

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 12,904

IN THE MATTER OF:

Served July 6, 2011

GREEN'S TRANSPORTATION COMPANY,)
INC., Suspension and Investigation)
of Revocation of Certificate)
No. 320)

Case No. MP-2011-038

This matter is before the Commission on respondent's response to Order No. 12,853, served May 10, 2011.

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. 320 for a minimum of \$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. 320 was rendered invalid on May 1, 2011, when the \$5 million primary WMATC Insurance Endorsement on file for respondent terminated without replacement. Order No. 12,831, served May 2, 2011, noted the automatic suspension of Certificate No. 320 pursuant to Regulation No. 58-12, directed respondent to cease transporting passengers for hire under Certificate No. 320, and gave respondent thirty 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. 320.

Respondent submitted a \$5 million primary WMATC Insurance Endorsement on May 5, 2011, and paid the late fee on May 10, 2011. The suspension was lifted as a result in Order No. 12,853 on May 10, 2011, in accordance with Regulation No. 58-13.

The effective date of the new endorsement was May 3, 2011, instead of May 1, 2011. Under Regulation No. 58-14:

¹ Compact, tit. II, art. XI, § 6(a).

² Compact, tit. II, art. XI, § 7(g).

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. 12,853 accordingly directed respondent to: (1) submit an affidavit verifying that respondent ceased operating as of May 1, 2011; and (2) produce copies of respondent's business records for the period beginning March 1, 2011, and ending May 10, 2011.

II. RESPONSE TO ORDER NO. 12,853

On May 12, 2011, respondent filed a new WMATC Endorsement with an effective date of May 2, 2011. This leaves May 1, 2011, uncovered and Regulation No. 58-14, and thus Order No. 12,853, still in play.

In response to Order No. 12,853, respondent has submitted the statement of its president, Mr. Horace Green. His statement asserts that respondent "transport[s] solely school children between the ages of 6 years- 18 years to District, Prince Georges, Montgomery, etc. public schools Mondays-Fridays. We do not provide charter services what so ever [sic]." The statement further asserts that respondent "was engaged solely in school bus operations during the period beginning March 1, 2011 and ending on [May 10, 2011]."

Respondent, however, has produced none of the documents specified in Order No. 12,853.

III. DISCUSSION

We find that Mr. Green's statement is deficient. First, it is not under oath as required by Commission Rule No. 4-06. Second, if the intent was to establish that respondent's "school bus" operations are excluded from WMATC jurisdiction, respondent must submit more than a summary assertion.

"Transportation by a motor vehicle employed solely in transporting teachers and school children through grade twelve to or from public or private schools is excluded from the Commission's jurisdiction.³ However, "[t]he Compact does not exclude school bus transportation from [WMATC] jurisdiction when it is performed in a vehicle used for other purposes on other occasions."⁴ "The 'employed solely' test must be met at all times, not just when the vehicle in

³ Compact, tit. II, art. XI, § 3(d).

⁴ *In re Charles B. Mainor, t/ a Mainor's Bus Serv.*, No. MP-98-69, Order No. 5575 at 2 (Apr. 7, 1999).

question is being used as a school bus.”⁵ “It is presumed that a carrier does not partition its fleet into exempt and non-exempt operations.”⁶ “This places the burden on respondent to come forward with evidence to the contrary.”⁷

Mr. Green states that respondent once provided “adult transportation” under the DC Medicaid program pursuant to contract with Medical Transportation Management, Inc., (MTM), but no longer. Indeed, Commission records indicate that respondent’s MTM contract tariff expired October 18, 2008. But respondent also has a general tariff on file for service to the public, with hourly rates, airport transfer rates, and “private pay for non-medical” rates. Mr. Green’s statement does not address this.

Because Mr. Green’s statement is not under oath, and because respondent has failed to produce corroborating documents without explanation, we find respondent has failed to comply with Order No. 12,853.

IV. ORDER TO SHOW CAUSE

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.⁸ Each day of the violation constitutes a separate violation.⁹

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.¹⁰

The term “knowingly” means with perception of the underlying facts, not that such facts establish a violation.¹¹ The terms “willful” and “willfully” do not mean with evil purpose or criminal intent; rather, they describe conduct marked by careless disregard of whether or not one has the right so to act.¹² Employee negligence is no defense.¹³ “To hold carriers not liable for penalties where the

⁵ *In re Morgan’s Bus Tours Inc.*, No. AP-04-171, Order No. 8516 (Jan. 21, 2005); *In re Laidlaw Transit (Virginia) Inc., & Williams Bus Lines, Inc.*, No. AP-96-46, Order No. 4918 (Sept. 3, 1996).

⁶ Order No. 8516; Order No. 4918; Order No. 5575.

⁷ Order No. 8516; Order No. 5575.

⁸ Compact, tit. II, art. XIII, § 6(f)(i).

⁹ Compact, tit. II, art. XIII, § 6(f)(ii).

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

¹¹ *In re Exact Enters. Inc.*, No. MP-10-049, Order No. 12,602 at 4 (Oct. 26, 2010).

¹² *Id.*

¹³ *Id.*

violations . . . are due to mere indifference, inadvertence, or negligence of employees would defeat the purpose of" the statute.¹⁴

Respondent shall have 30 days to show cause why the Commission should not assess a civil forfeiture and/or suspend or revoke Certificate No. 320 for respondent's failure to comply with Order No. 12,853.

THEREFORE, IT IS ORDERED:

1. 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 Order No. 12,853.

2. That respondent shall have 30 days to show cause why the Commission should not suspend or revoke Certificate No. 320 for respondent's willful failure to comply with Order No. 12,853.

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

¹⁴ *United States v. Illinois Cent. R.R.*, 303 U.S. 239, 243, 58 S. Ct. 533, 535 (1938).