

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 11,947

IN THE MATTER OF:

Served April 23, 2009

SAMS HEALTH CARE SERVICES INC.,)
Suspension and Investigation of)
Revocation of Certificate No. 1278)

Case No. MP-2008-005

This matter is before the Commission on respondent's response to Order No. 11,813, served January 26, 2009, which directed respondent to show cause why the Commission should not assess a civil forfeiture against respondent and/or suspend or revoke Certificate No. 1278.

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. 1278 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. 1278 was rendered invalid on January 5, 2008, when the \$1.5 million primary WMATC Insurance Endorsement on file for respondent terminated without replacement. Order No. 11,062, served January 7, 2008, noted the automatic suspension of Certificate No. 1278 pursuant to Regulation No. 58-02, directed respondent to cease transporting passengers for hire under Certificate No. 1278, and gave respondent thirty days to replace the expired endorsement and pay the \$50 late fee due under Regulation No. 67-03(c) or face revocation of Certificate No. 1278. Respondent also was directed to file a new tariff because respondent's preexisting tariff was no longer effective.

Respondent subsequently filed a \$1.5 million primary WMATC Insurance Endorsement on January 11, 2008, but the endorsement had an effective date of January 19, 2008, instead of January 5, 2008. Respondent later paid the \$50 late insurance fee on March 24, 2008, and filed a contract tariff for service to Medical Transportation Management, Inc., (MTM), on March 25, 2008.

¹ Compact, tit. II, art. XI, § 6(a).

² Compact, tit. II, art. XI, § 7(g).

Given the apparent lack of insurance coverage from January 5, 2008, to January 19, 2008, Order No. 11,263, served April 4, 2008, gave respondent thirty days to verify cessation of operations as of January 5, 2008, in accordance with Commission Rule No. 28, and thirty days to corroborate the verification with a statement from respondent's only customer, MTM.

Respondent thereafter submitted a revised \$1.5 million WMATC Insurance Endorsement on April 16, 2008, with an effective date of January 5, 2008, thus eliminating the 14-day gap in coverage under the original replacement endorsement. Respondent, however, failed to file any statement regarding cessation of operations as of January 5, 2008, and failed to file any statement from MTM, as required by Order No. 11,263.

Order No. 11,306, served April 24, 2008, lifted the suspension based on respondent having reestablished compliance with Regulation No. 58 and directed respondent to file the statements required by Order No. 11,263.

Respondent's CEO, Mr. Suleiman A. Memudu, submitted a statement on behalf of respondent on April 25, 2008, but no statement from MTM. Mr. Memudu's statement explains that he was not aware Certificate No. 1278 had been suspended until March 24, 2008, when MTM "cancelled [respondent's] contract and [withdrew] all the members that were assigned to [respondent]". Mr. Memudu claims he was unaware of the suspension until then because the Commission sent the suspension order to the wrong address.

The record shows the suspension order was sent by certified mail and returned to the Commission unclaimed because respondent failed to sign for it despite two delivery attempts by the U.S. Postal Service, not because the addressee was unknown. The first notice was left January 8, 2008. The second was left January 12, 2008. The delivery address for the suspension order was the same address that appears in the premium finance agreement signed by Mr. Memudu in December 2007 to obtain the replacement coverage at issue.³ Commission records show respondent eventually filed a change of address with the Commission, but not until February 22, 2008.

Order No. 11,813, served January 26, 2009, accordingly directed respondent to show cause why the Commission should not assess a civil forfeiture against respondent and/or suspend or revoke Certificate No. 1278, for operating while suspended and failing to produce a statement from MTM as directed by Order No. 11,263. Order No. 11,813 also gave respondent fifteen days to request an oral hearing.

II. RESPONSE TO ORDER NO. 11,813

Respondent has filed a request for oral hearing but nothing else. The request for hearing does not describe the evidence to be adduced and does not explain why respondent's evidence cannot be adduced without an oral hearing, as required by Order No. 11,813. The request states that respondent is unable to get a statement from MTM

³ The finance agreement is attached to Mr. Memudu's April 25 statement.

now that respondent is no longer under contract with MTM, but this does not explain why respondent failed to obtain such a statement when it was still under contract with MTM. The contemporaneous documents submitted by Mr. Memudu speak for themselves, in any case. The request for oral hearing shall accordingly be denied.

III. ASSESSMENT OF FORFEITURE

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.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 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 Mr. Memudu signed an application for coverage under the DC Automobile Insurance Plan and entered into a premium finance agreement on December 10, 2007, in order to replace the coverage due to expire January 5. The finance company received the agreement on December 18, 2007, but did not forward the insurance application and premium payment to the DC Plan until January 2. The DC Plan received the application and payment on January 3. The DC Plan assigned the policy to Progressive Casualty Insurance Company. An authorized Progressive employee signed respondent's WMATC Endorsement on January 8, 2008. The Endorsement was received by the Commission on January 11.

At no point prior to January 11 did respondent contact the Commission to ensure that its agents had timely carried out their tasks so that respondent might remain in compliance with Regulation No. 58. Mr. Memudu explains he did not request a copy of the WMATC Endorsement from the insurance company because he understood they do not send the Endorsement to the insured but rather to the Commission. Respondent was under no duty to obtain a copy from the the insurance company, but respondent should have checked with the Commission on or

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

⁵ *In re Metro Health-Tech Servs. Inc.*, No. MP-08-057, Order No. 11,588 (Sept. 24, 2008).

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).

before the January 5, 2008, expiration date to make sure the necessary replacement endorsement(s) had been filed.⁹

We find that respondent knowingly and willfully transported passengers for hire under its MTM contract while suspended from January 5, 2008, to March 24, 2008.

In situations similar to this one - operating while suspended but not while uninsured - the Commission has assessed a civil forfeiture of \$250 for each day of unauthorized operations and placed carriers on probation for one year.¹⁰ We shall follow the same course here and assess a civil forfeiture of \$250 per day for 79 days or \$19,750. We will suspend all but \$2,000 in recognition of respondent having closed the 14-day gap.

In addition, we will assess a forfeiture of \$250 for respondent's knowing and willful failure to timely produce documents as directed.¹¹

IV. ORDER DENYING WAIVER OF ANNUAL REPORT/FEE LATE FEES

Respondent owes a 2009 annual report pursuant to Regulation No. 60-01, a \$150 2009 annual fee pursuant to Regulation No. 67-02, and \$200 in late fees pursuant to Regulation No. 67-03(a), (b) for failing to file the annual report and pay the annual fee on or before February 2, 2009. Mr. Memudu has filed a request on behalf of respondent to waive the late fees. Mr. Memudu states that respondent has no current income from which to pay the late fees and that respondent has been ordered to vacate its current offices. A notice to vacate from the landlord is attached to Mr. Memudu's statement.

We will extend the deadline for paying the annual fee until June 30, 2009. No late fee shall be due under Regulation No. 67-03(b) if respondent pays the annual fee on or before June 30, 2009.

We will not extend the deadline for filing the annual report. Neither respondent's financial situation in January 2009 nor respondent's financial situation now constitutes grounds for failing to file a costless report on time. We will, however, extend the deadline for paying the \$100 late fee under Regulation No. 67-03(a) until June 30, 2009.

V. ORDER TO FILE NEW TARIFF

According to Commission records, respondent's most recent general tariff is for service rendered to clients of the District of Columbia Department of Health, Medical Assistance Administration (DCMAA). These rates are no longer in effect now that DCMAA has assigned all transportation contracts to Medical Transportation

⁹ See *In re Zee Transp., Serv. Inc.*, No. MP-07-120, Order No. 10,671 (Aug. 8, 2007) (same).

¹⁰ *In re Boomerang Tours, Inc.*, No. MP-08-204, Order No. 11,805 (Jan. 21, 2009).

¹¹ 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).

Management, Inc.¹² The only other tariff on file for respondent is respondent's contract tariff for service to MTM, which respondent states has been terminated. This leaves respondent with no effective tariff.

Respondent, therefore, must file a new tariff in accordance with Regulation Nos. 55 and 56, and pay the \$50 filing fee pursuant to Regulation No. 67-01.

THEREFORE, IT IS ORDERED:

1. That pursuant to Article XIII, Section 6(f), of the Compact, the Commission hereby assesses a net civil forfeiture against respondent in the amount of \$2,250 for knowingly and willfully violating Article XI, Section 6(a), and Order Nos. 11,263 and 11,306.

2. That the full forfeiture of \$20,000 assessed in this order shall be immediately due and payable if applicant fails to pay the net forfeiture on or before June 30, 2009.

3. That the deadline for paying the \$150 2009 annual fee, and the deadline for paying the \$100 late fee under Regulation No. 67-03(a) is hereby extended to June 30, 2009.

4. That in accordance with the preceding paragraphs, respondent is hereby directed to pay to the Commission on or before June 30, 2009, by money order, certified check, or cashier's check, the sum of two thousand five hundred dollars (\$2,500).

5. That respondent shall submit a 2009 annual report and tender a new tariff and \$50 tariff filing fee within thirty days.

6. That Certificate No. 1278 shall be subject to revocation pursuant to Article XI, Section 10(c) of the Compact if respondent fails to timely comply with the requirements of this order.

7. That respondent shall serve a one-year period of probation. A willful violation of the Compact, or of the Commission's rules, regulations or orders thereunder, during the period of probation shall constitute grounds for immediate suspension and/or revocation of Certificate No. 1278 without further proceedings, regardless of the nature and severity of the violation.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS CHRISTIE AND BRENNER:



William S. Morrow, Jr.
Executive Director

¹² In re Global Imex Inc., No. MP-08-182, Order No. 11,511 (Aug. 4, 2008).