

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 14,603

IN THE MATTER OF:

Served February 26, 2014

GRACE TRANSPORT SERVICES, INC.,)
Suspension and Investigation of)
Revocation of Certificate No. 433)

Case No. MP-2013-053

This matter is before the Commission on respondent's response to Order No. 14,470, served January 8, 2014, which directed respondent to show cause why the Commission should not assess a civil forfeiture against respondent and gave respondent 15 days to request an oral hearing.

I. BACKGROUND

Certificate No. 433 was automatically suspended on April 24, 2013, pursuant to Regulation No. 58-12 when the \$1.5 million primary WMATC Insurance Endorsement on file for respondent terminated without replacement. Order No. 13,881, served April 24, 2013, noted the automatic suspension of Certificate No. 433 pursuant to Regulation No. 58-12, directed respondent to cease transporting passengers for hire under Certificate No. 433, and gave respondent 30 days to replace the terminated endorsement and pay the \$100 late fee due under Regulation No. 67-03(c) or face revocation of Certificate No. 433.

Respondent subsequently paid the late fee on April 29, 2013, and submitted a \$1.5 million primary WMATC Insurance Endorsement on April 30, 2013, and the suspension was lifted in Order No. 13,907 on May 10, 2013.

But because the effective date of the new endorsement was May 10, 2013, instead of April 24, 2013, - thereby creating a 16-day coverage gap - Order No. 13,907 gave respondent 30 days to submit a statement verifying cessation of operations as of April 24, 2013, as corroborated by copies of respondent's pertinent business records, in accordance with Regulation No. 58-14.

Respondent thereafter produced a new \$1.5 million WMATC Insurance Endorsement with an effective date of April 24, 2013, which eliminates the 16-day gap created by the Endorsement filed April 30, 2013. But elimination of the coverage gap does not alter the fact that Certificate No. 433 was suspended from April 24, through May 9, 2013, and, as noted in Order No. 14,470, copies of respondent's business records indicate that respondent transported "members" on nine days during the period of April 29, 2013, through May 9, 2013.

Accordingly, Order No. 14,470 gave respondent 30 days to show cause why the Commission should not assess a civil forfeiture against respondent, and/or suspend or revoke Certificate No. 433, for knowingly and willfully transporting passengers for hire between points in the Metropolitan District while suspended on nine separate days during the period of April 29, 2013, through May 9, 2013.

Order No. 14,470 further gave respondent 15 days to request an oral hearing, subject to the condition that the request specify the grounds for the request, describe the evidence to be adduced, and explain why such evidence cannot be adduced without an oral hearing.

II. ORAL HEARING REQUEST

Respondent's sole response to Order No. 14,470 is a timely request for oral hearing. The ground cited for oral hearing is to give respondent "the opportunity to explain [its] own side of the case." However, the evidence to be adduced is not described, and the reason why that evidence cannot be adduced without an oral hearing is not explained. Moreover, the request does not contest the preliminary finding in Order No. 14,470 that respondent transported passengers for hire between points in the Metropolitan District while suspended on nine separate days during the period of April 29, 2013, through May 9, 2013.

Article XI, Section 10(c), of the Compact, provides that the Commission may suspend or revoke a certificate of authority for willful violations after notice and hearing. A paper hearing is normally all the statute requires.¹ An oral hearing is unnecessary, in any event, if no material issue of fact is in dispute.²

Inasmuch as respondent has not satisfied the prerequisites for an oral hearing and no material issue of fact is in dispute, the request for oral hearing is denied.

III. FINDINGS

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 authorizing the person to engage in that transportation."

According to Article XI, Section 7(g), of the Compact: "A Certificate of Authority is not valid unless the holder is in compliance with the insurance requirements of the Commission."

¹ *In re Sydney Shuttle, LLC*, No. MP-07-064, Order No. 10,792 at 3 (Sept. 28, 2007); *In re Babikir Ibrahim Elhag, t/a "BTS" Babcare Transp. Servs.*, No. MP-04-01, Order No. 7891 (Mar. 23, 2004).

² Order No. 10,792; Order No. 7891; *In re Diamond Tours, Inc.*, No. MP-82-06, Order No. 2347 (June 24), *aff'd on reconsideration*, Order No. 2354 (Aug. 5, 1982).

Regulation No. 58-03 states that: "A carrier operating under temporary authority or a certificate of authority issued by the Commission (WMATC carrier) shall maintain on file with the Commission at all times an acceptable, effective 'WMATC Certificate of Insurance and Policy Endorsement' (WMATC Insurance Endorsement)."

Under Regulation No. 58-12: "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."

The record shows that respondent's WMATC Endorsement expired on April 24, 2013. The record further shows that no replacement Endorsement was filed until April 30, 2013. As a consequence, Certificate No. 433 stood suspended on April 24, 2013, pursuant to Regulation No. 58-12, as noted in Order No. 13,881, served April 24, 2013. The suspension was not lifted until May 10, 2013, in Order No. 13,907.

Respondent does not dispute our preliminary finding in Order No. 14,470 that respondent transported passengers for hire between points in the Metropolitan District while suspended on nine separate days during the period of April 29, 2013, through May 9, 2013. Accordingly, we find that respondent violated Article XI, Section 6(a), of the Compact, Regulation No. 58-12, and Order No. 13,881 on those nine days.

IV. ASSESSMENT OF FORFEITURE AND ORDER OF PROBATION

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 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.⁵

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

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

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

⁵ Compact, tit. II, art. XI, § 10(c).

⁶ *In re L & J Limo Servs. LLC*, No. MP-10-017, Order No. 12,658 at 3 (Dec. 17, 2010); *In re Sams Health Care Servs. Inc.*, No. MP-08-005, Order No. 11,947 (Apr. 23, 2009); *In re Boomerang Tours, Inc.*, No. MP-08-204, Order No. 11,805 (Jan. 21, 2009); Order No. 10,792.

and "willfully" do not mean with evil purpose or criminal intent; rather, they describe conduct marked by intentional or careless disregard or plain indifference.⁷ Employee negligence is no defense.⁸ "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.⁹

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." Respondent has produced no such written verification.

We therefore conclude that respondent knowingly and willfully violated Article XI, Section 6(a), of the Compact, Regulation No. 58-12, and Order No. 13,881 by transporting passengers for hire between points in the Metropolitan District while suspended on nine separate days during the period of April 29, 2013, through May 9, 2013.

In situations similar to this one - operating while suspended but not while uninsured - the Commission has assessed a civil forfeiture of \$250 for each day of unauthorized operations and placed carriers on probation for one year.¹⁰ We shall follow the same course here and assess a civil forfeiture of \$250 per day, for nine days, or \$2,250, and place respondent on probation.

We will suspend all but 25 percent of the forfeiture, rounded to the nearest \$100, or \$600, based on the presence of one reduction factor: respondent's production of inculpatory records.¹¹ Failure to pay the net forfeiture in a timely fashion shall result in reinstatement of the full \$2,250.

THEREFORE, IT IS ORDERED:

1. That the request for oral hearing is denied.

⁷ Order No. 12,658; Order No. 11,947; Order No. 11,805; Order No. 10,792.

⁸ Order No. 12,658; Order No. 11,947.

⁹ *United States v. Illinois Cent. R.R.*, 303 U.S. 239, 243, 58 S. Ct. 533, 535 (1938).

¹⁰ Order No. 12,658 at 4; Order No. 11,947; Order No. 11,805; Order No. 10,792 at 5; *In re Zee Transp. Serv. Inc.*, No. MP-07-120, Order No. 10,671 (Aug. 8, 2007); *In re Annie Gardner, t/a Gardner Transportation*, No. MP-06-115, Order No. 10,456 (May 8, 2007); *In re Northstar Transp. LLC*, No. MP-06-122, Order No. 9901 (Sept. 11, 2006).

¹¹ See *In re Angel Enter. Inc, t/a The Angels*, No. MP-10-028, Order No. 12,761 at 5-6 (Mar. 14, 2011) (same).

2. 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(a), of the Compact, Regulation No. 58-12, and Order No. 13,881 on nine separate days; provided, that all but \$600 shall be suspended in recognition of respondent's production of inculpatory records.

3. 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 six hundred dollars (\$600).

4. That the full forfeiture of \$2,250 assessed in this order shall be immediately due and payable if respondent fails to timely pay the net forfeiture of \$600.

5. That respondent shall be placed on probation for a period of one year, such that a willful violation of the Compact, or of the Commission's rules, regulations, or orders thereunder, by respondent during the period of probation shall constitute grounds for immediate suspension and/or revocation of respondent's operating authority regardless of the nature and severity of the violation.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS BRENNER, HOLCOMB, AND BELLAMY:



William S. Morrow, Jr.
Executive Director