

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 16,490

IN THE MATTER OF:

Served July 21, 2016

AMERICAN EAGLE LIMOUSINE & TRAVEL ) Case No. MP-2016-013  
SERVICE, INC, Suspension and )  
Investigation of Revocation of )  
Certificate No. 644 )

This matter is before the Commission on respondent's response to Order No. 16,193, served February 10, 2016.

**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. 644 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. 644 was rendered invalid on January 23, 2016, when the \$1 million primary WMATC Insurance Endorsement on file for respondent terminated without replacement. Order No. 16,159, served January 27, 2016, noted the automatic suspension of Certificate No. 644 pursuant to Regulation No. 58-12, directed respondent to cease transporting passengers for hire under Certificate No. 644, 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. 644.

Respondent paid the late fee on February 2, 2016, and submitted a \$1 million primary WMATC Insurance Endorsement on January 28, 2016, but the effective date of the new endorsement is January 28, 2016, instead of January 23, 2016.

In accordance with Regulation No. 58-14, Order No. 16,193 gave respondent 30 days to submit a statement verifying cessation of

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

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

operations as of January 23, 2016, and 30 days to produce copies of all respondent's business records from November 1, 2015, through February 10, 2016.

## II. RESPONSE

On February 25, 2016, respondent produced the statement of Najib Ahmad and copies of various business records, including: (a) copies of respondent's trip logs for the period beginning November 1, 2015, and ending February 6, 2016; (b) copies of respondent's bank statements for the period beginning November 1, 2015, and ending February 10, 2016; and (c) copies of respondent's merchant service records showing individual customer credit card transactions for the period beginning October 2, 2015, and ending February 9, 2016.

In assessing respondent's response, it is important to note that Commission precedent distinguishes between carriers operating without authority and without adequate insurance, on the one hand, and carriers operating without authority but with adequate insurance, on the other.<sup>3</sup> The Commission metes out stiffer sanctions for operating without adequate insurance.<sup>4</sup>

In this case, respondent was suspended and not fully insured from January 23 through January 27. Respondent was fully insured but still suspended from January 28 through February 9.

Respondent's trip logs reveal that respondent transported passengers between points in the Metropolitan District on three days while respondent was fully insured but still suspended: January 30, February 5, and February 6.

As for operations while suspended and not fully insured, respondent's spokesperson, Najib Ahmad, acknowledges that respondent was not fully insured from January 23 through January 27, but he asserts that respondent "did not provide services to any clients" during those five days, even though respondent's credit card transaction records indicate that respondent received credit card payments from customers on January 25, January 26, and January 27, 2016. Mr. Ahmad explains that respondent's customers pay for their trips two weeks in advance; so, these payments should not be regarded as evidence of operations on those three dates. Not all of respondent's engagements follow the same pattern, however. Consider K. Scott, whose name first appears in respondent's credit card records on February 3, 2016, then reappears three days later on February 6, 2016, for a trip that same day. And even if customer credit card transactions are mostly finalized two weeks in advance, then surely respondent would have had to cancel many trips during the 18-day

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<sup>3</sup> *In re Better Business Connection, Inc.*, No. MP-13-028, Order No. 15,486 at 23 (Apr. 2, 2015).

<sup>4</sup> See *id.* (assessing larger forfeiture and revoking authority for operating without sufficient insurance).

suspension of Certificate No. 644 given the 35 credit card transactions that took place in the two weeks leading up to the suspension. According to respondent's bank records, however, only three chargebacks were recorded while Certificate No. 644 was suspended.

Mr. Ahmad generally asserts that "[u]nder no circumstances [has respondent] ever provided services, knowingly, with disregard to the requirements of WMATC." It appears that Mr. Ahmad misapprehends the meaning of "knowingly" under the Compact. The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.<sup>5</sup> In any event, under Regulation No. 58-12: "Failure to replace a WMATC Insurance Endorsement prior to termination shall result in immediate, automatic suspension of a carrier's WMATC operating authority. The carrier must suspend operations immediately and may not recommence operations unless and until otherwise ordered by the Commission." Under Regulation No. 58-11:

When a WMATC carrier's insurance has terminated or is about to terminate the carrier must contact the Commission to ascertain whether the necessary WMATC Insurance Endorsement has been filed before continuing to operate on and after the termination date. Proof a WMATC carrier has satisfied its duty to verify shall consist of contemporaneous written verification from the Commission.

The record shows that respondent's insurance coverage was canceled on December 18, 2015, effective January 23, 2016. The record further shows that the Commission reminded respondent on January 21 that a new WMATC endorsement needed to be filed before January 23. There is no evidence in the record indicating that respondent contacted the Commission to ascertain whether the necessary WMATC Insurance Endorsement had been filed before operating on and after January 23. To make matters worse, respondent has yet to comply with the Commission's request of May 25, 2016, for copies of the trip logs corresponding to all credit card transactions during the time Certificate No. 644 was suspended.

### **III. ORDER TO SHOW CAUSE**

Considering that respondent's trip logs reveal passenger carrier operations in the Metropolitan District while Certificate No. 644 was suspended and that the timing of key credit card transaction records coupled with respondent's failure to produce corresponding customer trip logs creates the appearance that such operations took place not only while Certificate No. 644 was suspended but while respondent was not fully insured, respondent shall have 30 days to show cause why the Commission should not assess a civil forfeiture against respondent, and/or suspend or revoke Certificate No. 644, for knowingly and willfully conducting operations under a

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<sup>5</sup> *Id.* at 21.

suspended certificate of authority and violating Regulation Nos. 58 and the orders in this proceeding.<sup>6</sup>

THEREFORE, IT IS ORDERED:

1. That respondent shall have 30 days to show cause why the Commission should not assess a civil forfeiture against respondent, and/or suspend or revoke Certificate No. 644, for knowingly and willfully violating Article XI, Section 6(a), of the Compact, Regulation No. 58, and the orders issued in this proceeding.

2. That respondent may submit within 15 days from the date of this order a written request for oral hearing, specifying the grounds for the request, describing the evidence to be adduced and explaining why such evidence cannot be adduced without an oral hearing.

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



William S. Morrow, Jr.  
Executive Director

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<sup>6</sup> See *In re Exact Enters. Inc.*, No. MP-14-146, Order No. 15,771 (July 28, 2015) (show cause order issued in part where documents showed carrier operated while suspended and uninsured); *In re Sami Investment Inc.*, No. MP-14-015, Order No. 15,531 (Apr. 17, 2015) (same).