

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 16,764

IN THE MATTER OF:

Served December 23, 2016

MEDICAL TRANSPORTATION SYSTEMS) Case No. MP-2016-121
(MTS) LLC, Suspension and)
Investigation of Revocation of)
Certificate No. 2630)

This matter is before the Commission on respondent's response to Order No. 16,578, served September 16, 2016.

I. BACKGROUND

Certificate No. 2630 was automatically suspended on July 23, 2016, when the \$1.5 million primary WMATC Insurance Endorsement on file for respondent terminated without replacement. Order No. 16,492, served July 25, 2016, noted the automatic suspension of Certificate No. 2630 pursuant to Regulation No. 58-12, directed respondent to cease transporting passengers for hire under Certificate No. 2630, 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. 2630.

Respondent paid the late fee and submitted a \$1.5 million primary WMATC Insurance Endorsement, and the suspension was lifted in Order No. 16,501, served August 3, 2016. However, because the effective date of the new endorsement is July 27, 2016, instead of July 23, 2016, Order No. 16,501 gave respondent 30 days in accordance with Regulation No. 58-14(a) to: (1) verify cessation of all WMATC operations as of July 23, 2016; (2) produce copies of respondent's pertinent business records from May 1, 2016, to August 3, 2016; and (3) submit a statement from Southeastrans, Inc., one of respondent's principal clients, confirming respondent's timely cessation of operations.

On August 18, 2016, Southeastrans submitted a copy of an email that it sent to respondent on July 25, 2016. The email directed respondent to cease operating and stipulated that "any trips performed under this contract on or after Monday July 25, 2016 are subject to denied payment."

On September 16, 2016, having received no response from respondent, the Commission issued Order No. 16,578 pursuant to Regulation No. 58-14(b), and in accordance with that regulation directed respondent to show cause why the Commission should not assess a civil forfeiture against respondent, and/or suspend or revoke Certificate No. 2630, 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. 16,578 AND FINDINGS

In response to Order No. 16,578, respondent has submitted a statement from its CEO, Bennett Ababio, in which he states that respondent did not operate during the time that Certificate No. 2630 was suspended. The statement is accompanied by a copy of the Southeastrans cease-and-desist notice but is unsupported by any of respondent's other business records.

We find respondent's response lacking in several respects. First, Mr. Ababio's statement is not under oath as required by Commission Rule No. 4-06. Second, the Southeastrans cease and desist email was not transmitted to respondent until the third day of the suspension. Consequently, the email has no bearing on respondent's activities, or lack thereof, on the first two suspension days, July 23 and July 24, and no bearing on July 25 prior to transmission. Indeed, the closing statement in the email that "any trips performed under this contract on or after Monday July 25, 2016 are subject to be denied payment" clearly anticipates that some unauthorized trips might have occurred already or might still occur despite the warning and Southeastrans's best efforts at shutting down respondent's operations during the suspension of Certificate No. 2630. Finally, respondent's failure to produce any business records other than the Southeastrans notice leaves uncorroborated Mr. Ababio's assertion that respondent did not perform trips for anyone else during the suspension period.

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

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

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

² Compact, tit. II, art. XI, § 10(c).

³ *In re Sheba Network, LLC, t/a Sheba*, No. MP-14-111, Order No. 15,591 (May 15, 2015).

⁴ *Id.*

Because respondent has failed to produce all corroborating business records as required by Regulation No. 58-14(a) and directed by Order No. 16,501, 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. 2630.⁶

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. 16,501.

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

3. That pursuant to Article XI, Section 10(c), of the Compact, Certificate of Authority No. 2630 is hereby revoked for respondent's willful failure to comply with Regulation No. 58-14(a) and Order No. 16,501.

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. 2630 to the Commission.

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



William S. Morrow, Jr.
Executive Director

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

⁶ See *id.* (revoking authority for failing to submit suspension-compliance verification under oath and for failing to produce corroborating documents).