

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 15,613

IN THE MATTER OF:

Served May 27, 2015

PRIME TRANSPORTATION SERVICES, INC,)
Suspension and Investigation of)
Revocation of Certificate No. 749)

Case No. MP-2014-031

This matter is before the Commission on respondent's response to Order No. 15,268, served December 30, 2014.

I. BACKGROUND

Certificate No. 749 was automatically suspended on February 21, 2014, pursuant to Regulation No. 58-12, when the \$5 million primary WMATC Insurance Endorsement on file for respondent terminated without replacement. Order No. 14,586, served February 21, 2014, noted the automatic suspension of Certificate No. 749, directed respondent to cease transporting passengers for hire under Certificate No. 749, 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. 749.

Respondent paid the late fee and submitted a \$5 million WMATC Insurance Endorsement, and the suspension was lifted in Order No. 14,673, on April 2, 2014, but because the effective date of the new endorsement is March 7, 2014, instead of February 21, 2014, the order gave respondent 30 days to verify cessation of operations as of February 21, 2014, as corroborated by copies of respondent's pertinent business records, in accordance with Regulation No. 58-14. Respondent did not respond.

Because respondent failed to verify cessation of operations on and after the suspension date and failed to produce any documents, Order No. 15,068, served September 18, 2014, directed respondent to show cause why the Commission should not assess a civil forfeiture against respondent, and/or suspend or revoke Certificate No. 749, for knowingly and willfully conducting operations under an invalid/suspended certificate of authority and failing to produce documents as directed.

II. RESPONSE TO ORDER NO. 15,068

Respondent responded by submitting the statement of respondent's corporate counsel, Charles Tucker, Jr., but his statement did not unequivocally state whether respondent ceased operating as of February 21, 2014. And Mr. Tucker's statement was not corroborated by respondent's business records.

According to Mr. Tucker, "Prime Transportation Services never knowingly operated any vehicle for under Certificate No. 749 knowing

that the Certificate had been suspended." This assertion left open the possibility that respondent continued operating during the suspension period, just not "knowingly" in Mr. Tucker's estimation, which he based on a "review of all of the records related to Certificate No. 749."

Whether a carrier has knowingly operated in violation of the Compact is for the Commission to decide, not the carrier or its attorney. Accordingly, we declined to accept Mr. Tucker's reading of respondent's business records in lieu of the records themselves.

III. OPPORTUNITY TO SUPPLEMENT RECORD

When the signatories and Congress approved the Compact, they designated noncompliance with Commission insurance requirements as the single offense that would automatically invalidate a certificate of authority.¹ "They could not have sent a clearer message that maintaining proper insurance coverage is of paramount importance under the Compact."²

"If the record shows [a] carrier operated while suspended and uninsured or underinsured, the Commission will issue an order assessing a civil forfeiture and revoking the carrier's operating authority."³

Given the gravity of the possible offenses at issue in this proceeding and the incomplete state of the record as of December 30, 2014, the Commission issued Order No. 15,268 giving respondent one final opportunity to unequivocally confirm or deny that respondent conducted WMATC operations during the suspension of Certificate No. 749 from February 21, 2014, to April 2, 2014, and one final opportunity to produce copies of its pertinent business records.

The order stipulated that failure to produce the requisite statement and records would result in assessment of a civil forfeiture against respondent and revocation of WMATC Certificate No. 749.

IV. RESPONSE TO ORDER NO. 15,268

Respondent's president and CEO, Tom Smith, filed a statement on February 3, 2015, that appears to repeat respondent's attorney's position that Prime Transportation Services never "knowingly" operated any vehicles for hire under Certificate No. 749. And like the attorney's statement, the statement of respondent's president and CEO is not supported by any corroborating records.

¹ Compact, tit. II, art. XI, § 7(g).

² *In re Christopher Starghill, t/a Starghill Limo. & Sedan Servs.*, No. MP-13-029, Order No. 14,257 (Oct. 1, 2013); *In re Couples, LLC, t/a Couples Limos.*, No. MP-09-134, Order No. 12,330 (Mar. 8, 2010); *In re Skyhawk Logistics, Inc.*, No. MP-09-044, Order No. 12,101 (July 24, 2009); *In re Westview Med. & Rehab. Servs., P.C. Inc.*, No. MP-07-070, Order No. 10,882 (Nov. 2, 2007).

³ Order No. 14,257 at 3; *In re Rulemaking to Amend Rules of Prac. & Proc. & Regs.*: Reg. No. 58, No. MP-08-017, Order No. 11,077 at 11 (Jan. 14, 2008).

In the meantime, Certificate No. 749 has been revoked in a separate proceeding for respondent's willful failure to maintain compliance with the Commission's insurance requirements in Regulation No. 58.⁴

V. 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.⁵

The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.⁶ 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.⁷

Because respondent has failed to produce corroborating records as required by Regulation No. 58-14(a), and as directed by Order Nos. 14,673 and 15,268, and because respondent has offered no explanation for this noncompliance, we find that respondent has failed to show cause why the Commission should not assess a civil forfeiture of \$250.⁸

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 \$250 for knowingly and willfully violating Regulation No. 58-14(a) and Order Nos. 14,673 and 15,268.

2. That respondent is hereby directed to pay to the Commission within thirty days of the date of this order, by money order, certified check, or cashier's check, the sum of two hundred fifty dollars (\$250).

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



William S. Morrow, Jr.
Executive Director

⁴ *In re Prime Transp. Servs., Inc.*, No. MP-15-043, Order No. 15,502 (Apr. 10, 2015).

⁵ Compact, tit. II, art. XIII, § 6(f).

⁶ *In re Car Plus Transportation LLC*, No. MP-14-099, Order No. 15,592 (May 15, 2015).

⁷ *Id.*

⁸ See *id.* (assessing \$250 for failing to produce documents).