

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 12,761

IN THE MATTER OF:

Served March 14, 2011

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. 12,473, served July 8, 2010, which directed respondent to show cause why the Commission should not assess a civil forfeiture against respondent, and/or suspend or revoke Certificate No. 1312.

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 on May 7, 2010, in accordance with Regulation No. 58-13 after respondent paid the late fee and submitted a new \$1.5 million primary WMATC Insurance Endorsement from a new insurance company. But because the effective date of the new endorsement is May 5, 2010, instead of March 29, 2010,

¹ Compact, tit. II, art. XI, § 6(a).

² Compact, tit. II, art. XI, § 7(g).

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 TO ORDER NO. 12,398

Respondent complied with Order No. 12,398, and based on that response, Order No. 12,473, made the following observations.

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.

Order No. 12,473 accordingly gave respondent 30 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.

Order No. 12,473 also gave respondent 15 days to submit 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.

III. REQUEST FOR ORAL HEARING

On July 15, 2010, respondent filed a request for oral hearing, but the request 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. 12,473. The request for oral hearing shall accordingly be denied.³

IV. RESPONSE TO ORDER NO. 12,473

Ms. Okoroafor has filed two statements in response to Order No. 12,473. The first, filed September 1, 2010, explains that she checked with the insurance company to ascertain whether the necessary filing had been made with the Commission and was assured that this had been done. On the other hand, Ms. Okoroafor appears to concede that she did not contact the Commission to confirm this before continuing to operate on and after March 29, 2010, as required by Regulation No. 58-11.

The second statement, filed October 18, 2010, explains that she thought respondent's policy expired April 24, 2010, instead of March 29, 2010.

Neither statement denies the finding in Order No. 12,473 that respondent transported 102 passengers on trips between points within the Metropolitan District on 23 separate days from March 29 through April 24, 2010. On the contrary, Ms. Okoroafor admits in her September 1 statement that respondent did not stop operating until after the Commission had issued Order No. 12,373 on April 23.

³ See *In re Chukwunyenye Nnakwu, t/a Progressive Med. Care Servs.*, No. MP-08-242, Order No. 12,038 (June 10, 2009) (same); *In re Sams Health Care Servs. Inc.*, No. MP-08-005, Order No. 11,947 (Apr. 23, 2009) (same).

On the other hand, respondent has filed a new \$1.5 million WMATC Endorsement from the old insurance company extending coverage under the old policy to cover the period from March 29, 2010, to May 5, 2010, thus closing the gap that triggered Regulation No. 58-14.

V. 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 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 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."

Under Regulation No. 58-11:

When a WMATC carrier's insurance has terminated or is about to terminate the carrier must contact the

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

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

⁶ *In re Chukwunye Nnakwu, t/a Progressive Med. Care Servs.*, No. MP-08-242, Order No. 12,121 (Aug. 18, 2009); Order No. 11,947.

⁷ Order Nos. 12,121; 11,947.

⁸ Order Nos. 12,121; 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).

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.

As noted above, respondent apparently concedes not contacting the Commission to ascertain whether the necessary WMATC Insurance Endorsement had been filed before continuing to operate on and after March 29, 2010, as required by Regulation No. 58-11.

This is the third time that respondent has been suspended for failing to comply with the Commission's insurance requirements. The first time was in February 2008, less than a year after Certificate No. 1312 was issued.¹¹ Respondent reestablished compliance a month later, and the suspension was lifted.¹²

The second time was in 2009.¹³ Respondent continued operating after the lapse in coverage, resulting in a \$4,250 forfeiture – of which all but \$1,200 was suspended in recognition of respondent's production of inculpatory records – and revocation of Certificate No. 1312.¹⁴ Respondent later filed for reconsideration and supported its request with a \$1.5 million WMATC Insurance Endorsement restoring coverage for the period during which coverage had been temporarily interrupted. The Commission reinstated Certificate No. 1312 but placed respondent on probation for one year.¹⁵ The probation period was still in effect when Certificate No 1312 was suspended this year for the same violation.

Under the circumstances, we view the current violation as a knowing and willful continuation of an ongoing pattern of behavior that respondent has yet to completely correct and therefore find that respondent has failed to show cause why the Commission should not assess a civil forfeiture for operating while suspended.

We shall assess a forfeiture against respondent in the amount of \$500 per day for 23 days, or \$11,500. We will suspend all but 25 percent, rounded to the nearest \$100, or \$2,900, based on the presence of one reduction factor: respondent's production of

¹¹ *In re Angel Enterprise Inc, t/a The Angels*, No. MP-08-048, Order No. 11,165 (Feb. 26, 2008).

¹² *In re Angel Enterprise Inc, t/a The Angels*, No. MP-08-048, Order No. 11,251 (Apr. 1, 2008).

¹³ *In re Angel Enterprise Inc, t/a The Angels*, No. MP-09-049, Order No. 11,903 (Mar. 31, 2009).

¹⁴ *In re Angel Enterprise Inc, t/a The Angels*, No. MP-09-049, Order No. 12,095 (July 17, 2009).

¹⁵ *In re Angel Enterprise Inc, t/a The Angels*, No. MP-09-049, Order No. 12,118 (Aug. 18, 2009).

inculpatory records.¹⁶ Failure to pay the net forfeiture in a timely fashion shall result in reinstatement of the full \$11,500.

In calculating the amount of the forfeiture we have taken into account a number of factors, first of which is that the civil forfeiture provision of the Compact serves at least two functions: deterrence of future violations and disgorgement of unjust profits.¹⁷ We have doubled the amount of forfeiture from the \$250 per day we assessed against respondent in 2009 because apparently \$250 per day is not enough of a deterrent to dissuade respondent from committing such violations.¹⁸

VI. SUSPENSION OF CERTIFICATE NO. 1312

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.¹⁹

As noted above, the Commission placed respondent on probation last year for committing the same violation, and respondent was still on probation at the time of the violation this year. We shall impose a 90-day suspension in one last attempt to "rehabilitate" respondent.²⁰

Upon completion of the suspension, in accordance with Rule No. 28, respondent shall file a statement under oath verifying compliance with the requirement that respondent refrain from transporting passengers between points in the Metropolitan District during the suspension period.

Respondent shall serve a two-year period of probation following the suspension.

THEREFORE, IT IS ORDERED:

1. That the request for oral hearing is denied.
2. That pursuant to Article XIII, Section 6(f), of the Compact, the Commission hereby assesses a civil forfeiture against respondent

¹⁶ See Order No. 12,095 (net of 28.24% based on production of inculpatory records); *In re Dependable Med. Transp. Inc.*, No. MP-08-235, Order No. 12,043 (June 10, 2009) (net of 27.27% based on same); *In re 1st Choice Investment Group, LLC, t/a It's About U*, No. MP-08-013, Order No. 11,639 (Oct. 24, 2008) (net of 21.62% based on same); *In re Veolia Transp. Servs., Inc., & Yellow Bus Serv., Inc., t/a Yellow Transp.*, No. AP-07-001, Order No. 11,580 (Sept. 18, 2008) (net of 29.85% based on same).

¹⁷ *In re Skyhawk Logistics, Inc.*, No. AP-09-044, Order No. 12,101 (July 24, 2009).

¹⁸ See *id.* (same).

¹⁹ Compact, tit. II, art. XI, § 10(c).

²⁰ See *Gold Line, Inc., v. American Coach Lines, Inc.*, No. FC-86-01, Order No. 3079 (Oct. 9, 1987) (same).

in the amount of \$11,500 for knowingly and willfully violating Article XI, Section 6(a), of the Compact and Regulation No. 58; provided, that all but \$2,900 shall be suspended in recognition of respondent's production of inculpatory records.

3. That respondent is hereby directed to pay to the Commission within thirty days of the date of this order, by check or money order, the sum of two thousand nine hundred dollars (\$2,900).

4. That the full forfeiture of \$11,500 assessed in this order shall be immediately due and payable if respondent fails to timely pay the net forfeiture of \$2,900.

5. That pursuant to Article XI, Section 10(c), of the Compact, Certificate of Authority No. 1312 is hereby suspended for 90 days commencing thirty days from the date of this order for respondent's willful failure to comply with Article XI, Section 6(a), of the Compact and Regulation No. 58.

6. That pursuant to Commission Rule No. 28, upon completion of the suspension, respondent shall file a statement under oath verifying compliance with the requirement that respondent refrain from transporting passengers between points in the Metropolitan District during the suspension period.

7. That respondent shall be placed on probation for a period of two years such that a willful violation of the Compact, or of the Commission's rules, regulations or orders thereunder, by respondent during the period of probation shall constitute grounds for immediate suspension and/or revocation of respondent's operating authority 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