

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 11,944

IN THE MATTER OF:

Served April 20, 2009

CHUKWUNENYE NNAKWU, Trading as)
PROGRESSIVE MEDICAL CARE SERVICES,)
Suspension and Investigation of)
Revocation of Certificate No. 1078)

Case No. MP-2008-242

This matter is before the Commission on respondent's response to Order No. 11,800, served January 15, 2009, which directed respondent to timely tender a 2009 annual report and annual fee, submit a verification of cessation of operations as of November 8, 2008, and produce copies of business records for the period beginning October 1, 2008, and ending January 15, 2009.

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. 1078 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. 1078 was rendered invalid on November 8, 2008, when the \$1.5 million primary WMATC Insurance Endorsement on file for respondent terminated without replacement. Order No. 11,674, served November 10, 2008, noted the automatic suspension of Certificate No. 1078 pursuant to Regulation No. 58-12, directed respondent to cease transporting passengers for hire under Certificate No. 1078, 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. 1078.

Respondent subsequently submitted a new \$1.5 million primary WMATC Endorsement on November 13, 2008, with an effective date of November 19, 2008, but respondent did not pay the \$50 late insurance fee. Certificate No. 1078 consequently was revoked in Order

¹ Compact, tit. II, art. XI, § 6(a).

² Compact, tit. II, art. XI, § 7(g).

No. 11,772, served December 30, 2008, pursuant to Article XI, Section 10 (c).

Respondent thereafter paid the late fee and filed an application for reconsideration on January 2, 2009. Respondent argued that the Commission had revoked Certificate No. 1078 "without reasons". Order No. 11,772, however, states that the reason for revocation was respondent had not paid the \$50 late insurance fee under Regulation No. 67-03(c). Indeed, the record shows Commission staff contacted respondent on December 19 and informed him that the \$50 late fee was due, but respondent did not pay the late fee until January 2. The application for reconsideration was therefore denied in Order No. 11,800, but because respondent had paid the late fee within the time prescribed for filing an application for reconsideration, the Commission reopened this proceeding on its own initiative and reinstated Certificate No. 1078.

To prevent circumvention of Regulation Nos. 60-01 and 67-02, respondent was directed to file a 2009 annual report and pay the 2009 annual fee on or before January 31, 2009. And because the effective date of respondent's new WMATC Endorsement was November 19, 2008, instead of November 8, 2008, Order No. 11,800 directed respondent to verify timely cessation of operations and corroborate with copies of pertinent business records in accordance with Regulation No. 58-14.

II. RESPONSE TO ORDER NO. 11,800

Respondent timely paid his 2009 annual fee and filed his 2009 annual report on January 30, 2009. Respondent has submitted nothing further in response to Order No. 11,800, other than a request to amend Order No. 11,800 so as to make November 19, 2008, the effective date of the reinstatement of Certificate No. 1078 on the ground that November 19 is the effective date of the replacement WMATC Endorsement supporting reinstatement. The request shall be denied because respondent was not eligible for reinstatement prior to January 2, 2009, when respondent paid the outstanding \$50 late fee.

This leaves us with two unsigned, unsworn statements and copies of bank records submitted by respondent prior to Order No. 11,800 in attempted compliance with Regulation No. 58-14. Besides being unsigned and unsworn, the statements are inconsistent with respondent's own bank records and contradicted by correspondence obtained from one of respondent's clients, Health Services for Children with Special Needs, Inc., (HSCSN).

According to a statement filed by respondent on January 2, 2009, respondent claims not to have "transported anyone since Nov 10, 2008." According to a statement filed by respondent on January 13, 2009: "Since June 2008 my contract was terminated by MTM. I have not signed any contract with anybody. I have not transported anybody." These statements are inconsistent with respondent's own bank records showing numerous purchases from several gas stations throughout November 2008. Even more telling are HSCSN's demands in a March 27, 2009, letter for repayment of money paid to respondent for service

rendered "from November 10, 2008, through January 15, 2009", including service rendered on November 14, 16, 17, and 18, 2008, when respondent was not only suspended but uninsured.

III. ORDER TO SHOW CAUSE

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 Each day of the violation constitutes a separate violation.⁴ 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.⁵

The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.⁶ 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.⁷ Employee negligence is no defense.⁸ "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.⁹

The record shows that respondent's WMATC Endorsement terminated on November 8, 2008, 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's bank records and the HSCSN correspondence establish that respondent continued operating on and after respondent's WMATC Endorsement expired on November 8, 2008. Respondent does not claim that somehow he was not aware of the

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

⁴ Compact, tit. II, art. XIII, § 6(f)(ii).

⁵ Compact, tit. II, art. XI, § 10(c).

⁶ *In re Metro Health-Tech Servs. Inc.*, No. MP-08-057, Order No. 11,588 (Sept. 24, 2008).

⁷ *Id.*

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

⁹ *United States v. Illinois Cent. R.R.*, 303 U.S. 239, 243, 58 S. Ct. 533, 535 (1938).

expiration date. In fact, the record is to the contrary. Regardless, there is no evidence that respondent made any effort to ascertain whether the necessary WMATC Endorsement had been filed as required by Regulation No. 58-11 before continuing to operate on and after November 8, 2008, and respondent should have produced copies of his HSCSN invoices in response to Order No. 11,800.

Respondent shall have thirty days to show cause why the Commission should not assess a civil forfeiture against respondent, and/or suspend or revoke Certificate No. 1078, for knowingly and willfully violating Article XI, Section 6(a), of the Compact by conducting operations under an invalid/suspended certificate of authority, and for knowingly and willfully violating Order No. 11,800 by failing to produce documents as required.¹⁰

THEREFORE, IT IS ORDERED:

1. That respondent shall have thirty days to show cause why the Commission should not assess a civil forfeiture against respondent for knowingly and willfully violating Article XI, Section 6(a), of the Compact and Order No. 11,800.

2. That respondent shall have thirty days to show cause why the Commission should not suspend or revoke Certificate No. 1078 for respondent's willful failure to comply with Article XI, Section 6(a), of the Compact and Order No. 11,800.

3. That respondent may submit within 15 days from the date of this order a written request for oral hearing, specifying the grounds for the request, describing the evidence to be adduced and explaining why such evidence cannot be adduced without an oral hearing.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS CHRISTIE AND BRENNER:



William S. Morrow, Jr.
Executive Director

¹⁰ See *In re Suka Medical Transp., Inc.*, No. MP-08-155, Order No. 11,730 (Dec. 4, 2008) (same).