

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 12,602

IN THE MATTER OF:

Served October 26, 2010

EXACT ENTERPRISES INC., Suspension )  
and Investigation of Revocation of )  
Certificate No. 1249 )

Case No. MP-2010-049

This matter is before the Commission on respondent's response to Order No. 12,459, served June 25, 2010.

**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."<sup>1</sup> A certificate of authority is not valid unless the holder is in compliance with the Commission's insurance requirements.<sup>2</sup>

Commission Regulation No. 58 requires respondent to insure the revenue vehicles operated under Certificate No. 1249 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. 1249 was rendered invalid on June 8, 2010, when the \$1.5 million primary WMATC Insurance Endorsement on file for respondent terminated without replacement. Order No. 12,431, served June 8, 2010, noted the automatic suspension of Certificate No. 1249 pursuant to Regulation No. 58-12, directed respondent to cease transporting passengers for hire under Certificate No. 1249, 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. 1249.

Respondent paid the late fee on June 24, 2010, and submitted a \$1.5 million primary WMATC Insurance Endorsement on June 25, 2010, and the suspension was lifted on June 25, 2010, in Order No. 12,459, but because the effective date of the new endorsement is June 24, 2010, instead of June 8, 2010, the order gave respondent 30 days in accordance with Regulation No. 58-14 to verify cessation of operations as of June 8, 2010, and to corroborate the verification with copies of respondent's pertinent business records and statements from three of

---

<sup>1</sup> Compact, tit. II, art. XI, § 6(a).

<sup>2</sup> Compact, tit. II, art. XI, § 7(g).

respondent's clients, the Montgomery County Department of Transportation, (DOT), Health Services for Children with Special Needs, Inc., (HSCSN), and LogistiCare Solutions, LLC.

## II. RESPONSE TO ORDER NO. 12,459

Respondent's president, Therese Toko Sime, has filed a statement asserting that respondent "ceased operation from June 8th, 2010, to June 24th, 2010," and respondent has produced a number of documents pertaining to that time period, as required by Order No. 12,459, including among others: driver mileage records, insurance billing forms, checking account statements, and fax cover sheets.

In addition, the Commission has received a letter from the Montgomery County Department of Transportation stating that respondent "submitted no invoices for reimbursement of non-emergency wheelchair van services for Montgomery County Medicaid transportation patients, for the period, June 9, 2010 through June 25, 2010."

Finally, the Commission has received a letter from HSCSN stating that it "suspended and removed all transportation authorizations from [respondent]" effective June 8, 2010, and that HSCSN "began authorizing [respondent] to start transporting our members on June 28, 2010." The Commission received no letter from LogistiCare Solutions, LLC.

## III. FINDINGS

Although respondent claims not to have operated from June 8 to June 24, 2010, driver mileage records, insurance billing forms, and a fax produced by respondent show that respondent continued transporting passengers in the Washington Metropolitan Area on June 8 and 9, 2010, and that respondent prepared and submitted claims for that transportation the following week. HSCSN may have withdrawn its authorization on June 8, but respondent's records clearly show that respondent performed trips already scheduled by HSCSN for June 8 and 9 and that respondent submitted a request for payment to HSCSN for both dates the following week.

Furthermore, although Montgomery County DOT may not have received any invoices from respondent for transportation during the suspension period, this does not rule out the possibility that respondent continued performing transportation services for Montgomery County Medicaid patients while suspended but simply did not bill the county for that service. Such service is unlawful notwithstanding a tacit understanding that respondent would not bill the county for service rendered while suspended.<sup>3</sup>

---

<sup>3</sup> See *In re Madison Limo. Serv., Inc.*, No. AP-91-39, Order No. 3891 (Feb. 24) (holding that continuation of certificated operations at no charge is "transportation for hire") (citing Order No. 3810 at 6; *Unique Freight Lines Co. v. White Tiger Transp. Co.*, 618 F. Supp. 216 (S.D.N.Y. 1985)), *aff'd on reconsideration*, Order No. 3914 (Mar. 25, 1992).

There is substantial other evidence that respondent provided transportation service to HSCSN and Montgomery County DOT clients and/or others throughout the suspension period. Respondent's checking account statements reveal that respondent pays its drivers according to the number of hours they work and that respondent paid for hours worked throughout the time Certificate No. 1249 was suspended. The June 2010 statement also shows numerous bank card purchases from service stations during the suspension period, which is consistent with entries on the driver mileage records showing gas purchases during that time. Respondent's payroll activity and service station purchases throughout the month of June 2010 are inconsistent with respondent's assertion that it did not operate from June 8 to June 24, 2010.

#### **IV. 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 terminate.<sup>4</sup> In this case, the Endorsement at issue was canceled by the insurance company on May 4, 2010, effective June 8, 2010, and the Commission so advised respondent by notice dated May 18, 2010.

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 to ascertain whether the necessary WMATC Insurance Endorsement had been filed before continuing to operate on and after June 8, 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

---

<sup>4</sup> See *In re Angel Enterprise Inc, t/a The Angels*, No. MP-10-028, Order No. 12,473 (July 8, 2010) (duty to be aware of expiration date).

not more than \$5,000 for any subsequent violation.<sup>5</sup> Each day of the violation constitutes a separate violation.<sup>6</sup>

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.<sup>7</sup>

The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.<sup>8</sup> 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.<sup>9</sup> Employee negligence is no defense.<sup>10</sup> "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.<sup>11</sup>

The record shows that respondent has exhibited a careless disregard for the Commission's insurance requirements. First, Regulation No. 58-04(c) requires that a WMATC Endorsement be "issued in accordance with state and local insurance laws." The record shows that respondent's insurance policy was canceled because an audit conducted by the insurance company revealed that respondent was headquartered in Maryland and not the District of Columbia as respondent had alleged in order to obtain coverage under the District of Columbia's assigned risk plan.

Second, respondent's June 2010 checking account statement shows that instead of immediately replacing the improperly obtained coverage upon notification of cancelation in May by the insurance company and the Commission, respondent waited until June 24, 2010, to purchase a new policy with another company, which apparently is the reason for the June 24 effective date in the replacement WMATC Endorsement.

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. 1249, for knowingly and willfully transporting passengers for hire between points in the Metropolitan District while suspended and uninsured on June 8 and 9, 2010.

THEREFORE, IT IS ORDERED:

---

<sup>5</sup> Compact, tit. II, art. XIII, § 6(f)(i).

<sup>6</sup> Compact, tit. II, art. XIII, § 6(f)(ii).

<sup>7</sup> Compact, tit. II, art. XI, § 10(c).

<sup>8</sup> Order No. 12,473.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *United States v. Illinois Cent. R.R.*, 303 U.S. 239, 243, 58 S. Ct. 533, 535 (1938).

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. 1249 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, HOLCOMB, AND KUBLY:



William S. Morrow, Jr.  
Executive Director