

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 11,641

IN THE MATTER OF:

Served October 24, 2008

HEAVEN ON WHEELS LLC, Suspension)
and Investigation of Revocation of)
Certificate No. 737)

Case No. MP-2007-238

This matter is before the Commission on respondent's failure to fully respond to Order No. 11,468 served July 10, 2008, which among other things directed respondent to show cause why the Commission should not assess a civil forfeiture and/or revoke Certificate No. 737.

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. 737 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. 737 was rendered invalid on November 11, 2007, when the \$1.5 million primary WMATC Insurance Endorsement on file for respondent terminated without replacement. Order No. 10,909, served November 13, 2007, noted the automatic suspension of Certificate No. 737 pursuant to Regulation No. 58-02, directed respondent to cease transporting passengers for hire under Certificate No. 737, 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. 737.

Respondent paid the \$50 late fee on November 19 and submitted a \$1.5 million primary WMATC Insurance Endorsement on November 14, with an effective date of November 22, 2007, instead of November 11, 2007. Thus, as matters stood then, respondent was without insurance coverage for eleven days, from November 11, 2007, through November 21, 2007.

¹ Compact, tit. II, art. XI, § 6(a).

² Compact, tit. II, art. XI, § 7(g).

Under Commission Rule No. 28, respondent was required to verify that it ceased transporting passengers for hire under Certificate No. 737 as directed by Order No. 10,909. Order No. 11,003 accordingly gave respondent thirty days to verify cessation of operations as of November 11, 2007. Inasmuch as respondent's only tariff at the time was an out of date DC Medicaid tariff, respondent also was directed to corroborate its verification with copies of its general business records. Finally, respondent was directed to file a new tariff replacing the invalid DC Medicaid tariff.

Respondent submitted a revised \$1.5 million replacement WMATC Insurance Endorsement on January 11, 2008. The revised replacement Endorsement is effective November 11, 2007, thus eliminating the 11-day gap in coverage under the original replacement endorsement.

Respondent, however, did not comply with any of the requirements of Order No. 11,003. Order No. 11,110 accordingly directed respondent to show cause why the Commission should not assess a civil forfeiture against respondent, and/or revoke Certificate No. 737, for knowingly and willfully conducting operations under an invalid/suspended certificate of authority and failing to produce documents as directed.

Respondent subsequently submitted a statement verifying cessation of operations as of November 1, 2007. Respondent also filed a new general tariff. But respondent did not file any copies of its business records.

Because respondent was in compliance with Regulation No. 58, Order No. 11,243, served March 31, 2008, lifted the suspension. But given the state of the record, the order directed respondent to produce copies of all business records, including copies of bank deposit items and gas station receipts, for the period beginning September 1, 2007, and ending on the date of the order.

Respondent had still not produced its records as of July 10, 2008, when Certificate No. 737 was automatically suspended again because the WMATC Insurance Endorsement on file for respondent terminated without replacement. Order No. 11,468, served July 10, accordingly gave respondent thirty days to file the necessary replacement Endorsement(s), pay a \$50 late fee, and show cause why the Commission should not assess a civil forfeiture against respondent, and/or revoke Certificate No. 737, for failing to produce documents as directed and for violating Regulation No. 58.

II. FAILURE TO FULLY RESPOND

Respondent has filed the necessary WMATC Insurance Endorsement and paid the \$50 late fee, but respondent still has not produced any records.

III. ASSESSMENT OF FORFEITURE AND REVOCATION OF AUTHORITY

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

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.⁴

The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.⁵ The terms "willful" and "willfully" do not mean with evil purpose or criminal intent; rather, they describe conduct marked by intentional or careless disregard or plain indifference.⁶

Because respondent has failed to produce its records as directed by Order Nos. 11,003 and 11,243, and because respondent has offered no explanation for this noncompliance, we find that respondent has failed to show cause why the Commission should not assess a civil forfeiture of \$250⁷ and revoke Certificate No. 737.⁸

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 Order Nos. 11,003 and 11,243.

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. 737 is hereby revoked for respondent's willful failure to comply with Order Nos. 11,003 and 11,243.

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

⁴ Compact, tit. II, art. XI, § 10(c).

⁵ *In re Metro Health-Tech Servs. Inc.*, No. MP-08-057, Order No. 11,588 (Sept. 24, 2008).

⁶ *Id.*

⁷ See *In re Fon Pius Nde, t/a Piusmed World Transp.*, No. MP-07-187, Order No. 11,362 (May 15, 2008) (same).

⁸ See *id.* (same); see also *In re Best Choice Transp., Inc.*, No. MP-07-147, Order No. 11,477 (July 18, 2008) (revoking authority in part for failing to file acceptable verification and produce documents); *In re Marbec LLC, t/a Marbec Limo. Servs. LLC*, No. MP-06-052, Order No. 10,346 (Mar. 23, 2007) (same); *In re Gold Transp., Inc.*, No. MP-05-171, Order No. 9985 (Oct. 11, 2006) (same).

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. 737 to the Commission.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS YATES AND CHRISTIE:



William S. Morrow, Jr.
Executive Director