

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 12,858

IN THE MATTER OF:

Served May 16, 2011

Investigation of Violation of )  
Commission Regulation No. 63-04 by )  
DEVINE ESCAPE LIMOUSINE SERVICE LLC )  
and DEVINE ESCAPE LIMOUSINE AND )  
SEDAN LLC )

Case No. MP-2011-027

This matter is before the Commission on the response of respondents to Order No. 12,787, served April 1, 2011, directing respondents to cease and desist from advertising passenger carrier service requiring a WMATC certificate of authority and giving respondents 30 days to show cause why the Commission should not assess a civil forfeiture against respondents for knowingly and willfully violating WMATC Regulation No. 63-04.

**I. BACKGROUND**

This investigation was initiated to address an apparent violation of Commission Regulation No. 63-04 governing passenger carrier advertising in the Washington Metropolitan Area Transit District, (Metropolitan District).

Article XI, Section 1, of the Washington Metropolitan Area Transit Regulation Compact,<sup>1</sup> (Compact), provides that: "This Act shall apply to the transportation for hire by any carrier of persons between any points in the Metropolitan District." Article XI, Section 6(a), of the Compact provides that: "A person may not engage in transportation subject to this Act unless there is in force a 'Certificate of Authority' issued by the Commission [or WMATC] authorizing the person to engage in that transportation." Regulation No. 63-04 provides that no carrier "regulated by the Commission or subject to such regulation shall advertise or hold itself out to perform transportation or transportation-related services within the Metropolitan District unless such transportation or transportation-related services are authorized by the Commission."

Devine Escape Limousine Service LLC, (Devine I), applied for WMATC authority in 2007. The application was conditionally approved subject to the requirement that Devine I file certain documents and

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<sup>1</sup> Pub. L. No. 101-505, § 1, 104 Stat. 1300 (1990), amended by Pub. L. No. 111-160, 124 Stat. 1124 (2010) (amending tit. I, art. III).

present its vehicles for inspection within 180 days.<sup>2</sup> Devine I presented a vehicle for inspection on February 15, 2008, a 10-person 2007 Chrysler stretch limousine. The vehicle failed inspection because the front license plate was missing, there was no proof the vehicle had passed a safety inspection within the past twelve months, and the vehicle markings were displayed on a magnetic sign attached to the vehicle instead of directly on the vehicle as required by WMATC Regulation No. 61-03.<sup>3</sup> Devine I failed to correct these deficiencies, thereby voiding the Commission's approval.<sup>4</sup>

Devine I's chairman, Dr. Charles Bassey, subsequently formed Devine Escape Limousine and Sedan LLC, (Devine II), and caused Devine II to apply for WMATC authority in 2010. The application was denied without prejudice for failure to establish regulatory compliance fitness.<sup>5</sup>

Devine II holds operating authority from the Federal Motor Carrier Safety Administration.<sup>6</sup> It appears that Devine I once held authority from the Maryland Public Service Commission but no longer. According to the Maryland Department of Assessments and Taxation website, the charter of Devine I was forfeited in 2009 for failure to file a 2008 property return.

The Webpage <http://www.devineescape.net/aboutus.html> stated as of April 1, 2011, that "Devine Escape Limousine Service offers you the best ground transportation service at the best price in the Maryland, Virginia and District of Columbia area. Our limousines provide equally cost efficient (sic) transportation services for any occasion or event."

The Webpage <http://www.devineescape.net/fleet.html> advertised as of April 1, 2011, passenger transportation between points in the Metropolitan District, including between the District of Columbia, on the one hand, and "National" and "Dulles" Airports, on the other. The Webpage also advertised passenger transportation between points in the District of Columbia and passenger transportation between the District of Columbia, on the one hand, and points in Alexandria and Arlington, Virginia, on the other. The fleet for providing this service was advertised to include vehicles seating 12, 14, 22, and 30 passengers.

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<sup>2</sup> See *In re Devine Escape Limo. Serv. LLC*, No. AP-07-123, Order No. 10,692 (Aug. 10, 2007) (conditionally granting Certificate No. 1424).

<sup>3</sup> Devine I was instructed to surrender the signs. There is no evidence that Devine I complied.

<sup>4</sup> See Order No. 10,692 (grant of authority void upon applicant's failure to timely satisfy conditions of issuance); Commission Regulation No. 66 (failure to comply with conditions of grant within 180 days voids approval).

<sup>5</sup> *In re Devine Escape Limo. & Sedan LLC*, No. AP-10-142, Order No. 12,700 (Jan. 25, 2011).

<sup>6</sup> USDOT Number 1642915

The passenger transportation service advertised on these Webpages on April 1, 2011, requires a WMATC certificate of authority. Neither Devine I nor Devine II has ever held WMATC operating authority. It thus appeared on April 1, 2011, that Devine I and/or Devine II were violating Regulation No. 63-04.

## **II. ORDER NO. 12,787**

The Commission may investigate on its own motion a fact, condition, practice, or matter to determine whether a person has violated or will violate a provision of the Compact or a rule, regulation, or order.<sup>7</sup> If the Commission finds that a respondent has violated a provision of the Compact or any requirement established under it, the Commission shall issue an order compelling compliance and effecting other just and reasonable relief.<sup>8</sup>

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.<sup>9</sup>

"Knowingly" means with perception of the underlying facts, not that such facts establish a violation.<sup>10</sup> "Willfully" does not mean with evil purpose or criminal intent; rather, it describes conduct marked by careless disregard.<sup>11</sup> Employee negligence is no defense.<sup>12</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>13</sup>

Order No. 12,787, served April 1, 2011, directed respondents to immediately cease and/or refrain from violating Regulation No. 63-04 and gave respondents 30 days to show cause why the Commission should not assess a civil forfeiture. Order No. 12,787, also gave respondents 15 days to request an oral hearing. No such request was filed.

## **III. RESPONSE TO ORDER NO. 12,787**

Respondents filed a response to Order No. 12,787, on April 25, 2011. The response is signed by Dr. Basseby. He states that the Website was constructed and maintained by a third party and that he,

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<sup>7</sup> Compact, tit. II, art. XIII, § 1(c).

<sup>8</sup> Compact, tit. II, art. XIII, § 1(d).

<sup>9</sup> Compact, tit. II, art. XIII, § 6(f).

<sup>10</sup> *In re A-American Dream Limo. Serv., Inc.*, No. MP-03-90, Order No. 8081 (June 9, 2004); *In re Imperial Travel & Limo. Servs., Inc.*, No. MP-03-48, Order No. 7748 (Feb. 17, 2004).

<sup>11</sup> Order No. 8081; Order No. 7748.

<sup>12</sup> Order No. 8081; Order No. 7748.

<sup>13</sup> *United States v. Illinois Cent. R.R.*, 303 U.S. 239, 243, 58 S. Ct. 533, 535 (1938).

Dr. Bassey, instructed the third party to decommission the Website in January of this year and was under the impression, based on a Website printout from the third party, that this had been accomplished. Upon receiving Order No. 12,787, Dr. Bassey contacted the third party and instructed him to remove all Devine Escape pages from the Internet.

Dr. Bassey further states that he no longer owns or desires to participate "in any limousine business."

#### IV. FINDINGS AND CONCLUSION

It appears from the record that the main Webpage for the Devine Escape Website was disabled in late January or early February 2011. Although some other pages associated with the Website were still accessible as of April 1, 2011, that is no longer the case.

The Commission is satisfied that Dr. Bassey reasonably believed that the Devine Escape Website had been decommissioned in late January/early February 2011. We are further satisfied that Dr. Bassey acted promptly in correcting the failure of the Website contractor to fully decommission the Website.

But Dr. Bassey fails to explain why these advertisements were on the Internet in the first place. Neither respondent has ever held WMATC authority. We therefore find that respondents have not shown cause why the Commission should not assess a civil forfeiture.

We shall assess a forfeiture of \$250 for knowingly and willfully violating Regulation No. 63-04.<sup>14</sup>

THEREFORE, IT IS ORDERED:

1. That pursuant to Article XIII, Section 6(f), of the Compact, the Commission hereby assesses a civil forfeiture against Devine Escape Limousine Service LLC and Devine Escape Limousine and Sedan LLC, jointly and severally, in the amount of \$250 for knowingly and willfully violating Regulation No. 63-04.

2. That respondents are 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 hundred fifty dollars (\$250).

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



William S. Morrow, Jr.  
Executive Director

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<sup>14</sup> See Order No. 8081 (same); Order No. 7748 (same).