

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 6425

IN THE MATTER OF:

Served November 16, 2001

Revocation of Certificate of)
Insurance and Investigation of)
Suspension and Revocation of)
Certificate of Authority)
Directed to L&N TRANSPORTATION)
COMPANY, INC., WMATC No. 254)

Case No. MP-2001-49

This proceeding was initiated on June 12, 2001, in Order No. 6249, for the purpose of revoking the certificate of insurance on file for L&N Transportation Company, Inc., (L&N), after the issuer of the certificate, an agent for the insurance company, repudiated the certificate it had issued for another carrier. The order gave L&N thirty days to file a new certificate of insurance signed by the insurance company.

The insurance company filed two certificates of insurance and two lists of vehicles showing that it had issued a \$1.5 million policy to cover L&N's vans and a \$5 million policy to cover L&N's minibus. Commission Regulation No. 58-03, however, provides that WMATC carriers with operating authority unrestricted as to vehicle seating capacity, such as L&N, must insure all of their revenue vehicles for \$5 million -- even their vans.

Accordingly, we issued Order No. 6293 on July 19, 2001, directing L&N to cancel the \$1.5 million policy and provide proof that all of L&N's vehicles are covered by a single policy for \$5 million as required by Commission Regulation No. 58.

On August 2, 2001, the Commission received a WMATC Certificate of Insurance and Policy Endorsement for \$5 million, accompanied by the insurance company's explanation that it had cancelled the \$5 million policy and increased the \$1.5 million policy to \$5 million and that all of L&N's vehicles are now insured with a \$5 million liability limit.

Order No. 6293 also directed L&N and its sole shareholder and officer Shirley L. Nelson to show cause why the Commission should not assess a civil forfeiture against them for knowingly and willfully violating the insurance provisions of the Compact and Commission regulations and orders thereunder.¹ In defense, L&N and Ms. Nelson claim that the failure to insure all vehicles for \$5 million was an inadvertent error caused by extenuating circumstances affecting Ms. Nelson personally at the time coverage was being renewed.

¹ A person who knowingly and willfully violates a provision of the Compact is subject to a civil forfeiture. Compact, tit. II, art. XIII, § 6(f).

We find this defense unavailing. "Knowingly," for purposes of assessing a civil forfeiture under the Compact, means with perception of the underlying facts, not that such facts establish a violation.² "Willfully" does not mean with evil purpose or criminal intent; rather, it describes "conduct marked by careless disregard whether or not one has the right so to act."³ Employee negligence is no defense.⁴ Moreover, L&N and Ms. Nelson had actual knowledge that insuring L&N's vans for less than \$5 million violated the Commission's insurance requirements.

L&N obtained Certificate of Authority No. 254 from Ms. Nelson in January of 1999, along with her vans and minibus, after receiving Commission approval the previous month.⁵ Prior to the transfer, the Commission had discovered that Ms. Nelson was insuring her vans for \$1.5 million and her minibus for \$5 million and directed her to show cause why she should not be ordered to terminate the \$1.5 million van policy and transfer the vans to her \$5 million minibus policy.⁶ Ms. Nelson responded by canceling the \$5 million minibus policy, increasing the van policy limit to \$5 million, and transferring the minibus to that policy.⁷

Ms. Nelson thereafter requested a waiver of the Commission's \$5 million insurance requirement as to her vans so that she might once again insure them for only \$1.5 million. The Commission denied that request on the ground that the Commission had permitted unrestricted carriers to insure their vans for only \$1.5 million in the past but "found that practice both unsound and administratively unmanageable" and on the ground that granting a waiver to Ms. Nelson alone would be "patently unfair" to the rest of the industry.⁸

Given Ms. Nelson's specific waiver request and the Commission's specific denial, there can be no doubt Ms. Nelson was aware that an unrestricted WMATC carrier may not insure its vans for only \$1.5 million. Her knowledge is imputed to L&N.⁹

² 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).

³ Order No. 4226; Order No. 4225.

⁴ Order No. 4226; Order No. 4225.

⁵ In re Shirley L. Nelson, t/a L&N Transportation & L&N Transportation Company, Inc., No. AP-98-46, Order No. 5485 (Dec. 15, 1998).

⁶ In re Shirley L. Nelson, t/a L&N Transp., No. MP-96-16, Order No. 4770 (Feb. 26, 1996).

⁷ In re Shirley L. Nelson, t/a L&N Transp., No. MP-96-16, Order No. 4834 at 2 (May 9, 1996).

⁸ Id. at 2. The U.S. Court of Appeals for the District of Columbia Circuit has reminded us of our role under the Compact in guarding against unfair competition. Old Town Trolley Tours of Washington, Inc., v. WMATC, 129 F.3d 201 (D.C. Cir. 1997).

⁹ In re Affordable Airport Charter, Inc., & Bach Vu, t/a Affordable Airport Charter, No. MP-97-76, Order No. 5276 (Feb. 17, 1998).

We will assess a civil forfeiture against L&N and Ms. Nelson in the amount of \$750.

THEREFORE, IT IS ORDERED:

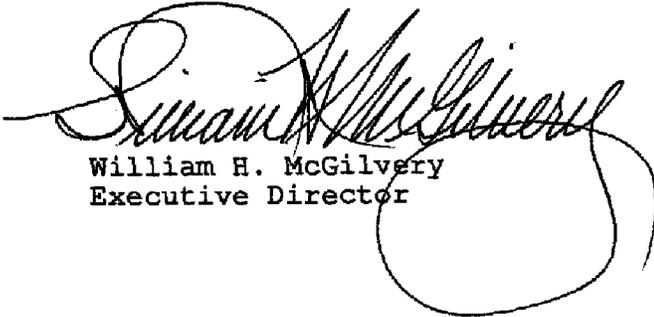
1. That the Commission hereby assesses a civil forfeiture against L&N Transportation Company, Inc., and Shirley L. Nelson, jointly and severally, in the amount of \$750, for knowing and willful violation of Title II of the Compact, Article XI, Section 7(f), Commission Regulation No. 58, and Commission Order No. 4834.

2. That respondents are 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 seven hundred fifty dollars (\$750).

3. That upon respondents' 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, respondents shall have thirty days to show cause why Certificate of Authority No. 254 shall not be revoked.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS YATES, LIGON, AND MILLER:



William H. McGilvery
Executive Director