

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 15,199

IN THE MATTER OF: Served November 14, 2014

TO FAX INC, Suspension and) Case No. MP-2012-111
Investigation of Revocation of)
Certificate No. 1588)

TO FAX INC, Suspension and) Case No. MP-2014-019
Investigation of Revocation of)
Certificate No. 1588)

This matter is before the Commission on respondent's response to Order No. 14,605, served February 26, 2014, in Case No. MP-2012-111 and on respondent's failure to respond to Order No. 14,654, served March 24, 2014, in Case No. MP-2014-019.

I. BACKGROUND

Under the Compact, a WMATC carrier may not engage in transportation subject to the Compact if the carrier's certificate of authority is not "in force."¹ A certificate of authority is not valid unless the holder is in compliance with the Commission's insurance requirements.²

Commission Regulation No. 58 requires respondent to insure the revenue vehicles operated under Certificate No. 1588 for a minimum of \$1.5 million in combined-single-limit liability coverage and maintain on file with the Commission at all times proof of coverage in the form of a WMATC Certificate of Insurance and Policy Endorsement (WMATC Insurance Endorsement) for each policy comprising the minimum.

A. Case No. MP-2012-111

Certificate No. 1588 was rendered invalid on December 12, 2012, when the \$1 million primary and \$500,000 excess WMATC Insurance Endorsements on file for respondent terminated without replacement. Order No. 13,625, served December 12, 2012, noted the automatic suspension of Certificate No. 1588 pursuant to Regulation No. 58-12, directed respondent to cease transporting passengers for hire under Certificate No. 1588, 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. 1588.

Respondent thereafter paid the late fee and submitted a \$1.5 million primary WMATC Insurance Endorsement, and the suspension

¹ Compact, tit. II, art. XI, § 6(a).

² Compact, tit. II, art. XI, § 7(g).

was lifted in Order No. 13,731, served February 7, 2013, but because the effective date of the new endorsement was January 4, 2013, instead of December 12, 2012, the order gave respondent 30 days to verify cessation of operations as of December 12, 2012, in accordance with Regulation No. 58-14. The statement was to be corroborated by copies of respondent's pertinent business records and a statement from Medical Transportation Management, Inc., (MTM), respondent's principal client of record at the time.

Respondent did not respond.

Consequently, Order No. 13,897, served May 7, 2013, directed respondent to show cause why the Commission should not assess a civil forfeiture against respondent, and/or suspend or revoke Certificate No. 1588 for respondent's failure to maintain vehicle liability insurance from December 12, 2012, through January 3, 2013, and for respondent's failure to verify cessation of operations from December 12, 2012, to February 7, 2013, when the suspension of Certificate No. 1588 for the foregoing violation was lifted.

Respondent responded to Order No. 13,897, by submitting a statement verifying cessation of operations as of December 12, 2012, and corroborating the statement with an email from MTM. The date of the email, however, is December 12, 2012, and thus does not speak to whether respondent recommenced operations thereafter and prior to the lifting of the suspension on February 7, 2013. Furthermore, respondent still had not furnished copies of respondent's pertinent business records for the period beginning October 1, 2012, and ending February 7, 2013, as directed by Order No. 13,731.

In the meantime, the Commission discovered that respondent owned several vehicles that apparently had not been reported to its insurance company and that respondent had reported to its insurance company several vehicles that respondent did not own and for which no lease was on file as required by Regulation No. 62. And Commission records showed that respondent was in arrears with respect to its \$150 annual fee for 2013, its \$150 annual fee for 2014, its annual report for 2014, and \$300 in late fees under Regulation No. 67-03(a),(b).

Order No. 14,605, served February 26, 2014, thus 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. 1588, for knowingly and willfully violating the commission's insurance requirements, conducting operations under a suspended certificate of authority, failing to produce documents as directed, and failing to tender its annual fees, annual reports, and late fees on time.

The record now shows that respondent is up to date with regard to fee payments and annual report filings, and as to the 23-day insurance gap, respondent continues to assert that it "was closed" throughout the suspension period, but respondent has yet to produce any of its business records and has yet to produce any statement from

MTM other than the December 12, 2012, email that the Commission found wanting in Order No. 14,605.

B. Case No. MP-2014-019

Certificate No. 1588 was rendered invalid on January 4, 2014, when the \$1.5 million primary WMATC Insurance Endorsement on file for respondent terminated without replacement. Order No. 14,548, served February 7, 2014, noted the automatic suspension of Certificate No. 1588 pursuant to Regulation No. 58-12, directed respondent to cease transporting passengers for hire under Certificate No. 1588, and gave respondent 30 days to replace the terminated endorsement, pay a \$100 late insurance fee, pay a \$150 annual fee for 2014, file an acceptable annual report for 2014, and pay \$300 in late fees for not tendering the 2014 annual fee and report on time.

As of March 24, 2014, respondent had filed an acceptable \$1.5 million primary WMATC Endorsement, and respondent had resolved all fee and report issues, as alluded to above. Accordingly, the suspension was lifted in Order No. 14,654 on March 24, 2014, but because the effective date of the new endorsement is March 5, 2014, instead of January 4, 2014, the order gave respondent 30 days to verify cessation of operations as of January 4, 2014, in accordance with Regulation No. 58-14. The statement was to be corroborated by copies of respondent's pertinent business records from November 1, 2013, to March 24, 2014.

Respondent has yet to respond.

II. ASSESSMENT OF FORFEITURE AND REVOCATION OF AUTHORITY

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

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.⁴

The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.⁵ 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.⁶

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

⁴ Compact, tit. II, art. XI, § 10(c).

⁵ *In re Christopher Starghill t/a Starghill Limo. & Sedan Servs.*, No. MP-13-029, Order No. 14,471 (Jan. 8, 2014).

⁶ *Id.*

Because respondent has failed to produce documents as directed by Order No. 13,731, has failed to respond to Order No. 14,654, and has offered no explanation for these failures, we find that respondent has failed to show cause why the Commission should not assess a civil forfeiture of \$250⁷ and revoke Certificate No. 1588.⁸

THEREFORE, IT IS ORDERED:

1. That Case Nos. MP-2012-111 and MP-2014-019 are hereby consolidated pursuant to Commission Rule No. 20-02.

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 \$250 for knowingly and willfully failing to produce documents as directed.

3. That pursuant to Article XI, Section 10(c), of the Compact, Certificate of Authority No. 1588 is hereby revoked for respondent's willful failure to comply with Regulation No. 58 and the orders issued in these proceedings.

4. That within 30 days from the date of this order respondent shall:

- a. pay to the Commission by money order or check, the sum of two hundred fifty dollars (\$250);
- b. remove from respondent's vehicle(s) the identification placed thereon pursuant to Commission Regulation No. 61;
- c. file a notarized affidavit and supporting photograph(s) with the Commission verifying compliance with the preceding requirement; and
- d. surrender Certificate No. 1588 to the Commission.

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



William S. Morrow, Jr.
Executive Director

⁷ See *id* (same).

⁸ See *id* (same).