

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 15,918

IN THE MATTER OF:

Served October 21, 2015

AJ ENTERPRISES LLC, Suspension and)
Investigation of Revocation of)
Certificate No. 2585)

Case No. MP-2015-117

This matter is before the Commission on the response of respondent to Order No. 15,857, served September 21, 2015.

I. BACKGROUND

Certificate No. 2585 was automatically suspended on June 8, 2015, pursuant to Regulation No. 58-12, when the \$1.5 million primary WMATC Insurance Endorsement on file for respondent terminated without replacement. Order No. 15,647, served June 8, 2015, noted the automatic suspension of Certificate No. 2585, directed respondent to cease transporting passengers for hire under Certificate No. 2585, and gave respondent 30 days to replace the terminated endorsement and pay the \$100 late fee due under Regulation No. 67-03(c) or face revocation of Certificate No. 2585.

Respondent failed to respond, and Certificate No. 2585 was revoked on July 13, 2015, in Order No. 15,735. The certificate was later reinstated on August 12, 2015, in Order No. 15,789, following respondent's request for reconsideration on August 11, 2015, which was supported by the necessary WMATC Insurance Endorsement and payment of the \$100 late fee.

However, because the effective date of respondent's replacement WMATC Endorsement is August 4, 2015, instead of June 8, 2015, the reinstatement order gave respondent 30 days to submit a statement verifying cessation of operations as of June 8, 2015, and produce copies of respondent's business records for the period April 1, 2015, to August 12, 2015, in accordance with Regulation No. 58-14(a). Respondent did not respond.

In accordance with Regulation No. 58-14(b), Order No. 15,857 directed respondent to show cause why the Commission should not assess a civil forfeiture against respondent for failing to produce documents as directed.

II. RESPONSE TO ORDER NO. 15,857 AND FINDINGS

On September 22, 2015, one of respondent's owners, Andre Oliphant, submitted a statement on respondent's behalf. According to Mr. Oliphant, respondent has "yet to commence operations" since obtaining Certificate No. 2585. In support of his statement,

Mr. Oliphant has produced "EBANKING" printouts for two joint checking accounts. One printout is for the period of April 20, 2015, to June 22, 2015. The other is for the period of April 3, 2015, to July 14, 2015. Both accounts are in the name of Mr. Oliphant and Ms. Patricia Bajulaiye. Commission records indicate that Ms. Bajulaiye is a co-owner of respondent. Respondent has produced no other records.

We find that respondent has failed to produce copies of ALL documents relating to the transportation of passengers for hire between points in the Metropolitan District during the period beginning April 1, 2015, and ending August 12, 2015, as directed by Order No. 15,789.

Both printouts show transfers flowing to and from each other as well as to and from two other checking accounts, including the joint checking account that respondent's owners used to pay the application fee in July 2014 that resulted in the issuance of Certificate No. 2585. That same account also was used to pay the late fee in August of this year in this proceeding. An account that respondent's owners have used twice to pay fees to WMATC would seem to be particularly relevant, and yet, respondent and its owners have failed to produce any statements for that account, just as they have failed to produce any statements for the fourth checking account.

In addition, according to Mr. Oliphant, the lapse in insurance coverage was precipitated by respondent's cancellation of an office lease in the District of Columbia and subsequent relocation to Maryland where respondent's insurance company does not issue commercial auto insurance policies. The lease cancellation notice and insurance cancellation notice would seem particularly relevant, but respondent has produced neither.

Respondent's failure to produce clearly relevant documents evidently in respondent's possession, custody, or control raises the issue of whether respondent is withholding other relevant documents in addition to the ones already mentioned.

III. ASSESSMENT OF FORFEITURE AND REVOCATION OF AUTHORITY

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.¹

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.²

¹ Compact, tit. II, art. XIII, § 6(f).

² Compact, tit. II, art. XI, § 10(c).

The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.³ The terms "willful" and "willfully" do not mean with evil purpose or criminal intent; rather, they describe conduct marked by intentional or careless disregard or plain indifference.⁴

Because respondent has failed to produce all relevant records as required by Regulation No. 58-14(a) and directed by Order No. 15,789, and because respondent has offered no explanation for this noncompliance, we find that respondent has failed to show cause why the Commission should not assess a civil forfeiture of \$250⁵ and revoke Certificate No. 2585.⁶

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 \$250 for knowingly and willfully violating Regulation No. 58-14(a) and Order No. 15,789.

2. That respondent is hereby directed to pay to the Commission within 30 days of the date of this order, by check or money order, the sum of two hundred fifty dollars (\$250).

3. That pursuant to Article XI, Section 10(c), of the Compact, Certificate of Authority No. 2585 is hereby revoked for respondent's willful failure to comply with Regulation No. 58-14(a) and Order No. 15,789.

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. 2585 to the Commission.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS BRENNER, HOLCOMB, AND DORMSJO:



William S. Morrow, Jr.
Executive Director

³ *In re Car Plus Transp. LLC*, No. MP-14-099, Order No. 15,592 (May 15, 2015).

⁴ *Id.*

⁵ *See id.* (assessing \$250 for failing to produce relevant documents).

⁶ *See id.* (revoking authority for failing to produce documents relevant to compliance with suspension order).