

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 16,066

IN THE MATTER OF:

Served December 21, 2015

ASRAT MENNA ALAYE, Trading as ALAYE)
TRANSPORTATION SERVICE, Suspension)
and Investigation of Revocation of)
Certificate No. 2492)

Case No. MP-2015-109

This matter is before the Commission on respondent's response to Order No. 15,788, served August 12, 2015.

I. BACKGROUND

Commission Regulation No. 58 requires respondent to insure the revenue vehicles operated under Certificate No. 2492 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.

Certificate No. 2492 was rendered invalid on May 20, 2015, when the \$1.5 million primary WMATC Insurance Endorsement on file for respondent terminated without replacement. Order No. 15,606, served May 20, 2015, noted the automatic suspension of Certificate No. 2492 pursuant to Regulation No. 58-12, directed respondent to cease transporting passengers for hire under Certificate No. 2492, and gave respondent thirty 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. 2492.

Respondent paid the late fee on June 25, 2015, and submitted a \$1.5 million primary WMATC Insurance Endorsement on June 24, 2015, and the suspension was lifted on June 26, 2015, in Order No. 15,710. However, because the effective date of the new endorsement is June 24, 2015, instead of May 20, 2015, the order gave respondent 30 days in accordance with Regulation No. 58-14 to verify cessation of operations as of May 20, 2015, and to produce copies of respondent's pertinent business records for the period from March 1, 2015, to June 26, 2015.

Respondent submitted a statement on July 8, 2015, asserting that he "was out of USA for six months" and did not operate as Alaye Transportation Service during that time.

In support of his statement, respondent produced copies of pages from his passport, checking account statements covering the period from March 1, 2015, to May 31, 2015, and credit card statements for the period beginning March 6, 2015, and ending June 5, 2015.

We found respondent's response deficient. Respondent produced no checking account statements for June 2015 and no credit card statements for June 6, 2015, to June 26, 2015. Furthermore, respondent produced no other business records, such as the paperwork and payment records associated with respondent's insurance renewal. What few documents were produced provided little support for respondent's claim of having discontinued all WMATC operations during the suspension of Certificate No. 2492.

Considering that respondent had failed to produce all pertinent business records and because the documents respondent produced did not sufficiently support respondent's version of events, Order No. 15,788 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. 2492, 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. 15,788 AND FINDINGS

On September 23, 2015, respondent submitted a new statement that narrows the date of his return to the United States to June 21-22, 2015. His statement finds support in copies of airline booking records and in affidavits from four individuals affirming respondent's absence from the country from February 2015 through the end of May 2015.

In addition, respondent has supplemented his earlier document production with a complete set of bank statements for September 1, 2014, through August 31, 2015, and a printout of electronic toll activity for respondent's vehicle from December 1, 2014, through August 31, 2015.

Respondent's expanded production of bank statements offers a more complete picture of respondent's operational status during the suspension period. The newly produced statements show electronic deposits of funds before and after the suspension period from a company that uses a digital dispatch system to connect passengers with passenger carriers such as respondent. Respondent's bank statements during the suspension period show no such entries.

Respondent's electronic toll activity is consistent with this pattern. The electronic toll printout shows a substantial number of trips in December 2014, virtually no toll road activity for respondent's vehicle during the first three months of this year, only two toll trips in April, and no such trips in May. Not until the last week of June is there an uptick in such activity again.

But it appears that respondent operated his vehicle prematurely after returning from his sojourn on June 21-22. Respondent's toll activity printout shows that two trips were conducted using respondent's transponder on June 23, 2015, one day prior to the June 24 effective date of respondent's replacement insurance policy.

There is no evidence that respondent was transporting passengers for hire on that date, but respondent's insurance broker confirms that respondent had "a gap in coverage from 05/20/2015 to 06/24/2015." Inasmuch as respondent's vehicle was uninsured on June 23, it should not have been operating on public roads for any purpose.

Respondent's toll activity printout also shows toll trips recorded on June 24 and June 25, 2015, after respondent's new insurance policy took effect but before the suspension of Certificate No. 2492 was lifted on June 26 in Order No. 15,710. There is no evidence in the record, however, that the trips on June 24 and 25 involved passenger transportation for hire.

Accordingly, we find that the record, as supplemented by respondent in response to Order No. 15,788, now supports a finding that respondent refrained from conducting WMATC operations during the suspension of Certificate No. 2492. Respondent thus has shown cause why Certificate No. 2492 should not be suspended or revoked. But given respondent's five-week delay in replacing the WMATC Endorsement that expired May 20, 2015, and considering respondent's non-WMATC vehicle activity on June 23 while respondent's vehicle was uninsured, we will place respondent on probation for a period of one year.¹

And we will assess a civil forfeiture for respondent's failure to produce all responsive documents by the deadline established in Order No. 15,710.

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

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 intentional or careless disregard or plain indifference.⁴

Respondent offers no explanation for failing to produce his June 2015 bank statement on or before the July 27 deadline established in Order No. 15,710. We find that the violation of Order No. 15,710

¹ See *In re Sheba Network, LLC, t/a Sheba*, No. MP-14-111, Order No. 15,753 (July 21, 2015) (reinstating authority in insurance-lapse proceeding based on belated evidence of timely cessation, subject to one year probation).

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

³ *In re 3MH Servs. Ltd.*, No. MP-15-020, Order No. 15,751 (July 21, 2015); *In re Car Plus Transp. LLC*, No. MP-14-099, Order No. 15,592 (May 15, 2015).

⁴ Order No. 15,751; Order No. 15,592.

was knowing and willful and hereby assess a civil forfeiture against respondent in the amount of \$250.⁵

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 No. 15,710.

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 two hundred fifty dollars (\$250).

3. 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 applicant's operating authority without further proceedings, regardless of the nature and severity of the violation.

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



William S. Morrow, Jr.
Executive Director

⁵ See *In re Sheba Network, LLC, t/a Sheba*, No. MP-14-111, Order No. 15,591 (May 15, 2015) (assessing \$250 for failing to produce documents), *aff'd*, Order No. 15,753.