

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 6762

IN THE MATTER OF:

Served August 7, 2002

SAFE HAVEN, INC., Suspension and )  
Investigation of Revocation of )  
Certificate No. 382 )

Case No. MP-2002-14

This matter is before the Commission for the purpose of deciding whether to reinstate Certificate of Authority No. 382.

**I. BACKGROUND**

Respondent is required by Commission Regulation No. 58 to carry \$1.5 million in motor vehicle liability insurance at all times and to maintain on file with the Commission proof of that insurance in the form of one or more insurance certificates. The Commission received notice on January 10, 2002, that respondent's first \$1 million in liability coverage was being cancelled effective February 11, 2002. A copy of the notice was forwarded to respondent January 11, 2002. Respondent failed to replace the primary coverage by the cancellation date. Certificate No. 382 was deemed invalid and automatically suspended as a result.<sup>1</sup>

Commission Order No. 6544, served February 12, 2002, noted the automatic suspension of Certificate No. 382 and gave respondent thirty days to replace the insurance certificate that had been cancelled. Respondent failed to comply.

Commission Order No. 6589, served March 27, 2002, revoked Certificate of Authority No. 382 pursuant to Article XI, Section 10(c), of the Compact for respondent's willful failure to maintain on file with the Commission an effective primary insurance certificate. The order directed respondent to surrender Certificate No. 382 and file an affidavit confirming removal of all markings placed on respondent's vehicle(s) pursuant to Regulation No. 61. Respondent failed to comply.

Respondent eventually filed a new \$1.5 million insurance certificate on April 19, 2002, together with an application for reconsideration of Order No. 6589. We denied the application in Order No. 6682, served June 4, 2002, because respondent did not allege any error on the part of the Commission as required by Article XIII, Section 4(a), of the Compact. However, inasmuch as respondent had filed a new certificate of insurance showing reinstatement of full coverage, we decided to consider reinstating Certificate of Authority No. 382 on our own initiative.

Because we had received copies of correspondence indicating that respondent continued providing passenger transportation services for clients of the District of Columbia's Mental Retardation and

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<sup>1</sup>Compact, tit. II, art. XI, § 7(g); Commission Regulation No. 58-02.

Developmental Disabilities Administration (MRDDA) after the suspension took effect, we gave respondent thirty days to furnish proof that it ceased operating February 11, 2002. We further ordered respondent to surrender Certificate No. 382 as directed by Order No. 6589, pending final disposition of this matter.

## II. UNAUTHORIZED AND UNDERINSURED OPERATIONS

Respondent's MRDDA contract was not officially suspended until May 20, 2002, and the response filed by respondent on June 19, 2002, admits that respondent "did perform" the MRDDA contract after the Commission issued its "Order of February 11, 2002." Thus, it would appear that respondent's unauthorized operations continued unabated for 98 days. Respondent claims it had no choice.

As the Commission knows, Safe Haven is under contract with MRDDA and could have been in peril of legal action due to non performance. In short either Safe Haven performed their duties under the contract or risk being sued or blacklisted from other contracts and contracting authorities. What would have been your suggestion?

Response of Safe Haven Inc. (June 19, 2002).

First, if respondent had consulted with the Commission in January during the thirty-two day cancellation notice period, while respondent was still authorized to operate, the suggestion would have been to subcontract out the MRDDA service to an active WMATC carrier effective February 11, 2002, once respondent determined it would not be able to replace the cancelled insurance certificate in time to avoid automatic suspension.

Second, we find it troubling that respondent possessed of a belief it must either break the law or breach a contract, respondent chose to break the law. It is that failure to comply with the law that has placed respondent in this predicament.

Finally, the \$1.5 million insurance certificate filed April 19, 2002, only covers respondent's operations from April 3, 2002, onward. This means respondent operated without liability insurance for the first \$1 million in claims from February 11, 2002, through April 2, 2002. It may be that MRDDA does not consider this a breach of contract, but that hardly seems likely. The Commission certainly considers it an aggravating factor.

Respondent suggests that the Commission reinstate Certificate No. 382 subject to a fine or period of probation. At \$250 per day for 98 days, the appropriate civil forfeiture would be \$24,500.<sup>2</sup> Given respondent's history of lapsed insurance, we do not believe it to be in the public interest to allow respondent to continue operating after being further weakened by a \$24,500 payout to the Commission, even if we thought respondent would be able to comply with the Compact and the Commission's rules and regulations in the future.

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<sup>2</sup>See In re Shirlington Limousine & Transportation, Inc., No. AP-02-20, Order No. 6709 (June 21, 2002) (forfeiture set at \$250 per day for operating while insurance suspension pending).

As for probation, we have not found that to be much of a deterrent when it comes to respondent. We placed respondent on probation in February 2000 for a period of one year. Respondent made it through probation but was suspended only two months after probation ended for letting its insurance lapse.<sup>3</sup>

We noted in Order No. 6682, that this proceeding marks the fourth time Certificate No. 382 has been revoked since it was first issued on March 18, 1997. The Commission reinstated Certificate No. 382 after the first two revocations in 1997 and 1998 but not after the third in 1999. Approximately one year after the third revocation, we approved respondent's application to reissue Certificate No. 382, subject to the one-year probation period. We do not believe that respondent has earned yet another chance.

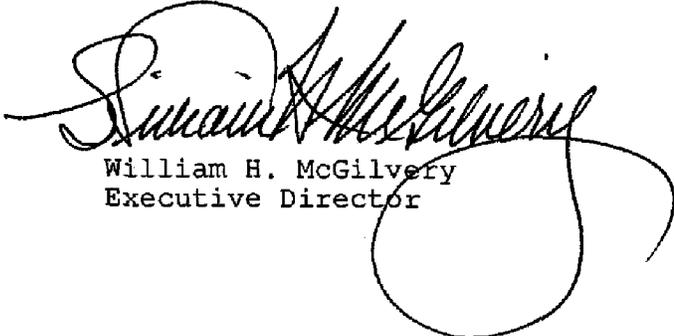
Respondent's failure to relinquish Certificate No. 382 while this proceeding was pending -- despite two orders commanding its surrender -- further validates our decision not to reinstate Certificate No. 382.

THEREFORE, IT IS ORDERED:

1. That respondent shall immediately surrender Certificate of Authority No. 382.

2. That respondent shall immediately remove from respondent's vehicle(s) the identification placed thereon pursuant to Commission Regulation No. 61 and file a notarized affidavit with the Commission verifying compliance.

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



William H. McGilvery  
Executive Director

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<sup>3</sup>In re Safe Haven, Inc., No. MP-01-31, Order No. 6185 (Apr. 11, 2001).

