

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 11,935

IN THE MATTER OF:

Served April 9, 2009

EPPS TRANSPORTATION COMPANY, INC.,)
Suspension and Investigation of) Case No. MP-2008-124
Revocation of Certificate No. 51)

EPPS TRANSPORTATION COMPANY, INC.,)
Suspension and Investigation of) Case No. MP-2009-020
Revocation of Certificate No. 51)

This matter is before the Commission on respondent's failure to respond to Order No. 11,804, served January 21, 2009, in Case No. MP-2008-124, and respondent's failure to fully respond to Order No. 11,837, served February 17, 2009, in Case No. MP-2009-020.

Order No. 11,804 directed respondent to show cause why the Commission should not assess a civil forfeiture against respondent, and/or revoke Certificate No. 51.

Order No. 11,837 noted the automatic suspension of Certificate No. 51 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. 51, 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. 51.

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. 51 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

¹ Compact, tit. II, art. XI, § 6(a).

² Compact, tit. II, art. XI, § 7(g).

of a WMATC Certificate of Insurance and Policy Endorsement (WMATC Insurance Endorsement) for each policy comprising the minimum.

Certificate No. 51 was rendered invalid on April 27, 2008, when the \$1.5 million primary WMATC Insurance Endorsement on file for respondent terminated without replacement. Order No. 11,312, served April 28, 2008, noted the automatic suspension of Certificate No. 51 pursuant to Regulation No. 58-12, directed respondent to cease transporting passengers for hire under Certificate No. 51, 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. 51. Respondent also was directed to file a new tariff because respondent's preexisting tariff was no longer effective.

Respondent paid the late fee and filed a new tariff on July 7. Respondent also submitted a new \$1.5 million primary WMATC Insurance Endorsement on July 16, but the effective date of the new endorsement is July 10, 2008, instead of April 27, 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. 11,480, served July 21, 2008, gave respondent thirty days to verify that it ceased operations as of April 27, 2008. Inasmuch as respondent's only tariff was for service rendered to the general public, respondent's verification was to be corroborated with copies of respondent's general business records.

Respondent subsequently filed a statement verifying cessation of operations as of October 19, 2007. Respondent also produced bank statements for the period beginning October 1, 2007, and ending June 30, 2008. The check and debit activity reflected in the statements is consistent with respondent's verification. The deposit activity is not. Respondent deposited over \$2,000 in May and June combined. Order No. 11,613, served October 6, 2008, accordingly directed respondent to produce copies of all items deposited to respondent's bank account during the period beginning March 1, 2008, and ending on October 6, 2008. Because respondent had reestablished compliance with Regulation No. 58, however, the order lifted the suspension of Certificate No. 51 as of October 6.

Respondent failed to comply with Order No. 11,613, and the Commission responded by issuing Order No. 11,804 on January 21, 2009. The order gave respondent thirty days to show cause why the Commission

should not assess a civil forfeiture against respondent, and/or revoke Certificate No. 51, for knowingly and willfully violating Article XI, Section 6(a), of the Compact and Order Nos. 11,312 and 11,613.

In the meantime, the WMATC Endorsement supporting the lifting of suspension in Order No. 11,613 subsequently terminated without replacement on February 13, 2009. The Commission responded by initiating Case No. MP-2009-020 and issuing Order No. 11,837 on February 17. The order noted the automatic suspension of Certificate No. 51 as of February 13 pursuant to Regulation No. 58-12, directed respondent to cease transporting passengers for hire under Certificate No. 51, 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. 51.

II. FAILURE TO FULLY RESPOND TO ORDER NOS. 11,804 & 11,837

Respondent has yet to respond to Order No. 11,804. As for Order No. 11,837, respondent has paid the \$50 late insurance fee, but respondent has yet to file a new WMATC Insurance Endorsement.

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

We will assess a forfeiture of \$250 for respondent's knowing and willful failure to produce documents as directed by Order No. 11,613.⁷

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 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).

In addition, we shall revoke Certificate No. 51 for respondent's willful failure to maintain on file with the Commission an effective WMATC Insurance Endorsement.

THEREFORE, IT IS ORDERED:

1. That Case Nos. MP-2008-124 and MP-2009-020 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 \$250 for knowingly and willfully violating Order No. 11,613.

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 hundred fifty dollars (\$250).

4. That pursuant to Article XI, Section 10(c), of the Compact, Certificate of Authority No. 51 is hereby revoked for respondent's willful failure to comply with Regulation No. 58.

5. 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. 51 to the Commission.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS CHRISTIE AND BRENNER:



William S. Morrow, Jr.
Executive Director