

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 12,802

IN THE MATTER OF:

Served April 8, 2011

PARAMED MEDICAL TRANSPORTATION,)
INC., Trading as PARA-MED, WMATC)
No. 206, Investigation of Violation)
of Regulation No. 61 and Operation)
of Unsafe Vehicles)

Case No. MP-2010-015

This matter is before the Commission on respondent's application for reconsideration of Commission Order No. 12,723, served February 15, 2011, which assessed a combined civil forfeiture of \$1,750 against respondent and placed respondent on probation for one year for knowingly and willfully:

1. Violating Order No. 12,326 by failing to timely produce a vehicle list, vehicle registrations, and vehicle safety inspection certificates - \$250.
2. Violating Order No. 12,326 by failing to timely present all vehicles for inspection - \$1,000.
3. Violating Regulation No. 62-02 by failing to timely file a lease for a 2004 Freightliner - \$250.
4. Violating Regulation No. 63-05 by displaying "WMATC 206" on a vehicle registered as an ambulance - \$250.

Respondent requests that the Commission "annul" the forfeiture or reduce the forfeiture and approve an installment payment plan. Respondent also requests that the Commission "commute" the probation period.

Under Title II of the Washington Metropolitan Area Transit Regulation Compact, Article XIII, Section 4,¹ a party to a proceeding affected by a final order or decision of the Commission may file within 30 days of its publication a written application requesting Commission reconsideration of the matter involved, and stating specifically the errors claimed as grounds for the reconsideration.² If the application is granted, the Commission shall rescind, modify, or affirm its order or decision with or without a hearing, after giving notice to all parties.³

¹ Pub. L. No. 101-505, § 1, 104 Stat. 1300, 1311 (1990).

² Compact, tit. II, art. XIII, § 4(a).

³ Compact, tit. II, art. XIII, § 4(d).

Respondent timely filed its application on March 17, 2011, but no errors are alleged. Respondent does not claim that it timely produced a complete vehicle list, all vehicle registrations, and all vehicle safety inspection certificates. Respondent does not claim that it timely presented all vehicles. And respondent does not claim that it never displayed its WMATC number on an ambulance.

Respondent appears to take credit for filing the Freightliner lease with the Commission in October 2010, but that filing took place after the Commission had issued Order No. 12,546, on September 15, 2010, directing respondent to show cause why the Commission should not assess a forfeiture against respondent for failing to file the lease prior to September 15, 2010.⁴

The application speaks vaguely about the difficulties respondent faced in attempting to present all of its vehicles for inspection by Commission staff, but respondent offers no specific reasons for failing to produce the two vehicles identified in Order No. 12,723. Indeed, these vehicles are not even mentioned in this regard.

The application also appears to intimate that somehow the Commission and/or Commission staff contributed to respondent's failure to fully comply with Order No. 12,326 and Regulation Nos. 62-02 and 63-05 and that "time lapses" and "communication delays" exacerbated the situation. First, once a carrier is apprised of Compact requirements, the onus is on the carrier to determine whether its operations are in compliance.⁵ Violations occurring thereafter are viewed as knowing and willful.⁶ Second, without some specific examples of the lapses and delays to which respondent refers and without any documents in support, we are left with no basis to render a finding in respondent's favor on this issue.

We therefore find no basis for rescinding Order No. 12,723. We do, however, find a potential basis for modifying the order. The civil forfeiture provision of the Compact serves at least two functions: deterrence of future violations and disgorgement of unjust profits.⁷ According to Mr. Teja Safai, respondent's Director of Operations, states that:

⁴ Order No. 12,723 misspoke by stating that the Commission had no record of approving a lease for this vehicle as of February 15, 2011, but the finding that the lease for this vehicle was not timely filed, the basis for assessing a forfeiture, still stands inasmuch as the lease was not approved by the Commission prior to the vehicle being placed in service as required by Regulation No. 62-02.

⁵ *In re Metro Day Treatment Center, Inc.*, No. AP-10-032, Order No. 12,729 at 5 (Feb. 15, 2011) (emphasis added).

⁶ *Id.* at 5.

⁷ *In re In re Skyhawk Logistics, Inc.*, No. MP-09-044, Order No. 12,137 at 3 (Sept. 2, 2009).

Para-Med owners and partners have not been able to draw any salaries in lieu of their daily function at Para-Med for the last 3-9 months depending on their official positions. Like thousands of other companies in our area, Para-Med has been impacted by the global/national economic situation to the extent of borrowing in excess of \$200,000.00 against the owners residences, to keep the company afloat, employees working and creating a tax-base rather than joining the ranks of the unemployed. Para-Med has a deficit of \$30,000.00 in meeting its payroll that is due on Wednesday, 23rd March 2011.

The Commission in the past has admitted on reconsideration evidence of a carrier's financial results of operations for the purpose of establishing a basis for partially suspending the amount of a civil forfeiture assessed against the carrier.⁸ In accordance with Article XIII, Section 4(d), of the Compact, the Commission shall grant respondent an opportunity to produce such evidence before rendering a decision on the merits. 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.

THEREFORE, IT IS ORDERED: That the application for reconsideration of Order No. 12,723 is granted for the purpose of receiving evidence of respondent's financial results of operations conducted during the time period in which respondent committed the violations found in Order No. 12,723.

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



William S. Morrow, Jr.
Executive Director

⁸ *In re VGA, Inc.*, No. MP-09-108, Order No. 12,502 at 3 (Aug. 9, 2010); Order No. 12,137 at 4.