

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 15,692

IN THE MATTER OF:

Served June 18, 2015

SAMI INVESTMENT INC., Suspension)
and Investigation of Revocation of)
Certificate No. 1989)

Case No. MP-2014-015

This matter is before the Commission on the response of respondent to Order No. 15,531, served April 17, 2015, directing respondent to show cause why the Commission should not assess a civil forfeiture against respondent, and/or suspend or revoke Certificate No. 1989.

I. BACKGROUND

Certificate No. 1989 was automatically suspended on January 31, 2014, pursuant to Regulation No. 58-12, when the \$2 million primary WMATC Insurance Endorsement on file for respondent terminated without replacement. Order No. 14,537, served January 31, 2014, noted the automatic suspension of Certificate No. 1989, directed respondent to cease transporting passengers for hire under Certificate No. 1989, 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. 1989. Respondent failed to comply, and Certificate No. 1989 was revoked in Order No. 14,803, on June 2, 2014, for respondent's willful failure to maintain compliance with the Commission's insurance requirements under Regulation No. 58 and respondent's willful failure to pay a \$100 late insurance fee under Regulation No. 67-03(c).

On July 2, 2014, respondent filed the necessary WMATC Insurance Endorsement, tendered payment of the late fee, and submitted an application for reconsideration of Order No. 14,803. Consistent with Commission precedent, Order No. 14,949 reinstated Certificate No. 1989 on July 28, 2014. But because the effective date of the replacement Endorsement was July 2, 2014, instead of January 31, 2014, Order No. 14,949 directed respondent to submit a statement verifying cessation of operations as of January 31, 2014, and to corroborate the statement with copies of respondent's pertinent business records, as required by Regulation No. 58-14.

In response, respondent submitted a manifest of operations in the Metropolitan District from January 10, 2014, to March 27, 2014, but no statement, and no other records. The manifest contains entries for passenger trips between points in the Metropolitan District on 14 separate days, five in February 2014 and nine in March 2014 while

Certificate No. 1989 was suspended and respondent was uninsured or underinsured.

Order No. 15,531 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. 1989, for knowingly and willfully conducting operations under an invalid/suspended certificate of authority.

II. RESPONSE TO ORDER NO. 15,531

Respondent's president, Muhammad Rabbani, has filed a statement that identifies the cause of respondent's violation of the Commission's insurance requirements as a "miscommunication" between respondent and its insurance company. He further states that he "wasn't fully aware of the rules and policies of the insurance company." He requests that the Commission not suspend Certificate No. 1989 for what he characterizes as an "honest mistake".

III. 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.¹

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.²

The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.³ 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.⁴ Employee negligence is no defense.⁵ "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.⁶

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

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

² Compact, tit. II, art. XI, § 10(c).

³ *In re Express Transit, LLC*, No. MP-13-149, Order No. 15,197 at 2 (Nov. 14, 2014).

⁴ *Id.* at 2.

⁵ *Id.* at 2.

⁶ *United States v. Illinois Cent. R.R.*, 303 U.S. 239, 243, 58 S. Ct. 533, 535 (1938).

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 before continuing to operate on and after January 31, 2014. In any event, operating without sufficient insurance for at least two months is more than an honest mistake.

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.⁷ They could not have sent a clearer message that maintaining proper insurance coverage is of paramount importance under the Compact.⁸

We therefore revoke Certificate No. 1989 and assess a forfeiture against respondent in the amount of \$500 per day for 14 days, or \$7,000, for knowingly and willfully operating while suspended and insufficiently insured.⁹

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 \$7,000 for knowingly and willfully violating Article XI, Section 6(a), of the Compact, Regulation No. 58, and the orders issued in this proceeding.

2. That pursuant to Article XI, Section 10(c), of the Compact, Certificate of Authority No. 1989 is hereby revoked for respondent's willful failure to comply with Article XI, Section 6(a), of the Compact, Regulation No. 58, and the orders issued in this proceeding.

⁷ Compact, tit. II, art. XI, § 7(g).

⁸ Order No. 15,197 at 3.

⁹ See Order No. 15,197 (revoking authority and assessing \$500 per day against carrier that operated while suspended and underinsured).

3. 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 seven thousand dollars (\$7,000);
- b. remove from respondent's vehicle(s) the identification placed thereon pursuant to Commission Regulation No. 61;
- c. file with the Commission a notarized affidavit and supporting photographs verifying compliance with the preceding requirement; and
- d. surrender to the Commission Certificate No. 1989.

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



William S. Morrow, Jr.
Executive Director