

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 16,724

IN THE MATTER OF:

Served December 7, 2016

AMERICAN EAGLE LIMOUSINE & TRAVEL )  
SERVICE, INC, Suspension and )  
Investigation of Revocation of )  
Certificate No. 644 )

Case No. MP-2016-013

This matter is before the Commission on respondent's response to Order No. 16,490, served July 21, 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."<sup>1</sup> A certificate of authority is not valid unless the holder is in compliance with the Commission's insurance requirements.<sup>2</sup>

Commission Regulation No. 58 requires respondent to insure the revenue vehicles operated under Certificate No. 644 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.

Certificate No. 644 was rendered invalid on January 23, 2016, when the \$1 million primary WMATC Insurance Endorsement on file for respondent terminated without replacement. Order No. 16,159, served January 27, 2016, noted the automatic suspension of Certificate No. 644 pursuant to Regulation No. 58-12, directed respondent to cease transporting passengers for hire under Certificate No. 644, 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. 644.

Respondent submitted a \$1 million primary WMATC Insurance Endorsement on January 28, 2016, and paid the late fee on February 2, 2016, and the suspension was lifted February 10, 2016, in Order No. 16,193, but because the effective date of the new endorsement is January 28, 2016, instead of January 23, 2016 - thereby creating a five-day coverage gap - the order gave respondent 30 days to submit a statement verifying cessation of operations as of January 23, 2016, and 30 days to produce copies of all respondent's business records

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<sup>1</sup> Compact, tit. II, art. XI, § 6(a).

<sup>2</sup> Compact, tit. II, art. XI, § 7(g).

from November 1, 2015, through February 10, 2016, in accordance with Regulation No. 58-14(a).

## **II. RESPONSE TO ORDER NO. 16,193**

On February 25, 2016, respondent produced the statement of Najib Ahmad and copies of various business records, including: (a) copies of respondent's trip logs for the period beginning November 1, 2015, and ending February 6, 2016; (b) copies of respondent's bank statements for the period beginning November 1, 2015, and ending February 10, 2016; and (c) copies of respondent's merchant service records showing individual customer credit card transactions for the period beginning October 2, 2015, and ending February 9, 2016.

In reviewing respondent's records, it is important to note that Commission precedent distinguishes between carriers operating without authority and without adequate insurance, on the one hand, and carriers operating without authority but with adequate insurance, on the other.<sup>3</sup> The Commission metes out stiffer sanctions for operating without adequate insurance.<sup>4</sup> In this case, respondent was suspended and not fully insured from January 23 through January 27. Respondent was fully insured but still suspended from January 28 through February 9.

After reviewing respondent's records, the Commission found in Order No. 16,490 that respondent's trip logs revealed that respondent transported passengers between points in the Metropolitan District on three days while respondent was fully insured but still suspended: January 30, February 5, and February 6, 2016.

As for operations while suspended and not fully insured, the order noted that respondent's spokesperson, Najib Ahmad, had acknowledged that respondent was not fully insured from January 23 through January 27 but that he also had asserted that respondent "did not provide services to any clients" during those five days, even though respondent's credit card transaction records indicate that respondent received credit card payments from customers on January 25, January 26, and January 27, 2016. Mr. Ahmad explained that respondent's customers pay for their trips two weeks in advance; so, these payments should not be regarded as evidence of operations on those three dates.

The Commission observed, however, that not all of respondent's engagements followed the same pattern and that even if customer credit card transactions were mostly finalized two weeks in advance, it would be reasonable to expect that respondent would have had to cancel many trips during the 18-day suspension of Certificate No. 644 given the 35 credit card transactions that took place in the two weeks leading up to the suspension. According to respondent's bank records, however,

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<sup>3</sup> *In re Better Business Connection, Inc.*, No. MP-13-028, Order No. 15,486 at 23 (Apr. 2, 2015).

<sup>4</sup> See *id.* (assessing larger forfeiture and revoking authority for operating without sufficient insurance).

only three chargebacks were recorded while Certificate No. 644 was suspended.

### **III. ORDER TO SHOW CAUSE**

Considering that respondent's trip logs revealed passenger carrier operations in the Metropolitan District while Certificate No. 644 was suspended and that the timing of key credit card transaction records coupled with respondent's failure to produce corresponding customer trip logs created the appearance that such operations took place not only while Certificate No. 644 was suspended but perhaps while respondent was not fully insured, Order No. 16,490 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. 644, for knowingly and willfully conducting operations under a suspended certificate of authority and violating Regulation Nos. 58 and the orders in this proceeding.

### **IV. RESPONSE TO SHOW CAUSE ORDER AND FINDINGS**

On August 5, 2016, respondent produced additional records and a statement in response to Order No. 16,490. The records are responsive to Order No. 16,193, served February 10, 2016, and tend to confirm respondent's assertion that it did not conduct any WMATC operations while uninsured.

The statement, on the other hand, does not take issue with the Commission's preliminary finding in Order No. 16,490 that respondent transported passengers between points in the Metropolitan District on three days while respondent was fully insured but still suspended. And it does not explain why the records produced August 5 were not produced with the other responsive records back on February 25, 2016.

### **V. 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.<sup>5</sup> Each day of the violation constitutes a separate violation.<sup>6</sup>

The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.<sup>7</sup> 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.<sup>8</sup> Employee negligence is no defense.<sup>9</sup> "To hold carriers not liable for penalties where the

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<sup>5</sup> Compact, tit. II, art. XIII, § 6(f)(i).

<sup>6</sup> Compact, tit. II, art. XIII, § 6(f)(ii).

<sup>7</sup> *In re J T E Inc.*, No. MP-16-047, Order No. 16,621 at 3 (Oct. 17, 2016).

<sup>8</sup> *Id.* at 3.

<sup>9</sup> *Id.* at 3.

violations . . . are due to mere indifference, inadvertence, or negligence of employees would defeat the purpose of" the statute.<sup>10</sup>

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 carriers on probation for one year.<sup>11</sup> We shall follow the same course here and assess a civil forfeiture of \$250 per day, for three days, or \$750, 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. 16,193.<sup>12</sup>

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 \$750 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. 16,193.

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 dollars (\$1,000).

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

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<sup>10</sup> *United States v. Illinois Cent. R.R.*, 303 U.S. 239, 243, 58 S. Ct. 533, 535 (1938).

<sup>11</sup> Order No. 16,621 at 3-4.

<sup>12</sup> See *id.* at 4 (assessing \$250 for failing to produce documents in timely fashion).