

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 7878

IN THE MATTER OF:

Served March 19, 2004

JUNIOR'S ENTERPRISES, INC., )  
Suspension and Investigation of )  
Revocation of Certificate No. 401 )

Case No. MP-2003-165

This matter is before the Commission on the response of respondent to Commission Order No. 7669, served January 14, 2004, which directed respondent to show cause why the Commission should not assess a civil forfeiture and revoke Certificate No. 401 for knowing and willful violation of Article XI, Section 6(a), of the Compact and Commission Regulation No. 58.

Under the Compact, a certificate of authority is not valid unless the holder is in compliance with the Commission's insurance requirements.<sup>1</sup> Commission Regulation No. 58 requires respondent to insure the revenue vehicles operated under Certificate No. 401 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) for each policy comprising the minimum.

Certificate No. 401 became invalid on November 25, 2003, when the \$500,000 excess of \$1 million WMATC Insurance Endorsement on file for respondent expired without replacement. Order No. 7567 noted the automatic suspension of Certificate No. 401 pursuant to Regulation No. 58-02 and gave respondent thirty days to replace the expired endorsement or face revocation of Certificate No. 401. Respondent submitted a replacement endorsement on December 4, 2003, and a corrected replacement endorsement on December 11, 2003. Coverage under the corrected replacement endorsement is effective November 26, 2003. This brings the total coverage on file to \$1.5 million.

Normally, we would have lifted the suspension at that point, but the Commission is in receipt of records from the District of Columbia Department of Health, Medical Assistance Administration (DC Medicaid), indicating that respondent provided passenger transportation services between points in the Metropolitan District for clients of DC Medicaid on November 25, 2003, while Certificate No. 401 was invalid and respondent's operations were insured for less than the minimum \$1.5 million required under Regulation No. 58. Order

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<sup>1</sup> Compact, tit. II, art. XIII, § 7(g).

No. 7669 gave respondent thirty days to show cause why this should not be grounds for assessing a forfeiture for knowingly and willfully violating Article XI, Section 6(a), of the Compact and Commission Regulation No. 58<sup>2</sup> and/or revoking Certificate No. 401 for willful failure to comply with Article XI, Section 6(a), of the Compact and Commission Regulation No. 58.<sup>3</sup>

Respondent admits that it transported "some Medicaid clients on November 25, 2003, in violation of Commission Regulation No. 58." Respondent claims to have been "unaware" that it was in violation. But the term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.<sup>4</sup> The terms "willful" and "willfully" do not mean with evil purpose or criminal intent.<sup>5</sup> Rather, they mean purposely or obstinately, with careless or intentional disregard or plain indifference.<sup>6</sup> Employee negligence is no defense.<sup>7</sup> "To hold carriers not liable for penalties where the violations . . . are due to mere indifference, inadvertence, or negligence of employees would defeat the purpose of" the Act.<sup>8</sup>

Respondent claims to have acted prudently by applying for renewal of excess coverage several weeks in advance of the termination date and argues that it had no control over the renewal process that resulted in the excess coverage company not quoting a premium price until November 26, 2003. But there is nothing in the record indicating that the company selected by respondent is the only company providing excess coverage, and it was respondent's duty to ensure that the broker and the excess coverage provider understood when the

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<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. Compact, tit. II, art. XIII, § 6(f)(i).

<sup>3</sup> 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. Compact, tit. II, art. XI, § 10(c).

<sup>4</sup> In re Junior's Enterprises, Inc., No. MP-01-103, Order No. 6549 (Feb. 21, 2002); In re Capital Tours & Transp., Inc., t/a Suburban Airport Shuttle, No. MP-95-88, Order No. 4765 (Feb. 13, 1996).

<sup>5</sup> Order No. 6549; Order No. 4765.

<sup>6</sup> Order No. 6549; Order No. 4765.

<sup>7</sup> Order No. 6549.

<sup>8</sup> Id. (quoting United States v. Illinois Cent. R.R., 303 U.S. 239, 243, 58 S. Ct. 533, 535 (1938)).

deadline was. Respondent was careless in not checking with the Commission before operating on November 25, 2003, in any event.<sup>9</sup>

In the past, we have revoked and refused to reinstate the certificates of authority of carriers who operated while suspended and either uninsured or underinsured.<sup>10</sup> Thus, by that precedent we would be warranted in revoking Certificate No. 401, but the single underinsured carrier had no primary coverage, only excess coverage, and continued operating for several weeks.<sup>11</sup> In this case, respondent had \$1 in million primary coverage on the day in question; hence, any person submitting a claim for any accident that may have occurred that day and for which respondent may have been responsible could recover up to the first \$1 million in damages.<sup>12</sup>

Under the circumstances, we will assess the maximum civil forfeiture of \$1,000 and lift the suspension of Certificate No. 401 subject to a one-year period of probation.

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 \$1,000 for knowingly and willfully violating Article XI, Section 6(a), of the Compact, and Commission Regulation No. 58.

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 one thousand dollars (\$1,000).

3. That upon timely compliance with the requirements of this order, the Commission shall issue an order lifting the suspension of Certificate No. 401, subject to a one-year period of probation, such that a willful violation of the Compact, or of the Commission's rules,

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<sup>9</sup> See Order No. 4765 (carrier careless for not verifying filing).

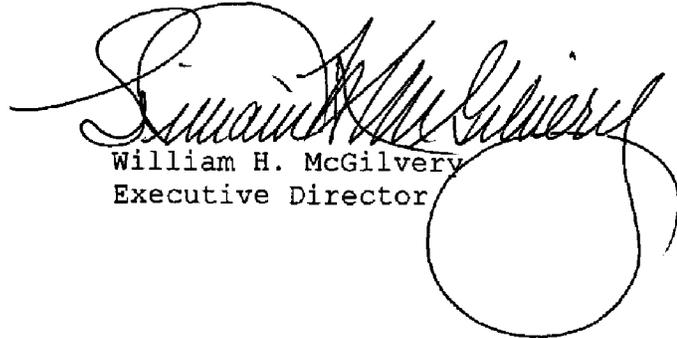
<sup>10</sup> E.g., In re ACEP Group Inc., No. MP-02-128, Order No. 7069 (Mar. 4, 2003); In re Safe Haven. Inc., No. MP-02-14, Order No. 6762 (Aug. 7, 2002).

<sup>11</sup> See Order No. 6762.

<sup>12</sup> According to respondent's broker, no claims have been submitted for November 25, 2003.

regulations or orders thereunder, during the period of probation shall constitute grounds for immediate revocation of Certificate No. 401, regardless of the nature and severity of the violation.

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



William H. McGilvery  
Executive Director