

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 17,101

IN THE MATTER OF:

Served July 17, 2017

A & W SERVICES, LLC, Suspension and)
Investigation of Revocation of)
Certificate No. 2217)

Case No. MP-2016-120

This matter is before the Commission on respondent's response to Order No. 16,567, served September 14, 2016, directing respondent to show cause why the Commission should not assess a civil forfeiture against respondent, and/or suspend or revoke Certificate No. 2217, for conducting operations under an invalid/suspended certificate of authority and failing to produce documents as directed

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. 2217 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. 2217 was rendered invalid on July 19, 2016, when the \$1.5 million primary WMATC Insurance Endorsement on file for respondent expired without replacement. Order No. 16,475, served July 19, 2016, noted the automatic suspension of Certificate No. 2217 pursuant to Regulation No. 58-12, directed respondent to cease transporting passengers for hire under Certificate No. 2217, 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. 2217.

Respondent paid the late fee on August 12, 2016, and submitted a \$1.5 million primary WMATC Insurance Endorsement on August 12, 2016, and the suspension was lifted on August 12, 2016, in Order No. 16,521. However, because the effective date of the new endorsement was

¹ Compact, tit. II, art. XI, § 6(a).

² Compact, tit. II, art. XI, § 7(g).

August 4, 2016, instead of July 19, 2016 - thus creating a 16-day coverage gap - the order gave respondent 30 days to verify cessation of operations as of July 19, 2016, and 30 days to produce copies of respondent's pertinent business records from May 1, 2016, to August 12, 2016, in accordance with Regulation No. 58-14(a). Respondent did not comply.

Order No. 16,567 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. 2217, for knowingly and willfully violating Article XI, Section 6(a), of the Compact, Regulation No. 58, and the orders issued in this proceeding.

II. RESPONSE TO ORDER NO. 16,567 AND ANALYSIS

In response to Order No. 16,567, respondent has produced the statement of its president/managing partner, Earl B. Andrews. The statement does not address whether respondent continued operating during the suspension of Certificate No. 2217, but "Payment Statements" produced by respondent in response to Order No. 16,567 and issued to respondent by "Uber USA" for "Black Car service, "SUV" service, and "uberXL" service reveal that respondent continued operating throughout the 24-day suspension of Certificate No. 2217.

Meanwhile, on February 14, 2017, Zurich American Insurance Company filed a \$1.5 million WMATC Endorsement on behalf of respondent with an effective date of July 19, 2016, and an expiration date of August 4, 2016.³ This had the effect of closing the 16-day coverage gap.

Of course, elimination of the coverage gap does not alter the fact that Certificate No. 2217 was suspended from July 19, 2016, through August 11, 2016.

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." And 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

³ The filing was facilitated by the Maryland Insurance Administration (MIA) in response to a complaint lodged by respondent against Zurich American Insurance Company. The filing was not submitted via the Commission's electronic filing system as required by Regulation No. 58-06 because the filer does not have a filing ID and was making a one-time filing at the behest of the MIA. Given these circumstances, we waive the electronic filing requirement in this case.

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.

Respondent is charged with the knowledge that its WMATC Insurance Endorsement had a July 19, 2016, expiration date. 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 that date.

Respondent should not have continued to operate on and after July 19, 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.⁴ Each day of the violation constitutes a separate violation.⁵

The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.⁶ 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.⁷ Employee negligence is no defense.⁸ "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.⁹

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.¹⁰ We shall follow the same course

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

⁵ Compact, tit. II, art. XIII, § 6(f)(ii).

⁶ *In re J T E Inc.*, No. MP-16-047, Order No. 16,621 at 3 (Oct. 17, 2016); *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).

⁷ Order No. 16,621 at 3; Order No. 15,423 at 3; Order No. 15,133 at 2; Order No. 14,603 at 3-4.

⁸ Order No. 16,621 at 3; Order No. 14,603 at 4.

⁹ *United States v. Illinois Cent. R.R.*, 303 U.S. 239, 243, 58 S. Ct. 533, 535 (1938).

¹⁰ Order No. 16,621 at 3-4; Order No. 15,423 at 3; Order No. 15,133 at 2; Order No. 14,603 at 4.

here and assess a civil forfeiture of \$250 per day, for 24 days, or \$6,000, and place respondent on probation for one year.

We will suspend all but 25 percent of the forfeiture, rounded to the nearest \$100, or \$1,500, based on the presence of one reduction factor: respondent's production of inculpatory records.¹¹ Failure to pay the net forfeiture in a timely fashion shall result in reinstatement of the full \$6,000.

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 \$6,000 for knowingly and willfully violating Article XI, Section 6(a), of the Compact and Regulation No. 58-12 on 24 separate days; provided, that all but \$1,500 shall be suspended in recognition of respondent's production of inculpatory records.

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

3. That the full forfeiture of \$6,000 assessed in this order shall be immediately due and payable if respondent fails to timely pay the net forfeiture of \$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

¹¹ See Order No. 15,423 at 4 (partially suspending forfeiture); Order No. 14,603 at 4 (same).