

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 12,242

IN THE MATTER OF:

Served December 2, 2009

SKYHAWK LOGISTICS, INC., Suspension)
and Investigation of Revocation of)
Certificate No. 406)

Case No. MP-2009-044

This matter is before the Commission on respondent's Requests for Abatement of Penalty filed in response to Order No. 12,137, served September 2, 2009, which gave respondent thirty days to adduce evidence of its profit or loss from unauthorized operations as a basis for partially suspending a \$26,000 civil forfeiture assessed in Order No. 12,101, served July 24, 2009.

The Commission found in Order No. 12,101 that respondent had knowingly and willfully violated the Compact, Regulation No. 58, and Order No. 11,895 by operating from March 17, 2009, through April 27, 2009, while Certificate No. 406 was suspended. The Commission also found that respondent operated while uninsured/underinsured from March 17, 2009, through March 26, 2009.

The forfeiture was assessed at \$500 per day for 42 days of operations while Certificate No. 406 was suspended, or \$21,000, and \$500 per day for the 10 days respondent operated while uninsured/underinsured, or \$5,000, for a total forfeiture of \$26,000. Order No. 12,101 further explained that the amount of forfeiture was doubled from the \$250 per day assessed against respondent in 2008 for the same type of violations¹ because \$250 per day had apparently proved an insufficient deterrent.

The Commission upheld the \$26,000 forfeiture on reconsideration in Order No. 12,137 but stipulated that respondent would be permitted an opportunity to adduce evidence of its profit or loss from unauthorized operations as a basis for partially suspending the \$26,000 forfeiture, as follows:

The Commission noted that in calculating the amount of the forfeiture, the Commission had taken into account that the civil forfeiture provision of the Compact serves at least two functions: deterrence of future violations and disgorgement of unjust profits.

¹ *In re Skyhawk Logistics, Inc.*, No. AP-07-195, Order No. 11,693 at 4 (Nov. 19, 2008).

Respondent contends that it "has not unjustly profited" from operating while suspended. Respondent requests "additional time to calculate and tabulate all of its direct, fixed and overhead costs attributable to" the transportation it was performing while suspended in order to establish the amount of profit or loss attributable to that activity.

The Commission has partially suspended civil forfeitures in the past where respondents demonstrated they had profited little or not at all from their unauthorized operations. The Commission has reduced forfeitures on reconsideration. The Commission will therefore grant respondent's request for additional time to produce evidence concerning respondent's "very small or possibly [nonexistent] profit" from unauthorized operations. Respondent is reminded that it bears the burden of proof on this issue and is cautioned to comply with Rule No. 4 and produce full supporting documentation and/or independent verification of its computations. (Citations omitted).

Respondent has filed two requests to abate the \$26,000 forfeiture. The first request was filed on September 30, 2009, and is supported by a monthly profit and loss statement for respondent's Defense Intelligence Agency (DIA) shuttle operations for the 11 months beginning March 2008 and ending January 2009. The second request was filed on October 26, 2009, and is supported by a monthly profit and loss statement for respondent's DIA shuttle operations for the 12 months beginning March 2008 and ending February 2009. Neither request is supported by a statement or analysis of respondent's overall profit or loss during March and April 2009 when the violations took place, and respondent has offered no explanation for not producing such a statement. In addition, neither of the profit and loss statements is "verified under oath by a person having knowledge of the matters set forth" as required by Rule No. 4-06.

Furthermore, implicit in respondent's proffer is the premise that the average monthly results of DIA shuttle operations for the 11 or 12 months immediately preceding March 2009 are representative of the actual results of DIA shuttle operations for March and April 2009. We find that premise has no basis in the record before us.

The profit and loss statements show that respondent experienced most of its DIA contract losses in March 2008 through June 2008. The months thereafter were predominately profitable. Both statements show that a significant increase in monthly revenue beginning July 2008 accounts for this. Under respondent's Contract Tariff No. CT-1, DIA was obligated to pay even more beginning March 2009. Under the circumstances, we cannot say that respondent has shown that the average monthly results of DIA operations for the 11 or 12 months prior to March 2009 are representative of the actual results of DIA

operations at the time respondent committed the violations in March and April 2009.

We therefore find that respondent has not satisfied its burden of demonstrating a basis for reducing the \$26,000 forfeiture.

THEREFORE, IT IS ORDERED: that the Requests for Abatement of Penalty are denied; and this proceeding is hereby terminated.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS CHRISTIE AND BRENNER:

A handwritten signature in black ink, appearing to read "W.S. Morrow, Jr.", written in a cursive style.

William S. Morrow, Jr.
Executive Director