

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 11,677

IN THE MATTER OF:

Served November 12, 2008

METRO HEALTH-TECH SERVICES INC.,
WMATC No. 589, Investigation of
Violation of Article XI,
Section 5(a), of the Compact

Case No. MP-2008-057

This matter is before the Commission on the response of respondent to Order No. 11,588, served September 24, 2008, which directed respondent to show cause why the Commission should not assess a civil forfeiture and/or suspend or revoke Certificate No. 589 for respondent's knowing and willful failure to present vehicles for inspection in violation of Order No. 11,207, served March 6, 2008.

I. BACKGROUND

This investigation was initiated in Order No. 11,207 after the Commission received a complaint about the condition of respondent's vehicles and respondent failed to cooperate in an informal investigation of the allegations in the complaint.

Order No. 11,207 directed respondent to file a current vehicle list within fifteen days and produce its vehicles for inspection by Commission staff within thirty days or face suspension and/or revocation of Certificate No. 589. Respondent subsequently produced a list of thirty-five vehicles and presented all but twelve for inspection. The twenty-three that were presented passed.

Inasmuch as the twelve vehicles not presented failed to pass inspection within the thirty days allowed, those vehicles were declared out of service in Order No. 11,588 until such time as they pass inspection by Commission staff.

Order No. 11,588 also gave respondent thirty days to show cause why the Commission should not assess a civil forfeiture and/or suspend or revoke Certificate No. 589 for respondent's knowing and willful failure to comply with Order No. 11,207.

II, RESPONSE

Respondent affirms that the vehicles declared out of service in Order No. 11,588 have been removed from service. Respondent states that the reason respondent failed to present all vehicles for inspection was that "most" either had a "serious maintenance problem" or had been repossessed by the lessor.

Respondent has submitted proof of return of license plates for two of the out-of-service vehicles. One plate was returned in May of this year, the other in October of this year.

Respondent also has submitted a statement from the lessor of the other out-of-service vehicles. According to the statement of MV Transportation, Inc., WMATC No. 764: "Said vehicles were removed from [Metro Health-Tech's] possession and control on Friday, October 3, 2008."

III. ASSESSMENT OF FORFEITURE

The Compact provides that 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.¹

In addition, 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.²

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

We find that respondent has shown cause for not suspending or revoking Certificate No. 589. Respondent has not shown cause, however, why the Commission should not assess a civil forfeiture. Even if "most" of respondent's vehicles were either repossessed⁵ or not in sufficient operating condition to present for inspection on or before April 5, 2008 a claim that is not supported by any other evidence and which we view with great skepticism - "most" is not the same as "all".

We will assess a civil forfeiture of \$1,000⁶ for respondent's knowing and willful failure to present all vehicles for inspection on or before April 5, 2008, as directed by Order No. 11,207.

¹ Compact, tit. II, art. XIII, § 6(f).

² Compact, tit. II, art. XI, § 10(c).

In re Emanco Transp. Inc., No. MP-07-245, Order No. 11,304 (Apr. 24, 2008); *In re Junior's Enters., Inc.*, No. MP-01-103, Order No. 6549 (Feb. 21, 2002) .

⁴ Order Nos. 11,304; 6549.

⁵ The supporting lessor statement that vehicles repossessed in October. Nothing is said about April.

⁶ See *In re Jimmie Lee Davenport & James L. Hughes*, No. MP-04-164, Order No. 9851 (Aug. 18, 2006) (assessing \$1,000 for failure to present vehicles) .

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 \$1,000 for knowingly and willfully violating Order No. 11,207.

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 one thousand dollars (\$1,000).

BY DIRECTION OF THE COMMISSION; COMMISSIONERS YATES AND CHRISTIE:



William S. Morrow, Jr.
Executive Director