

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 16,069

IN THE MATTER OF:

Served December 22, 2015

AJ ENTERPRISES LLC, Suspension and)
Investigation of Revocation of)
Certificate No. 2585)

Case No. MP-2015-117

This matter is before the Commission on the response of respondent to Order No. 15,918, served October 21, 2015.

I. BACKGROUND

Certificate No. 2585 was automatically suspended on June 8, 2015, pursuant to Regulation No. 58-12, when the \$1.5 million primary WMATC Insurance Endorsement on file for respondent terminated without replacement. Order No. 15,647, served June 8, 2015, noted the automatic suspension of Certificate No. 2585, directed respondent to cease transporting passengers for hire under Certificate No. 2585, 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. 2585.

Respondent failed to respond, and Certificate No. 2585 was revoked on July 13, 2015, in Order No. 15,735. The certificate was later reinstated on August 12, 2015, in Order No. 15,789, following respondent's request for reconsideration on August 11, 2015, which was supported by the necessary WMATC Insurance Endorsement and payment of the \$100 late fee.

However, because the effective date of respondent's replacement WMATC Endorsement was August 4, 2015, instead of June 8, 2015, the reinstatement order gave respondent 30 days to submit a statement verifying cessation of operations as of June 8, 2015, and to produce copies of respondent's business records for the period April 1, 2015, to August 12, 2015, in accordance with Regulation No. 58-14(a). Respondent did not respond.

Order No. 15,857, served September 21, 2015, accordingly directed respondent to show cause why the Commission should not assess a civil forfeiture against respondent for failing to produce documents as directed. Respondent subsequently submitted the statement of one of its two owners, Mr. Andre Oliphant, on September 22, 2015. According to that statement, respondent had "yet to commence operations." Respondent also produced copies of some pertinent business records - but not all.

For example, as of September 22, respondent's two owners, Mr. Oliphant and Ms. Patricia Bajulaiye-Oliphant, had twice used a joint bank account to pay WMATC fees on respondent's behalf. On September 22, respondent produced copies of bank statements for two of the owners' several joint accounts but not the account used to pay WMATC fees. And the statements that were produced did not cover the entire period specified in Order No. 15,789.

Additionally, respondent failed to produce copies of documents relating to respondent's insurance policy that would have been in respondent's possession, custody, or control.

Because respondent failed to produce all relevant records as required by Regulation No. 58-14(a) and directed by Order No. 15,789, and because respondent had offered no explanation for this noncompliance, we assessed a civil forfeiture of \$250 against respondent and revoked Certificate No. 2585 in Order No. 15,918, served October 21, 2015.

II. RESPONSE TO ORDER NO. 15,918 AND FINDINGS

On November 10, 2015, respondent paid the \$250 forfeiture and simultaneously submitted a refund request. Respondent also submitted a request for reinstatement of Certificate No. 2585 in the form of a joint statement signed by respondent's owners. The joint statement asserts that respondent has "not conducted any form of transportation business" since receiving Certificate No. 2585.

The requests for refund and reinstatement are supported by monthly statements for five bank accounts belonging to respondent's owners: the two accounts covered by respondent's September 22 production; two other bank accounts revealed by respondent's September 22 production but for which no records were produced at that time (including the WMATC fee account); and one bank account previously undisclosed. Consistent with Order No. 15,789, the statements cover the period from April 1, 2015, to August 12, 2015, and then some.

An examination of the bank records reveals no hard evidence of any income and expense that one might associate with passenger transportation activity, such as electronic deposits from transportation brokers and frequent purchases from area service stations.

In addition, it appears that respondent's only driver was otherwise engaged during the period in question. According to respondent's insurance company, respondent has only one vehicle and only one driver, Mr. Oliphant. Among the documents produced November 10, 2015, are pay stubs showing that during the period in question, Mr. Oliphant was engaged as a full-time employee of Ceridian Premium Retail Services, a consulting firm for the retail trade.

It thus appears that the record, as supplemented November 10, now supports a finding that respondent did not transport passengers during the suspension of Certificate No. 2585.

III. CONCLUSION

Rule No. 26-04 provides that the Commission may reopen a proceeding if it has reason to believe that conditions of fact or of law have so changed as to require reopening. In this case, respondent had not fully complied with Order No. 15,789 as of October 21, 2015. With respondent's additional document production on November 10, 2015, we now find that respondent has sufficiently complied.

Considering that respondent belatedly complied with Regulation No. 58-14(a) and Order No. 15,789 within the 30-day deadline for seeking reconsideration and that respondent's bank records and Mr. Oliphant's employment records support a finding that no operations took place while respondent was suspended and uninsured, we will reopen this proceeding under Commission Rule No. 26-04 and reinstate Certificate No. 2585, subject to a one-year period of probation.¹

The \$250 forfeiture assessed in Order No. 15,918 is a different matter. The forfeiture was predicated on respondent's failure to produce pertinent documents on or before September 11, 2015. Respondent's 11th-hour document production does not cure that,² and respondent offers no explanation for failing to submit any response whatsoever by the September 11 deadline.

Furthermore, the belated production on September 22 was incomplete. The bank records produced on that date were partly responsive in the sense that respondent's owners planned to use the two underlying accounts "to receive payments upon commencement of the business . . ." But the records that were produced did not cover the entire period of time specified in Order No. 15,789, and respondent offers no explanation for this deficiency.

Also missing from the September 22 production were records for two accounts used by respondent's owners to pay expenses on respondent's behalf, including: (1) the account used to pay WMATC fees, which, as we now know, also was used to make the down-payment on respondent's replacement WMATC insurance policy and pay the \$250 forfeiture; and (2) an account used to pay insurance premiums on respondent's behalf prior to the suspension of Certificate No. 2585. Respondent offers no credible reason for withholding these obviously relevant records until their existence was inadvertently revealed by other documents submitted by respondent in this and other proceedings, as noted in Order No. 15,918.

¹ See *In re Challenger Transp., Inc.*, No. MP-14-139, Order No. 15,706 (June 25, 2015) (reinstating authority based on belated evidence of timely cessation, subject to one year probation).

² See *id.* (refusing to rescind \$250 forfeiture).

The request for refund therefore is denied.

THEREFORE, IT IS ORDERED:

1. That this proceeding is reopened under Commission Rule No. 26-04.
2. That Certificate No. 2585 is hereby reinstated.
3. That the request for refund is denied.
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 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