

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 16,854

IN THE MATTER OF:

Served March 1, 2017

BURLINGTON BREW TOURS, LLC,)
Suspension and Investigation of)
Revocation of Certificate No. 2534)

Case No. MP-2016-136

Application of DC BREW TOURS, LLC,)
to Acquire Certificate No. 2534)
from BURLINGTON BREW TOURS, LLC)

Case No. AP-2017-026

The matter in Case No. MP-2016-136 is before the Commission on the response of Burlington Brew Tours, LLC, (respondent), to Order No. 16,606, served October 7, 2016.

The matter in Case No. AP-2017-026 is before the Commission on the application of respondent's affiliate, DC Brew Tours, LLC, to obtain Certificate No. 2534 from respondent.

These matters are being consolidated pursuant to Commission Rule No. 20-02 to resolve the issue of whether Certificate No. 2534 should be revoked and, if so, remain revoked for some period of time.

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. 2534 for a minimum of \$1.5 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. 2534 was automatically suspended on August 17, 2016 when the \$1.5 million primary WMATC Insurance Endorsement on file for respondent expired without replacement. Order No. 16,527, issued on August 18, 2016, noted the automatic suspension of Certificate No. 2534 pursuant to Regulation No. 58-12, directed respondent to

¹ Compact, tit. II, art. XI, § 6(a).

² Compact, tit. II, art. XI, § 7(g).

cease transporting passengers for hire under Certificate No. 2534, 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. 2534.

Respondent failed to respond, and Certificate No. 2534 was revoked in Order No. 16,584 on September 21, 2016, pursuant to Regulation No. 58-15(a). Respondent thereafter submitted the necessary WMATC Endorsement, paid the late fee, and filed a timely application for reconsideration, and Certificate of Authority No. 2534 was reinstated in Order No. 16,606, in accordance with Regulation No. 58-15(b).

However, respondent's replacement Endorsement did not take effect until September 8, 2016, instead of August 17, 2016, the expiration date of the prior Endorsement, thereby creating a 22-day gap in required coverage. Order No. 16,606 accordingly directed respondent to submit a statement verifying cessation of operations as of August 17, 2016, as required by Regulation No. 58-14(a). The order also directed respondent to produce copies of its business records pertaining to any and all operations under WMATC authority during the suspension/revocation of Certificate No. 2534.

II. RESPONSE TO ORDER NO. 16,606

In response to Order No. 16,606, respondent has produced the statement of its owner and CEO, Mr. Chad Brodsky, who admits that respondent continued operating in the Washington Metropolitan Area during the suspension of Certificate No. 2534.

The documents produced by respondent in response to Order No. 16,606 - chiefly respondent's "DC Bookings Report" - confirm that respondent operated in the Washington Metropolitan Area on 17 separate days while Certificate No. 2534 was suspended/revoked, including five days during the 22-day gap in required coverage.

III. ASSESSMENT OF FORFEITURE

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

Mr. Brodsky asserts that he did not act "deliberately or maliciously in continuing tour operations" while Certificate No. 2534 was suspended/revoked. Whether respondent acted "deliberately" or "maliciously" is not the issue. The test, as noted, is whether respondent acted "knowingly and willfully".

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

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

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

Mr. Brodsky admits receiving a copy of the suspension order on August 18, 2016. We therefore find that respondent's 17 days of WMATC operations between the suspension of Certificate No. 2534 on August 17, 2016, and the reinstatement of Certificate No. 2534 on October 7, 2016, were knowingly and willfully in violation of the Compact, Regulation No. 58, and Order No. 16,527.

In setting the daily forfeiture amount, the Commission distinguishes between unlawful operations conducted with the required insurance coverage in place, on the one hand, from unlawful operations conducted without the required insurance coverage in place, on the other - assessing a larger amount for unlawful operations conducted without the required insurance coverage.⁹

For operating unlawfully but with the requisite WMATC Endorsement(s) on file, the Commission normally assesses a civil forfeiture of \$250 for each day of unauthorized operations.¹⁰ The Commission assesses \$500 per day when a carrier operates without the requisite WMATC Endorsement(s) on file.¹¹

Mr. Brodsky argues that respondent had a commercial auto policy in place at all times. But he acknowledges that the amount of coverage under that policy during the 22-day gap was short by \$500,000.

Accordingly, we shall assess a civil forfeiture of \$250 per day for 12 days of operations while suspended/revoked but properly insured (or \$3,000) and \$500 per day for 5 days of operations while suspended and not properly insured (or \$2,500), for a combined forfeiture of \$5,500.

⁵ *In re Jonathan Lee Gerity Sr, t/a Riverside Transp.*, No. MP-16-036, Order No. 16,574 at 5 (Sept. 15, 2016).

⁶ *Id.* at 5.

⁷ *Id.* at 5.

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

⁹ Order No. 16,574 at 5.

¹⁰ *Id.* at 5.

¹¹ *Id.* at 5.

IV. REVOCATION OF AUTHORITY

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.¹²

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.¹³ They could not have sent a clearer message that maintaining proper insurance coverage is of paramount importance under the Compact.¹⁴ We therefore revoke Certificate No. 2534 for respondent's 5 days of underinsured operations.¹⁵

V. DENIAL OF PENDING TRANSFER APPLICATION

On February 8, 2017, while this proceeding was pending, Mr. Brodsky submitted respondent's 2017 annual report. Section 5 of the report concerning mergers, consolidations and other changes in management, ownership, and control contained the following entry: "I would like to transfer my operating authority to DC Brew Tours, LLC which has been registered with the Government of DC." And two days later, Mr. Brodsky filed an application on behalf of DC Brew Tours, LLC, to obtain Certificate No. 2534 from respondent. The application identifies Mr. Brodsky as CEO of DC Brew Tours, LLC.

Under Article XI, Section 11(a), of the Compact: "A person may not transfer a Certificate of Authority unless the Commission approves the transfer as consistent with the public interest."

Given Mr. Brodsky's central role in respondent knowingly and willfully operating while suspended and underinsured, and having determined that Certificate No. 2534 shall be revoked, we find that approving the transfer of Certificate No. 2534 to DC Brew Tours, LLC, would not be consistent with the public interest at this time.

DC Brew Tours, LLC, may reapply for operating authority after waiting 180 days from the date of this order.¹⁶

THEREFORE, IT IS ORDERED:

1. That Case Nos. MP-2016-136 and AP-2017-026 are hereby consolidated pursuant to Commission Rule No. 20-02.

¹² Compact, tit. II, art. XI, § 10(c).

¹³ Compact, tit. II, art. XI, § 7(g).

¹⁴ Order No. 16,574 at 6.

¹⁵ See *id.* at 6 (revoking authority of carrier that operated while suspended and insufficiently insured).

¹⁶ 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).

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 \$5,500 for knowingly and willfully violating Article XI, Section 6(a), of the Compact, Regulation No. 58-12, and the orders in this proceeding.

3. That pursuant to Article XI, Section 10(c), of the Compact, Certificate of Authority No. 2534 is hereby revoked for respondent's willful failure to comply with Article XI, Section 6(a), of the Compact, Regulation No. 58-12, and the orders in this proceeding.

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

- a. pay to the Commission by check or money order the sum of five thousand five hundred dollars (\$5,500);
- b. remove from respondent's vehicle(s) the identification placed thereon pursuant to Commission Regulation No. 61;
- c. file a notarized affidavit and supporting photograph(s) with the Commission verifying compliance with the preceding requirement; and
- d. surrender Certificate No. 2534 to the Commission.

5. That the application of DC Brew Tours, LLC, in Case No. AP-2017-026 is denied.

6. That DC Brew Tours, LLC, 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