

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 16,836

IN THE MATTER OF:

Served February 9, 2017

CARLOS SEDAN, LLC, Suspension and)
Investigation of Revocation of)
Certificate No. 2029)

Case No. MP-2015-223

This matter is before the Commission on respondent's response to Order No. 16,576, served September 16, 2016.

I. BACKGROUND

Certificate No. 2029 was automatically suspended on December 31, 2015, pursuant to Regulation No. 58-12, when the \$2 million primary WMATC Insurance Endorsement on file for respondent terminated without replacement. Order No. 16,091, served December 31, 2015, noted the automatic suspension of Certificate No. 2029, directed respondent to cease transporting passengers for hire under Certificate No. 2029, 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. 2029.

Respondent paid the late fee and submitted a \$1.5 million primary WMATC Insurance Endorsement, and the suspension was lifted in Order No. 16,139, served January 7, 2016. However, because the effective date of the new endorsement was January 6, 2016, instead of December 31, 2015 - thereby creating a six-day insurance gap - the order gave respondent 30 days in accordance with Regulation No. 58-14(a) to: (1) verify cessation of operations as of December 31, 2015; (2) produce copies of respondent's pertinent business records from October 1, 2015, to January 7, 2016; and (3) submit a statement from Carey Limousine D.C., Inc., WMATC Carrier No. 69, one of respondent's principal clients, confirming timely cessation of operations.

Carey submitted a statement on January 15, 2016, stating that respondent "did not provide any services under its Independent Operator Agreement with Carey DC between December 31, 2015 and January 7, 2016." Respondent, however, did not respond with its own statement and failed to produce any business records.

In accordance with Regulation No. 58-14(b), Order No. 16,576, served September 16, 2016, directed respondent to show cause why the Commission should not assess a civil forfeiture against respondent, and/or suspend or revoke Certificate No. 2029, 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. 16,576 AND FINDINGS

In response to Order No. 16,576, respondent has submitted a statement that appears to be signed by respondent's owner, Carlos Ugarte, and that asserts Mr. Ugarte works only for Carey. The statement is accompanied by a copy of respondent's January 6 insurance filing, some related insurance documents, and a copy of a vehicle registration card in Mr. Ugarte's name for a vehicle that apparently was added to respondent's fleet in November 2015. Respondent has produced no other business records.

We find respondent's response lacking. The statement is not under oath as required by Commission Rule No. 4-06, and the assertion that Mr. Ugarte, or more properly respondent, works only for Carey is not corroborated by any of respondent's business records as required by Regulation No. 58-14(a) and Order No. 16,139. And because the statement is cast in the present tense as of October 5, 2016, it does not speak to the suspension period at issue in this proceeding.

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

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 intentional or careless disregard or plain indifference.⁴

Because respondent has (1) failed to verify whether it ceased operating while suspended and uninsured from December 31, 2015, through January 5, 2016, and while suspended on January 6, 2016; (2) failed to produce all relevant business records as required by Regulation No. 58-14(a) and directed by Order No. 16,139; and (3) offered no explanation for these failures; we find that respondent has failed to show cause why the Commission should not assess a civil

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

² Compact, tit. II, art. XI, § 10(c).

³ *In re Sheba Network, LLC, t/a Sheba*, No. MP-14-111, Order No. 15,591 (May 15, 2015).

⁴ *Id.*

forfeiture of \$250⁵ and revoke Certificate No. 2029,⁶ without prejudice to respondent's right to reapply for operating authority after waiting 180 days from the date of this order.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 \$250 for knowingly and willfully violating Regulation No. 58-14(a) and Order No. 16,139.

2. 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 two hundred fifty dollars (\$250).

3. That pursuant to Article XI, Section 10(c), of the Compact, Certificate of Authority No. 2029 is hereby revoked for respondent's willful failure to comply with Regulation No. 58-14(a) and Order No. 16,139.

4. That within 30 days from the date of this order respondent shall:

- a. remove from respondent's vehicle(s) the identification placed thereon pursuant to Commission Regulation No. 61;
- b. file a notarized affidavit with the Commission verifying compliance with the preceding requirement; and
- c. surrender Certificate No. 2029 to the Commission.

5. Respondent may reapply for operating authority after waiting 180 days from the date of this order.

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



William S. Morrow, Jr.
Executive Director

⁵ See *id.* (assessing \$250 for failing to produce verification and documents).

⁶ See *id.* (revoking authority for failing to produce verification and documents).

⁷ See *In re Jonathan Lee Gerity Sr, t/a Riverside Transp.*, No. MP-16-036, Order No. 16,710 (Nov. 30, 2016) (stipulating 180-day application waiting period in insurance gap case).