

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 8684

IN THE MATTER OF:

Served May 4, 2005

REHOBOTH TRANSPORTATION)
SERVICES LLC, Suspension and)
Investigation of Revocation of)
Certificate No. 822)

Case No. MP-2004-155

This matter is before the Commission on respondent's response to Order No. 8521, served January 24, 2005, which gave respondent thirty days to show cause why the Commission should not assess a civil forfeiture against respondent, and/or revoke Certificate No. 822, for violating, and otherwise failing to comply with, the Compact and Commission Order No. 8257.

I. BACKGROUND

Under the Compact, a WMATC carrier may not engage in transportation subject to the Compact if the carrier's certificate of authority is not "in force."¹ A certificate of authority is not valid unless the holder is in compliance with the Commission's insurance requirements.²

Commission Regulation No. 58 requires respondent to insure the revenue vehicles operated under Certificate No. 822 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. 822 became invalid on September 6, 2004, when the \$1.5 million WMATC Insurance Endorsement on file for respondent terminated without replacement. Order No. 8257 noted the automatic suspension of Certificate No. 822 pursuant to Regulation No. 58-02, directed respondent to cease transporting passengers for hire under Certificate No. 822, and gave respondent thirty days to replace the expired endorsement or face revocation of Certificate No. 822. Respondent submitted a \$1.5 million replacement endorsement on November 10, 2004. The effective date of the new endorsement is September 28, 2004. This means that respondent was without insurance coverage for twenty-two days, from September 6, 2004, through September 27, 2004.

Order No. 8441, served November 29, 2004, gave respondent thirty days to furnish proof of having ceased operations as of September 6, 2004. Inasmuch as respondent's only tariff is for

¹ Compact, tit. II, art. XI, § 6(a).

² Compact, tit. II, art. XI, § 7(g).

service rendered to clients of the District of Columbia Department of Health, Medical Assistance Administration (DC Medicaid), such proof was to include confirmation from DC Medicaid. Respondent replied that it did not transport any passengers while suspended and uninsured, but the Commission received a statement from DC Medicaid's agent for processing carrier invoices, ACS State Healthcare, indicating that respondent submitted a claim for services rendered on September 8, 2004.

Accordingly, Order No. 8521 gave respondent thirty days to show cause why the Commission should not assess a civil forfeiture against respondent, and/or revoke Certificate No. 822, for violating, and otherwise failing to comply with, the Compact and Commission Order No. 8257.

II. RESPONSE TO ORDER NO. 8521

In a statement filed February 22, 2005, respondent now says it regrets that the violation occurred, asserts that the violation was unintentional and claims to have "paid the full insurance premium in order to avoid any recurrences of this nature."

The standard for assessing a civil forfeiture or revoking a certificate of authority is not whether a carrier intended to violate the Compact or rules, regulations and orders thereunder, but whether the violation was committed knowingly and willfully in the case of forfeiture³ and whether the failure to comply was willful in the case of revocation.⁴

The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.⁵ 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.⁶

The record shows that respondent's policy was cancelled for nonpayment of premium and that the notice of cancellation was issued on August 3, 2004. Respondent blames the cancellation on a "miscommunication" between respondent and the insurance company. But the plain fact of the matter is that the Commission sent a cancellation notice to respondent on August 6, 2004, and respondent did not purchase replacement coverage until September 28, 2004. Respondent's version of events is not entitled to much if any weight, in any event, considering that the statement is not under oath, that respondent at first denied any violation occurred and that the renewed coverage respondent claims to have been in place as of February 22, 2005, was cancelled on February 8, effective March 10, and has not been replaced. Consequently, we shall assess a forfeiture against

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

⁴ Compact, tit. II, art. XI, § 10(c).

⁵ In re EMK Servs. Inc., No. MP-04-153, Order No. 8440 (Nov. 29, 2004); 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).

⁶ Order No. 8440; Order No. 7899; Order No. 7069.

respondent in the amount of \$250 for knowingly and willfully operating without authority on September 8, 2004.⁷

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.

This is not the first time respondent has been cited for violating the insurance requirements specified in Regulation No. 58. Respondent's certificate of authority was suspended three times within the first twelve months of being issued October 8, 2003. This is the third time.⁸ The first infraction led the Commission to revoke respondent's operating authority.⁹ After denying respondent's application for reconsideration, the Commission subsequently reopened that proceeding on its own initiative and reinstated Certificate of Authority No. 822.¹⁰ Inasmuch as respondent operated not only without authority but without insurance, we do not believe reinstating Certificate No. 822 would be in the public interest at this time.¹¹ Accordingly, we shall revoke Certificate No. 822.

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 \$250 for knowingly and willfully violating Article XI, Section 6(a), of the Compact.

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 two hundred fifty dollars (\$250).

⁷ See In re A.S.K. Enters., Inc., No. MP-04-152, Order No. 8495 (Jan. 10, 2005); (assessing civil forfeiture at \$250 per day for operating under invalid certificate of authority); Order No. 8440 (same); Order No. 7899 (same); Order No. 7069 (same).

⁸ See In re Rehoboth Transp. Servs. LLC, No. MP-04-155, Order No. 8257 (Sept. 7, 2004); In re Rehoboth Transp. Servs. LLC, No. MP-04-124, Order No. 8128 (June 25, 2004); In re Rehoboth Transp. Servs. LLC, No. MP-03-171, Order No. 7602 (Dec. 11, 2003).

⁹ In re Rehoboth Transp. Servs. LLC, No. MP-03-171, Order No. 7747 (Feb. 17, 2004).

¹⁰ In re Rehoboth Transp. Servs. LLC, No. MP-03-171, Order No. 8034 (May 27, 2004).

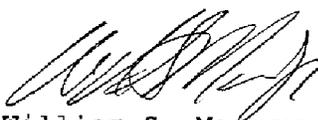
¹¹ The Commission has consistently revoked and refused to reinstate the certificates of authority of carriers who operate while suspended and uninsured. E.g., In re John Carmen Cadet, t/a Reliable Transp., No. MP-04-128, Order No. 8560 (Feb. 16, 2005); Order No. 8495; Order No. 8440; Order No. 7899; 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. 822 is hereby revoked for respondent's willful failure to comply with Article XI, Section 6(a), of the Compact and Commission Regulation No. 58.

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. 822 to the Commission.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS YATES AND MILLER:



William S. Morrow, Jr.
Executive Director