

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 8440

IN THE MATTER OF:

Served November 29, 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. 8359, served October 27, 2004, which gave respondent thirty days to show cause why the Commission should not assess a civil forfeiture against respondent, and/or revoke Certificate No. 855, for violating, and otherwise failing to comply with, the Compact and Commission Order No. 8254.

I. BACKGROUND

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.

The Commission received written notice of cancellation of respondent's \$1.5 million WMATC Insurance Endorsement on July 14, 2004, effective August 29, 2004.² The Commission mailed an insurance termination notice to respondent the next day, July 15, 2004. The notice cautioned:

Your Certificate of Authority will be automatically **SUSPENDED**, and you must **IMMEDIATELY** cease operations if a new WMATC Certificate of Insurance and Policy Endorsement is not filed **BEFORE** the termination date.

DO NOT assume we have received a new WMATC Certificate of Insurance and Policy Endorsement. Call the undersigned at 202-331-1671 to verify timely filing.

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

² Under Regulation No. 58-07 a WMATC Insurance Endorsement may not be cancelled except on thirty days' written notice to the Commission.

On August 30, 2004, having received no replacement endorsement, the Commission issued Order No. 8254, noting the automatic suspension of Certificate No. 855 and directing respondent to cease transporting passengers for hire unless and until otherwise ordered. The record shows respondent received Order No. 8254 on August 31, 2004. Respondent should have ceased operating immediately, but the record shows respondent continued operating through September 3, 2004.

Respondent eventually submitted a replacement endorsement on September 9, 2004, with an effective date of September 7, 2004. This means that respondent was without insurance coverage while operating on an invalid and suspended certificate of authority.

Based on that record, Order No. 8359 gave respondent thirty days to show cause why the Commission should not assess a civil forfeiture against respondent, and/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 Compact³ and Commission Order No. 8254. In addition, Order No. 8359 gave respondent fifteen days to request an oral hearing.

II. RESPONSE TO ORDER NO. 8359

In a statement filed November 5, 2004, respondent admits operating without insurance for three days, "as shown",⁴ but neither requests a hearing nor offers any explanation for failing to cease operating as commanded by Order No. 8254.

III. SANCTIONS

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.⁵

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.⁶

³ Article XI, Section 6(a), provides that: "A person may not engage in transportation subject to this Act unless there is in force a 'Certificate of Authority' issued by the Commission authorizing the person to engage in that transportation."

⁴ Actually, the record shows respondent operated for five days without insurance.

⁵ Compact, tit. II, art. XIII, § 6(f).

⁶ Compact, tit. II, art. XI, § 10(c).

Respondent denies that it acted knowingly and willfully. The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.⁷ 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.⁸ Continuing to operate in the face of a cease-and-desist order is the epitome of knowing and willful conduct.⁹

We shall assess a forfeiture of \$250 per day for three days of knowingly and willfully operating without authority, or \$750.¹⁰ On the issue of revocation, we note that 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. Operating in the face of a cease-and-desist order makes the case for revocation all the more compelling. Accordingly, we shall revoke Certificate No. 855 for respondent's willful failure to comply with the Compact and Order No. 8254.¹¹

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 \$750 for knowingly and willfully violating Article XI, Section 6(a), of the Compact and Order No. 8254.

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 seven hundred fifty dollars (\$750).

⁷ In re Elijah Jehovah Inc., No. MP-03-178, Order No. 7899 (Mar. 25, 2004); In re ACEP Group Inc., No. MP-02-128, Order No. 7069 (Mar. 4, 2003).

⁸ Order No. 7899; Order No. 7069.

⁹ Furthermore, respondent does not deny receiving cancellation notices from the insurance company and the Commission a month before.

¹⁰ See Order No. 7899 (assessing civil forfeiture at \$250 per day for operating under invalid certificate of authority); Order No. 7069 (same).

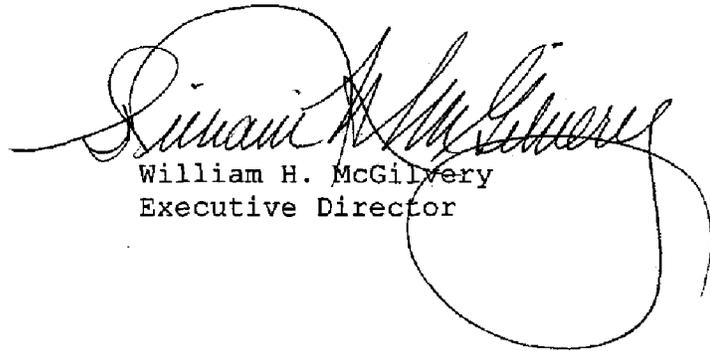
¹¹ The Commission has revoked and refused to reinstate the certificates of authority of carriers who operate while suspended and uninsured. E.g., Order No. 7899; In re Babikir Ibrahim Elhag, t/a "BTS" Babcare Transp. Servs., No. MP-04-01, Order No. 7891 (Mar. 23, 2004); Order No. 7069. We see nothing in the record to warrant deviating from that precedent in this case.

3. That pursuant to Article XI, Section 10(c), of the Compact, Certificate of Authority No. 855 is hereby revoked for respondent's willful failure to comply with Article XI, Section 6(a), of the Compact and Order No. 8254.

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. 855 to the Commission.

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



William H. McGilvery
Executive Director