

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 11,934

IN THE MATTER OF: Served April 9, 2009

KHULON 1 ENTERPRISES, INC.,) Case No. MP-2008-208
Suspension and Investigation of)
Revocation of Certificate No. 971)

KHULON 1 ENTERPRISES, INC.,) Case No. MP-2009-032
Suspension and Investigation of)
Revocation of Certificate No. 971)

This matter is before the Commission on respondent's response to Order No. 11,745, served on December 11, 2008, in Case No. MP-2008-208, and respondent's failure to respond to Order No. 11,853, served on February 24, 2009, in Case No. MP-2009-032.

Order No. 11,745 directed respondent to show cause why the Commission should not assess a civil forfeiture against respondent, and/or suspend or revoke Certificate No. 971, for knowingly and willfully violating Article XI, Section 6(a), of the Compact, Regulation No. 58, and the orders issued in Case No. MP-2008-208.

Order No. 11,853 noted the automatic suspension of Certificate No. 971 pursuant to Regulation No. 58-12 for respondent's failure to maintain an effective WMATC Insurance Endorsement on file with the Commission, directed respondent to cease transporting passengers for hire under Certificate No. 971, and gave respondent thirty days to replace the terminated endorsement and pay the \$50 late fee due under Regulation No. 67-03(c) or face revocation of Certificate No. 971.

These proceedings are being consolidated under Rule No. 20-02 because they share common issues of fact and law.

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. 971 for a minimum of \$1.5 million in combined-single-limit liability coverage and maintain

¹ Compact, tit. II, art. XI, § 6(a).

² Compact, tit. II, art. XI, § 7(g).

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. 971 was rendered invalid on September 14, 2008, when the \$1.5 million primary WMATC Insurance Endorsement on file for respondent terminated without replacement. Order No. 11,577, served September 15, 2008, in Case No. MP-2008-208, noted the automatic suspension of Certificate No. 971 pursuant to Regulation No. 58-12, directed respondent to cease transporting passengers for hire under Certificate No. 971, and gave respondent thirty days to replace the terminated endorsement and pay the \$50 late fee due under Regulation No. 67-03(c) or face revocation of Certificate No. 971.

Respondent paid the late fee on September 18, 2008, and submitted a \$1.5 million primary WMATC Insurance Endorsement on September 24, 2008, but the effective date of the new endorsement was October 9, 2008, instead of September 14, 2008.

Under Regulation No. 58-14:

If a carrier's operating authority is suspended under Regulation No. 58-12 and the effective date of a later-filed replacement Endorsement falls after the automatic suspension date, the carrier must verify timely cessation of operations in accordance with Commission Rule No. 28 and corroborate the verification with client statements and/or copies of pertinent business records, as directed by Commission order.

Order No. 11,589, served September 25, 2008, accordingly gave respondent until October 27 to verify cessation of operations as of September 14. Inasmuch as respondent's only tariff was for service rendered to the general public, the order directed respondent to corroborate the verification with copies of its business records for the period beginning July 1, 2008, and ending September 25, 2008.

Instead of submitting a statement and producing copies of its business records, respondent requested that the Commission rescind Order Nos. 11,577 and 11,589. Order No. 11,745 denied that request but lifted the suspension as of December 11 because respondent had reestablished compliance with Regulation No. 58. The order also directed respondent to show cause within thirty days why the Commission should not assess a forfeiture against respondent, and/or suspend or revoke Certificate No. 971, for operating without authority and failing to produce documents as directed and gave respondent fifteen days to request an oral hearing.

The WMATC Endorsement supporting the lifting of suspension in Order No. 11,745 subsequently terminated without replacement on January 3, 2009. The Commission inadvertently overlooked the termination event until February 24, when it issued Order No. 11,853 in Case No. MP-2009-032. The order noted the automatic suspension of

Certificate No. 971 as of January 3 pursuant to Regulation No. 58-12, directed respondent to cease transporting passengers for hire under Certificate No. 971, and gave respondent thirty days to replace the terminated endorsement and pay the \$50 late fee due under Regulation No. 67-03(c) or face revocation of Certificate No. 971. The order also directed respondent to comply with Regulation Nos. 60 and 67 by paying a \$150 annual fee for 2009, filing an annual report for 2009, and paying \$200 in late fees for missing the February 2, 2009, annual report/fee deadline.

II. RESPONSE TO ORDER NO. 11,745

Respondent subsequently submitted a statement asserting that respondent ceased operating upon receiving the September 2008 suspension order. We view respondent's statement as an admission that respondent continued operating until the afternoon of September 16, 2008, the date and time the order was delivered to respondent according to U.S. Postal Service tracking information.

Respondent also produced copies of bank statements for July 2008 through September 2008. The bank statements show numerous purchases at several gas stations throughout September, suggesting that respondent actually continued operating for the entire month.

Respondent has not requested a hearing.

III. FAILURE TO RESPOND TO ORDER NO. 11,853

Respondent has neither filed a new WMATC Endorsement nor paid the \$50 late insurance fee as directed by Order No. 11,853. In addition, respondent has neither paid its 2009 annual fee, nor submitted its 2009 annual report, nor paid the \$200 in associated late fees.

IV. 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;

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).

rather, they describe conduct marked by intentional or careless disregard or plain indifference.⁶ Employee negligence is no defense.⁷ "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.⁸

The record shows that the WMATC Endorsement that terminated on September 14, 2008, did so because that was the expiration date stated in the Endorsement. Under Regulation No. 58-11:

When a WMATC carrier's insurance has terminated or is about to terminate the carrier must contact the Commission to ascertain whether the necessary WMATC Insurance Endorsement has been filed before continuing to operate on and after the termination date. Proof a WMATC carrier has satisfied its duty to verify shall consist of contemporaneous written verification from the Commission.

Respondent does not claim that somehow it was unaware of the expiration date. In fact, the record is to the contrary in that respondent attempted to renew its WMATC Endorsement with a September 14 effective date. Although respondent maintains it was unaware that it had become suspended until several days after the fact, there is no evidence that respondent made any effort to ascertain whether the necessary WMATC Endorsement had been timely filed before continuing to operate as required by Regulation No. 58-11. We therefore find that respondent's operations on and after September 14, 2008, were knowing and willful within the meaning of the Compact. Because respondent has admitted operating while suspended from September 14, 2008, through September 16, 2008, we will assess a forfeiture of \$250⁹ for three days or \$750.

In addition, we will assess a forfeiture of \$250 for respondent's knowing and willful failure to timely produce documents as directed.¹⁰

Finally, we shall revoke Certificate No. 971 for respondent's willful failure to maintain on file with the Commission an effective WMATC Insurance Endorsement and willful failure to file a 2009 annual report and pay \$400 in fees as directed by Order No. 11,853.

⁶ *Id.*

⁷ *In re Zee Transp. Serv., Inc.*, No. MP-07-120, Order No. 10,671 (Aug. 8, 2007).

⁸ *United States v. Illinois Cent. R.R.*, 303 U.S. 239, 243, 58 S. Ct. 533, 535 (1938).

⁹ See *In re Yai Med. Transp., L.L.C.*, No. MP-05-09, Order No. 8845 (July 22, 2005) (assessing \$250 per day for unauthorized operations).

¹⁰ See *In re Westview Med. & Rehab. Servs., P.C. Inc.*, No. MP-07-070, Order No. 10,882 (Nov. 2, 2007) (assessing \$250 for failure to timely produce documents).

THEREFORE, IT IS ORDERED:

1. That Case Nos. MP-2008-208 and MP-2009-032 are hereby consolidated pursuant to Rule No. 20-02.

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 \$1,000 for knowingly and willfully violating Article XI, Section 6(a), of the Compact and the orders issued in Case No. MP-2008-208.

3. That respondent's 2009 annual report, \$150 2009 annual fee, and \$250 in late fees shall remain due.

4. 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 four hundred dollars (\$1,400).

5. That pursuant to Article XI, Section 10(c), of the Compact, Certificate of Authority No. 971 is hereby revoked for respondent's willful failure to comply with Regulation No. 58 and Order No. 11,853.

6. 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. 971 to the Commission.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS CHRISTIE AND BRENNER:



William S. Morrow, Jr.
Executive Director