

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 8495

IN THE MATTER OF:

Served January 10, 2005

A.S.K. ENTERPRISES, INC.,)
Suspension and Investigation of)
Revocation of Certificate No. 361)

Case No. MP-2004-152

This matter is before the Commission on respondent's failure to respond to Order No. 8358, served October 27, 2004, which gave respondent thirty days to show cause why the Commission should not assess a civil forfeiture against respondent and why Certificate No. 361 should not be revoked.

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. 361 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. 361 became invalid/automatically suspended on August 23, 2004, when the \$500,000 primary and \$1 million excess WMATC Insurance Endorsements on file for respondent terminated without replacement.² Respondent should have ceased operations immediately, as noted in Order No. 8236, served August 24, 2004, but records of invoices furnished by the District of Columbia Department of Health, Medical Assistance Administration (DC Medicaid), indicate that respondent continued transporting twenty-three DC Medicaid passengers through August 25, 2004. Respondent contended that the invoices sent to DC Medicaid for transportation after August 22, 2004, were submitted in error. Respondent supported this contention with exculpatory affidavits from six of the passengers (or their representatives) in question, leaving seventeen passengers for whom respondent did not account. Order No. 8358 gave respondent thirty

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

² Respondent eventually submitted replacement endorsements on September 8, 2004, but the effective date on each is September 7, 2004. This means that respondent was without insurance coverage from August 23, 2004, through September 6, 2004.

days to account for the remaining seventeen passengers, but respondent has yet to reply.

Under the Compact, 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

We shall assess a forfeiture of \$250 per day for three days for respondent's knowingly and willfully operating without authority, or \$750.⁵ 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, Order No. 8236, makes the case for revocation all the more compelling. Accordingly, we shall revoke Certificate No. 361 for respondent's willful failure to comply with the Compact and Order No. 8236.⁶

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. 8236.

2. That respondent is hereby directed to pay to the Commission within thirty days of the date of this order, by money order,

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

⁴ Compact, tit. II, art. XI, § 10(c).

⁵ See In re Elijah Jehovah Inc., No. MP-03-178, Order No. 7899 (Mar. 25, 2004) (assessing civil forfeiture at \$250 per day for operating under invalid certificate of authority); In re ACEP Group Inc., No. MP-02-128, Order No. 7069 (Mar. 4, 2003) (same).

⁶ 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.

certified check, or cashier's check, the sum of seven hundred fifty dollars (\$750).

3. That pursuant to Article XI, Section 10(c), of the Compact, Certificate of Authority No. 361 is hereby revoked for respondent's willful failure to comply with Article XI, Section 6(a), of the Compact and Order No. 8236.

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. 361 to the Commission.

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



William S. Morrow, Jr.
Executive Director