

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 14,472

IN THE MATTER OF:

Served January 8, 2014

HOME LIFE HELP SERVICES, LLC, WMATC)
No. 1607, Investigation of)
Violation of WMATC Regulation)
Nos. 58 & 60-64)

Case No. MP-2013-084

This matter is before the Commission on respondent's response to Order No. 14,027, served June 20, 2013, which initiated this investigation of respondent's operations in the Washington Metropolitan Area Transit District.

I. WMATC JURISDICTION

The Washington Metropolitan Area Transit Regulation Compact,¹ (Compact), applies to: "the transportation for hire by any carrier of persons between any points in the Metropolitan District."² A person may not engage in transportation subject to the Compact unless there is in force a Certificate of Authority issued by the Washington Metropolitan Area Transit Commission (WMATC) authorizing the person to engage in that transportation.³ "A person other than the person to whom an operating authority is issued by the Commission may not lease, rent, or otherwise use that operating authority."⁴ "Each authorized carrier shall: (a) provide safe and adequate transportation service, equipment, and facilities; and (b) observe and enforce Commission regulations established under [the Compact]."⁵

The Commission may investigate on its own motion a fact, condition, practice, or matter to determine whether a person has

¹ 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).

² Compact, tit. II, art. XI, § 1. The Metropolitan District includes: the District of Columbia; the cities of Alexandria and Falls Church of the Commonwealth of Virginia; Arlington County and Fairfax County of the Commonwealth of Virginia, the political subdivisions located within those counties, and that portion of Loudoun County, Virginia, occupied by the Washington Dulles International Airport; Montgomery County and Prince George's County of the State of Maryland, and the political subdivisions located within those counties; and all other cities now or hereafter existing in Maryland or Virginia within the geographic area bounded by the outer boundaries of the combined area of those counties, cities, and airports. Compact, tit. I, art. II.

³ Compact, tit. II, art. XI, § 6(a).

⁴ Compact, tit. II, art. XI, § 11(b).

⁵ Compact, tit. II, art. XI, § 5.

violated or will violate a provision of the Compact or a rule, regulation, or order.⁶

II. BACKGROUND

This investigation was initiated based on the following observations stated in Order No. 14,027.

Respondent's 2012 annual report lists two Dodge vans with for-hire plates issued by the State of Maryland. Respondent's 2013 annual report lists the same two Dodge vans, but the plate number has changed on one of them. According to the Maryland Motor Vehicle Administration, (MVA), the van with the new plates is not registered in respondent's name. It is registered to Wells Fargo Equipment Finance. Under WMATC Regulation No. 62, a WMATC carrier may operate a vehicle not titled in the carrier's name, but only if a copy of a lease covering that vehicle is on file with the Commission. The Commission has no record of any lease having been filed by respondent for this vehicle.

In addition, MVA records show a sedan registered to respondent's owner/CEO, Mr. David Kerr, that is not listed in respondent's 2013 annual report and has not been reported to respondent's WMATC insurance company of record, Selective Insurance Company of America. In and of itself, this is not necessarily a violation of WMATC Regulation Nos. 60 (annual reports) and 58 (insurance). But during an informal investigation in 2011, the Commission received a photo showing the same sedan displaying a removable sign advertising "Home Life Help". This raises the issue of whether this vehicle has been used in WMATC operations and whether the removable sign complies with WMATC Regulation Nos. 61 (vehicle markings) and 63 (advertising).

Maryland MVA records also show a van registered to Mr. Kerr that likewise is not listed on respondent's 2013 annual report and has not been reported to Selective Insurance Company - not necessarily a violation of Regulation Nos. 58 and 60, but under the circumstances deserving of inquiry.

Finally, Selective Insurance Company lists four drivers it has approved to operate the two vans that respondent has reported to it. It could be that two drivers are backup drivers and/or that one or more drive only part time. But four drivers is also consistent with respondent operating four vehicles - two having been reported to WMATC and Selective and two having not. This raises questions regarding respondent's compliance with the for-hire plate requirements and driver record requirements of WMATC Regulation No. 64.

⁶ Compact, tit. II, art. XIII, § 1(c).

III. ORDER TO PRODUCE DOCUMENTS & PRESENT VEHICLES

Pursuant to the Compact, Article XIII, Section 1(e), and Article XII, Section 1(b), Order No. 14,027, directed respondent and Mr. Kerr to present vehicles for inspection and to produce any and all removable vehicle displays and copies of all vehicle-related records for the period beginning January 1, 2013, and ending June 20, 2013.

IV. RESPONSE

Respondent has submitted several statements signed by its CEO, Mr. David Kerr, in which Mr. Kerr states that the license plate change from 2012 to 2013 was necessitated by damage to one of the 2012 plates, that in 2011 respondent disposed of the removable vehicle displays it once possessed, and that respondent does not use any private vehicles in its operations, including apparently the van registered to Mr. Kerr. Indeed, the Metropolitan District client load evident in respondent's business records does not appear to exceed the practical capacity of the two WMATC vans listed in respondent's 2013 annual report. And both of those vans have passed inspection by Commission staff.

On the other hand, the van with the new plate is titled and registered to Wells Fargo Equipment Finance, but the Commission has no record of respondent having filed a copy of a lease covering that vehicle in compliance with Regulation No. 62. Mr. Kerr indicates that respondent filed a lease for that vehicle at some time in the past, but the Commission date stamps all accepted leases and returns a copy of each approved lease to the filer and the other party to the lease, and no date-stamped copy appears in the record. And although a non-date-stamped copy of the lease accompanies Mr. Kerr's statement of July 2, 2013, there is no record of respondent having paid the \$50 filing fee.

Finally, during this investigation, respondent's record-keeping practices with respect to its drivers were discovered to be deficient.

Based on the fewer-than-nine-passengers seating capacity of respondent's vans, respondent's operations must comply with WMATC Regulation No. 64-02. Under Regulation No. 64-02(g), respondent is required to obtain a certified copy of a driver's 10-year driving record before hiring that driver. Under Regulation No. 64-02(h), respondent is required to obtain a certified copy of a driver's 10-year criminal history before hiring that driver. And under said regulations, respondent is required to obtain an updated driving record and an updated criminal history for each driver every 12 months.

Consistent with Regulation No. 64-02, Order No. 14,027 directed respondent to submit all driver records, including but not limited to state motor vehicle driving records, for all drivers. Respondent produced Maryland MVA records for the following four drivers:

1. David Lyles Kerr;
2. Dominga Vazquez;
3. Earlene Goldsberry Murphy; and
4. Leonard Leroy Givens, Jr.

The MVA records produced for each driver, however, only covered a 3-year period, instead of the 10-year period required by WMATC Regulation No. 64-02(g). In addition, respondent failed to produce any of the 10-year driver criminal history records required by WMATC Regulation 64-02(h).

Furthermore, respondent's insurance company had no current record of Earlene Goldsberry Murphy, and no records were produced for Brenda Wheeler, even though respondent's insurance company listed her as one of respondent's drivers.

WMATC Regulation No. 64-06 stipulates that the Executive Director shall issue written notice directing a carrier to withdraw from service any driver whose records have not been produced upon request. The Commission's Executive Director accordingly issued notice on July 26, 2013, directing respondent to withdraw all five drivers from service under WMATC No. 1607.

On August 30, 2013, Mr. Kerr advised the Commission that Ms. Wheeler was no longer employed by respondent and produced additional records for the other four. The additional criminal history records were sufficient as to all four current drivers, but only the additional driver records for Ms. Murphy satisfied the requirements of Regulation No. 64-02(g). The Commission's Executive Director accordingly issued a return to service notice as to Ms. Murphy on September 9, 2013.

Respondent eventually submitted additional driver records for the remaining three current drivers, and the Commission's Executive Director accordingly issued a return to service notice as to those drivers on October 4, 2013.

V. OUT OF SERVICE & SHOW CAUSE ORDER

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 term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.⁸ The term "willfully" does not mean with evil purpose or criminal intent; rather, it describes conduct marked by careless disregard whether or not one has the right so to act.⁹

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

⁸ *In re Washington Shuttle, Inc., t/a SuperShuttle*, No. MP-11-099, Order No. 13,726 at 6 (Feb. 5, 2013).

⁹ Order No. 13,726 at 6.

If the Commission finds that a respondent has violated a provision of the Compact or any requirement established under it, the Commission shall issue an order compelling compliance and effecting other just and reasonable relief.¹⁰

Respondent shall remove the Wells Fargo van from service until such time as a lease covering that vehicle has been accepted and marked approved by the Commission, and respondent shall have 30 days to show cause why the Commission should not assess a civil forfeiture for the lease violations and safety violations discovered during this investigation.

THEREFORE, IT IS ORDERED:

1. That the van leased from Wells Fargo Equipment Finance, Inc., shall be removed from WMATC service and not returned to WMATC service until such time as a lease covering said vehicle has been accepted and marked approved by the Commission.

2. That within 30 days, respondent shall show cause why the Commission should not assess a civil forfeiture for respondent's knowing and willful violations of Regulation Nos. 62, 64-02(g) & 64-02(h).

3. That respondent may submit within 15 days from the date of this order a written request for oral hearing, 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, HOLCOMB, AND BELLAMY:



William S. Morrow, Jr.
Executive Director

¹⁰ Compact, tit. II, art. XIII, § 1(d).