

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 16,814

IN THE MATTER OF:

Served January 26, 2017

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. 16,764, served December 23, 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 - thereby creating a four-day insurance gap - 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.

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

We found respondent's response lacking in several respects. First, Mr. Ababio's statement was 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 had 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, we noted that 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 anticipated 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 left uncorroborated Mr. Ababio's assertion that respondent did not perform trips for anyone else during the suspension period.

In accordance with the foregoing findings, we assessed a \$250 civil forfeiture against respondent and revoked Certificate No. 2630 in Order No. 16,764.

## **II. RESPONSE TO ORDER NO. 16,764**

On December 23, 2016, respondent paid the \$250 forfeiture assessed in Order No. 16,764.

On December 27, 2016, respondent filed a request for reinstatement of Certificate No. 2630. The request is supported by a supplementary statement from Mr. Ababio and by respondent's bank statements for May through August of 2016. The bank statements tend to corroborate respondent's assertion that Southeastrans was respondent's only client during the suspension of Certificate No. 2630.

On January 9, 2017, respondent filed a \$1.5 million WMATC Insurance Endorsement for July 23, 2016, to July 27, 2016 - thereby closing the four-day insurance gap.

Finally, on several dates after Order No. 16,764 was issued, Southeastrans submitted various statements to WMATC indicating that respondent transported passengers under its contract with Southeastrans on July 25, 2016, but not on any other day during the suspension of Certificate No. 2630.

### III. ORDER TO REINSTATE AUTHORITY

Under Article XIII, Section 4, of the Compact, a party affected by a final order or decision of the Commission may file within 30 days of its publication a written application requesting Commission reconsideration of the matter involved.<sup>1</sup> The application must state specifically the errors claimed as grounds for reconsideration.<sup>2</sup> The Commission must grant or deny the application within 30 days after it has been filed.<sup>3</sup> If the Commission does not grant or deny the application by order within 30 days, the application shall be deemed denied.<sup>4</sup> If the application is granted, the Commission shall rescind, modify, or affirm its order or decision with or without a hearing, after giving notice to all parties.<sup>5</sup>

Applicant's request for reconsideration of Order No. 16,764 was timely filed on December 27, 2016, but it does not allege any specific error on the part of the Commission. The application therefore is denied.

Under Commission Rule No. 26-04, however: "If, after the hearing in a proceeding, the Commission shall have reason to believe that conditions of fact or of law have so changed as to require, or that the public interest requires, the reopening of such proceeding, the Commission will issue an order reopening." Considering that respondent has closed the four-day coverage gap and is currently in compliance with Regulation No. 58, we will reopen this proceeding on our own initiative under Commission Rule No. 26-04 and reinstate Certificate No. 2630.<sup>6</sup>

### IV. ASSESSMENT OF FORFEITURE

Prior to the issuance of Order No. 16,764, the record was incomplete with respect to whether respondent transported passengers under its contract with Southeastrans during the suspension of Certificate No. 2630. The record now shows that respondent transported passengers under its contract with Southeastrans on July 25, 2016, but not on any other day during the suspension of Certificate No. 2630.

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

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<sup>1</sup> Compact, tit. II, art XIII, § 4(a).

<sup>2</sup> Compact, tit. II, art XIII, § 4(a).

<sup>3</sup> Compact, tit. II, art XIII, § 4(b).

<sup>4</sup> Compact, tit. II, art XIII, § 4(c).

<sup>5</sup> Compact, tit. II, art XIII, § 4(d).

<sup>6</sup> See, *In re Honeywell Transp. LLC*, No. MP-12-023, Order No. 13,538 (Oct. 18, 2012) (reinstating certificate of authority after gap closed); *In re Angel Enter. Inc, t/a The Angels*, No. MP-09-049, Order No. 12,118 (Aug. 18, 2009) (same).

civil forfeiture of not more than \$1,000 for the first violation and not more than \$5,000 for any subsequent violation.<sup>7</sup>

The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.<sup>8</sup> 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.<sup>9</sup> Employee negligence is no defense.<sup>10</sup> "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.<sup>11</sup>

In situations similar to this one - operating while suspended but not while uninsured - the Commission has assessed a civil forfeiture of \$250 for each day of unauthorized operations and placed carriers on probation for one year.<sup>12</sup> We shall follow the same course here and assess a civil forfeiture of \$250 against respondent for operating one day while suspended and place respondent on probation for one year.

#### **V. ANNUAL FEE & ANNUAL REPORT**

To prevent circumvention of Regulation Nos. 60-01 and 67-02, respondent shall file a 2017 annual report and pay the 2017 annual fee within 30 days of the date of this order.<sup>13</sup>

THEREFORE, IT IS ORDERED:

1. That the application for reconsideration is denied.
2. That this proceeding is hereby reopened under Commission Rule No. 26-04.
3. That Certificate of Authority No. 2630 is hereby reinstated.
4. That pursuant to Article XIII, Section 6(f), of the Compact, the Commission hereby assesses a civil forfeiture against respondent

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<sup>7</sup> Compact, tit. II, art. XIII, § 6(f).

<sup>8</sup> *In re J T E Inc.*, No. MP-16-047, Order No. 16,621 at 3 (Oct. 17, 2016).

<sup>9</sup> *Id.* at 3.

<sup>10</sup> *Id.* at 3.

<sup>11</sup> *United States v. Illinois Cent. R.R.*, 303 U.S. 239, 243, 58 S. Ct. 533, 535 (1938).

<sup>12</sup> Order No. 16,621 at 3-4.

<sup>13</sup> See *In re DC Nation, Inc.*, No. MP-12-096, Order No. 13,700 (Jan. 23, 2013) (requiring tender of annual fee and report as condition to reinstating authority in January after revoking in December); *In re Okaas LLC*, No. MP-12-079, Order No. 13,696 (Jan. 23, 2013) (requiring tender of annual fee and report as condition to reinstating authority in January after revoking in November).

in the amount of \$250 for knowingly and willfully violating Article XI, Section 6(a), of the Compact and Regulation No. 58-12.

5. 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).

6. That respondent is hereby placed on probation for a period of one year, such that a willful violation of the Compact, or of the Commission's rules, regulations, or orders thereunder, by respondent during the period of probation shall constitute grounds for immediate suspension and/or revocation of respondent's operating authority regardless of the nature and severity of the violation.

7. That respondent shall file a 2017 annual report and pay the 2017 annual fee within 30 days of the date of this order.

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



William S. Morrow, Jr.  
Executive Director