

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 11,639

IN THE MATTER OF:

Served October 24, 2008

1ST CHOICE INVESTMENT GROUP, LLC,)
Trading as IT'S ABOUT U, Suspension)
and Investigation of Revocation of)
Certificate No. 1056)

Case No. MP-2008-013

This matter is before the Commission on respondent's response to Order No. 11,574, served September 12, 2008, which directed respondent to show cause why the Commission should not assess a civil forfeiture against respondent and/or revoke Certificate No. 1056, for knowingly and willfully conducting operations under a suspended certificate of authority.

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. 1056 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. 1056 was rendered invalid on January 11, 2008, when the \$1.5 million primary WMATC Insurance Endorsement on file for respondent terminated without replacement. Order No. 11,071, served January 11, 2008, noted the automatic suspension of Certificate No. 1056 pursuant to Regulation No. 58-02, directed respondent to cease transporting passengers for hire under Certificate No. 1056, and gave respondent thirty days to replace the cancelled endorsement and pay the \$50 late fee due under Regulation No. 67-03(c) or face revocation of Certificate No. 1056.

Respondent submitted a \$1.5 million primary WMATC Insurance Endorsement on January 22, 2008. But respondent did not pay the late fee, and the effective date of the endorsement was February 12, 2008, instead of January 11, 2008.

¹ Compact, tit. II, art. XI, § 6(a).

² Compact, tit. II, art. XI, § 7(g).

Order No. 11,131, served February 6, 2008, accordingly directed respondent to pay the late fee and verify cessation of operations as of January 11, 2008. Inasmuch as respondent's general tariff covers service rendered to the general public, respondent's verification was to be corroborated with copies of respondent's general business records.

Respondent paid the late fee on February 11 and submitted a revised \$1.5 million replacement WMATC Insurance Endorsement on February 19. The revised replacement is effective January 11, 2008, thus eliminating the 32-day gap in coverage. Respondent, however, did not verify cessation of operations and did not produce any records.

Order No. 11,222, served March 18, 2008, lifted the suspension based on respondent having closed the gap in compliance with Regulation No. 58 but directed respondent to: (1) file a written statement clearly stating whether respondent timely ceased all operations in the Metropolitan District; and (2) produce copies of all business records, including copies of bank deposit items and gas station receipts, for the period beginning December 1, 2007, and ending on March 18, 2008.

Respondent thereafter admitted operating while suspended on and after January 11. Respondent defended its actions on the ground that allegedly respondent was not aware its insurance had been cancelled. But the record shows that the insurance was cancelled at respondent's request and that Order No. 11,071, the order noting the suspension of Certificate No. 1056, was delivered to respondent by the United States Postal Service on January 12, 2008.

Order No. 11,574 accordingly gave respondent thirty days to show cause why the Commission should not assess a civil forfeiture against respondent, and/or revoke Certificate No. 1056, for knowingly and willfully violating Article XI, Section 6(a), of the Compact, Regulation No. 58, and the orders issued in this proceeding.

A statement subsequently filed on September 30 by respondent's president, Brenda L. Warren, asserts that respondent's president was attempting to cancel the insurance for another carrier when she unwittingly cancelled respondent's policy by mistake. The record shows, however, that respondent became aware of that mistake, and the resulting suspension of Certificate No. 1056, on January 12, 2008, when respondent signed for a copy of Order No. 11,071.

II. ASSESSMENT OF FORFEITURE

Under the Compact, 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.³ Each day of the violation constitutes a separate violation.⁴

"Knowingly" means with perception of the underlying facts, not that such facts establish a violation.⁵ "Willfully" does not mean with evil purpose or criminal intent; rather, it describes conduct marked by careless disregard.⁶ Continuing to operate in the face of a cease-and-desist order is the epitome of knowing and willful conduct.⁷

The record shows that respondent was aware that Certificate No. 1056 was suspended when respondent transported passengers for hire between points in the Metropolitan District on the following dates:

January: 14-18, 22-25, 28-31
February: 1, 4-8, 11-14, 19-21, 26-27
March: 3-6, 10-14, 18

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.⁸ We shall follow the same course here and assess a civil forfeiture of \$250 per day for thirty-seven days, or \$9,250. We will suspend all but \$2,000 in recognition of respondent's production of inculpatory records⁹ and the lack of good cause on this record for delaying the lifting of the suspension from February 19 to March 18.¹⁰ Failure to pay the net forfeiture in a timely fashion shall result in reinstatement of the full \$9,250.

Because respondent has offered no explanation for failing to timely produce copies of its pertinent business as directed by Order No. 11,131, we will assess a forfeiture of \$250 for knowingly and willfully violating Order No. 11,131.¹¹

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

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

⁵ *In re Sydney Shuttle, LLC*, No. MP-07-064, Order No. 10,792 (Sept. 28, 2007).

⁶ *Id.* at 5.

⁷ *Id.* at 5.

⁸ *Id.* at 5.

⁹ See *id.* at 5, (suspending 67% of forfeiture where carrier produced inculpatory records); *In re Malek Invest., Inc., t/a Montgomery Airport Shuttle, & Malek Invest. of Va., Inc., & Assadollah Malekzadeh*, No. MP-98-53, Order No. 5707 (Sept. 22, 1999) (suspending 70% of forfeiture where carrier produced inculpatory records).

¹⁰ See *In re Sams Health Care Servs. Inc.*, No. MP-08-005, Order No. 11,306 (Apr. 24, 2008) (lifting suspension three days after gap-closing endorsement filed).

¹¹ See *In re Global Imex Inc.*, No. MP-07-135, Order No. 11,107 (Jan. 29, 2008) (assessing \$250 forfeiture for failing to timely respond to document request); *In re Special People Transportation, LLC*, No. MP-06-103, Order No. 10,683 (Aug. 8, 2007) (assessing \$250 forfeiture in part for failing to timely respond to document request).

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 \$2,000 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 thirty-seven separate days while Certificate No. 1056 was invalid/suspended.

2. 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 Order No. 11,131 by failing to produce all responsive documents.

3. 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 thousand two hundred fifty dollars (\$2,250).

4. That respondent shall serve 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. 1056 without further proceedings, regardless of the nature and severity of the violation.

5. That Certificate No. 1056 shall be subject to revocation pursuant to Article XI, Section 10(c) of the Compact, and the full forfeiture of \$9,500 assessed in this order shall be immediately due and payable, 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