

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 7137

IN THE MATTER OF:

Served April 18, 2003

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

Case No. MP-2002-128

This matter is before the Commission on respondent's application for reconsideration of Commission Order No. 7069, served March 4, 2003, which revoked Certificate No. 548 and assessed a \$2,500 civil forfeiture against respondent for knowingly and willfully operating without authority in violation of Article XI, Section 6(a), of the Compact, while uninsured.

I. STATUTORY STANDARD

A party to a proceeding affected by a final order or decision of the Commission may file within 30 days of its publication a written application requesting Commission reconsideration of the matter involved, and stating specifically the errors claimed as grounds for the reconsideration.¹ If the application is granted, the Commission shall rescind, modify, or affirm its order or decision with or without a hearing, after giving notice to all parties.²

II. DISCUSSION

Respondent timely filed its application for reconsideration on March 28, 2003, and in it requests that the Commission reconsider the portion of Order No. 7069 revoking Certificate No. 548.

Respondent claims the Commission committed three errors. First, respondent contends that the Commission failed to articulate a rationale for revoking Certificate No. 548 as opposed to suspending Certificate No. 548 or taking no action at all. Second, respondent contends that the Commission only considered matters unrelated to violations of the Compact that posed no threat to the public. Third, respondent contends that the Commission failed to consider mitigating factors. We disagree with all three contentions.

A. Basis for Revocation

The Commission may suspend or revoke all or part of any certificate of authority for willful failure to comply with a

¹ Compact, tit. II, art. XIII, § 4(a).

² Compact, tit. II, art. XIII, § 4(d).

provision of the Compact, an order, rule, or regulation of the Commission, or a term, condition, or limitation of the certificate.³

We found in Order No. 7069 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. Under the Compact, a certificate of authority is not valid unless the holder is in compliance with the insurance requirements of the Commission.⁴ 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. Consequently, Certificate No. 548 was invalid on the dates in question.

In addition, respondent was uninsured from August 3, 2002, the expiration date of the old policy, to August 12, 2002, the effective date of the new policy. The record is clear that respondent continued operating during that period. So, it was not simply that respondent operated unlawfully but that it operated while uninsured as well. Under the circumstances, revocation was appropriate.⁵

B. Aggravating Factors

The Commission also considered that respondent had not reported all vehicles to its insurance company and that respondent misidentified the insurance company when registering its vehicles. Respondent's violations of basic vehicle registration and insurance laws are certainly relevant to an investigation of respondent's fitness to hold passenger carrier authority.⁶ These compounding violations add strength to the Commission's decision to revoke

³ Compact, tit. II, art. XIII, § 10(c).

⁴ Compact, tit. II, art. XIII, § 7(g).

⁵ See In re Baron Transportation, Inc., No. MP-02-42, Order No. 7067 (Mar. 4, 2003) (declining to reinstate authority where respondent was uninsured while operating under invalid certificate); In re Safe Haven, Inc., No. MP-02-14, Order No. 6762 (Aug. 7, 2002) (declining to reinstate authority where respondent was underinsured while operating under invalid certificate); see also In re VGA Enters. Inc., No. AP-02-34, Order No. 6736 (July 22, 2002) (application denied where applicant continued to operate while suspended and uninsured).

⁶ See In re V.I.P. Tours, No. AP-83-10, Order No. 2504 (Dec. 2, 1983) (on reconsideration) (Commission may investigate transportation-related violations of non-WMATC laws), aff'd per curiam, No. 83-2341, judgment (D.C. Cir. Jan. 25, 1985).

Certificate No. 548. Respondent has failed to offer any evidence that it has corrected them. The core violations in this case were more than sufficient to sustain revocation, in any event, as noted above.

C. Alleged Mitigating Factors

Respondent claims the Commission failed to consider that respondent acted diligently and promptly to obtain insurance coverage on August 12, 2002, after receiving the Commission's formal notice of suspension on August 10, 2002. The pertinent date for measuring respondent's diligence is August 3, 2002, the date respondent's insurance policy expired. We do not see how waiting nine days to renew expired coverage demonstrates respondent's diligence. Respondent should have applied for renewed coverage nine days before the policy expired, not nine days after. The Commission should not have had to issue notice of suspension in the first place.

Respondent also claims it was diligent in issuing instructions to its employees on August 12, 2002, to discontinue operations. Respondent should have issued those instructions on August 2, 2002, when it became apparent that respondent's insurance would expire the next day and its certificate of authority would become automatically suspended.

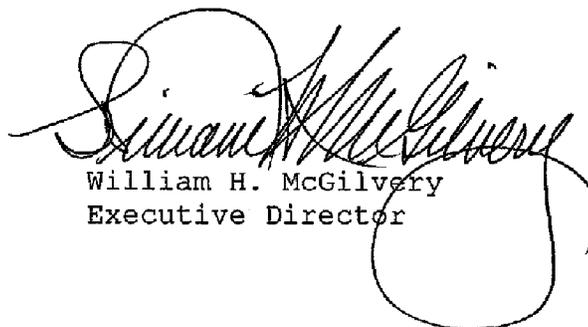
III. CONCLUSION

When the signatories and Congress approved the Compact, they designated noncompliance with Commission insurance requirements as the single offense that would automatically invalidate a certificate of authority. They could not have sent a clearer message that maintaining proper insurance coverage is of paramount importance under the Compact. Respondent put its passengers and the public at risk of not receiving just compensation for any injuries or property damage respondent might inflict during the period from August 3, 2002, to August 12, 2002. That is completely unacceptable and more than justifies the actions we have taken.

THEREFORE, IT IS ORDERED:

1. That the application for reconsideration is granted.
2. That Order No. 7069 is affirmed.

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


William H. McGilvery
Executive Director

