

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 12,038

IN THE MATTER OF:

Served June 10, 2009

CHUKWUNENYE NNAKWU, Trading as) Case No. MP-2008-242
PROGRESSIVE MEDICAL CARE SERVICES,)
Suspension and Investigation of)
Revocation of Certificate No. 1078)

This matter is before the Commission on respondent's response to Order No. 11,944, served April 20, 2009, which directed respondent to show cause why the Commission should not assess a civil forfeiture against respondent, and/or suspend or revoke Certificate No. 1078, for knowingly and willfully violating Article XI, Section 6(a), of the Compact by conducting operations under an invalid/suspended certificate of authority, and for knowingly and willfully violating Order No. 11,800 by failing to produce documents as required.

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. 1078 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.

Certificate No. 1078 was rendered invalid on November 8, 2008, when the \$1.5 million primary WMATC Insurance Endorsement on file for respondent terminated without replacement. Order No. 11,674, served November 10, 2008, noted the automatic suspension of Certificate No. 1078 pursuant to Regulation No. 58-12, directed respondent to cease transporting passengers for hire under Certificate No. 1078, and gave respondent thirty days to replace the terminated endorsement and pay the \$50 late fee due under Regulation No. 67-03(c) or face revocation of Certificate No. 1078.

Respondent subsequently submitted a new \$1.5 million primary WMATC Endorsement on November 13, 2008, with an effective date of

¹ Compact, tit. II, art. XI, § 6(a).

² Compact, tit. II, art. XI, § 7(g).

November 19, 2008, but respondent did not pay the \$50 late insurance fee. Certificate No. 1078 consequently was revoked in Order No. 11,772, served December 30, 2008, pursuant to Article XI, Section 10 (c).

Respondent thereafter paid the late fee and filed an application for reconsideration on January 2, 2009. Respondent argued that the Commission had revoked Certificate No. 1078 "without reasons". Order No. 11,772, however, states that the reason for revocation was respondent had not paid the \$50 late insurance fee under Regulation No. 67-03(c). Indeed, the record shows Commission staff contacted respondent on December 19 and informed him that the \$50 late fee was due, but respondent did not pay the late fee until January 2. The application for reconsideration was therefore denied in Order No. 11,800, served January 15, 2009, but because respondent had paid the late fee within the time prescribed for filing an application for reconsideration, the Commission reopened this proceeding on its own initiative and reinstated Certificate No. 1078.

To prevent circumvention of Regulation Nos. 60-01 and 67-02, respondent was directed to file a 2009 annual report and pay the 2009 annual fee on or before January 31, 2009. And because the effective date of respondent's new WMATC Endorsement was November 19, 2008, instead of November 8, 2008, Order No. 11,800 directed respondent to verify timely cessation of operations and corroborate with copies of pertinent business records in accordance with Regulation No. 58-14.

II. RESPONSE TO ORDER NO. 11,800

Respondent timely paid his 2009 annual fee and filed his 2009 annual report on January 30, 2009. Respondent submitted nothing further in response to Order No. 11,800, other than a request to amend Order No. 11,800 so as to make November 19, 2008, the effective date of the reinstatement of Certificate No. 1078 on the ground that November 19 is the effective date of the replacement WMATC Endorsement supporting reinstatement. The request was denied because respondent was not eligible for reinstatement prior to January 2, 2009, when respondent paid the outstanding \$50 late fee.

The only other documents in the record were two unsigned, unsworn statements disavowing operations during the suspension period and copies of supporting bank records submitted by respondent prior to Order No. 11,800 in attempted compliance with Regulation No. 58-14. Besides being unsigned and unsworn, the statements are inconsistent with respondent's own bank records and contradicted by correspondence obtained from one of respondent's clients, Health Services for Children with Special Needs, Inc., (HSCSN), as pointed out in Order No. 11,944.

According to a statement filed by respondent on January 2, 2009, respondent claims not to have "transported anyone since Nov 10, 2008." According to a statement filed by respondent on January 13, 2009: "Since June 2008 my contract was terminated by MTM. I have not signed any contract with anybody. I have not transported anybody."

These statements are inconsistent with respondent's own bank records showing numerous purchases from several gas stations throughout November 2008, and the statements are inconsistent with HSCSN's demands in a March 27, 2009, letter for repayment of money paid to respondent for service rendered "from November 10, 2008, through January 15, 2009", including service rendered on November 14, 16, 17, and 18, 2008, when respondent was not only suspended but seemingly uninsured.

We thus concluded in Order No. 11,944 that respondent's bank records and the HSCSN correspondence establish that respondent continued operating on and after respondent's WMATC Endorsement expired on November 8, 2008. We also found no evidence that respondent made any effort to ascertain whether the necessary WMATC Endorsement had been filed before continuing to operate on and after November 8, 2008, as required by Regulation No. 58-11. We further found that respondent should have produced copies of his HSCSN invoices in response to Order No. 11,800.

Order No. 11,944 therefore gave respondent thirty days to show cause why the Commission should not assess a civil forfeiture against respondent, and/or suspend or revoke Certificate No. 1078, for knowingly and willfully violating Article XI, Section 6(a), of the Compact by conducting operations under an invalid/suspended certificate of authority, and for knowingly and willfully violating Order No. 11,800 by failing to produce documents as required.³

III. RESPONSE TO ORDER NO. 11,944

On April 23, 2009, respondent filed a new \$1.5 million primary WMATC Insurance Endorsement with an effective date of November 8, 2008, thus closing the eleven-day gap in coverage created by the replacement endorsement filed November 13, 2008.

On May 4, respondent filed a request for oral hearing, but the request does not describe the evidence to be adduced and does not explain why respondent's evidence cannot be adduced without an oral hearing, as required by Order No. 11,944. The request for oral hearing shall accordingly be denied.⁴

In a statement filed May 12, respondent maintains that he did not operate while suspended but does not explain the numerous purchases from several gas stations throughout November 2008 and does not contradict the statement submitted by HSCSN detailing the service rendered to HSCSN clients from November 10, 2008, through January 15, 2009. Indeed, a statement from respondent filed May 12 affirms that these operations took place as HSCSN states.

³ See *In re Suka Medical Transp., Inc.*, No. MP-08-155, Order No. 11,730 (Dec. 4, 2008) (same).

⁴ See *In re Sams Health Care Servs. Inc.*, No. MP-08-005, Order No. 11,947 (Apr. 23, 2009) (same).

HSCSN's March 27 letter advises respondent of HSCSN's decision to offset the payable portion of unpaid fees for service lawfully rendered by respondent after the suspension period against the paid fees for service unlawfully rendered by respondent during the suspension period. In a statement filed May 12, respondent requests that the Commission vacate the suspension of Certificate No. 1078 so that he might recoup those fees. Thus, instead of denying the details of HSCSN's record of payment for service rendered by respondent to HSCSN clients from November 10, 2008, through January 15, 2009, it is respondent's position that he should receive full payment for that service. Such a position cannot be reconciled with respondent's summary denial of operating while suspended.

Finally, respondent offers no explanation for failing to produce his HSCSN records as required by Order No. 11,800.

IV. EVIDENCE OF OTHER VIOLATIONS

On May 28, 2009, the Commission received a copy of a letter dated May 15, 2009, from HSCSN to respondent advising respondent as follows:

Under the provisions of 12.4 of the Agreement between HSCSN and Progressive Medical Transportation (dated October 31, 2008), the Agreement is hereby suspended immediately based on HSCSN's belief that its members are in imminent danger. This suspension is permanent and will not be rescinded, and therefore this notification to you should also be considered notification of termination, effective May 15, 2009, the date hereof.

Accompanying the May 15 letter is a letter dated May 19, 2009, from HSCSN to the "Chief of Investigation" at 2100 Martin Luther King Avenue, SE, Washington, DC 20020, who apparently is an official in the District Government with oversight of matters involving Medicaid recipients. The letter recites the details of HSCSN's termination of its contract with respondent. According to the May 19 letter, respondent was arrested by "Capital Hill police" on May 14, 2009, for operating a "Camry" with "van tags". An HSCSN "member" who is also a Medicaid recipient was reportedly in the vehicle at the time of the arrest and had to be picked up and transported by another of respondent's drivers.⁵

The allegations in the two May letters raise the issues of whether respondent was operating a motor vehicle in violation of the District's motor vehicle laws, whether respondent was operating a vehicle that was not safe to operate, whether respondent was operating a vehicle without WMATC markings, whether respondent has reported to the Commission all of the vehicles in respondent's fleet, and whether respondent has reported all vehicles to his insurance company.

⁵ The Commission has record of only one vehicle for respondent, a 1994 Toyota Sienna.

Respondent will be directed to confirm or deny the allegations in the May HSCSN letters and, if confirmed, produce any and all documents pertaining to the arrest and any and all safety inspection certificates issued for the impounded vehicle within the past 15 months. Respondent also will be directed to submit a current list of vehicles used in WMATC operations, produce any and all safety inspection certificates issued for those vehicles within the past 15 months, and present said vehicles for inspection by Commission staff.

V. CONCLUSION

We will postpone our decision on whether to levy any sanctions for the insurance related violations until after respondent has had an opportunity to respond to our request for additional information.

THEREFORE, IT IS ORDERED:

1. That the request for oral hearing is denied.
2. That respondent shall submit within thirty days a written statement confirming or denying the arrest of respondent last month for operating a vehicle with the wrong license plates while an HSCSN passenger was in the vehicle.
3. That in the event respondent confirms the arrest referenced in the foregoing paragraph, respondent shall produce within thirty days copies of all records pertaining to the arrest, a copy of the registration for the impounded vehicle, and any and all safety inspection certificates issued for the impounded vehicle within the past 15 months.
4. That respondent shall within thirty days submit a current list of vehicles used in WMATC operations, produce copies of the vehicle registrations and any and all safety inspection certificates issued for those vehicles within the past 15 months, and present said vehicles for inspection by Commission staff.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS CHRISTIE AND BRENNER:



William S. Morrow, Jr.
Executive Director