

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 12,473

IN THE MATTER OF:

Served July 8, 2010

ANGEL ENTERPRISE INC, Trading as) Case No. MP-2010-028
THE ANGELS, Suspension and)
Investigation of Revocation of)
Certificate No. 1312)

This matter is before the Commission on respondent's response to Order No. 12,398, served May 7, 2010, which directed respondent to verify cessation of operations as of March 29, 2010, and corroborate the verification with copies of its pertinent business records and client statements.

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. 1312 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. 1312 was rendered invalid on March 29, 2010, when the \$1.5 million primary WMATC Insurance Endorsement on file for respondent expired without replacement. Order No. 12,373, served April 23, 2010, noted the automatic suspension of Certificate No. 1312 pursuant to Regulation No. 58-12, directed respondent to cease transporting passengers for hire under Certificate No. 1312, and gave respondent 30 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. 1312.

The suspension was lifted in Order No. 12,398 in accordance with Regulation No. 58-13 after respondent paid the late fee on April 27, 2010, and submitted a new \$1.5 million primary WMATC Insurance Endorsement on May 7, 2010. But because the effective date

¹ Compact, tit. II, art. XI, § 6(a).

² Compact, tit. II, art. XI, § 7(g).

of the new endorsement is May 5, 2010, instead of March 29, 2010, the investigation was continued in Order No. 12,398 pursuant to Regulation No. 58-14.

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. 12,398 directed respondent to submit a written verification and pertinent business records, and because Commission records indicated respondent transports passengers for the Montgomery County Department of Transportation and LogistiCare Solutions, LLC, the order also directed respondent to file written statements from those entities indicating whether respondent ceased operating on their behalf as of March 29, 2010.

II. RESPONSE

Respondent has produced business records showing that respondent continued operating on and after March 29, 2010. Invoices produced by respondent establish that respondent transported 102 passengers on trips between points within the Metropolitan District on 23 separate days from March 29 through April 24, 2010. This evidence is supported by bank statements produced by respondent indicating respondent made purchases at gasoline stations at least nine times from March 29 through April 24, 2010.

Respondent also produced a notice, or copy of a notice, from the Montgomery County Department of Transportation dated April 27, 2010, stating that respondent would not be permitted to transport Montgomery County Medicaid patients "until such time as [respondent's] insurance is cleared with WMATC." This would appear to indicate that respondent did not cease transporting passengers for Montgomery County prior to April 27, 2010, and respondent has produced no statement from Montgomery County to the contrary. Indeed, respondent's CEO, Ms. Christien O. Okoroafor, states not that respondent stopped operating March 29, 2010, but, rather, that respondent ceased operating after receiving notice from WMATC to stop, which is apparently a reference to the Commission's Order No. 12,373 dated April 23, 2010.

Ms. Okoroafor states that respondent did not do any business with LogistiCare but was unable to obtain a statement to that effect.

III. ORDER TO SHOW CAUSE

Regulation No. 58-03 states that: "A carrier operating under temporary authority or a certificate of authority issued by the

Commission (WMATC carrier) shall maintain on file with the Commission at all times an acceptable, effective 'WMATC Certificate of Insurance and Policy Endorsement' (WMATC Insurance Endorsement)." (Emphasis added). This places a duty on each carrier to be aware of when its WMATC Endorsement is due to expire.³ In this case, the Endorsement at issue had an expiration date of March 29, 2010. Respondent should have been aware of that.

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.

There is no evidence in the record indicating that respondent contacted the Commission and was informed that a replacement Endorsement had been filed and that respondent was clear to continue operating on and after March 29, 2010.

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 Each day of the violation constitutes a separate violation.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 careless disregard of whether or not one has the right so to act.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

³ See *In re Junior's Enters., Inc.*, No. MP-03-165, Order No. 7878 (Mar. 19, 2004) (respondent's duty to advise insurance broker and insurance company of WMATC filing deadline).

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

⁵ Compact, tit. II, art. XIII, § 6(f)(ii).

⁶ *In re Couples, LLC, t/a Couples Limos.*, No. MP-09-134, Order No. 12,330 (Mar. 8, 2010).

⁷ *Id.*

⁸ *Id.*

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

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. 1312, for knowingly and willfully transporting passengers for hire between points in the Metropolitan District while suspended and uninsured on 23 separate days from March 29 through April 24, 2010.

We note that respondent is currently on probation for operating for 17 days while suspended last year.¹⁰ Respondent's insurance had lapsed for 26 days from March 29 through April 23, 2009, and the Commission revoked Certificate No. 1312 after finding that respondent continued operating while suspended and uninsured.¹¹ The Commission later reinstated Certificate No. 1312 subject to a one year period of probation upon respondent's payment of a civil forfeiture and filing of a revised WMATC Endorsement that closed the 26-day insurance gap. Respondent thus had particular reason to be vigilant of its insurance status and consequently its right to operate on and after March 29, 2010.

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 Regulation No. 58.

2. That respondent shall have thirty days to show cause why the Commission should not suspend or revoke Certificate No. 1312 for respondent's willful failure to comply with Article XI, Section 6(a), of the Compact and Regulation No. 58.

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 BRENNER AND CHRISTIE:



William S. Morrow, Jr.
Executive Director

¹⁰ *In re Angel Enterprise Inc, t/a The Angels*, No. MP-09-049, Order No. 12,118 (Aug. 18, 2009).

¹¹ *In re Angel Enterprise Inc, t/a The Angels*, No. MP-09-049, Order No. 12,095 (July 17, 2009).