

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 7069

IN THE MATTER OF:

Served March 4, 2003

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

Case No. MP-2002-128

This investigation was initiated in Order No. 6938, served December 10, 2002, to determine whether a civil forfeiture should be assessed against respondent and whether respondent's certificate of authority should be suspended or revoked for knowingly and willfully violating Article XI, Section 6(a), of the Compact by operating while Certificate of Authority No. 548 was invalid.

**I. BACKGROUND**

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 the revenue vehicles operated under Certificate No. 548 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 or Endorsement) for each policy comprising the minimum.

The \$1.5 million WMATC Insurance 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 the invalidation of Certificate No. 548 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.<sup>1</sup> Order No. 6781, served August 22, 2002, noted the filing of the new

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<sup>1</sup> In re ACEP Group Inc., No. MP-02-59, Order No. 6768 (Aug. 9, 2002).

Endorsement and revalidated Certificate No. 548.<sup>2</sup> Under the circumstances, it would have been unlawful for respondent to operate in the Metropolitan District from August 3, 2002, through August 21, 2002.

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

Order No. 6938 gave respondent thirty days to show cause why the Commission should not assess a civil forfeiture against respondent and/or suspend or revoke Certificate No. 548 for knowingly and willfully operating while Certificate No. 548 was invalid.<sup>3</sup> The order also gave respondent fifteen days to request an oral hearing. Respondent filed its response and a conditional request for oral hearing on January 9, 2003.

## II. REQUEST FOR ORAL HEARING

The request for oral hearing states that "ACEP Group Inc. also requests an oral hearing should we need one." (Emphasis added). The Commission is not in a position to advise a respondent on whether it needs an oral hearing. That is for the respondent to decide.

The request for hearing is not properly lodged, in any event. Order No. 6938 mandated not only that the request be filed within fifteen days but that the request specify the grounds for requesting a hearing, describe the evidence to be adduced and explain why such evidence cannot be adduced without an oral hearing. Respondent's request satisfies none of these threshold requirements. The request is untimely, does not specify the grounds for the request, does not describe the evidence to be adduced, and does not explain why such evidence cannot be adduced without an oral hearing. Accordingly, the request shall be denied.

## III. SHOW CAUSE RESPONSE

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<sup>2</sup> In re ACEP Group Inc., No. MP-02-59, Order No. 6781 (Aug. 22, 2002).

<sup>3</sup> The Commission, after notice and hearing, may suspend or revoke a certificate of authority for willful failure to comply with a provision of the Compact. Compact, tit. II, art. XI, § 10(c). A person who knowingly and willfully violates a provision of the Compact is 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. Compact, tit. II, art. XIII, § 6(f)(i). Each day of the violation constitutes a separate violation. Compact, tit. II, art. XIII, § 6(f)(ii).

Respondent admits transporting passengers under an invalid certificate but claims it did not do so knowingly and willfully. According to the affidavit of respondent's CEO, Robin C. Jallow:

ACEP Group Inc. did not knowingly or willfully violate any part or section of the Compact. ACEP Group Inc. owners Robin C. Jallow and Abdul A. Jallow gave specific instructions to their office manager to solely depend on their subcontractors (whom all at that present time had valid operating authority) for all transportation services while they were out of town relocating Mrs. Jallow's ill mother from Gary, Indiana to Grandview MO. Unfortunately our office manager took it upon himself to assign transportation to our drivers without our authorization; because of this that office manager has been terminated.

This is not a good defense. First, the alleged instructions to the office manager were flawed. The manager should have been instructed to subcontract out service while Certificate No. 548 was invalid, not while senior management was out of town. There is nothing in the record to indicate the two periods were coterminous.<sup>4</sup>

Second, there is no evidence in the record identifying the alleged subcontractors, no evidence they were in fact willing and able to take on all of respondent's passengers during the time respondent's certificate was invalid, and no evidence that such an arrangement would have been acceptable to DC Medicaid.

Third, respondent misapprehends the meaning of whether it acted knowingly and willfully. The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.<sup>5</sup> The terms "willful" and "willfully" do not mean with evil purpose or criminal intent; rather, they describe conduct marked by careless disregard whether or not one has the right so to act.<sup>6</sup> This certainly describes the office manager's conduct. That he countermanded senior management's alleged instructions is beside the point, whether he acted intentionally or not.

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<sup>4</sup> In fact, there is some evidence to the contrary. As noted, some of the violations occurred on August 19-21, 2002. A fax from Ms. Jallow dated August 19, 2002, concerning respondent's garage or vehicle storage lot and suggesting that any questions be directed to Ms. Jallow via respondent's office telephone number, appears to place her in the office on that date.

<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.; In re All-Star Presidential, LLC, & Presidential Coach Co., & Presidential Limo. Serv., Inc., No. MP-95-82, Order No. 4961 (Oct. 29, 1996).

As between the government and respondent, the latter's breach is precisely the same in kind and degree as it would have been if its [employee's] failure had been intentional instead of merely negligent. The duty violated did not arise out of the relation of employer and employee but was one that, in virtue of the statute, was owed by respondent to [its customers] and the public. As respondent could act only through employees, it is responsible for their failure. To hold carriers not liable for penalties where the violations of [the statute] are due to mere indifference, inadvertence or negligence of employees would defeat the purpose of [the statute]. Whether respondent knowingly and willfully failed is to be determined by the acts and omissions which characterize its violation of the statute and not upon any breach of duty owed to it by its employees.

United States v. Illinois Cent. R.R., 303 U.S. 239, 244, 58 S. Ct. 533, 535 (1938).

We find that respondent knowingly and willfully violated Article XI, Section 6(a), of the Compact, by transporting passengers for hire between points in the Metropolitan District on August 9-10, 12-16, and 19-21 of 2002, while Certificate No. 548 was invalid. We shall assess a forfeiture of \$250 per day for ten days of unauthorized operations,<sup>7</sup> or \$2,500.

On the issue of suspension or revocation, the record shows that coverage under the old policy expired August 3, 2002, and that coverage under the new policy did not commence until August 12, 2002. Hence, respondent was uninsured when it operated on August 9 and 10, 2002. Moreover, the record shows that respondent's August 12, 2002, application for insurance only lists one of the six vehicles respondent reported to the Commission just six months earlier in connection with respondent's application for operating authority. Ms. Jallow explains in an unsworn statement that one of the vehicles was transferred, one was totaled, and two were taken out of service. That still leaves respondent operating one vehicle that has not been reported to respondent's insurance company, even if we were to accept Ms. Jallow's statement.

Normally, the WMATC Insurance Endorsement acts as a backstop since it provides coverage even in the event a vehicle is not identified in the policy, but the Endorsement is of little value if a claimant is not given accurate policy information, and in this case the record shows that the registrations for the two vehicles respondent admits operating misidentify the name of the insurance company, putting customers and the public at risk, apparently since

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<sup>7</sup> See Order No. 6772 (civil forfeiture for operating without authority assessed at \$250 per day).

August 3, 2002. Accordingly, we shall revoke Certificate No. 548 for respondent's willful failure to comply with Article XI, Section 6(a), of the Compact while uninsured.<sup>8</sup>

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 \$2,500 for knowingly and willfully violating Article XI, Section 6(a), of the Compact, by transporting passengers for hire between points in the Metropolitan District on August 9-10, 12-16, and 19-21 of 2002, while Certificate No. 548 was invalid.

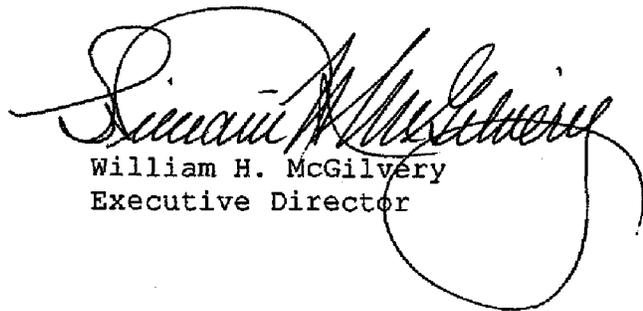
2. That respondent is hereby directed to pay to the Commission within thirty days of the date of this order, by money order, certified check, or cashier's check, the sum of two thousand five hundred dollars (\$2,500).

3. That pursuant to Article XI, Section 10(c), of the Compact, Certificate of Authority No. 548 is hereby revoked for respondent's willful failure to comply with Article XI, Section 6(a), of the Compact while uninsured.

4. That within 30 days from the date of this order respondent shall:

- a. remove from respondent's vehicle(s) the identification placed thereon pursuant to Commission Regulation No. 61;
- b. file a notarized affidavit with the Commission verifying compliance with the preceding requirement; and
- c. surrender Certificate No. 548 to the Commission.

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



William H. McGilvery  
Executive Director

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<sup>8</sup> See In re Safe Haven, Inc., No. MP-02-14, Order No. 6762 (Aug. 7, 2002) (certificate of authority not reinstated where carrier operated while suspended and underinsured).