

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 11,805

IN THE MATTER OF:

Served January 21, 2009

BOOMERANG TOURS, INC., Suspension )  
and Investigation of Revocation of )  
Certificate No. 1289 )

Case No. MP-2008-204

This matter is before the Commission on respondent's response to Order No. 11,627, served October 10, 2008, directing respondent to submit a statement verifying cessation of operations from September 10 to October 10, 2008, and corroborate the statement with copies of respondent's pertinent business records.

**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."<sup>1</sup> A certificate of authority is not valid unless the holder is in compliance with the Commission's insurance requirements.<sup>2</sup>

Commission Regulation No. 58 requires respondent to insure the revenue vehicles operated under Certificate No. 1289 for a minimum of \$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. 1289 was rendered invalid on September 10, 2008, when the \$1.5 million primary and the \$3.5 million excess WMATC Insurance Endorsements on file for respondent terminated without replacement. Order No. 11,569, noted the automatic suspension of Certificate No. 1289 pursuant to Regulation No. 58-12, directed respondent to cease transporting passengers for hire under Certificate No. 1289, and gave respondent thirty days to replace the expired endorsement and pay the \$50 late fee due under Regulation No. 67-03(c) or face revocation of Certificate No. 1289.

Respondent thereafter paid the late fee and submitted new \$1 million primary and \$4 million excess WMATC Insurance Endorsements, but the new endorsements are effective September 27, 2008, instead of September 10, 2008. This means that respondent was without insurance coverage for seventeen days, from and including September 10, 2008, through September 26, 2008.

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<sup>1</sup> Compact, tit. II, art. XI, § 6(a).

<sup>2</sup> Compact, tit. II, art. XI, § 7(g).

Under Regulation No. 58-14:

If a carrier's operating authority is suspended under Regulation No. 58-12 and the effective date of a later-filed replacement Endorsement falls after the automatic suspension date, the carrier must verify timely cessation of operations in accordance with Commission Rule No. 28 and corroborate the verification with client statements and/or copies of pertinent business records, as directed by Commission order.

Respondent filed a statement verifying cessation of operations as of September 10, 2008 and produced records partially corroborating the statement but also indicating that respondent advised its patrons that because of the insurance coverage gap, respondent would "not [be] able to use [its] Boomerang Buses until September 24th." This raised the possibility that respondent resumed operations on or after September 24, notwithstanding assurances that no operations had been performed since September 10.

Order No. 11,627 lifted the suspension as of October 10, 2008, based on respondent having reestablished compliance with Regulation No. 58. But because not all issues had been resolved, the order directed respondent to submit a statement verifying cessation of operations from September 10 to October 10, 2008, and to corroborate the statement with copies of pertinent business records.

In response, respondent states that it resumed operations on September 27, 2008. Respondent's additional records show that respondent operated on September 27, October 3, and October 4 while Certificate No. 1289 was suspended.

## II. FINDINGS AND ASSESSMENT OF FORFEITURE

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.<sup>3</sup> Each day of the violation constitutes a separate violation.<sup>4</sup>

"Knowingly" means with perception of the underlying facts, not that such facts establish a violation.<sup>5</sup> "Willfully" does not mean with evil purpose or criminal intent; rather, it describes conduct marked

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<sup>3</sup> Compact, tit. II, art. XIII, § 6(f)(i).

<sup>4</sup> Compact, tit. II, art. XIII, § 6(f)(ii).

<sup>5</sup> *In re 1<sup>st</sup> Choice Investment Group, LLC, t/a It's About U*, No. MP-08-013, Order No. 11,639 (Oct. 24, 2008).

by careless disregard.<sup>6</sup> Continuing to operate in the face of a cease-and-desist order is the epitome of knowing and willful conduct.<sup>7</sup>

The record shows that respondent was aware that Certificate No. 1289 was suspended when respondent transported passengers for hire between points in the Metropolitan District on the three dates noted above.

In situations similar to this one - operating while suspended but not while uninsured - the Commission has assessed a civil forfeiture of \$250 for each day of unauthorized operations and placed carriers on probation for one year.<sup>8</sup> We shall follow the same course here and assess a civil forfeiture of \$250 per day for three days or \$750.

THEREFORE, IT IS ORDERED:

1. That pursuant to Article XIII, Section 6(f), of the Compact, the Commission hereby assesses a net civil forfeiture against respondent in the amount of \$750 for knowingly and willfully violating Article XI, Section 6(a), of the Compact by transporting passengers for hire between points in the Metropolitan District on three separate days while Certificate No. 1289 was invalid/suspended.

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).

3. That respondent shall serve a one-year period of probation. A willful violation of the Compact, or of the Commission's rules, regulations or orders thereunder, during the period of probation shall constitute grounds for immediate suspension and/or revocation of Certificate No. 1289 without further proceedings, regardless of the nature and severity of the violation.

4. That Certificate No. 1289 shall be subject to revocation pursuant to Article XI, Section 10(c) of the Compact if respondent fails to timely comply with the requirements of this order.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS CHRISTIE AND BRENNER:



William S. Morrow, Jr.  
Executive Director

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<sup>6</sup> *Id.* at 3.

<sup>7</sup> *Id.* at 3.

<sup>8</sup> *Id.* at 3.