

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 16,153

IN THE MATTER OF:

Served January 22, 2016

EXQUISITE LIMOUSINE SERVICE LLC,)
Suspension and Investigation of)
Revocation of Certificate No. 1818)

Case No. MP-2015-152

This matter is before the Commission on respondent's response to Order No. 15,994, served November 25, 2015.

I. BACKGROUND

Certificate No. 1818 was automatically suspended on August 15, 2015, pursuant to Regulation No. 58-12, when the \$1 million primary WMATC Insurance Endorsement on file for respondent terminated without replacement. Order No. 15,798, served August 17, 2015, noted the automatic suspension of Certificate No. 1818, directed respondent to cease transporting passengers for hire under Certificate No. 1818, 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. 1818. The \$4 million excess WMATC Insurance Endorsement on file for respondent terminated without replacement on August 18, 2015.

Respondent paid the late fee on October 16, 2015, and submitted a \$1 million primary WMATC Insurance Endorsement on September 11, 2015, and a \$4 million excess WMATC Insurance Endorsement on September 30, 2015, and the suspension was lifted in Order No. 15,910, on October 16, 2015, but because the effective date of the new endorsements is September 11, 2015, instead of August 15, 2015, and August 18, 2015, respectively, the order gave respondent 30 days to verify cessation of operations as of August 15, 2015, and 30 days to produce copies of its business records relating to the transportation of passengers for hire between points in the Metropolitan District for the period beginning June 1, 2015, and ending October 16, 2015, in accordance with Regulation No. 58-14(a). Respondent did not respond.

Order No. 15,994, served November 25, 2015, 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. 1818, for knowingly and willfully conducting operations under an invalid/suspended certificate of authority and failing to produce documents as directed.

II. RESPONSE AND FINDINGS

Respondent submitted business records and the statement of its CEO/President, Edward M. Grasty, on December 15, 2015. The business

records consist of customer reservation calendars and monthly bank statements for the months of August and September 2015. No other documents were produced for those two months, and no documents whatsoever were produced for June, July, and October.

Mr. Grasty states that he "grounded all outgoing transportation contracts and suspended the daily reservations operations until such time when the insurance was reinstated." The August and September reservation calendars largely support his statement. Although the calendars show reservations having been booked for every day of both months, the entry "NO TRIPS PER ED" (or variation) has been superimposed over the reservation entries for August 16, 2015, through September 10, 2015. But no such manifestation of forbearance appears in respondent's August calendar with respect to reservations accepted for August 15, 2015, the first day of the suspension period and a day when respondent lacked insurance coverage for the first \$1 million in claims.

Inasmuch as respondent's calendar shows several passenger reservations having been accepted for August 15, 2015, but not cancelled, we find that respondent unlawfully transported passengers for hire between points in the Metropolitan District on August 15, 2015, while Certificate No. 1818 was suspended and respondent's vehicles were underinsured.

And based on Mr. Grasty's admission that reservations were suspended "until . . . the insurance was reinstated," we find that respondent unlawfully transported passengers for hire between points in the Metropolitan District from September 11, 2015 (the date respondent's insurance coverage was reinstated) through October 15, 2015 (the day before the suspension was lifted) - a 35-day period of time when respondent's vehicles were fully insured but Certificate No. 1818 was still suspended. This latter finding is further supported by the absence of any "NO TRIPS PER ED" notations in respondent's calendars on and after September 11, 2015.

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

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

² Compact, tit. II, art. XI, § 10(c).

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 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 August 15, 2015. Respondent's operations on August 15, 2015, and from September 11, 2015, through October 15, 2015, are thus deemed knowing and willful.

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. 1818 and assess a forfeiture against respondent in the amount of \$500 for knowingly and willfully operating on August 15, 2015, while Certificate No. 1818 was suspended and respondent's vehicles were insufficiently insured.⁹

³ *In re Sami Investment Inc.*, No. MP-14-015, Order No. 15,692 at 2 (June 18, 2015).

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).

⁷ Compact, tit. II, art. XI, § 7(g).

⁸ Order No. 15,692 at 3.

⁹ See Order No. 15,692 at 3 (revoking authority and assessing \$500 per day against carrier that operated while suspended and underinsured).

In addition, we shall assess a civil forfeiture against respondent in the amount of \$250 per day for 35 days, for a total of \$8,750, for knowingly and willfully operating from September 11, 2015, through October 15, 2015, while respondent's vehicles were properly insured but Certificate No. 1818 was still suspended.¹⁰

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 \$9,250 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. 1818 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.

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 nine thousand two hundred fifty dollars (\$9,250);
- 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. 1818.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS HOLCOMB AND DORMSJO:



William S. Morrow, Jr.
Executive Director

¹⁰ See *In re Dereje Bogale Worbelo, t/a Worbelo Limo Serv.*, No. MP-14-005, Order No. 15,130 (Oct. 21, 2014) (assessing \$250 per day against carrier that operated while suspended but not uninsured).