

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 13,167

IN THE MATTER OF:

Served February 17, 2012

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. 13,044, served November 8, 2011, which assessed a civil forfeiture against respondent, continued the suspension of Certificate No. 985, and directed respondent to show cause why Certificate No. 985 should not be revoked.

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 had been filed with the Commission 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.

Finally, two of respondent's vehicles, including the Setra, had not been shown to have passed a safety inspection in the 12 months preceding the date they were presented for inspection by Commission staff 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.

Order No. 12,900 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 failed 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 expired later. Moreover, as of November 8, 2011, respondent: (1) had 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; (2) had not filed leases for all WMATC vehicles not titled in respondent's name; and (3) had yet to file a contract tariff for service to Alex-Alternative Experts.

In the meantime, the WMATC Insurance Endorsement on file for respondent expired on November 1, 2011, without replacement. The Commission issued Order No. 13,035 that same day, noting the suspension of Certificate No. 985 under Regulation No. 58-12 and giving respondent 30 days to file the necessary WMATC Insurance

Endorsement(s) and pay a \$50 late fee or show cause why Certificate No. 985 should not be revoked.³

V. CIVIL FORFEITURE, SUSPENSION, SHOW CAUSE

Respondent timely addressed the issues raised in the insurance proceeding, but based on the record in this proceeding, the Commission continued the suspension of Certificate No. 985 in Order No. 13,044, and gave respondent until December 8, 2011, to show cause why Certificate No. 985 should not be revoked. Order No. 13,044 also assessed the following forfeitures:

- o \$250 for respondent's knowing and willful failure to produce documents and vehicles in violation of Order No. 12,798.
- o \$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.
- o \$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.
- o \$250 per day for each of the four days⁴ (\$1,000 total) respondent was observed to have knowingly and willfully violated the Commission's vehicle marking regulation, Regulation No. 61.
- o \$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.
- o \$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.

VI. RESPONSE AND FINDINGS

Respondent promptly paid the total \$2,500 forfeiture by check on November 18, 2011. Respondent has not, however, adequately addressed all other issues in this proceeding.

First, after 10 months, respondent has yet to present for inspection by Commission staff all vehicles added to respondent's

³ *In re Executive Tech. Solutions, LLC*, No. MP-11-096, Order No. 13,035 (Nov. 1, 2011).

⁴ May 5, 2010; December 22 & 23, 2010; and February 25, 2011.

fleet since November 15, 2010, as directed by Order No. 12,798, served April 8, 2011, which at a minimum include the following:

Vehicle No. 1001
Vehicle No. 1002
Vehicle No. 1003
Vehicle No. 1606
Vehicle No. 1801
Vehicle No. 1904
Vehicle No. 2001
Vehicle No. 2802
Vehicle No. 2803

Second, Vehicle No. 2903 is registered to Wells Fargo Equipment Finance, but no lease is on file with the Commission as required by Regulation No. 62.

Third, Vehicle No. 1606 is registered to BB&T Equipment Finance Inc., but no lease is on file with the Commission as required by Regulation No. 62, and the date on the safety inspection certificate for this vehicle is illegible.

Fourth, respondent submitted a safety inspection certificate for a 2005 Setra on December 8, 2011, that has been altered to make it appear that it was issued May 21, 2011, and thus current, instead of May 21, 2010, and thus out of date.

Fifth, respondent has been transporting passengers between points in the Metropolitan District under a tailored-service contract with the Department of the Navy since September 2, 2009, without a contract tariff on file with the Commission as required by Regulation No. 55.

Sixth, respondent states that it turned to Worldwide Tours & Travel, WMATC No. 372, among others, to cover its WMATC operations while suspended. Specifically, respondent states that it subcontracted the Navy contract to Worldwide Tours & Travel, which confirms providing service on behalf of respondent beginning October 4, 2011, and lists the range of dates of service in a statement dated January 23, 2012. The range of dates, however, does not include eight days in November - November 1-4 and November 7-10 - while Certificate No. 985 was suspended.

VII. 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.⁵ Each day of the violation constitutes a separate violation.⁶

The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.⁷ 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.⁸

We will assess a civil forfeiture against respondent in the amount of \$250⁹ for not filing the Navy contract tariff with the Commission in 2009 as required by Regulation No. 55.

We will assess a civil forfeiture against respondent in the amount of \$250 per day¹⁰ for knowingly and willfully operating eight days while suspended, or \$2,000, in violation of Article XI, Section 6, of the Compact.

VIII. REVOCATION OF CERTIFICATE NO. 985

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.¹¹

Ten months after the Commission ordered respondent to present certain vehicles for inspection by Commission staff, respondent has yet to comply or explain its failure to do so. And respondent's violation of the Commission's lease requirements in Regulation No. 62 persists.

Respondent's failure to cease operating on November 1 when Certificate No. 985 became suspended and the filing of an obviously altered safety inspection certificate leave no doubt that respondent has failed to show cause why Certificate No. 985 should not be revoked.

⁵ Compact, tit. II, art. XIII, § 6(f)(i).

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

⁷ *In re Angel Enter. Inc, t/a The Angels*, No. MP-10-028, Order No. 12,761 (Mar. 14, 2011); *In re Chukwunenye 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).

⁸ Order Nos. 12,761; 12,121; 11,947.

⁹ See *In re Chika Transport Serv., Inc.*, No. MP-02-124, Order No. 7173 (May 7, 2003) (same).

¹⁰ See *In re Salwa Seedahmed, t/a Pantio Med. Transp.*, No. MP-08-254, Order No. 12,135 (Sept. 1, 2009) (same); *In re Yai Med. Transp., L.L.C.*, No. MP-05-09; Order No. 8845 (July 22, 2005) (same).

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

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 \$2,250 for knowingly and willfully violating Article XI, Section 6, of the Compact and Regulation No. 55.

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 two hundred fifty dollars (\$2,250).

3. That Certificate of Authority No. 985 is hereby revoked for respondent's knowing and willful failure to comply with Article XI, Section 6, of the Compact, Regulation Nos. 55 and 62, and Order No. 12,798.

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 and supporting photograph(s) with the Commission verifying compliance with the preceding requirement; and
- c. surrender Certificate No. 985 to the Commission.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS BRENNER AND HOLCOMB:



William S. Morrow, Jr.
Executive Director