

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 13,044

IN THE MATTER OF:

Served November 8, 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 response to Order No. 12,900, served July 6, 2011, directing respondent to show cause why the Commission should not assess a civil forfeiture against respondent and/or suspend or revoke WMATC Certificate of Authority No. 985.

I. BACKGROUND

In 2010, respondent filed an annual report pursuant to WMATC Regulation No. 60-01 listing 7 vehicles used by respondent in WMATC operations as of February 1, 2010. The vehicle identification number (VIN) listed for one of the vehicles in the report was 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.¹

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

¹ 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.

covering a vehicle not registered in respondent's name in belated compliance with Regulation No. 62-02.

Respondent also filed six safety inspection certificates covering 5 of the 12 vehicles on respondent's 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.²

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 for violating the requirement in Commission Regulation No. 61 that each WMATC carrier display its name and WMATC number on both sides of each WMATC vehicle at a height of 2.5 inches or more. Two of respondent's 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.

² 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.

III. OUT OF SERVICE ORDER

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 copies of the registration cards and safety inspection certificates for those 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 tariff for service under a contract with Alex-Alternative Experts, LLC, that respondent was performing while this investigation was pending, but which tariff had been rejected for filing by Commission staff under Commission Regulation Nos. 55 and 56.

Respondent did not comply with any of these requirements.

IV. SHOW CAUSE ORDER

Order No. 12,900, served July 6, 2011, gave respondent 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.

The order also gave respondent 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.

On September 27, 2011, respondent filed copies of registrations and safety inspection certificates for some of its vehicles, but respondent has yet to confirm that it removed from service the vehicles ordered out of service by Order No. 12,798 on April 8, 2011, and some of the inspection certificates submitted by respondent on September 27, 2011, had already expired. Others have expired since then. Moreover, respondent has yet to present for inspection by Commission staff any of the vehicles that respondent was to have submitted for inspection on or before May 9, 2011. And respondent has not filed leases for all WMATC vehicles not titled in respondent's name. Finally, respondent has yet to file a contract tariff for service to Alex-Alternative Experts.

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.³ Each day of the violation constitutes a separate violation.⁴

The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.⁵ 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.⁶

Respondent does not deny the violations discussed above; rather, respondent blames employee negligence. Employee negligence is no defense.⁷ "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.⁸

We will assess a forfeiture of \$250 for respondent's knowing and willful failure to produce documents and vehicles in violation of Order No. 12,798.⁹

We will assess a forfeiture of \$250 for respondent's knowing and willful failure to file a contract tariff for service to Alex-Alternative Experts in violation of the Commission's tariff regulations, Regulation Nos. 55 and 56.¹⁰

We will assess a forfeiture of \$250 for respondent's knowing and willful failure to report all of its WMATC vehicles in its 2010 annual report in violation of the Commission's annual report regulation, Regulation No. 60-01.¹¹

We will assess a forfeiture of \$250 per day for each of the four days¹² (\$1,000 total) respondent was observed to have knowingly

³ Compact, tit. II, art. XIII, § 6(f)(i).

⁴ Compact, tit. II, art. XIII, § 6(f)(ii).

⁵ *In re Angel Enter. Inc, t/a The Angels*, No. MP-10-028, Order No. 12,761 (Mar. 14, 2011); *In re Chukwunye 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).

⁶ Order Nos. 12,761; 12,121; 11,947.

⁷ Order Nos. 12,761; 12,121; 11,947.

⁸ *United States v. Illinois Cent. R.R.*, 303 U.S. 239, 243, 58 S. Ct. 533, 535 (1938).

⁹ See *In re Ibrahim A. Fahadi*, No. MP-09-090, Order No. 12,094 (July 17, 2009) (same).

¹⁰ See *In re Chika Transport Serv., Inc.*, No. MP-02-124, Order No. 7173 (May 7, 2003) (same).

¹¹ See *In re Executive Tech. Solutions, LLC, v. Vicar Limo. Serv., Inc.*, No. FC-07-03, Order No. 11,680 (Nov. 12, 2008) (same).

¹² May 5, 2010; December 22 & 23, 2010; and February 25, 2011.

and willfully violated the Commission's vehicle marking regulation, Regulation No. 61.¹³

We will assess a forfeiture of \$250 for respondent's knowing and willful failure to file leases for all of respondent's WMATC vehicles not titled in respondent's name in violation of the Commission's vehicle leasing regulation, Regulation No. 62.¹⁴

We will assess a forfeiture of \$500 for respondent's knowing and willful failure to produce current safety inspection certificates for all of its WMATC vehicles in violation of the Commission's safety regulation, Regulation No. 64.¹⁵

VI. SUSPENSION OF AUTHORITY AND SHOW CAUSE ORDER

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.¹⁶

While this proceeding was pending, the WMATC Insurance Endorsement on file for respondent expired on November 1, 2011, without replacement. A certificate of authority is not valid unless the holder is in compliance with the Commission's insurance requirements.¹⁷ 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. 13,035 in this proceeding on November 1, 2011, quoting Regulation No. 58-12 and giving respondent 30 days to show cause why Certificate No. 985 should not be revoked.¹⁸

In any event, given that the Commission has 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 valid safety inspection certificates for many of its other vehicles, Certificate No. 985 shall remain suspended irrespective of respondent's compliance with Regulation No. 58. Respondent shall

¹³ See *In re C.P.R. Med. Transp. LLC*, No. MP-10-053, Order No. 12,872 (June 1, 2011) (same).

¹⁴ See Order No. 11,680 (same).

¹⁵ See *In re VOCA Corp. of Wash., D.C.*, No. MP-02-30, Order No. 7258 (June 20, 2003) (assessing \$500 for operating unsafe vehicles).

¹⁶ Compact, tit. II, art. XI, § 10(c).

¹⁷ Compact, tit. II, art. XI, § 7(g).

¹⁸ *In re Executive Tech. Solutions, LLC*, No. MP-11-096, Order No. 13,035 (Nov. 1, 2011).

have 30 days to resolve these out-of-service and vehicle-safety issues or show cause why Certificate No. 985 should not be revoked.¹⁹

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 \$2,500 for knowingly and willfully violating Order No. 12,798 and Commission Regulation Nos. 55, 56, 60, 61, 62, and 64.

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 thousand five hundred dollars (\$2,500).

3. That Certificate of Authority No. 985 is hereby suspended under Article XI, Section 10(c), of the Compact for respondent's willful failure to comply with Order No. 12,798 and Commission Regulation Nos. 55, 56, 60, 61, 62, and 64.

4. That respondent shall have 30 days to show cause why the Commission should not revoke Certificate of Authority No. 985 under Article XI, Section 10(c), of the Compact for respondent's willful failure to comply with Order No. 12,798 and Commission Regulation Nos. 55, 56, 60, 61, 62, and 64.

5. That respondent may submit within 15 days from the date of this order a written request for oral hearing on the issue of whether the Commission should revoke Certificate of Authority No. 985, 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 AND HOLCOMB:



William S. Morrow, Jr.
Executive Director

¹⁹ See *In re William E. Gillison, t/a Quiana Tours*, No. MP-02-97, Order No. 7229 (June 4, 2003) (same).