

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 16,760

IN THE MATTER OF:

Served December 23, 2016

LIFELINE INC., Suspension and ) Case No. MP-2016-101  
Investigation of Revocation of )  
Certificate No. 2463 )

This matter is before the Commission on respondent's response to Order No. 16,577, served September 16, 2016.

**I. BACKGROUND**

Certificate No. 2463 was automatically suspended on May 28, 2016, when the \$1.5 million primary WMATC Insurance Endorsement on file for respondent terminated without replacement. Order No. 16,388, served May 31, 2016, noted the automatic suspension of Certificate No. 2463 pursuant to Regulation No. 58-12, directed respondent to cease transporting passengers for hire under Certificate No. 2463, and gave respondent 30 days to replace the terminated endorsement and pay a \$100 late fee due under Regulation No. 67-03(c) or face revocation of Certificate No. 2463.

Respondent failed to respond, and Certificate No. 2463 was revoked on July 11, 2016, in Order No. 16,465. The certificate was later reinstated on August 1, 2016, in Order No. 16,498, following respondent's request for reinstatement on July 20, 2016, 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 July 15, 2016, instead of May 28, 2016, the reinstatement order gave respondent 30 days to: (1) submit a statement verifying cessation of operations as of May 28, 2016; and (2) produce copies of respondent's business records for the period from March 1, 2016, to August 1, 2016, in accordance with Regulation No. 58-14(a). Respondent did not respond.

In accordance with Regulation No. 58-14(b), Order No. 16,577, served September 16, 2016, directed respondent to show cause why the Commission should not assess a civil forfeiture against respondent, and/or suspend or revoke Certificate No. 2463, 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. 16,577 AND FINDINGS**

On October 5, 2016, respondent's program director, Rhoda Makinde, submitted a one page statement on respondent's behalf. According to the statement:

Lifeline ceased all vehicle operation all through the period when the certificate was invalid, from May 28th up until August 1st, 2016. The vehicle is usually used to convene five people to community activities. The vehicle does not transport the public. When Lifeline certificate was suspended, our staff were the one using their personal vehicles to convene these five people to their community activities and doctor's appointment.

As respondent's statement makes clear, rather than ceasing to furnish for-hire passenger transportation while its certificate of authority was suspended and no insurance was in place, respondent continued transporting the same five passengers for hire by directing its staff to use their personal vehicles. Far from mitigating the problem, this response raises numerous additional serious issues, including whether staff's personal vehicles had passed a safety inspection (Regulation No. 64-02(b)), whether the vehicles were registered for-hire (Regulation No. 64-04), and whether the vehicles were properly marked to identify respondent's operations to the public (Regulation No. 61).

In addition, respondent has yet to produce any business records as directed by Order No. 16,498. Ms. Makinde states that initially respondent did not "know how to respond to most of the orders from the commission," but she acknowledges that prior to responding to Order No. 16,577, respondent had contacted WMATC staff, "who gave a better explanation of the orders and clarified distinctively what those orders mean." This leaves respondent without an excuse for failing to produce business records as directed by Order No. 16,498.

## **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.<sup>1</sup>

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.<sup>2</sup>

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<sup>1</sup> Compact, tit. II, art. XIII, § 6(f).

<sup>2</sup> Compact, tit. II, art. XI, § 10(c).

The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.<sup>3</sup> 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.<sup>4</sup>

"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."<sup>5</sup> For operating while suspended but not while uninsured, the Commission normally assesses a civil forfeiture of \$250 for each day of unauthorized operations.<sup>6</sup> The Commission assesses \$500 per day when a carrier operates unlawfully without an effective WMATC Endorsement on file.<sup>7</sup>

Respondent's statement does not specify the exact number of days it operated, but admits that passengers were transported in staff vehicles while its certificate "was suspended." The suspension period ran from May 28, 2016, until the certificate was revoked on July 11, 2016. According to the WMATC Insurance Endorsements on file, respondent had no insurance coverage in effect during the entire suspension period. Accordingly, we shall assess a civil forfeiture of \$500 for operating while suspended and uninsured on one day.

Because respondent has failed to produce records as required by Regulation No. 58-14(a) and directed by Order No. 16,498, and because respondent has offered no satisfactory explanation for this noncompliance, we find that respondent has failed to show cause why the Commission should not assess a civil forfeiture of \$250.<sup>8</sup> Because respondent operated while suspended and uninsured and failed to produce records as directed, we shall revoke Certificate No. 2463.<sup>9</sup>

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

<sup>4</sup> *Id.*

<sup>5</sup> *In re Jonathan Lee Gerity Sr, t/a Riverside Transp.*, No. MP-16-036, Order No. 16,574 at 5 (Sept. 15, 2016), *Recons. denied*, Order No. 16,710 (Nov. 30, 2016).

<sup>6</sup> Order No. 16,574 at 5.

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

<sup>8</sup> See Order No. 15,592 (assessing \$250 for failing to produce documents).

<sup>9</sup> See Order No. 16,574 (revoking authority of carrier that operated while suspended and uninsured); Order No. 15,592 (revoking authority for failing to produce documents relevant to compliance with suspension order).

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 \$500 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 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. 16,498.

3. 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 seven hundred fifty dollars (\$750).

4. That pursuant to Article XI, Section 10(c), of the Compact, Certificate of Authority No. 2463 is hereby revoked for respondent's willful failure to comply with Article XI, Section 6(a), of the Compact, Regulation No. 58-12, Regulation No. 58-14(a), and the orders in this proceeding.

5. 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. 2463 to the Commission.

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



William S. Morrow, Jr.  
Executive Director