

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 12,900

IN THE MATTER OF:

Served July 6, 2011

EXECUTIVE TECHNOLOGY SOLUTIONS, )  
LLC, WMATC No. 985, Investigation )  
of Violation of Regulation No. 61 )  
and Operation of Unsafe Vehicles )

Case No. MP-2010-090

This matter is before the Commission (WMATC) on respondent's failure to respond to Order No. 12,798, served April 8, 2011, directing respondent to remove vehicles from service, present vehicles for inspection, produce evidence of current safety inspections, and file a certain contract tariff.

**I. BACKGROUND**

Respondent holds WMATC Certificate of Authority No. 985. Respondent's 2010 annual report, dated February 1, 2010, lists 7 vehicles used by respondent in WMATC operations. The vehicle identification number (VIN) reported for one of the vehicles on that list is invalid. While attempting to ascertain the correct VIN, Commission staff discovered several discrepancies between the vehicle information in respondent's annual report and vehicle information on file with the Maryland Motor Vehicle Administration (MVA), the Maryland Public Service Commission (PSC), and respondent's insurance company.<sup>1</sup>

On April 7, 2010, staff wrote to respondent concerning the discrepancies and requested that respondent submit a current list of vehicles and copies of the corresponding registration cards and safety inspection certificates on or before April 21, 2010. Staff also requested that respondent present its vehicles for inspection on or before May 5, 2010.

On April 23, 2010, respondent filed a vehicle list containing 12 vehicles. Respondent subsequently filed copies of current registration cards for 10 of the vehicles and asserted that the other 2 vehicles only provided intrastate service within Virginia and thus were exempt from this Commission's jurisdiction under Article XI, Section (3)(g), of the Compact. On May 3, 2010, respondent filed a vehicle lease covering a vehicle that was not registered to respondent, in compliance with Regulation No. 62-02.

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<sup>1</sup> Records from the Maryland MVA revealed that respondent had registered a vehicle not reported to this Commission. Also, two vehicles reported on respondent's 2010 annual report were not listed in a schedule of vehicles obtained from respondent's insurance company. Finally, respondent held operating authority from the Maryland PSC at the time and had reported a vehicle to the PSC not listed in respondent's 2010 annual report and not listed in the vehicle schedule from the insurance company.

Respondent also filed six safety inspection certificates covering 5 of the 12 vehicles on its April 23 vehicle list and one vehicle not included on that list.

On May 5, 2010, respondent presented 4 vehicles for inspection by Commission staff. All 4 failed.<sup>2</sup>

This investigation followed in Order No. 12,601, served October 26, 2010, which directed respondent to file a vehicle list and corresponding registration cards and safety inspection certificates within 15 days and present all vehicles for inspection within 30 days.

## **II. RESPONSE**

Respondent submitted a list of 11 vehicles on November 15, 2010, but only 10 registrations and only 10 safety inspection certificates, and one of the safety inspection certificates was for a vehicle not on the list, a 2003 Lincoln.

Respondent presented 5 vehicles for inspection on December 22, 2010, and 5 vehicles for inspection on December 23, 2010. All 10 failed. Two vehicles had no markings. One of the vehicles had markings only 1.5 inches high. The other 7 had markings only 0.5 inches high. Eight vehicles subsequently passed inspection, 4 on January 11, 2011, and 4 on January 12, 2011.

Two of the vehicles were not registered in respondent's name, but no lease is on file for those vehicles as required by Regulation No. 62.

On February 25, 2011, respondent presented a vehicle for inspection that was not on the November 15 list, a 2005 Setra. The Setra failed inspection because it displayed required vehicle markings at a height of only 1 inch.

Two of respondent's vehicles, including the Setra, have not been shown to have passed a safety inspection in the 12 months preceding the date presented for staff inspection in response to Order No. 12,601.

## **III. ORDER NO. 12,798**

Order No. 12,798, served April 8, 2011, directed respondent to immediately remove from WMATC service the six vehicles that had not passed staff inspection and directed respondent to verify compliance with this requirement within 10 days.

The order also noted that respondent's 2011 annual report, filed January 31, 2011, lists vehicles not on respondent's November 15, 2010, vehicle list and directed respondent to submit

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<sup>2</sup> Respondent did not present its other vehicles for inspection. The four that were presented were observed to display markings of less than two and one-half inches in height and thus under Regulation No. 61-02 presumed not to be in compliance with the Commission's vehicle marking requirements.

copies of the registration cards and safety inspection certificates for those additional vehicles within 15 days and to present those vehicles for inspection within 30 days.

Finally, the order gave respondent 15 days to file a corrected contract tariff that respondent filed while this investigation was pending but which had been rejected for filing by Commission staff.

To date, respondent has complied with none of these requirements.

#### **IV. SUSPENSION AND REVOCATION**

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>3</sup>

The record shows that a copy of Order No. 12,798 was delivered to respondent on April 9, 2011. Given that the Commission had ordered half of respondent's fleet out of service and that respondent has failed to confirm compliance, and considering that respondent has failed to produce safety inspection certificates for 10 of its apparent 12 vehicles, we shall suspend Certificate No. 985.<sup>4</sup>

Respondent shall have 30 days to show cause why the Commission should not revoke Certificate No. 985 for respondent's willful failure to comply with the Commission's requirements regarding tariffs (Regulation Nos. 55 & 56), annual reports (Regulation No. 60), vehicle markings (Regulation No. 61), vehicle leases (Regulation No. 62), and vehicle safety (Regulation No. 64) and with the orders issued in this proceeding.

#### **V. CIVIL 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.<sup>5</sup> Each day of the violation constitutes a separate violation.<sup>6</sup>

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<sup>3</sup> Compact, tit. II, art. XI, § 10(c).

<sup>4</sup> See *In re William E. Gillison, t/a Quiana Tours, Quiana Tours, Inc., & Baron Transp., Inc.*, No. MP-02-97, Order No. 7229 (June 4, 2003) (suspending carrier for willful failure to demonstrate compliance with Regulation No. 61); *In re Chika Transport Serv., Inc.*, No. MP-02-124, Order No. 7014 (Jan. 24, 2003) (suspending carrier for failing to produce documents requested in tariff investigation); see also *In re Double Decker Bus Tours, W.D.C., Inc.*, No. AP-95-21, Order No. 4666 (Sept. 22, 1995) (post-deprivation hearing satisfies due process when the need for immediate action to safeguard the public outweighs the harm of suspending licensee's rights and the risk of erroneous deprivation is not great) (citing *Dixon v. Love*, 431 U.S. 105 (1977)).

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

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

The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.<sup>7</sup> 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.<sup>8</sup> Employee negligence is no defense.<sup>9</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>10</sup>

Inasmuch as respondent has chosen to ignore Order No. 12,798, we shall give respondent 30 days to show cause why the Commission should not assess a civil forfeiture for respondent's knowing and willful violations of Regulation Nos. 55, 56, 60, 61, 62, and 64 and the orders issued in this proceeding.

THEREFORE, IT IS ORDERED:

1. That respondent shall have 30 days to show cause why the Commission should not suspend or revoke Certificate of Authority No. 985 for respondent's willful failure to comply with Commission Regulation Nos. 55, 56, 60, 61, 62, and 64 and with the orders issued in this proceeding.

2. That respondent shall have 30 days to show cause why the Commission should not assess a civil forfeiture against respondent for knowingly and willfully violating Commission Regulation Nos. 55, 56, 60, 61, 62, and 64 and the orders issued in this proceeding.

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

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<sup>7</sup> *In re Angel Enter. Inc, t/a The Angels*, No. MP-10-028, Order No. 12,761 (Mar. 14, 2011); *In re Chukwuneny Nnakwu, t/a Progressive Med. Care Servs.*, No. MP-08-242, Order No. 12,121 (Aug. 18, 2009); *In re Sams Health Care Servs. Inc.*, No. MP-08-005, Order No. 11,947 (Apr. 23, 2009) (same).

<sup>8</sup> Order Nos. 12,761; 12,121; 11,947.

<sup>9</sup> Order Nos. 12,761; 12,121; 11,947.

<sup>10</sup> *United States v. Illinois Cent. R.R.*, 303 U.S. 239, 243, 58 S. Ct. 533, 535 (1938).