

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 13,098

IN THE MATTER OF:

Served December 28, 2011

Investigation of Violation of )  
Commission Regulation No. 63-04 by )  
AMERICA TRANSPORTATION )  
SERVICES, INC. )

Case No. MP-2011-066

This matter is before the Commission on the failure of respondent to respond to Order No. 12,913, served July 12, 2011, directing respondent to cease and desist from advertising passenger carrier service requiring a WMATC certificate of authority and giving respondent 30 days to show cause why the Commission should not assess a civil forfeiture against respondent for knowingly and willfully violating the Commission's advertising regulation, Regulation No. 63-04.

**I. BACKGROUND**

Article XI, Section 1, of the Washington Metropolitan Area Transit Regulation Compact,<sup>1</sup> (Compact), provides that: "This Act shall apply to the transportation for hire by any carrier of persons between any points in the Metropolitan District." Article XI, Section 6(a), of the Compact provides that: "A person may not engage in transportation subject to this Act unless there is in force a 'Certificate of Authority' issued by the Commission [or WMATC] authorizing the person to engage in that transportation." Regulation No. 63-04 provides that no carrier "regulated by the Commission or subject to such regulation shall advertise or hold itself out to perform transportation or transportation-related services within the Metropolitan District unless such transportation or transportation-related services are authorized by the Commission."

As of July 11, 2011, the Website [www.americatransportation.com](http://www.americatransportation.com) advertised passenger transportation service "throughout Washington DC, Virginia and Maryland" "in the Washington DC Metropolitan area." Documents filed in WMATC Case No. AP-2010-138 identify this Website as the Website of America Transportation Services, Inc. The advertised service included shuttle service to and from Union Station, Washington Dulles International Airport, and Ronald Reagan National Airport, as well as "Sightseeing Tours of Washington DC", in vehicles seating 14, 18, 20, 25, 26, 32, 40, 44, and 56 passengers. Such service requires a WMATC certificate of authority. America Transportation Services, Inc., did not hold such authority as of July 11, 2011. It thus appeared that America Transportation Services, Inc., was violating WMATC Regulation No. 63-04.

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<sup>1</sup> 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).

Order No. 12,913, served July 12, 2011, directed respondent to immediately cease and/or refrain from violating Regulation No. 63-04 and gave respondent 30 days to show cause why the Commission should not assess a civil forfeiture. Order No. 12,913, also gave respondent 15 days to request an oral hearing. Respondent has yet to respond.

## II. ASSESSMENT OF 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>2</sup>

"Knowingly" means with perception of the underlying facts, not that such facts establish a violation.<sup>3</sup> "Willfully" does not mean with evil purpose or criminal intent; rather, it describes conduct marked by careless disregard.<sup>4</sup> Employee negligence is no defense.<sup>5</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>6</sup>

The record shows that Order No. 12,913 was delivered to respondent by the United States Postal Service on July 14, 2011. The record also shows that as of December 13, 2011, the Website [www.americatransportation.com](http://www.americatransportation.com) continues to advertise passenger transportation "throughout Washington DC, Virginia and Maryland" "in the Washington DC Metropolitan area" in vehicles seating 10, 14, 20, 24, 26, 33, 40, 44, and 56 passengers.

We therefore find that respondent knowingly and willfully violated WMATC Regulation No. 63-04 on July 11, 2011, and December 13, 2011, by advertising passenger transportation service requiring a WMATC certificate of authority.

We will assess a forfeiture of \$250<sup>7</sup> for violating Regulation No. 63-04 on July 11, 2011, and \$500<sup>8</sup> for violating Regulation No. 63-04 on December 13, 2011, in the face of a cease and desist order.

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<sup>2</sup> Compact, tit. II, art. XIII, § 6(f).

<sup>3</sup> *In re Washington DC Bus Charter LLC, t/a DC Limo World*, No. MP-11-025, Order No. 12,859 (May 16, 2011); *In re A-American Dream Limo. Serv., Inc.*, No. MP-03-90, Order No. 8081 (June 9, 2004); *In re Imperial Travel & Limo. Servs., Inc.*, No. MP-03-48, Order No. 7748 (Feb. 17, 2004).

<sup>4</sup> Order No. 12,859; Order No. 8081; Order No. 7748.

<sup>5</sup> Order No. 12,859; Order No. 8081; Order No. 7748.

<sup>6</sup> *United States v. Illinois Cent. R.R.*, 303 U.S. 239, 243, 58 S. Ct. 533, 535 (1938).

<sup>7</sup> See Order No. 12,859 (same); Order No. 8081 (same); Order No. 7748 (same).

<sup>8</sup> See Order No. 12,859 (doubling \$250 for repeat violation); *In re Skyhawk Logistics, Inc.*, No. AP-09-044, Order No. 12,101 (July 24, 2009) (same).

### III. ORDER OF ENFORCEMENT

Under the Compact:

Whenever the Commission determines that a person is engaged or will engage in an act or practice which violates a provision of this Act or a rule, regulation, or order under it, the Commission may bring an action in the United States District Court in the district in which the person resides or conducts business or in which the violation occurred to enjoin the act or practice and to enforce compliance with this Act or a rule, regulation, or order under it.<sup>9</sup>

In the event respondent fails to cease advertising service requiring WMATC operating authority within 30 days, staff shall bring an action in the United States District Court in the district in which respondent resides or conducts business or in which the violation occurs to enjoin said advertising and to enforce compliance with Regulation No. 63-04.

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 \$750 for knowingly and willfully violating Regulation No. 63-04.

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 seven hundred fifty dollars (\$750).

3. That respondent shall not hold itself out to perform passenger transportation service subject to WMATC Regulation No. 63-04, unless and until otherwise ordered by the Commission.

4. That in the event respondent fails to cease advertising service requiring WMATC operating authority within 30 days, Commission staff shall bring an action in the appropriate United States District Court to enjoin said advertising and to enforce compliance with Regulation No. 63-04.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS BRENNER AND HOLCOMB:



William S. Morrow, Jr.  
Executive Director

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<sup>9</sup> Compact, tit. II, art. XIII, § 6(a).