

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 6938

IN THE MATTER OF:

Served December 10, 2002

ACEP GROUP INCORPORATED, )  
WMATC No. 548, Investigation )  
of Unauthorized Operations and )  
Order To Show Cause )

Case No. MP-2002-128

This investigation is being initiated to determine whether a civil forfeiture should be assessed against ACEP Group Incorporated, WMATC No. 548, and why the Commission should not suspend or revoke Certificate No. 548, for knowingly and willfully violating Article XI, Section 6(a), of the Compact by operating while Certificate No. 548 was invalid.

Article XI, Section 6(a), of the Compact states that a person may not engage in transportation subject to the Compact unless there is in force a certificate of authority issued by the Commission authorizing the person to engage in that transportation. Article XI, Section 7(g) of the Compact states that a certificate of authority is not valid unless the holder is in compliance with the insurance requirements of the Commission.

Commission Regulation No. 58 requires respondent to insure its operations for a minimum of \$1.5 million 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 Endorsement). The WMATC Endorsement on file for respondent expired August 3, 2002, and was not replaced until August 22, 2002.

Order No. 6768, served August 9, 2002, noted that Certificate No. 548 had become invalid as of August 3, 2002, and directed respondent to cease and desist from conducting transportation subject to the Compact, unless and until otherwise ordered by the Commission. Order No. 6781, served August 22, 2002, noted the filing of an acceptable replacement WMATC Endorsement and reinstated Certificate No. 548.<sup>1</sup> Hence, it would have been unlawful for respondent to operate in the Metropolitan District from August 3, 2002, to August 22, 2002.

~~On October 2, 2002, the Commission received from the District of Columbia Department of Health, Medical Assistance Administration,~~

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<sup>1</sup> Coverage under the replacement endorsement is effective August 12, 2002.

(DC Medicaid), evidence of claims submitted to DC Medicaid by respondent for transportation performed during the period Certificate No. 548 was invalid. The specific dates are August 9-10, 12-16, and 19-21 of this year.

The Commission, after notice and hearing, 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.<sup>2</sup>

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.<sup>3</sup> Each day of the violation constitutes a separate violation.<sup>4</sup>

The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.<sup>5</sup> The term "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.<sup>6</sup> Employee negligence is no defense.<sup>7</sup>

Respondent shall have thirty days to show cause why the Commission should not assess a civil forfeiture against respondent, and to show cause why the Commission should not suspend or revoke Certificate No. 548, for operating while Certificate No. 548 was invalid.

THEREFORE, IT IS ORDERED:

1. That an investigation of respondent is hereby initiated under Article XIII, Section 1, of the Compact.

2. That respondent shall have thirty days to show cause why the Commission should not assess a civil forfeiture against respondent for knowingly and willfully violating Article XI, Section 6(a), of the Compact.

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<sup>2</sup> Compact, tit. II, art. XI, § 10(c).

<sup>3</sup> Compact, tit. II, art. XIII, § 6(f)(i).

<sup>4</sup> Compact, tit. II, art. XIII, § 6(f)(ii).

<sup>5</sup> In re Washington Exec. Sedan, Inc., & Global Express Limo. Serv., Inc., No. MP-02-03, Order No. 6772 (Aug. 13, 2002).

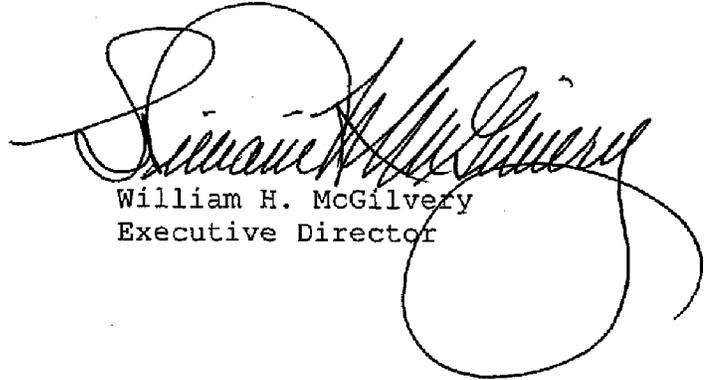
<sup>6</sup> Id.

<sup>7</sup> Id.

3. That respondent shall have thirty days to show cause why the Commission should not suspend or revoke Certificate No. 548 for willful failure to comply with Article XI, Section 6(a), of the Compact.

4. That respondent may file within 15 days from the date of this order a request for oral hearing, specifying the grounds for the request, describing the evidence to be adduced and explaining why such evidence cannot be adduced without an oral hearing.

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



William H. McGilvery  
Executive Director