

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 8359

IN THE MATTER OF:

Served October 27, 2004

EMK SERVICES INC., Suspension and)
Investigation of Revocation of)
Certificate No. 855)

Case No. MP-2004-153

This matter is before the Commission on respondent's response to Order No. 8254, served August 30, 2004, which noted the suspension of Certificate No. 855 for respondent's noncompliance with the Commission's insurance requirements and directed respondent not to transport passengers for hire under Certificate No. 855, unless and until otherwise ordered by the Commission.

Under the Compact, a certificate of authority is not valid unless the holder is in compliance with the Commission's insurance requirements.¹ Commission Regulation No. 58 requires respondent to insure the revenue vehicles operated under Certificate No. 855 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. Regulation No. 58-02 provides for automatic suspension of authority in the event a carrier fails to comply.

Certificate No. 855 became invalid/automatically suspended on August 29, 2004, when the \$1.5 million WMATC Insurance Endorsement on file for respondent terminated without replacement.² Respondent should have ceased operations immediately, but according to Affiliated Computer Services, Inc., the billing agent for the District of Columbia Department of Health, Medical Assistance Administration (DC Medicaid), respondent continued transporting DC Medicaid passengers through September 3, 2004. Respondent professes a lack of contemporaneous awareness that coverage had been cancelled as of August 29, 2004, but the record is clear that respondent received Order No. 8254 on August 31, 2004, and continued operating anyway. In addition, the record shows the Commission notified respondent of the August 29, 2004, cancellation date by letter dated July 15, 2004.

¹ Compact, tit. II, art. XIII, § 7(g).

² Respondent eventually submitted a replacement endorsement on September 9, 2004, but the effective date is September 7, 2004. This means that respondent was without insurance coverage from August 29, 2004, through September 6, 2004.

Respondent does not specifically deny receiving that letter or the original cancellation notice issued by the insurance company on July 14, 2004.

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; each day of the violation constitutes a separate violation.³ The Commission 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.⁴

Respondent shall have thirty days to show cause why the Commission should not assess a civil forfeiture against respondent, and/or suspend or revoke Certificate No. 855, for conducting operations under an invalid/suspended certificate of authority in violation of Article XI, Section 6(a), of the Compact and Commission Order No. 8254.

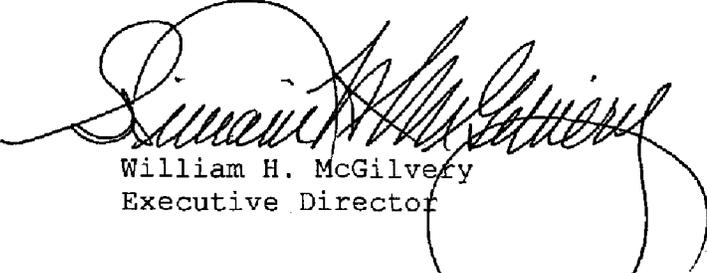
THEREFORE, IT IS ORDERED:

1. 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 and Commission Order No. 8254.

2. That respondent shall have thirty days to show cause why the Commission should not suspend or revoke Certificate No. 855 for respondent's willful failure to comply with Article XI, Section 6(a), of the Compact and Commission Order No. 8254.

3. That respondent may submit within 15 days from the date of this order a written 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 GUNS:



William H. McGilvery
Executive Director

³ Compact, tit. II, art. XIII, § 6(f).

⁴ Compact, tit. II, art. XI, § 10(c).