

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 13,043

IN THE MATTER OF:

Served November 8, 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. 12,904, served July 6, 2011, which directed respondent to show cause why the Commission should not assess a civil forfeiture against respondent, and/or suspend or revoke Certificate No. 320.

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, including, but not limited to, customer contracts and invoices; calendars and itineraries; and bank and credit card statements.

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 left 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 submitted the statement of its president, Mr. Horace Green. The statement was not submitted under oath as required by Commission Rule No. 4-06, however, and respondent produced none of the documents specified in Order No. 12,853.

Order No. 12,904, served July 6, 2011, accordingly directed respondent to show cause why the Commission should not assess a civil forfeiture against respondent, and/or suspend or revoke Certificate No. 320, for respondent's failure to comply with Order No. 12,853.

Order No. 12,904 also gave respondent 15 days to submit a written request for oral hearing.

III. RESPONSE TO ORDER NO. 12,904

Respondent submitted a second statement from Mr. Green on August 3, 2011. The statement is under oath, and in it, Mr. Green states that respondent ceased all operations under the Commission's jurisdiction on May 1, 2011.

Respondent also produced two statements from one of its clients, Family Matters of Greater Washington. One of the statements indicates that respondent performed no transportation services for Family Matters on May 1, 2011, but that statement is silent with respect to whether respondent performed any services for Family Matters on May 2 through May 9, 2011 while Certificate No. 320 was still suspended. The other statement is silent on this issue, as well.

As for corroboration on the issue of whether respondent provided services to any other clients while suspended, respondent

still has not produced any of the documents required by Order No. 12,853 in accordance with Regulation No. 58-14, and respondent failed to request the hearing offered in Order No. 12,904 that would have given respondent an opportunity to present other evidence on this issue.

Respondent argues that it need not produce the documents specified in Order No. 12,853. Respondent claims it is "immune" from the Commission's jurisdiction under the school bus exemption in Article XI, Section 3(d), of the Compact. Under that section of the Compact, "transportation by a motor vehicle employed solely in transporting teachers and school children through grade 12 to or from public or private schools" is excluded from the Commission's jurisdiction. (Emphasis added). The "employed solely" test must be met at all times, not just when the vehicle in question is being used as a school bus.³ It is presumed that a carrier does not partition its fleet into exempt and non-exempt operations.⁴ This places the burden on respondent to come forward with evidence to the contrary.⁵ The very evidence respondent refuses to produce.

Respondent offers the statements from Family Matters of Greater Washington, noted above, in support of its argument that respondent is "immune" from Commission jurisdiction under the school bus exemption. Neither statement provides that support. One of the statements simply states that respondent provided no service to Family Matters on May 1, 2011. The other statement says that respondent was providing "transportation to 60+ clients in the Child Welfare Unit" as of July 12, 2011, but it says nothing about whether that transportation was being performed in "a motor vehicle employed solely in transporting teachers and school children through grade twelve to or from public or private schools." Indeed, neither statement says anything about school transportation at all.

The documents requested in Order No. 12,853 might support respondent's argument that it has converted its WMATC fleet to a non-WMATC fleet, but we cannot tell if that is so because respondent refuses to produce those documents and has declined the hearing offered in Order No. 12,904 at which respondent might have made a prima facie case on this issue.

IV. RENEWED SUSPENSION

After Order No. 12,904 was issued, respondent's insurance company canceled the replacement WMATC Endorsement filed May 12, 2011. The cancellation notice was filed with the Commission on July 19, 2011, and became effective August 24, 2011. Respondent has yet to replace the canceled WMATC Endorsement.

³ *In re Laidlaw Transit (Virginia) Inc., & Williams Bus Lines, Inc.*, No. AP-96-46, Order No. 4918 (Sept. 3, 1996).

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

⁵ Order No. 5575.

As noted above, a certificate of authority is not valid unless the holder is in compliance with the Commission's insurance requirements.⁶ Regulation No. 58-12 similarly states: "Failure to replace a WMATC Insurance Endorsement prior to termination shall result in immediate, automatic suspension of a carrier's WMATC operating authority. The carrier must suspend operations immediately and may not recommence operations unless and until otherwise ordered by the Commission." Accordingly, the Commission issued Order No. 12,961 in this proceeding on August 24, 2011, quoting Regulation No. 58-12.

In a response to Order No. 12,961 filed October 24, 2011, respondent mischaracterizes Order No. 12,961, as a revocation order. That order did not revoke Certificate No. 320. It simply states that Certificate No. 320 has become automatically suspended pursuant to Regulation No. 58-12 and that respondent therefore may not operate under Certificate No. 320 unless and until the Commission orders otherwise. There is no basis for ordering otherwise at this time because respondent has yet to reestablish compliance with Regulation No. 58 by filing the necessary WMATC Insurance Endorsement(s).

Respondent asserts that "revoking" Certificate No. 320 has caused respondent to lose "contracts" and that the Commission should "restore Certificate No. 320 to its good standing status." But if respondent's only operations are school bus operations exempt from Commission jurisdiction, then "revoking" Certificate No. 320 should have no effect on respondent, and unless and until respondent reestablishes compliance with the Commission's insurance requirements, Article XI, Section 7(g), of the Compact stipulates that Certificate No. 320 shall remain invalid.

V. ASSESSMENT OF FORFEITURE AND REVOCATION OF AUTHORITY

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.⁷

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.⁸

The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.⁹ The terms "willful" and "willfully" do not mean with evil purpose or criminal intent;

⁶ Compact, tit. II, art. XI, § 7(g).

⁷ Compact, tit. II, art. XIII, § 6(f).

⁸ Compact, tit. II, art. XI, § 10(c).

⁹ *In re Ibrahim A. Fahadi*, No. MP-09-090, Order No. 12,094 (July 17, 2009); *In re Epps Transp. Co., Inc.*, No. MP-09-020, Order No. 11,935 (Apr. 9, 2009).

rather, they describe conduct marked by intentional or careless disregard or plain indifference.¹⁰

We find that respondent has not shown cause why we should not assess a civil forfeiture of \$250 for respondent's failure to produce documents as directed by Order No. 12,853 in accordance with Commission Regulation No. 58-14.¹¹

We further find that respondent has not shown cause why we should not revoke Certificate No. 320. Respondent has had ample opportunity to replace the WMATC Insurance Endorsement that has been canceled since August 24, 2011. Accordingly, we shall revoke Certificate No. 320 for respondent's willful failure to maintain on file with the Commission an effective WMATC Insurance Endorsement as required by Commission Regulation No. 58.¹²

THEREFORE, IT IS ORDERED:

1. That pursuant to Article XIII, Section 6(f), of the Compact, the Commission hereby assesses a civil forfeiture against respondent in the amount of \$250 for knowingly and willfully violating Order No. 12,853.

2. That respondent is hereby directed to pay to the Commission within 30 days of the date of this order, by check or money order, the sum of two hundred fifty dollars (\$250).

3. That pursuant to Article XI, Section 10(c), of the Compact, Certificate of Authority No. 320 is hereby revoked for respondent's willful failure to comply with Regulation No. 58.

4. That within 30 days from the date of this order respondent shall:

- a. remove from respondent's vehicle(s) the identification placed thereon pursuant to Commission Regulation No. 61;
- b. file a notarized affidavit with the Commission verifying compliance with the preceding requirement; and
- c. surrender Certificate No. 320 to the Commission.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS BRENNER AND HOLCOMB:



William S. Morrow, Jr.
Executive Director

¹⁰ Order No. 12,094; Order No. 11,935.

¹¹ See Order No. 12,094 (same); Order No. 11,935 (same).

¹² See Order No. 12,094 (same); Order No. 11,935 (same).