does not make sense. Accordingly, we will assess a civil forfeiture of \$750 against Mr. Khaliel for knowingly and willfully failing to report all WMATC vehicles to National Continental.⁷

IV. SAFETY VIOLATIONS

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).⁸ Such a vehicle is presumptively unsafe.⁹

The 1999 Chevy Astro is registered with the Virginia Department of Motor Vehicles. Virginia law requires that the Astro pass an annual safety inspection.¹⁰ There is no evidence in the record that the Astro passed a Virginia safety inspection prior to May 2, 2008.

Respondents shall have thirty days to show cause why the Commission should not assess a civil forfeiture and/or suspend or revoke Certificate No. 923 for knowing and willful violation of Article XI, Section 5(a), of the Compact.

VI. VIOLATION OF ORDER NOS. 10,503 & 10,504

As noted above, two MTM checks payable to Emanco Trans were deposited into the account of Eiman B Youssif dba Aiman Trans. The bank records produced by respondents show an instance of Mr. Khaliel authorizing a disbursement from Ms. Youssif's account and an instance of Ms. Youssif authorizing a disbursement from Mr. Khaliel's account.

Ms. Youssif held WMATC Certificate No. 910 under the trade name "Aimn Trans" from July 15, 2004, until November 9, 2007, when it was reissued to Amin Transportation Inc pursuant to Commission Order No. 10,503.¹¹ Ms. Youssif owns Amin Transportation Inc. The order noted that Carrier No. 910 and Carrier No. 923 operate out of the same address. Each carrier was admonished to "keep its assets, books, finances and operations completely separate from the other's." The order conditionally approving the transfer of Certificate No. 923 to ETI, Order No. 10,504, carried the same caution.¹²

⁷ See *id.* (assessing \$750 for not reporting vehicle to proper insurer).

⁸ *In re VOCA Corp. of Wash, D.C.*, No. MP-02-30, Order No. 7258 at 2 (June 20, 2003); *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).

⁹ Order No. 7258; Order No. 6549; Order No. 4849.

¹⁰ Va. Code Ann. §§ 46.2-1157, 1158 (2007).

¹¹ *In re Eiman Badereldin Youssif, t/a Aimn Trans, & Amin Transp. Inc.*, No. AP-07-015, Order No. 10,503 (May 25, 2007).

¹² *In re Abdelmagid Kahliel Hamid Khaliel, t/a Emanco Trans, t/a Emanco Transp. Inc.*, No. AP-07-016, Order No. 10,504 (May 25, 2007).

Respondents shall have thirty days to show cause why the Commission should not assess a civil forfeiture and/or suspend or revoke Certificate No. 923 for knowing and willful violation of Order Nos. 10,503 & 10,504.

VII. ORDER TO LIFT SUSPENSION OF MTM OPERATIONS

Order No. 11,304 suspended all MTM operations under Certificate No. 923 because of "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."

Mr. Khaliel thereafter presented the Astro for inspection by Commission staff on May 2. The inspection report notes that the Astro has been properly marked in accordance with Regulation No. 61, and Mr. Khaliel has submitted proof that the Astro passed a safety inspection just prior to staff's inspection. As noted above, Mr. Khaliel has submitted the MTM contract tariff.

The record also shows that Mr. Khaliel's WMATC Endorsement from National Continental has been cancelled, that Northland has transferred ETI's policy to Mr. Khaliel and filed an acceptable \$1.5 million WMATC Endorsement in Mr. Khaliel's name, and that the Astro has been reported to Northland.

It would appear then that Mr. Khaliel may be permitted to recommence operations under the MTM contract. This conclusion is bolstered by the following: the Chevy Express van passed a safety inspection in February 2008 and a staff inspection on May 2; and the Chevy Express has been reported to Northland. Respondents have submitted evidence that ETI has surrendered the license plates for the 1994 Ford van listed on ETI's vehicle list.

Permission to recommence MTM operations shall be subject to the following conditions. Mr. Khaliel shall have thirty days to produce a list of all vehicles in his possession, custody or control. The list shall identify the year, make, model, serial number, fleet number, license plate number (with jurisdiction), and seating capacity of each vehicle. Mr. Khaliel shall furnish a copy of the list to Northland Insurance Company. Mr. Khaliel also shall have thirty days to submit proof that each vehicle on the list has passed a safety inspection within the past twelve months. And Mr. Khaliel shall have thirty days to produce all vehicles on the list for inspection by Commission staff.

THEREFORE, IT IS ORDERED:

1. That Abdelmagid Kahliel Hamid Khaliel, trading as Emanco Trans, may commence operations under his Contract Tariff No. CT-1.

2. That the Commission hereby assesses a civil forfeiture against Emanco Transportation Inc and Abdelmagid Kahliel Hamid Khaliel, trading as Emanco Trans, jointly and severally, in the amount of \$750, for knowing and willful violation of Title II of the Compact,

Article XI, Section 7(f), Commission Regulation No. 58, and Commission Order No. 10,925.

3. That respondents are 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).

4. That Mr. Khaliel shall file the following documents with the Commission within thirty days of the date of this order:

- a. copies of all ETI bank statements;
- b. copies of all documents pertaining to the 1999 Chevy Express;
- c. copies of all documents pertaining to ETI's insurance policy with Northland Insurance Company; and
- d. a list identifying the year, make, model, serial number, fleet number, license plate number (with jurisdiction), and seating capacity of all vehicles in Mr. Khaliel's possession, custody or control and proof that each vehicle on the list has passed a safety inspection within the past twelve months.

5. That within thirty days of the date of this order Mr. Khaliel shall furnish a copy of the aforementioned vehicle list to Northland Insurance Company.

6. That within thirty days of the date of this order Mr. Khaliel shall present for inspection by Commission staff all vehicles in Mr. Khaliel's possession, custody or control.

7. That respondents shall have thirty days to show cause why the Commission should not assess a civil forfeiture and/or suspend or revoke Certificate No. 923 for knowing and willful violation of Article XI, Section 5(a), of the Compact.

8. That respondents shall have thirty days to show cause why the Commission should not assess a civil forfeiture and/or suspend or revoke Certificate No. 923 for knowing and willful violation of Order Nos. 10,503 & 10,504.

9. That Certificate No. 923 shall stand suspended upon respondents' failure to timely satisfy the requirements of this order.

FOR THE COMMISSION



William S. Morrow, Jr.
Executive Director