

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 4834

IN THE MATTER OF:

Served May 9, 1996

SHIRLEY L. NELSON, Trading as L&N )  
TRANSPORTATION -- Investigation of )  
Violation of the Compact, )  
Article XI, Section 14, and )  
Regulations Nos. 55, 61, 62 and 68, )  
and Circumvention of the Compact, )  
Article XI, Section 7(f), and )  
Regulation No. 58 )

Case No. MP-96-16

This investigation was initiated February 26, 1996, pursuant to Order No. 4770. Respondent was directed to show cause why civil forfeitures should not be assessed for operating without a proper tariff, lease and vehicle identification and why respondent should not be ordered to terminate her \$1.5 million van policy and insure her vans under her \$5 million minibus policy, considering that all of her vehicles must be insured for \$5 million.

I. Tariff, Lease & Vehicle Identification

The record shows that on January 3, 1996, a DC Commission on Health Care Finance (CHCF) inspector observed respondent transporting Medicaid recipients in a van which did not display respondent's certificate number as required by Commission Regulation No. 61. Commission records show that respondent did not file rates for service under the DC Medicaid program until January 16, 1996, effective January 24. The records also show that respondent operated a leased vehicle for eight days without first filing the lease with the Commission as required by Commission Regulation No. 62.

Article XIII, Section 6(f), of the Compact states that a person who knowingly and willfully violates a provision of the Compact 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 and that each day of the violation constitutes a separate violation. "Knowingly" means with perception of the underlying facts, not that such facts establish a violation.<sup>1</sup> "Willfully" does not mean with evil purpose or criminal intent; rather, it describes conduct marked by careless disregard.<sup>2</sup> Employee negligence is no defense.<sup>3</sup>

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<sup>1</sup> DD Enters., Inc., t/a Beltway Transp. Serv., v. Reston Limo. Serv., No. FC-93-01, Order No. 4226 (Dec. 20, 1993); O. Oluokun, Inc., t/a Montgomery County Limo, No. MP-93-43, Order No. 4225 (Dec. 16, 1993).

<sup>2</sup> Orders Nos. 4226, 4225.

<sup>3</sup> Orders Nos. 4226, 4225.

We will assess a civil forfeiture of \$250 for the tariff violation, \$100 for the violation of Regulation No. 61, and \$100 per day for the lease violations. The total civil forfeiture assessed is, therefore, \$1,150. We will suspend all but \$500 in recognition of respondent bringing three of her five vehicles into compliance.<sup>4</sup>

Although it is reasonable to infer from the record that respondent is guilty of operating without a proper tariff for more than just one day, it is this Commission's understanding that because respondent was not authorized to transport Medicaid passengers prior to January 24, 1996, respondent will be subject to CHCF forfeiture proceedings for any transportation rendered prior to that date. Having to refund to CHCF all revenue earned prior to January 24, 1996, is penalty enough for operating without a proper tariff.

On April 19, 1996, respondent filed a supplemental response in which she avers that the two vehicles which have not passed inspection by staff will not be used in WMATC operations. One is a personal vehicle, and one is inoperative. Respondent will be directed to cease and desist from operating the two vehicles she claims are not used in WMATC operations. The two vehicles are identified as follows:

1984 CHEV., VIN 2GDGG35M5E4158730, MD tag 733605M  
1988 DODGE, VIN 2B5WB31W9JK145703, DC tag B34409

## II. Insurance

The record shows that respondent has cancelled the \$5 million minibus policy, increased coverage on the van policy from \$1.5 million to \$5 million, and transferred the minibus from the former policy to the latter. This is an acceptable alternative to cancellation of the \$1.5 million van policy.

Respondent requests waiver of the \$5 million minimum insurance requirement with respect to vehicles seating less than 16 persons. Respondent is not the first to propose such a waiver. The Commission addressed this issue in the context of a proposed industry-wide rulemaking in In re United Mgmt. Corp., No. MP-92-31, Order No. 3995 (Sept. 3, 1992), and noted that until 1991, the Commission had permitted carriers with unrestricted certificates to insure their large vehicles for \$5 million and their small vehicles for \$1.5 million but "found that practice both unsound and administratively unmanageable." Id. at 1. Granting a select waiver to respondent alone would be patently unfair to the rest of the industry.

### THEREFORE, IT IS ORDERED:

1. That respondent is hereby directed to cease and desist from transporting passengers for hire between points in the Metropolitan District in the two vehicles identified above, unless and until the Commission's staff has issued a written determination that said vehicles have passed inspection.

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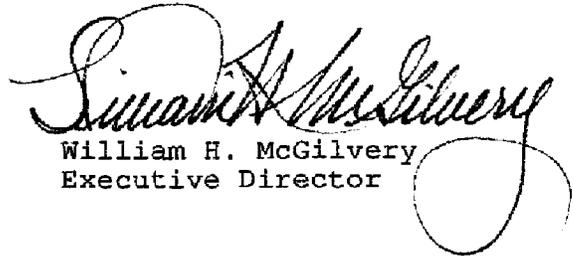
<sup>4</sup> Order No. 4770 noted the existence of six vehicles. The record shows that the leased vehicle has been returned to the lessor.

2. That the Commission hereby assesses a net civil forfeiture against respondent in the amount of \$500, for knowing and willful violation of the Compact and Commission Regulations, and that respondent is hereby directed to pay to the Commission within thirty days of the date of this order, by money order, certified check, or cashier's check, the sum of five hundred dollars (\$500).

3. That upon respondent's failure to timely pay the assessed forfeiture, staff shall issue an order suspending Certificate of Authority No. 254 for willful violation of the Compact and this order.

4. That upon the suspension of Certificate of Authority No. 254 in accordance with the preceding paragraph, respondent shall have thirty days to show cause why Certificate of Authority No. 254 shall not be revoked.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS ALEXANDER AND LIGON:

  
William H. McGilvery  
Executive Director