

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 16,574

IN THE MATTER OF:

Served September 15, 2016

JONATHAN LEE GERITY SR, Trading as)
RIVERSIDE TRANSPORTATION,)
Suspension and Investigation of)
Revocation of Certificate No. 2735)

Case No. MP-2016-036

This matter is before the commission on the response of respondent to Order No. 16,330, served May 4, 2016.

I. BACKGROUND

Commission Regulation No. 58 requires respondent to insure the revenue vehicles operated under Certificate No. 2735 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.

Respondent filed a \$1.5 million primary WMATC Insurance Endorsement from National Liability & Fire Insurance Company on June 12, 2015, with an effective date of June 9, 2015, and an expiration date of February 25, 2016. Said endorsement was canceled on November 13, 2015, effective December 13, 2015. Respondent did not file an acceptable \$1.5 million replacement endorsement until February 25, 2016. The replacement endorsement was filed by Prime Insurance Company and has an effective date of February 24, 2016, and an expiration date of February 24, 2017.

Order No. 16,280, served April 1, 2016, noted the automatic suspension of Certificate No. 2735 under Regulation No. 58-12 and gave respondent 30 days to pay the \$100 late fee, and 30 days to verify cessation of operations as of December 13, 2015, in accordance with Regulation No. 58-14(a). The statement was to be corroborated by copies of respondent's pertinent business records - from October 1, 2015, to April 1, 2016 - and by a statement from Medical Transportation Management, Inc, (MTM), one of respondent's principal clients, verifying cessation of MTM operations as of December 13, 2015.

Respondent paid the late fee on April 5, 2016, and the suspension was lifted that same day in Order No. 16,293. But respondent failed to produce any documents in response to Order No. 16,280.

In accordance with Regulation No. 58-14(b), Order No. 16,330 gave respondent until June 3, 2016, to show cause why the Commission should not assess a civil forfeiture against respondent, and/or suspend or revoke Certificate No. 2735, for knowingly and willfully conducting operations under an invalid/suspended certificate of authority and failing to produce documents as directed.

II. RESPONSE TO ORDER NO. 16,330 AND ANALYSIS

Respondent concedes operating without insurance but claims not to have known that the National Liability policy had been canceled, which respondent explains resulted from what he characterizes as a "late payment" of premium. Respondent blames his lack of knowledge on a breakdown in communication between the insurance company and premium finance company, on the one hand, and respondent and respondent's insurance agent, on the other. The insurance company for its part regards the matter as a nonpayment of premium, not late payment of premium, and because respondent offers no corroborating documents in support of his version of events, such as a canceled check or a statement from his agent, as required by Regulation No. 58-14 and Order No. 16,280, we are more inclined to accept the insurance company's version.

Respondent points the finger at a second insurance company, Progressive Casualty Insurance Co., as well. According to respondent:

We did operate with no insurance for at least a day. I had progressive insurance who listed WMATC 1.5 million which is requirement and was supposed to do the filing and I believe I would only have one-day lapse of coverage. It looks like they didn't do the filing. I didn't get nothing in the mail nor I heard anything back from anyone about not having the filing in so I assumed that it was already taking care of. I do admit that we did go with lapse of coverage and we did transport.

It seems rather peculiar that respondent would seek a new policy from Progressive on December 15, 2015, if, as respondent says, he was "completely in the dark" as to the cancelation of the National Liability policy. And he could not have believed that he "would only have one-day lapse of coverage" under the Progressive policy if he did not know that the National Liability policy had been canceled effective December 13, 2015.

In any event, after missing a premium payment, respondent was not free to assume that the National Liability policy was still in effect and on file with WMATC in the form of an active WMATC Endorsement. Having missed a payment with respect to the National Liability policy, and being charged with the knowledge that cancellation is the natural consequence of missing a premium payment, respondent should have immediately contacted his agent or the premium finance company upon tendering the alleged make-up payment to ensure that said payment had been received and that coverage was still

intact. And then respondent should have contacted WMATC in compliance with Regulation No. 58-11, which provides:

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 Commission has no record of any contact from respondent prior to the National Liability cancellation date of December 13, 2015.

To make matters worse, respondent obtained the Progressive policy for the wrong entity. According to the few documents respondent has produced in response to Order No. 16,280, the Progressive policy was issued in the name of Riverside Transportation Inc,¹ not Jonathan Lee Gerity, Sr., trading as Riverside Transportation. This is not the first time that respondent has attempted to rely on documents issued in someone else's name.

During the application proceeding that resulted in Certificate No. 2735 being issued in June 2015, the Commission became aware that respondent had formed a limited liability company in Maryland by the name of Riverside Transportation LLC. The May 2015 order approving respondent's application cautioned respondent to "not conduct WMATC operations under the name 'Riverside Transportation LLC.'"² A few weeks later, the Commission received a vehicle lease naming "Jonathan Gerity Sr (Riverside Transportation LLC)" as the lessee. Eleven days after that, the Commission received the same lease with the same defect. The Commission also received a WMATC Insurance Endorsement in the name of "Riverside Transportation LLC".

Later, after corrected versions of the lease and endorsement had been filed and Certificate No. 2735 had issued, respondent attempted to comply with WMATC Regulation No. 55 concerning the filing of fixed rates and fares as mandated by Article XI, Section 14, of the Compact. In the case of service under an MTM contract, a carrier must file a copy of the contract with the Commission to comply with the fixed rate, fixed fare requirement in the Compact.³ Respondent

¹ It is not clear from the record whether such a corporation really exists. Respondent's LLC was formed in Maryland, and its articles of organization may be found on the website of the Maryland Department of Assessments and Taxation. See <http://sdat.dat.maryland.gov/ucc-charter/>. No such evidence of respondent's alleged corporation appears on said website.

² *In re Jonathan Lee Gerity Sr, t/a Riverside Transp.*, No. AP-15-088, Order No. 15,577 (May 14, 2015).

³ *In re Jonathan Lee Gerity Sr, t/a Riverside Transp.*, No. MP-15-161, Order No. 16,027 (Dec. 7, 2015).

attempted to comply with Regulation No. 55 by filing an MTM contract in the name of, once again, Riverside Transportation LLC. The rejection letter issued by WMATC on August 10, 2015, reminded respondent that the contract had to be in respondent's name, as a sole proprietor doing business as Riverside Transportation, not in the name of Riverside Transportation LLC.

On September 18, 2015, knowing that respondent was still working for MTM but having not received any MTM contract tariff in respondent's name, the Commission gave respondent 30 days to show cause why the Commission should not assess a civil forfeiture against respondent and/or order respondent to cease and desist providing passenger transportation for MTM.⁴ On December 7, 2015, it appearing that respondent had failed to respond to Order No. 15,853, the Commission issued Order No. 16,027, assessing a \$250 forfeiture against respondent and directing respondent to cease and desist transporting passengers for MTM.⁵

It was discovered later that respondent had filed an incomplete MTM contract tariff in respondent's name on October 14, which respondent completed and the Commission accepted as of December 7, along with respondent's payment of the forfeiture, and the cease and desist order eventually was lifted on December 10.⁶ Under these circumstances, applying for a Progressive insurance policy five days later in the name of "Riverside Transportation Inc" constitutes carelessness of the highest degree if not outright contumacy.

And against this backdrop of respondent's recurring efforts at impermissibly involving his LLC in WMATC operations, respondent's failure to produce any business records, other than a few critically flawed insurance papers, in response to Order No. 16,280, and his glaringly poor judgment in presenting his defense in chief on "Riverside Transportation LLC" letterhead, underscores respondent's persistent inability or unwillingness to comply with Commission regulations and orders.

III. ASSESSMENT OF FORFEITURE

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.⁷ Each day of the violation constitutes a separate violation.⁸

⁴ *In re Jonathan Lee Gerity Sr, t/a Riverside Transp.*, No. MP-15-161, Order No. 15,853 (Sept. 18, 2015).

⁵ Order No. 16,027.

⁶ *In re Jonathan Lee Gerity Sr, t/a Riverside Transp.*, No. MP-15-161, Order No. 16,040 (Dec. 10, 2015).

⁷ Compact, tit. II, art. XIII, § 6(f).

⁸ Compact, tit. II, art. XIII, § 6(f)(ii).

The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.⁹ The terms "willful" and "willfully" do not mean with evil purpose or criminal intent; rather, they describe conduct marked by careless disregard of whether or not one has the right so to act.¹⁰ Employee negligence is no defense.¹¹ "To hold carriers not liable for penalties where the violations . . . are due to mere indifference, inadvertence, or negligence of employees would defeat the purpose of" the statute.¹²

"In setting the daily forfeiture amount, we . . . take[] into consideration Commission precedent that distinguishes carriers operating without authority and without adequate insurance, on the one hand, from carriers operating without authority but with adequate insurance, on the other - assessing a larger amount against those without adequate insurance."¹³ For operating while suspended but not while uninsured, the Commission normally assesses a civil forfeiture of \$250 for each day of unauthorized operations.¹⁴ The Commission assesses \$500 per day when a carrier operates unlawfully without an effective WMATC Endorsement on file.¹⁵

As noted above, one of respondent's principal clients is MTM, which manages the District of Columbia Medicaid (DC Medicaid) non-emergency medical transportation program. MTM runs the reservation system and assigns passengers to the 40-45 WMATC-certificated carriers, such as respondent, under contract with MTM to provide daily transportation service to eligible DC Medicaid beneficiaries. Respondent has not produced his records of daily MTM operations as directed by Order No. 16,280, but he admits that he did not stop operating on December 13, 2015. And although he professes to have believed at the time that his operations were properly insured for all but one day,¹⁶ the one policy he relies on as proof of insurance from December 13, 2015, through February 23, 2016, is a Progressive policy issued to someone else.

⁹ *In re Royal Limo. LLC*, No. MP-15-119, Order No. 16,289 at 2 (Apr. 4, 2016); *In re Exquisite Limo. Serv. LLC*, No. MP-15-152, Order No. 16,153 at 3 (Jan. 22, 2016); *In re Sami Investment Inc.*, No. MP-14-015, Order No. 15,692 at 2 (June 18, 2015).

¹⁰ Order No. 16,289 at 2; Order No. 16,153 at 3; Order No. 15,692 at 2.

¹¹ Order No. 16,289 at 2; Order No. 16,153 at 3; Order No. 15,692 at 2.

¹² *United States v. Illinois Cent. R.R.*, 303 U.S. 239, 243, 58 S. Ct. 533, 535 (1938).

¹³ Order No. 16,289 at 3-4; *In re Better Business Connection, Inc.*, No. MP-13-028, Order No. 15,486 at 23 (Apr. 2, 2015).

¹⁴ Order No. 16,289 at 4.

¹⁵ Order No. 16,289 at 4.

¹⁶ We note that even one day of uninsured operations may support the revocation of a carrier's operating authority. See *In re Rehoboth Transp. Servs. LLC*, No. MP-04-155, Order No. 8684 (May 4, 2005) (revoking authority of repeat offender for operating one day without insurance).

According to MTM's program manager, Michelle Moses, respondent operated every day during the December 13, 2015, through April 4, 2016, suspension period, with the exception of holidays.

Accordingly, we shall assess a civil forfeiture of \$250 per day for 41 days of operations while suspended but properly insured (or \$10,250) and \$500 per day for 69 days of operations while suspended and uninsured (or \$34,500), for a combined forfeiture of \$44,750.

IV. REVOCATION OF AUTHORITY

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.¹⁷

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.¹⁸ They could not have sent a clearer message that maintaining proper insurance coverage is of paramount importance under the Compact.¹⁹ We therefore revoke Certificate No. 2735 for respondent's 48 days of uninsured operations.²⁰

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 \$44,750 for knowingly and willfully violating Article XI, Section 6(a), of the Compact, Regulation No. 58-12, and the orders in this proceeding.

2. That pursuant to Article XI, Section 10(c), of the Compact, Certificate of Authority No. 2735 is hereby revoked for respondent's willful failure to comply with Article XI, Section 6(a), of the Compact, Regulation No. 58-12, and the orders in this proceeding.

3. That within 30 days from the date of this order respondent shall:

- a. pay to the Commission by check or money order the sum of forty-four thousand seven hundred fifty dollars (\$44,750);

¹⁷ Compact, tit. II, art. XI, § 10(c).

¹⁸ Compact, tit. II, art. XI, § 7(g).

¹⁹ Order No. 16,289 at 4-5; Order No. 16,153 at 3; Order No. 15,692 at 3.

²⁰ See Order No. 16,289 at 5 (revoking authority of carrier that operated while suspended and insufficiently insured); Order No. 16,153 at 3-4 (same); Order No. 15,692 at 3 (same).

- b. remove from respondent's vehicle(s) the identification placed thereon pursuant to Commission Regulation No. 61;
- c. file a notarized affidavit and supporting photograph(s) with the Commission verifying compliance with the preceding requirement; and
- d. surrender Certificate No. 2735 to the Commission.

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



William S. Morrow, Jr.
Executive Director