

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 11,819

IN THE MATTER OF:

Served January 26, 2009

Application of MELWOOD HORTICULTURAL) Case No. AP-2008-014
TRAINING CENTER, INC., for a)
Certificate of Authority --)
Irregular Route Operations)

This matter is before the Commission on applicant's application for reconsideration of Order No. 11,692, served November 19, 2008, which assessed a civil forfeiture of \$7,500 for applicant's unlawful operations from July 1, 2007, to August 12, 2008.

Applicant held WMATC Certificate of Authority No. 534 from May 5, 2000, until October 19, 2007, when the Commission revoked Certificate No. 534 for applicant's willful failure to comply with the Commission's insurance regulation, Regulation No. 58.¹ Applicant thereafter initiated this proceeding by reapplying for operating authority.

During the course of this proceeding, applicant admitted that it continued operating a shuttle bus service in the Metropolitan District uninterrupted through August 12, 2008, notwithstanding the suspension of Certificate No. 534 on July 1, 2007, and revocation on October 19, 2007. Based on this admission and other evidence in the record, the Commission determined in Order No. 11,692, that applicant had operated in violation of Article XI, Section 6(a), of the Compact, that the violation was knowing and willful within the meaning of Article XIII, Section 6(f), of the Compact, and that the appropriate forfeiture was \$7,500 based on the number of days of operations and after taking into account applicant's voluntary admission of guilt and reapplying for operating authority.

Applicant seeks reconsideration of Order No. 11,692 on the grounds that the violation was not knowing and willful and that the \$7,500 is steep. Under Title II of the Compact, Article XIII, Section 4(a), an application for reconsideration of a Commission order must be filed within thirty days of its publication and state specifically the errors claimed as grounds for reconsideration. Respondent timely filed the application for reconsideration as of December 12, 2008.

Applicant argues that it changed transportation directors in 2007, that the new director was unaware that applicant's WMATC insurance filing had lapsed, and that there was no intent on applicant's part to circumvent Commission regulations. Applicant misapprehends the meaning of knowing and willful.

¹ *In re Melwood Horticultural Training Center, Inc.*, No. MP-07-142, Order No. 10,844 (Oct. 19, 2007).

The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.² The term "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.³ Once a carrier is apprised of Compact requirements, the onus is on the carrier to determine whether its operations are in compliance.⁴ Violations occurring thereafter are viewed as knowing and willful.⁵ Employee negligence is no defense.⁶ "To hold carriers not liable for penalties where the violations . . . are due to mere indifference, inadvertence, or negligence of employees would defeat the purpose of" the statute.⁷

In any event, the record shows that applicant continued operating while this application was pending. Applicant seems to suggest that it thought there was a live issue as to whether the transportation applicant was performing under contract with the U.S. Department of Agriculture requires WMATC authority, but this is the same contract applicant was performing when Certificate No. 534 was originally granted.⁸

As for the amount of the forfeiture, the civil forfeiture provision of the Compact serves at least two functions: deterrence of future violations and disgorgement of unjust profits.⁹ The \$7,500 net forfeiture assessed in Order No. 11,692 was reduced from \$70,500 in recognition of applicant's admission of guilt and reapplying for authority. The reduced forfeiture is appropriate on deterrence grounds alone considering applicant operated without authority for over one year. The application for reconsideration, therefore, shall be denied.

IT IS SO ORDERED.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS CHRISTIE AND BRENNER:



William S. Morrow, Jr.
Executive Director

² *In re Union, Inc.*, No. AP-07-013, Order No. 10,482 (May 10, 2007); *In re Associated Community Servs., Inc.*, No. AP-02-88, Order No. 6839 (Oct. 3, 2002).

³ Order Nos. 10,482; 6839.

⁴ Order Nos. 10,482; 6839.

⁵ Order Nos. 10,482; 6839.

⁶ Order No. 6839.

⁷ *United States v. Illinois Cent. R.R.*, 303 U.S. 239, 243, 58 S. Ct. 533, 535 (1938).

⁸ See *In re Melwood Horticultural Training Center, Inc.*, No. AP-00-11, Order No. 5862 (Apr. 19, 2000) (noting applicant's proposed tariff for shuttle service under USDA contract).

⁹ *In re Phoenix Limo. & Tour Co.*, No. AP-98-10, Order No. 5304 (Apr. 6, 1998).