

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 12,906

IN THE MATTER OF:

Served July 7, 2011

MOBILITY EXPRESS INC., WMATC)
No. 668, Investigation of Violation)
of Regulation Nos. 55, 58, 60, 61,)
and 62)

Case No. MP-2011-062

MOBILITY EXPRESS TRANSPORTATION)
LLC, Investigation of Violation of)
Article XI, Sections 6(a) and 11(b))
of the Compact)

Case No. MP-2011-063

The Washington Metropolitan Area Transit Regulation Compact,¹ (Compact), applies to: "the transportation for hire by any carrier of persons between any points in the Metropolitan District."² A person may not engage in transportation subject to the Compact unless there is in force a Certificate of Authority issued by the Washington Metropolitan Area Transit Commission (WMATC) authorizing the person to engage in that transportation.³ "A person other than the person to whom an operating authority is issued by the Commission may not lease, rent, or otherwise use that operating authority."⁴

This investigation is being initiated on the failure of Mobility Express Inc., (MEI), WMATC Carrier No. 668, to comply with WMATC regulations regarding vehicle leases, vehicle markings, annual reports, insurance, and rates. It is also being initiated to determine whether Mobility Express Transportation LLC, (MET), which appears to be under common control with MEI, has transported passengers within the Metropolitan District without proper authority.

¹ 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).

² Compact, tit. II, art. XI, § 1. The Metropolitan District includes: the District of Columbia; the cities of Alexandria and Falls Church of the Commonwealth of Virginia; Arlington County and Fairfax County of the Commonwealth of Virginia, the political subdivisions located within those counties, and that portion of Loudoun County, Virginia, occupied by the Washington Dulles International Airport; Montgomery County and Prince George's County of the State of Maryland, and the political subdivisions located within those counties; and all other cities now or hereafter existing in Maryland or Virginia within the geographic area bounded by the outer boundaries of the combined area of those counties, cities, and airports. Compact, tit. I, art. II.

³ Compact, tit. II, art. XI, § 6(a).

⁴ Compact, tit. II, art. XI, § 11(b).

I. BACKGROUND

MEI holds WMATC Certificate of Authority No. 668. On April 13, 2010, MEI filed a contract tariff pursuant to Commission Regulation No. 55 for service to Metro Homes, Inc. The contract called for MEI to transport Metro Homes clients while the Commission processed Metro Homes' application for WMATC operating authority. The underlying contract had a stated effective date of April 1, 2010, and an expiration date of September 1, 2010. The contract tariff was accompanied by a lease covering two vans from Metro Homes to MEI with the same stated effective and expiration dates as the contract. Because the Commission did not decide the Metro Homes application by September 1, 2010, the parties renewed the contract, and MEI filed a new Metro Homes contract tariff on September 21, 2010, with a stated effective date of September 1, 2010, and an expiration date of September 1, 2011. The vehicle lease was renewed, as well, with the same stated effective and expiration dates as the renewed contract.

On February 15, 2011, the Commission found Metro Homes fit for WMATC operating authority in Order No. 12,729, but made the issuance of a WMATC certificate of authority contingent on Metro Homes filing certain documents and presenting its vehicles for inspection.

On February 24, 2011, while Metro Homes' application and MEI's Metro Homes contract tariff were still pending, the Commission received a complaint against Metro Homes alleging that two vans displaying MEI's WMATC number had been recently spotted transporting Metro Homes clients and that MEI's name was not displayed on those vehicles. Although Commission records indicate that these vehicles are not owned by MEI, staff could not rule out the possibility that MEI had leased these vehicles from the owners, notwithstanding the lack of any MEI leases for those vehicles on file with the Commission.

A preliminary investigation of these allegations led Commission staff to review MEI's 2011 annual report and MEI's insurance records, and in the course of this review, staff discovered that a vehicle registered to MEI had not been included on MEI's annual report, that not all vehicles on the annual report had been reported to MEI's insurance company, and that not all vehicles reported to the insurance company had been listed in the annual report.

On March 1, 2011, staff wrote to MEI requesting that MEI submit a current list of its revenue vehicles on or before March 14, 2011, along with current registration cards and safety inspection certificates for those vehicles, and that MEI present its vehicles for inspection on or before March 28, 2011.

On March 14, 2011, MEI produced a vehicle list containing 12 vehicles, (see Appendix), along with registration cards and safety inspection certificates for those vehicles. The list did not include the two vehicles alleged in the aforementioned complaint as displaying MEI's WMATC number.

MEI later presented its vehicles for inspection and filed some leases. Several vehicles failed inspection as to markings and leases, as discussed below.

Meanwhile, on March 16, 2011, in the Metro Homes application proceeding, Metro Homes presented its vehicles for inspection by Commission staff in accordance with Order No. 12,729, including the two vehicles identified in the complaint. Those vehicles did not display any MEI markings at the time of staff's inspection.

Finally, on June 16, 2011, Commission staff observed a van registered to MEI operating in the Metropolitan District without any markings.

II. AUTHORITY TO INVESTIGATE AND SANCTION VIOLATIONS

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.⁵

"The Commission shall have access at all times to the accounts, records, memoranda, lands, buildings, and equipment of any carrier for inspection purposes."⁶ The Commission also shall have such access with respect "to any person controlling, controlled by, or under common control with a carrier subject to the Compact, whether or not that person otherwise is subject to the Compact."⁷

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.⁸

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.⁹ Each day of the violation constitutes a separate violation.¹⁰

The Commission may suspend or revoke all or part of any certificate of authority for willful failure to comply with a

⁵ Compact, tit. II, art. XIII, § 1(c).

⁶ Compact, tit. II, art. XII, § 1(b).

⁷ Compact, tit. II, art. XII, § 1(c).

⁸ Compact, tit. II, art. XIII, § 1(d).

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

¹⁰ Compact, tit. II, art. XIII, § 6(f)(ii).

provision of the Compact, an order, rule, or regulation of the Commission, or a term, condition, or limitation of the certificate.¹¹

The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.¹² 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.¹³ Employee negligence is no defense.¹⁴ "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.¹⁵

III. VEHICLE LEASE VIOLATIONS

Regulation No. 62-02 provides in part:

No carrier subject to the jurisdiction of this Commission may charter, rent, borrow, lease, or otherwise operate in revenue service any motor vehicle to which such carrier does not hold title, except in accordance with this regulation. No carrier subject to the jurisdiction of this Commission shall operate any motor vehicle(s) as lessee thereof unless the contract of lease has been approved by the Commission.

WMATC lease regulations assure clear identification of the carrier to the public and to the users of the service, clearly identify responsibility for an operation, and prevent circumvention of the Compact through rental of operating rights, which is specifically prohibited by the Compact.¹⁶

Seven of the 12 vehicles reported by MEI are owned by other persons. (See Appendix). MEI has filed leases for five of the seven. No approved leases are on file for the other two, which are identified in the Appendix to this order as Vehicle Nos. 6 and 12.

In addition, as noted above, MEI filed a lease on April 13, 2010, covering two vehicles owned by Metro Homes for service beginning April 1, 2010, and ending September 1, 2010. Also as noted above, the parties renewed the lease, and MEI filed a copy on September 21, 2010, for service commencing September 1, 2010, and ending September 1, 2011. It thus appears that MEI operated the two Metro Homes vehicles

¹¹ Compact, tit. II, art. XI, § 10(c).

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

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *United States v. Illinois Cent. R.R.*, 303 U.S. 239, 243, 58 S. Ct. 533, 535 (1938).

¹⁶ *In re Proposed Reg. Relating to Leases of Equip.*, No. 388, Order No. 2011 at 8 (July 24, 1979).

from April 1, 2011, through April 12, 2011, without an approved lease on file. And it thus appears that MEI operated the two Metro Homes vehicles from September 1, 2011, through September 20, 2011, without an approved lease on file.

Finally, MEI has yet to adequately account for the two vehicles alleged in the complaint against Metro Homes as displaying MEI's WMATC number but not MEI's name. One vehicle is a 2003 Ford van owned by Meridienic Services, Inc., with VIN ending 59001. The other vehicle is a 2003 Ford van owned by David Njafuh, with VIN ending 37934. MEI's manager, David Sarpong, submitted a statement on March 28, 2011, apparently intended to address this issue, but the statement is cast in the present tense and thus does not refute the allegation in the complaint that these vehicles were marked with MEI's WMATC number in the past. The statement thus fails to negate the possibility that MEI operated these vehicles in January and February of this year without an approved lease on file with the Commission.

MEI shall immediately cease operating Vehicle Nos. 6 and 12. In addition, MEI shall have 30 days to show cause why a civil forfeiture should not be assessed against MEI, and/or why Certificate No. 668 should not be suspended or revoked, for MEI's knowing and willful failure to comply with Commission Regulation No. 62-02.

IV. VEHICLE MARKING VIOLATIONS

Under Regulation No. 61, each vehicle operated under a WMATC certificate of authority must display carrier identification markings. The markings required by Regulation No. 61 help assign responsibility, and facilitate recovery of compensation, for damage and injuries caused by carriers operating under WMATC authority.¹⁷

Regulation No. 61-01 states that the following information must appear on both sides of each vehicle used to transport passengers under WMATC authority:

(a) the carrier's legal name or trade name appearing on the carrier's certificate of authority, or otherwise approved by the Commission for use in the Metropolitan District, preceded by the phrase "Operated By" if some other name also appears on the vehicle; and

(b) "WMATC" followed by either the carrier's certificate of authority number or, if applicable, the carrier's temporary authority or approval number.

Regulation No. 61-02 dictates the markings must be large enough to be legible:

¹⁷ *In re Escort Limo. Serv., Inc.*, No. AP-03-48, Order No. 7512 (Nov. 5, 2003); *In re Prime Transp. Servs., Inc.*, No. AP-02-92, Order No. 7511 (Nov. 5, 2003).

The markings required by this regulation must contrast sharply in color with the background and be legible during daylight hours from a distance of fifty feet. Markings less than two and one-half inches in height are presumed not to be legible from fifty feet. The markings must be kept and maintained in a manner preserving the required legibility.

Staff inspected Vehicle Nos. 1, 4, and 11 on March 23, 2011. All three failed. All three displayed the name "Mobility Express Transportation", which is neither MEI's legal name nor a WMATC approved trade name. And Vehicle Nos. 1 and 11 displayed MEI's WMATC number at a height of less than 2.5 inches. Vehicle Nos. 1 and 11 did not pass inspection until March 28, 2011. Vehicle No. 4 did not pass inspection until March 29, 2011. The unmarked vehicle observed by staff on June 16, 2011, displayed Maryland license plate number 49296B, which according to Maryland MVA records is registered to MEI.

In addition, as noted in the discussion of lease violations, MEI has yet to adequately account for the two vehicles alleged in the complaint against Metro Homes as displaying MEI's WMATC number but not MEI's name. MEI thus has failed to negate the possibility that MEI operated these vehicles without proper markings in January and February of this year.

MEI shall immediately cease operating the van with Maryland license plate number 49296B. MEI shall have 30 days to show cause why a civil forfeiture should not be assessed against MEI, and/or why Certificate No. 668 should not be suspended or revoked, for MEI's knowing and willful failure to comply with Commission Regulation No. 61.

V. ANNUAL REPORT VIOLATIONS

Commission Regulation No. 60-01 provides that each carrier holding a certificate of authority on the first day of the calendar year shall file an annual report on or before January 31 of that year. The Commission's annual report form instructs the filer to include a list of revenue vehicles used in WMATC operations. Each filer must certify the information in the report as follows: "I certify that this report, including any attachments, was prepared by me or under my supervision, that I have examined it, and that the information contained in it is true, correct, and complete as of this date."

Vehicle No. 11 was registered with the Maryland MVA as of February 22, 2010, and MEI reported Vehicle No. 12 to MEI's insurance company on October 14, 2010, but MEI reported neither vehicle on its 2011 annual report. Filing a false annual report is a violation of Regulation No. 60-01.¹⁸

¹⁸ *In re Executive Coach, Ltd., & Executive Sedan Mgmt. Servs., Inc., t/a Washington Car & Driver*, No. AP-02-75, Order No. 6797 (Sept. 3, 2002).

MEI shall have 30 days to show cause why a civil forfeiture should not be assessed against MEI, and/or why Certificate No. 668 should not be suspended or revoked, for MEI's knowing and willful failure to comply with Commission Regulation No. 60-01.

V. INSURANCE VIOLATIONS

Under Regulation No. 58-02:

A carrier shall obtain one or more insurance policies securing the public against loss resulting from the carrier's operation, maintenance, or use of a motor vehicle, in the minimum amount specified in this section. Coverage shall remain in effect continuously until terminated. In the case of vehicles insured in compliance with subsection (c), tiered or layered coverage shall be permitted, provided that not more than one policy may be obtained for any one tier or layer.

One of the purposes of this regulation is to prevent carriers from failing to report all vehicles to the WMATC insurer of record and then failing to advise claimants of the WMATC Endorsement.¹⁹

According to Commission records, the following two vehicles were listed in MEI's 2011 annual report filed in January of this year but were not on the vehicle schedule obtained from MEI's WMATC insurer of record in February 2011:

1996 Dodge, VIN ending 71483
2005 Ford, VIN ending 15889

MEI shall have 30 days to show cause why a civil forfeiture should not be assessed against MEI, and/or why Certificate No. 668 should not be suspended or revoked, for MEI's knowing and willful failure to comply with Commission Regulation No. 58-02.

MEI also shall have 30 days to furnish proof that these vehicles have been removed from service.

VI. TARIFF VIOLATIONS

Under Title II, of the Compact, Article XI, Section 14(c), "A carrier may not charge a rate or fare for transportation subject to [the Compact] other than the applicable rate or fare specified in a tariff filed by the carrier under [the Compact] and in effect at the time."²⁰ Under Regulation No. 55, a carrier must file a general tariff if it offers standardized service at universally applicable rates.²¹ A carrier must file a contract tariff if it offers tailored service on a

¹⁹ *In re Rules of Prac. & Proc. & Regs.*, No. MP-08-017, Order No. 11,077 at 7 & n.31 (Jan. 14, 2008).

²⁰ See also Commission Regulation No. 55-02 ("[n]o carrier shall demand, receive, or collect any compensation for any transportation or transportation-related service, except such compensation as is specified in its currently effective tariff for the transportation or transportation-related service provided.")

²¹ Regulation No. 55-07; *In re Executive Tech. Solutions, LLC.*, No. MP-10-090, Order No. 12,798 at 3 (Apr. 8, 2011); *In re Transcom, Inc.*, No. MP-09-034, Order No. 11,865 at 2 (Feb. 27, 2009); *In re Washington, D.C. Jitney Ass'n, Inc.*, No. AP-95-26, Order No. 4795 at 4 (Mar. 15, 1996).

continuing basis at negotiated rates.²² "No carrier shall demand, receive, or collect any compensation for any transportation or transportation-related service, except such compensation as is specified in its currently effective tariff for the transportation or transportation-related service provided."²³

As noted above, MEI filed a contract tariff on April 13, 2010, for service to Metro Homes, Inc. The contract called for MEI to transport Metro Homes clients beginning April 1, 2010, and ending September 1, 2010. Also as noted above, the parties renewed the contract, and MEI filed a new contract tariff on September 21, 2010, for service commencing September 1, 2010, and ending September 1, 2011. It thus appears that MEI operated the Metro Homes contract from April 1, 2011, through April 12, 2011, without a contract tariff on file for that service. And it thus appears that MEI operated the Metro Homes contract from September 1, 2011, through September 20, 2011, without a contract tariff on file for that service.

MEI shall have 30 days to show cause why a civil forfeiture should not be assessed against MEI, and/or why Certificate No. 668 should not be suspended or revoked, for MEI's knowing and willful failure to comply with Article XI, Section 14(c), of the Compact and Commission Regulation No. 55-02.

VII. UNAUTHORIZED OPERATIONS

MET is a Maryland limited liability company. According to records obtained from the Maryland Department of Assessments and Taxation, MET is located within the Metropolitan District and was formed in 2009 by MEI's manager, David Sarpong, for the purpose of providing "non emergency medical transportation." MET does not hold a certificate of authority from this Commission.

As noted above, staff inspected MEI Vehicle Nos. 1, 4, and 11 on March 23, 2011, and discovered that those three vehicles displayed MEI's WMATC number but MET's name. This raises the possibility that MET may have operated under color of MEI's certificate No. 668 in violation of Article XI, Sections 6(a) and 11(b), of the Compact.

MET will be directed to produce pertinent business records within 30 days. MET will also be given an opportunity to file a statement explaining why not requiring MET's dissolution would be consistent with the public interest, given that MET does not hold passenger carrier authority required to fulfill its stated business purpose.²⁴

²² Regulation No. 55-08; Order No. 12,798 at 3; Order No. 11,865 at 2; Order No. 4795 at 4.

²³ Regulation No. 55-02.

²⁴ *In re Capital Care, Inc.*, No. AP-06-134 (Aug. 4, 2006) (applicant ordered to file proof of dissolution of similarly named entity under common control with applicant or explain why not requiring dissolution was

THEREFORE, IT IS ORDERED:

1. That an investigation of respondents' operations in the Washington Metropolitan Area Transit District is hereby initiated under Article XIII, Section 1, of the Compact.

2. That Mobility Express Inc. shall: (a) immediately remove from WMATC service the following three vehicles; (b) verify compliance with this requirement in writing within 15 days; and (c) not return the following four vehicles to service unless and until they are covered by a Commission approved lease, as confirmed in writing by the Commission's Executive Director.

2002 Dodge, VIN ending 29890
2006 Ford, VIN ending 97905
2006 Ford, VIN ending 24615

3. That within 30 days, Mobility Express Inc. shall furnish proof that the following two vehicles have been removed from service.

1996 Dodge, VIN ending 71483
2005 Ford, VIN ending 15889

4. That within 30 days, Mobility Express Inc. shall show cause why a civil forfeiture should not be assessed against Mobility Express Inc., and/or why Certificate of Authority No. 668 should not be suspended and/or revoked, for knowingly and willfully failing to comply with Article XI, Section 14(c), of the Compact and Commission Regulation Nos. 55, 58, 60, 61, 62.

5. That with respect to the show-cause portion of this order, Mobility Express Inc. may file within 15 days from the date of this order a 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.

6. That within 30 days, Mobility Express Transportation LLC shall file with the Commission any and all books, papers, correspondence, memoranda, contracts, agreements, and other records and documents, including any and all stored electronically, that are within Mobility Express Transportation's possession, custody or control and which relate to the transportation of passengers for hire between points in the Metropolitan District during the period beginning January 1, 2010, and ending on the date of this order, including, but not limited to any and all:

a. customer contracts and invoices;

consistent with the public interest); *In re Pacific Health and Transp. Servs., Inc.*, No. AP-05-06, Order No. 8547 (Feb. 10, 2005) (same).

- b. invoices from other carriers;
- c. calendars and itineraries;
- d. bank and payroll records;
- e. insurance documents;
- f. advertising materials; and advertising materials;
- g. income tax and personal property returns.

7. That within 30 days, respondents shall file with the Commission proof of dissolution of Mobility Express Transportation LLC from the Maryland Department of Assessments and Taxation or a statement explaining why not requiring dissolution would be consistent with the public interest.

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



William S. Morrow, Jr.
Executive Director

Appendix to Order No. XXX

Fleet No.	VIN	Year	Make	Plate	State	Registered to
1	1FTNE24W65HA40660	2005	Ford	49252B	MD	Mobility Express Inc
2	1FTNE24W05HA40640	2005	Ford	49251B	MD	Mobility Express Inc
3	1FTNE24253HB65871	2003	Ford	49253B	MD	Mobility Express Inc
4	1FTNES24W35HA95611	2005	Ford	49256B	MD	David Kwame Sarpong
5	1FTNE24233HB90381	2003	Ford	49258B	MD	David Kwame Sarpong
6	2B5WB35Z12K129890	2002	Dodge	49259B	MD	Mobility Express Trans
7	2C4GP54L71R393305	2001	Chrysler	49257B	MD	David Kwame Sarpong
8	1D4GP45RX4B534192	2004	Dodge	49250B	MD	Mobility Express Inc
9	1FBNE31LX7DB12152	2007	Ford	48849B	MD	Tanya Laveren Jones Sarpong
10	1FBNE31L66DA82341	2006	Ford	49255B	MD	David Kwame Sarpong
11	2FAFP73W83X100552	2003	Ford	49254B	MD	Mobility Express Inc
12	1FTNS24W66HA97905	2006	Ford	40132B	MD	Beltway Metro