

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 15,423

IN THE MATTER OF:

Served March 3, 2015

FIKRE A MAMO, Trading as DMV LIMO,)
Suspension and Investigation of)
Revocation of Certificate No. 2070)

Case No. MP-2014-008

This matter is before the Commission on respondent's response to Order No. 15,049, served September 12, 2014.

I. BACKGROUND

Certificate No. 2070 was automatically suspended on January 17, 2014, pursuant to Regulation No. 58-12 when the \$1.5 million primary WMATC Insurance Endorsement on file for respondent terminated without replacement. Order No. 14,483, served January 17, 2014, noted the automatic suspension of Certificate No. 2070 pursuant to Regulation No. 58-12, directed respondent to cease transporting passengers for hire under Certificate No. 2070, 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. 2070.

Respondent submitted a \$1.5 million primary WMATC Insurance Endorsement on January 20, 2014, but that endorsement was not acceptable because the carrier address appearing on the endorsement did not match any address for respondent on file with the Commission, as required by Commission Regulation No. 58-04(b). Respondent subsequently paid the late fee on February 19, 2014, and filed an acceptable \$1.5 million primary WMATC Insurance Endorsement on February 20, 2014, and the suspension was lifted in Order No. 14,621, served March 10, 2014. However, because the effective date of the new endorsement was February 19, 2014, instead of January 17, 2014 - thereby creating a 33-day coverage gap - Order No. 14,621 gave respondent until April 9, 2014, to submit a statement verifying cessation of operations as of January 17, 2014, as corroborated by copies of respondent's pertinent business records, in accordance with Regulation No. 58-14.

Respondent thereafter produced no statement regarding cessation of operations. Respondent, however, did produce a new \$1.5 million WMATC Insurance Endorsement with an effective date of January 17, 2014, which eliminates the 33-day gap created by the Endorsement filed February 20, 2014. But elimination of the coverage gap does not alter the fact that Certificate No. 2070 was suspended from January 17, 2014, through March 9, 2014.

In addition, respondent produced a passenger trip manifest covering the entire suspension period from January 17, 2014, through March 9, 2014. The manifest shows that respondent transported

passengers for hire between points in the Metropolitan District on 30 separate days while suspended.

Order No. 15,049, served September 12, 2014, accordingly 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. 2070, for conducting passenger carrier operations in the Metropolitan District while suspended, in knowing and willful violation of Article XI, Section 6(a), of the Compact and Regulation No. 58.

In response, respondent argues that he was unaware of the suspension until February 19, 2014.¹

II. FINDINGS

The WMATC Endorsement on file for respondent on January 16, 2014, expired by its own terms at 12:01 a.m. on January 17, 2014.

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." 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.

There is no evidence in the record indicating that respondent contacted the Commission to ascertain whether the necessary WMATC Insurance Endorsement had been filed prior to January 17, 2014.

In fact, respondent did not submit a replacement WMATC Insurance Endorsement until January 20, 2014. To make matters worse, the endorsement was not acceptable because the carrier address appearing on the endorsement did not match any address for respondent on file with the Commission, as required by Commission Regulation No. 58-04(b).

Therefore, there is no question but that respondent should have been aware on January 17, 2014, that Certificate No. 2070 stood suspended and that respondent had no authority to operate under Certificate No. 2070 unless and until otherwise ordered by the Commission. Moreover, respondent concedes that he became aware of these proceedings as of February 19, 2014, but he continued operating

¹ The response also requested an oral hearing, but respondent later withdrew the request.

anyway even though the Commission did not issue an order lifting the suspension until March 10, 2014.

III. 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.² Each day of the violation constitutes a separate violation.³

Respondent argues that he did not act with "mal intent", but intent is not an element of the violation.

The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.⁴ The terms "willful" and "willfully" do not mean with evil purpose or criminal intent; rather, they describe conduct marked by careless disregard of whether or not one has the right so to act.⁵

We therefore find that respondent knowingly and wilfully transported passengers for hire between points in the Metropolitan District while suspended on 30 separate days during the suspension period of January 17, 2014, through March 9, 2014, in violation of Article XI, Section 6(a), of the Compact, Regulation No. 58-12, and Order No. 14,483.

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.⁶ We shall follow the same course here, with one proviso.

Ordinarily, when a suspended carrier cures the violation that induced the suspension, the Commission promptly issues an order lifting the suspension. In this case, however, for some inexplicable reason, the order lifting the suspension of Certificate No. 2070 was not issued until March 10, 2014, even though the violation had been cured as of February 20, 2014. In the past, the Commission has waived fees in those situations where had the Commission acted with its usual degree of promptness the fees would not have been due.⁷ Although that precedent would seem to suggest that waiving the forfeiture for respondent's operations after February 20, 2014, would be fair and just, we cannot ignore the fact that respondent did not stop operating

² Compact, tit. II, art. XIII, § 6(f)(i).

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

⁴ *In re Grace Transp. Servs., Inc.*, No. MP-13-053, Order No. 14,603 at 3 (Feb. 26, 2014).

⁵ *Id.* at 3-4.

⁶ *Id.* at 4.

⁷ *See In re Alem Mesfin, t/a AM Transp.*, No. MP-06-201, Order No. 11,076 (Jan. 14, 2008) (waiving 2008 annual fee where revocation was ripe in 2007).

when even he admits he became aware of the suspension on February 19, 2014. Respondent should have contacted the Commission about the delay in lifting the suspension instead of continuing to operate in direct violation of Order No. 14,483. As a compromise, we will include in our calculations only half of the 10 post-February 20 days on which respondent operated without authority.

Accordingly, we shall assess a civil forfeiture of \$250 per day, for 25 days, or \$6,250, and place respondent on probation.

We will suspend all but 25 percent of the forfeiture, rounded to the nearest \$100, or \$1,600, based on the presence of one reduction factor: respondent's production of inculpatory records.⁸ Failure to pay the net forfeiture in a timely fashion shall result in reinstatement of the full \$6,250.

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 \$6,250 for knowingly and willfully violating Article XI, Section 6(a), of the Compact, Regulation No. 58-12, and Order No. 14,483 on 25 separate days; provided, that all but \$1,600 shall be suspended in recognition of respondent's production of inculpatory records.

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 one thousand six hundred dollars (\$1,600).

3. That the full forfeiture of \$6,250 assessed in this order shall be immediately due and payable if respondent fails to timely pay the net forfeiture of \$1,600.

4. 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 AND HOLCOMB:



William S. Morrow, Jr.
Executive Director

⁸ See Order No. 14,603 at 4 (same).