

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 16,117

IN THE MATTER OF:

Served January 4, 2016

EXACT ENTERPRISES INC., Suspension)
and Investigation of Revocation of)
Certificate No. 1249)

Case No. MP-2014-146

This matter is before the Commission on respondent's failure to respond to Order No. 15,771, served July 28, 2015.

I. BACKGROUND

Certificate No. 1249 was automatically suspended on September 21, 2014, pursuant to Regulation No. 58-12 when the \$1 million primary and \$500,000 excess WMATC Insurance Endorsements on file for respondent terminated without replacement. Order No. 15,074, served September 22, 2014, noted the automatic suspension of Certificate No. 1249, directed respondent to cease transporting passengers for hire under Certificate No. 1249, 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. 1249.

Respondent paid the late fee on October 9, 2014, and submitted a \$1.5 million primary WMATC Insurance Endorsement on October 10, 2014, and the suspension was lifted on October 10, 2014, in Order No. 15,115. However, because the effective date of the new endorsement was October 8, 2014, instead of September 21, 2014 - thereby creating a 17-day coverage gap - Order No. 15,115 gave respondent 30 days to submit, in accordance with Regulation No. 58-14, a statement verifying cessation of operations as of September 21, 2014, as corroborated by copies of respondent's pertinent business records and statements from three of respondent's clients, Medical Transportation Management, Inc., (MTM), the Montgomery County Department of Transportation, (MCDOT), and Southeastrans, Inc.

In response, respondent's executive director, Rufin Toko Sime, filed a statement on November 12, 2014, in which he stated that respondent "did not transport people during the time of our suspension." Respondent also submitted a statement from MTM asserting that respondent "did not transport any beneficiaries for [MTM] between September 12, 2014, and October 13, 2014." Respondent did not submit statements from Southeastrans and MCDOT, although Mr. Sime did say that respondent requested such statements from Southeastrans and MCDOT but did not receive any.

As for business records, respondent produced bank statements covering the period from September 22, 2014, through November 10, 2014. The bank statements showed three electronic deposits from

Southeasterns and five from MTM. At the request of Commission staff, respondent produced "invoice statements" relating to the eight deposits, including Southeasterns invoice statements for the transportation of 19 passengers by five of respondent's drivers on September 22, 2014, the second day of the suspension.

On such a record, the Commission normally would direct a carrier to show cause why the Commission should not assess a civil forfeiture and/or why the Commission should not suspend or revoke the carrier's operating authority. But in this case, while this proceeding was pending, respondent allowed its WMATC Endorsement to terminate without replacement once again, and Certificate No. 1249 was revoked in a separate proceeding in accordance with Regulation No. 58-15(a) when respondent did not replace it within 30 days.¹

Accordingly, Order No. 15,771, issued in this proceeding on July 28, 2015, gave respondent 30 days to show cause why the Commission should not assess a civil forfeiture against respondent for conducting passenger carrier operations in the Metropolitan District in knowing and willful violation of Article XI, Section 6(a), of the Compact, Regulation No. 58, and Order No. 15,074. Respondent has yet to respond.

II. 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 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 *In re Exact Enters., Inc.*, No. MP-15-029, Order No. 15,443 (Mar. 9, 2015), *recon. denied*, Order No. 15,589 (May 15, 2015).

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

³ *In re Couples, LLC, t/a Couples Limos.*, No. MP-09-134, Order No. 12,330 at 3 (Mar. 8, 2010).

⁴ *Id.* at 3.

⁵ *Id.* at 3.

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 operating on and after September 21, 2015. We therefore find that respondent knowingly and willfully transported passengers on September 22, 2015, while respondent was uninsured and Certificate No. 1249 was suspended.

We hereby assess a civil forfeiture against respondent in the amount of \$500.⁷

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 \$500 for knowingly and willfully violating Article XI, Section 6(a), of the Compact, Regulation No. 58, and Order No. 15,074.

2. That respondent is hereby directed to pay to the Commission within 30 days of the date of this order, by money order, certified check, or cashier's check, the sum of five hundred dollars (\$500).

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



William S. Morrow, Jr.
Executive Director

⁷ *In re Sami Inv. Inc.*, No. MP-14-015, Order No. 15,692 (June 18, 2015) (assessing \$500 per day for operating while suspended and underinsured); *In re Express Transit, LLC*, No. MP-13-149, Order No. 15,197 (Nov. 14, 2014) (assessing \$500 per day for operating while suspended and uninsured); Order No. 12,330 (assessing \$500 per day for operating while suspended and underinsured).