

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 16,268

IN THE MATTER OF:

Served March 30, 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 request for reconsideration of Order No. 16,153, served January 22, 2016.

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.

Respondent submitted business records and the statement of its CEO/President, Edward M. Grasty, on December 15, 2015. The business records consisted 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 stated 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 supported his statement. Although the calendars showed reservations having been booked for every day of both months, the entry "NO TRIPS PER ED" (or variation) had been superimposed over the reservation entries for August 16, 2015, through September 10, 2015. But no such manifestation of forbearance on respondent's part appeared 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 showed several passenger reservations having been accepted for August 15, 2015, but not canceled, we found 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 found 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 was further supported by the absence of any "NO TRIPS PER ED" notations in respondent's calendars on and after September 11, 2015.

Based on the foregoing findings, the Commission revoked Certificate No. 1818 and assessed a civil forfeiture of \$9,250 against respondent for knowingly and willfully violating Article XI, Section 6(a), of the Compact, Regulation No. 58, and the orders issued in this proceeding.

II. RECONSIDERATION REQUEST

Under Article XIII, Section 4, of the Compact, a party affected by a final order or decision of the Commission may file within 30 days of its publication a written application requesting Commission reconsideration of the matter involved.¹ The application must state specifically the errors claimed as grounds for reconsideration.² The Commission must grant or deny the application within 30 days after it

¹ Compact, tit. II, art XIII, § 4(a).

² Compact, tit. II, art XIII, § 4(a).

has been filed.³ If the Commission does not grant or deny the application by order within 30 days, the application shall be deemed denied.⁴ If the application is granted, the Commission shall rescind, modify, or affirm its order or decision with or without a hearing, after giving notice to all parties.⁵ Filing an application for reconsideration may not act as a stay upon the execution of a Commission order or decision, or any part of it, unless the Commission orders otherwise.⁶

Respondent's application for reconsideration of Order No. 16,153 was timely filed on February 22, 2016, and is supported by two statements, one executed by respondent's CEO/President, Edward M. Grasty, and one executed by Marvin Brooks, president of MNB Transportation Services, LLC, WMATC Carrier No. 2395.

Mr. Grasty, admits that three "jobs" were scheduled for August 15, 2015, but claims that "only 1 trip actually went on as scheduled." Mr. Grasty alleges that said trip "was not performed by Exquisite Limousine Service." Mr. Brooks states that he "covered a trip for Exquisite Limousine Service LLC, on August 15, 2015, which was one of their pre-scheduled tours," and that he "provided transportation service for Exquisite Limousine Service LLC, on that date and was paid by Exquisite Limousine Service LLC." We are not persuaded by respondent's eleventh-hour proffer on this issue. Neither of the statements is under oath as required by WMATC Rule No. 4-06, and neither is supported by contemporaneous documents as required by Regulation No. 58-14 and Order No. 15,910. And if such an arrangement had existed, we would expect to find some notation of the arrangement on respondent's calendar similar to the notations evidencing respondent's self-cancellation of trips for August 16, 2015, through September 10, 2015.

As for the reservations on and after September 11, 2015, Mr. Grasty appears to acknowledge that some trips may have been performed by respondent during that time period when he "ask[s] the WMATC to consider that any trips performed in the DC Metro area from September 11, 2015 through October 16, 2015 were entirely for school bus transportation for which WMATC does not have jurisdiction over." We find that such a consideration is not supported by the record. There is no evidence in the record that any of said reservations were for "transportation by a motor vehicle employed solely in transporting teachers and school children through grade 12 to or from public or private schools."⁷ Even if there were some such evidence, the "employed solely" test must be met at all times, not just when the vehicle in

³ Compact, tit. II, art XIII, § 4(b).

⁴ Compact, tit. II, art XIII, § 4(c).

⁵ Compact, tit. II, art XIII, § 4(d).

⁶ Compact, tit. II, art XIII, § 4(e).

⁷ Compact, tit. II, art XI, § 3(d).

question is being used as a school bus.⁸ It is presumed that a carrier does not partition its fleet into exempt and non-exempt operations.⁹ This places the burden on respondent to come forward with evidence to the contrary.¹⁰ Evidence respondent has failed to produce.

Ultimately, the contemporaneous record contradicts Mr. Grasty when he declares in sweeping fashion: "Exquisite Limousine LLC, at no time after August 15, 2015 through October 15, 2015 was engaged in passenger for hire transportation whether knowingly or unknowingly during this time period and in fact did no trips during this period." There are no notations on respondent's calendar indicating that any of the reservations respondent accepted for those dates were canceled and/or subcontracted to other carriers. And this most recent statement from Mr. Grasty is inconsistent with his statement of December 15, 2015, wherein he stated that respondent suspended operations "until such time when the insurance was reinstated," which was September 11, 2015, not October 16, 2015.

III. CONCLUSION

We find that respondent has failed to establish any error on the part of the Commission in Order No. 16,153. The application therefore is denied.

IT IS SO ORDERED.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS HOLCOMB AND DORMSJO:



William S. Morrow, Jr.
Executive Director

⁸ *In re Green's Transp. Co., Inc.*, No. MP-11-038, Order No. 13,043 at 3 (Nov. 8, 2011).

⁹ *Id.* at 3.

¹⁰ *Id.* at 3.