

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 12,658

IN THE MATTER OF:

Served December 17, 2010

L & J LIMO SERVICES LLC, Suspension)
and Investigation of Revocation of)
Certificate No. 1605)

Case No. MP-2010-017

This matter is before the Commission on respondent's response to Order No. 12,597, served October 25, 2010, directing respondent to show cause why the Commission should not assess a civil forfeiture against respondent, and/or suspend or revoke Certificate No. 1605, for knowingly and willfully transporting passengers for hire between points in the Metropolitan District while suspended and for knowingly and willfully failing to produce documents as directed by Order No. 12,344.

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. 1605 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. 1605 was rendered invalid on March 6, 2010, when the \$1.5 million primary WMATC Insurance Endorsement on file for respondent expired without replacement. Order No. 12,331, served March 8, 2010, noted the automatic suspension of Certificate No. 1605 pursuant to Regulation No. 58-12, directed respondent to cease transporting passengers for hire under Certificate No. 1605, 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. 1605.

Respondent submitted a new \$1.5 million primary WMATC Insurance Endorsement on March 9, 2010, and paid the \$50 late fee on March 24,

¹ Compact, tit. II, art. XI, § 6(a).

² Compact, tit. II, art. XI, § 7(g).

2010. The suspension was lifted as a result in Order No. 12,344 on March 26, 2010, in accordance with Regulation No. 58-13.

The effective date of the new endorsement is March 9, 2010, instead of March 6, 2010. 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. 12,344 accordingly gave respondent 30 days to: (1) submit an affidavit stating whether respondent operated during the period beginning March 6, 2010, and ending March 26, 2010; and (2) produce copies of respondent's business records for the period beginning January 1, 2010, and ending March 26, 2010.

II. RESPONSE TO ORDER NO. 12,344

On March 30, 2010, respondent submitted the statement of Learie Bruce, who signed respondent's 2010 WMATC annual report as respondent's president. His statement reads as follows:

I am writing this letter to inform you that from 3/06/10 thru 3/09/10 I didn't work nor Their wasn't any monetary transaction performed during those period. I have provided you with my trip manifest, my daily Dairy and also my Credit Card Statement for the period of 02/17/10 thru 03/16/10 to proof too you that I was total out of operation until I reinstated my Insurance Policy on the 03/09/10.

Respondent's document production consisted of the following: (1) a single "Merchant Financial Activity Statement" for the period February 17, 2010, through March 16, 2010; (2) two "Daily Trip Sheets", one for March 5, 2010, and one for March 10, 2010; and (3) two spiral binder calendar pages covering the period from March 4, 2010, through March 10, 2010.

The Commission found Mr. Bruce's statement deficient in several respects. First, it is not under oath as required by Commission Rule No. 4-06. Second, it does not fully cover the March 6 to March 26, 2010, period stipulated in Order No. 12,344. Third, it speaks only to Mr. Bruce's activities, not respondent's.

The Commission found respondent's March 30 document production likewise deficient. None of the document categories fully cover the January 1, 2010, to March 26, 2010, period stipulated in Order No. 12,344 - a total of 85 days. The merchant statement covers

only 28 of the 85 days. The daily trip sheets cover only two of the 85 days. The calendar pages cover only seven of the 85 days.

Furthermore, Order No. 12,344 specifically directed respondent to produce customer contracts, customer invoices, and bank statements, but respondent failed to produce any such records and failed to explain why such documents were not produced.

Order No. 12,597 accordingly directed respondent to show cause why the Commission should not assess a civil forfeiture against respondent and/or suspend or revoke Certificate No. 1605.

III. RESPONSE TO ORDER NO. 12,597

Respondent has produced additional documents in response to Order No. 12,597, together with the affidavit of Ms. Jacinta F. Smart, respondent's current president according to Commission records. Ms. Smart's affidavit addresses respondent's actions during the suspension period but not respondent's failure to produce all responsive documents on or before April 25, 2010, as required by Order No. 12,344.

Ms. Smart states that respondent did not operate from March 6 to March 9, 2010, when no insurance was in place. Respondent's records are not to the contrary. Ms. Smart admits, on the other hand, that respondent operated from March 10 to March 25, 2010, while suspended, even if not uninsured. Respondent's calendar shows two trips between points in the Metropolitan District during the suspension period - one on March 10 and one on March 23, 2010.

IV. FINDINGS AND ASSESSMENT OF FORFEITURE AND PROBATION

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"

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 Sams Health Care Servs. Inc.*, No. MP-08-005, Order No. 11,947 (Apr. 23, 2009); *In re Boomerang Tours, Inc.*, No. MP-08-204, Order No. 11,805 (Jan. 21, 2009).

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

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.¹⁰

Under Regulation No. 58-12: "Failure to replace a WMATC Insurance Endorsement prior to termination shall result in immediate, automatic suspension of a carrier's WMATC operating authority. The carrier must suspend operations immediately and may not recommence operations unless and until otherwise ordered by the Commission."

Ms. Smart states that respondent was not aware that Certificate No. 1605 was suspended until respondent received "the commission's [order] dated October 25, 2010." This argument fails for two reasons. First, respondent obviously was aware of the suspension as of March 30 when it produced its business records in response to Order No. 12,344, which explained that the reason for requiring those documents was to ensure corroboration of any claim that respondent did not operate while suspended.

Second, even if Ms. Smart meant to say that respondent was not aware of the suspension until after receiving the document production order, under Regulation Nos. 58-03 and 58-12, respondent should have been aware on March 6 that its WMATC Endorsement had expired without replacement, that Certificate No. 1605 had become automatically suspended as a result, and that respondent should not recommence operations unless and until otherwise ordered by the Commission.

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.¹¹ We shall follow the same course here and assess a civil forfeiture of \$250 per day, or \$500, for

⁷ Order No. 11,947; Order No. 11,805.

⁸ Order No. 11,947.

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

¹⁰ *In re Angel Enterprise Inc, t/a The Angels*, No. MP-10-028, Order No. 12,473 (July 8, 2010).

¹¹ Order No. 11,947; Order No. 11,805.

knowingly and willfully operating two days while suspended and place respondent on probation.

In addition, we will assess a forfeiture of \$250 for respondent's knowing and willful failure to timely produce documents as directed.¹²

THEREFORE, IT IS ORDERED:

1. That pursuant to Article XIII, Section 6(f), of the Compact, the Commission hereby assesses a civil forfeiture against respondent in the amount of \$500 for knowingly and willfully violating Article XI, Section 6(a), of the Compact, and Regulation No. 58-12.

2. That pursuant to Article XIII, Section 6(f), of the Compact, the Commission hereby assesses a civil forfeiture against respondent in the amount of \$250 for knowingly and willfully violating Order No. 12,344.

3. That respondent is hereby directed to pay to the Commission within 30 days, by check or money order, the sum of seven hundred fifty dollars (\$750).

4. That Certificate No. 1605 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.

5. 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. 1605, regardless of the nature and severity of the violation.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS BRENNER, HOLCOMB, AND KUBLY:



William S. Morrow, Jr.
Executive Director

¹² See Order No. 11,947 (assessing \$250 for failure to timely produce documents).