

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 16,621

IN THE MATTER OF:

Served October 17, 2016

J T E INC., Suspension and)
Investigation of Revocation of)
Certificate No. 1630)

Case No. MP-2016-047

This matter is before the Commission on respondent's response to Order No. 16,404, served June 2, 2016.

I. BACKGROUND

Under the Compact, a WMATC carrier may not engage in transportation subject to the Compact if the carrier's certificate of authority is not "in force."¹ A certificate of authority is not valid unless the holder is in compliance with the Commission's insurance requirements.²

Commission Regulation No. 58 requires respondent to insure the revenue vehicles operated under Certificate No. 1630 for a minimum of \$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.

Respondent filed a \$5 million WMATC Endorsement on April 28, 2015, with an expiration date of April 28, 2016. The insurer, Canal Insurance Company, filed a notice of cancellation with the Commission on March 24, 2016, cancelling said endorsement effective April 23, 2016. WMATC notified respondent of the cancellation by letter dated March 28, 2016, and sent respondent a reminder by email on April 20, 2016. Respondent failed to file a new WMATC Endorsement on or before April 23, 2016.

Order No. 16,310, served April 25, 2016, noted the automatic suspension of Certificate No. 1630 pursuant to Regulation No. 58-12, directed respondent to cease transporting passengers for hire under Certificate No. 1630, 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. 1630.

Respondent paid the late fee and submitted a new \$5 million primary WMATC Insurance Endorsement on April 28, 2016, and the

¹ Compact, tit. II, art. XI, § 6(a).

² Compact, tit. II, art. XI, § 7(g).

suspension was lifted that day in Order No. 16,321, but because the effective date of the new endorsement was April 28, 2016, instead of April 23, 2016 - thereby creating a five-day coverage gap - the order gave respondent 30 days to verify cessation of operations as of April 23, 2016, and 30 days to produce copies of respondent's pertinent business records from February 1, 2016, to April 28, 2016, in accordance with Regulation No. 58-14(a).

On May 2, 2016, Canal Insurance Company filed a \$5 million WMATC Endorsement on behalf of respondent with an effective date of April 22, 2016, and an expiration date of April 28, 2016. This had the effect of closing the five-day coverage gap.

Of course, elimination of the coverage gap did not alter the fact that Certificate No. 1630 was suspended from April 23, 2016, through April 27, 2016. Closing the gap did not relieve respondent of the requirements of Regulation No. 58-14(a), as amplified by Order No. 16,321 directing respondent to verify cessation of operations as of April 23, 2016, and directing respondent to produce business records relating to respondent's WMATC operations from February 1, 2016, to April 28, 2016.

On June 2, 2016, having received neither respondent's verification nor respondent's business records, the Commission issued Order No. 16,404, directing respondent to show cause why the Commission should not assess a civil forfeiture against respondent, and/or suspend or revoke Certificate No. 1630, 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. 16,404 AND ANALYSIS

Respondent has finally produced the statement of its vice president, Jerome Leonard, in response to the requirement that respondent verify cessation of WMATC operations as of April 23, 2016. Respondent still has not produced any business records.

Mr. Leonard states that Canal Insurance Company erred in canceling coverage as of April 23, 2016, and that "[s]ince this was entirely canals mistake," respondent "continued to operate." Considering the context of this proceeding and the purpose for which the statement has been submitted, we understand Mr. Leonard's statement to mean that respondent operated throughout the five-day suspension period in violation of Regulation No. 58-12.

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." We further note that 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 prior to April 23, 2016. Indeed, as noted above, WMATC reached out to respondent on April 20 with an email advising respondent that no new filing had been made.

Respondent should not have continued to operate on and after April 23, 2016, without first checking with the Commission to verify that a new WMATC Endorsement had been filed as required by Regulation No. 58-11.

III. ASSESSMENT OF FORFEITURE AND PROBATION

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.³ Each day of the violation constitutes a separate violation.⁴

The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.⁵ 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.⁶ Employee negligence is no defense.⁷ "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.⁸

In situations similar to this one - operating while suspended but not while uninsured - the Commission has assessed a civil forfeiture of \$250 for each day of unauthorized operations and placed

³ Compact, tit. II, art. XIII, § 6(f)(i).

⁴ Compact, tit. II, art. XIII, § 6(f)(ii).

⁵ *In re Fikre A Mamo, t/a DMV Limo*, No. MP-14-008, Order No. 15,423 at 3 (Mar. 3, 2015); *In re Dereje Bogale Worbello, t/a Worbello Limo Serv.*, No. MP-14-005, Order No. 15,133 at 2 (Oct. 21, 2014); *In re Grace Transport Servs., Inc.*, No. MP-13-053, Order No. 14,603 at 3 (Feb. 26, 2014).

⁶ Order No. 15,423 at 3; Order No. 15,133 at 2; Order No. 14,603 at 3-4.

⁷ Order No. 14,603 at 4.

⁸ *United States v. Illinois Cent. R.R.*, 303 U.S. 239, 243, 58 S. Ct. 533, 535 (1938).

carriers on probation for one year.⁹ We shall follow the same course here and assess a civil forfeiture of \$250 per day, for five days, or \$1,250, and place respondent on probation for one year.

We also shall assess a forfeiture of \$250 against respondent for failing to produce documents as required by Regulation No. 58-14(a) and Order No. 16,321.¹⁰

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 \$1,250 for knowingly and willfully violating Article XI, Section 6(a), of the Compact and Regulation No. 58-12.

2. 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. 16,321.

3. 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 one thousand five hundred dollars (\$1,500).

4. That respondent is hereby 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 respondent's operating authority regardless of the nature and severity of the violation.

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



William S. Morrow, Jr.
Executive Director

⁹ Order No. 15,423 at 3; Order No. 15,133 at 2; Order No. 14,603 at 4.

¹⁰ See *In re Asrat Menna Alaye, t/a Alaye Transp. Serv.*, No. MP-15-109, Order No. 16,066 at 3-4 (Dec. 21, 2015) (assessing \$250 for failing to produce documents in timely fashion).