

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 13,333

IN THE MATTER OF:

Served July 3, 2012

Application of ADDIS)
TRANSPORTATION, INC., for a) Case No. AP-2011-111
Certificate of Authority --)
Irregular Route Operations)

This matter is before the Commission on applicant's failure to respond to Commission Order No. 13,153, served February 13, 2012.

Order No. 13,153 granted reconsideration of Commission Order No. 13,114, served January 10, 2012, which: (1) assessed a civil forfeiture of \$14,250 against applicant for knowingly and willfully operating without WMATC authority in violation of Article XI, Section 6(a), of the Compact; (2) suspended all but \$3,600; and (3) denied the application filed in this proceeding for applicant's failure to demonstrate regulatory compliance fitness.

Applicant requested that the Commission reconsider its denial of the application, reconsider the size of the forfeiture and reduce it to \$750, and extend the time for payment by 60 days.

Under Title II of the Washington Metropolitan Area Transit Regulation Compact, Article XIII, Section 4,¹ a party to a proceeding affected by a final order or decision of the Commission may file within 30 days of its publication a written application requesting Commission reconsideration of the matter involved and stating specifically the errors claimed as grounds for the reconsideration.² If the application is granted, the Commission shall rescind, modify, or affirm its order or decision with or without a hearing, after giving notice to all parties.³ Filing an application for reconsideration may not act as a stay upon the execution of a Commission order or decision, or any part of it, unless the Commission orders otherwise.⁴

The application for reconsideration was timely filed on February 9, 2012, and contests the Commission's finding that applicant knowingly and willfully operated without authority on and after June 16, 2010. Applicant's attorney claims that applicant did not receive the suspension order and revocation order that rendered

¹ Pub. L. No. 101-505, § 1, 104 Stat. 1300, 1311 (1990).

² Compact, tit. II, art. XIII, § 4(a).

³ Compact, tit. II, art. XIII, § 4(d).

⁴ Compact, tit. II, art XIII, § 4(e).

applicant's operations illegal on and after June 16, 2010. This argument, however, was considered and rejected in Order No. 13,114 as follows:

Applicant's attorney claims that applicant was unaware of the June 16, 2010, suspension order and the June 24, 2010, revocation order because allegedly applicant did not receive them. The record shows that even before those orders were issued, the Commission issued an advance warning to applicant by email on June 11, 2010, that Certificate No. 1314 would be suspended if applicant did not file a new WMATC Endorsement before June 16, 2010. Under Regulation No. 58-11:

When a WMATC carrier's insurance has terminated or is about to terminate the carrier must contact the Commission to ascertain whether the necessary WMATC Insurance Endorsement has been filed before continuing to operate on and after the termination date. Proof a WMATC carrier has satisfied its duty to verify shall consist of contemporaneous written verification from the Commission.

Applicant has produced no such written verification. Moreover, a copy of the revocation order, Order No. 12,456, was sent by Certified Mail to applicant on June 24, 2010. According to U.S. Postal Service records, the order was delivered on June 30, 2010, after being forwarded to an alternate address. Applicant has produced no testimony or other evidence to demonstrate that the order was not delivered to applicant at that address. Mailing an order to the address of record constitutes constructive notice, in any event.⁵

The application for reconsideration does not address these points.

On the other hand, the Commission in the past has admitted on reconsideration evidence of a carrier's financial results of operations for the purpose of establishing a basis for partially suspending the amount of a civil forfeiture assessed against the carrier.⁶ Accordingly, Order No. 13,153 granted reconsideration for the purpose of receiving evidence of respondent's financial results of operations in 2010 and 2011. Respondent has yet to respond.

⁵ See *In re Annie Gardner t/a Gardner Transp.*, No. MP-06-115, Order No. 10,456 (May 8, 2007) (finding constructive notice where U.S. Postal Service attempted delivery of Commission orders).

⁶ *In re VGA, Inc.*, No. MP-09-108, Order No. 12,502 at 3 (Aug. 9, 2010); Order No. 12,137 at 4.

Inasmuch as respondent bears the burden of proof⁷ and has produced no evidence of financial results of operations in 2010 and 2011, we find that respondent has failed to demonstrate a basis for further reducing the forfeiture assessed in Order No. 13,114.

THEREFORE, IT IS ORDERED:

1. That Order No. 13,114 is affirmed.

2. That pursuant to Order No. 13,114, the full forfeiture of \$14,250 assessed in that order shall be immediately due and payable if respondent fails to pay the net forfeiture of \$3,600 within 30 days of the date of this order.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS BRENNER AND HOLCOMB:



William S. Morrow, Jr.
Executive Director

⁷ Order No. 13,153 at 2.