

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 16,935

IN THE MATTER OF:

Served April 12, 2017

BURLINGTON BREW TOURS, LLC, )  
Suspension and Investigation of )  
Revocation of Certificate No. 2534 )

Case No. MP-2016-136

Application of DC BREW TOURS, LLC, )  
to Acquire Certificate No. 2534 )  
from BURLINGTON BREW TOURS, LLC )

Case No. AP-2017-026

This matter is before the Commission on the response of Burlington Brew Tours, LLC, (respondent), to Order No. 16,854, served March 1, 2017, which assessed a civil forfeiture against respondent, revoked Certificate No. 2534, and denied the application of DC Brew Tours, LLC, (applicant), to acquire Certificate No. 2534 from respondent.

**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. 2534 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.

Certificate No. 2534 was automatically suspended on August 17, 2016 when the \$1.5 million primary WMATC Insurance Endorsement on file for respondent expired without replacement. Order No. 16,527, issued in Case No. MP-2016-136 on August 18, 2016, noted the automatic suspension of Certificate No. 2534 pursuant to Regulation No. 58-12, directed respondent to cease transporting passengers for hire under Certificate No. 2534, 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. 2534.

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

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

Respondent failed to respond, and Certificate No. 2534 was revoked in Order No. 16,584 on September 21, 2016, pursuant to Regulation No. 58-15(a). Respondent thereafter submitted the necessary WMATC Endorsement, paid the late fee, and filed a timely application for reconsideration, and Certificate of Authority No. 2534 was reinstated in Order No. 16,606, in accordance with Regulation No. 58-15(b).

However, respondent's replacement Endorsement did not take effect until September 8, 2016, instead of August 17, 2016, the expiration date of the prior Endorsement, thereby creating a 22-day gap in required coverage. Order No. 16,606 accordingly directed respondent to submit a statement verifying cessation of operations as of August 17, 2016, as required by Regulation No. 58-14(a). The order also directed respondent to produce copies of its business records pertaining to any and all operations under WMATC authority during the suspension/revocation of Certificate No. 2534.

In response to Order No. 16,606, respondent produced the statement of its owner and CEO, Mr. Chad Brodsky, who admitted that respondent continued operating in the Washington Metropolitan Area during the suspension of Certificate No. 2534. Respondent also produced certain business records - chiefly respondent's "DC Bookings Report" - confirming that respondent operated in the Washington Metropolitan Area on 17 separate days while Certificate No. 2534 was suspended/revoked, including five days during the 22-day gap in required coverage.

Based on the foregoing record, Order No. 16,854 assessed a civil forfeiture against respondent in the amount of \$250 per day for 12 days of operations while Certificate No. 2534 was suspended/revoked but respondent was properly insured (or \$3,000) and \$500 per day for 5 days of operations while Certificate No. 2534 was suspended and respondent was not properly insured (or \$2,500), for a combined forfeiture of \$5,500. The order also revoked Certificate No. 2534 for respondent's five days of underinsured operations.

Finally, the order consolidated the investigation of respondent's operations under Certificate No. 2534 in Case No. MP-2016-136, with an application to transfer the certificate to respondent's commonly-controlled affiliate, DC Brew Tours, in Case No. AP-2017-026, and denied the application because DC Brew Tours is controlled by Mr. Brodsky, the person at the center of the violations committed by respondent.

## **II. RESPONSE TO ORDER NO. 16,854**

On March 27, 2016, Burlington Brew Tours filed an application for reconsideration of Order Nos. 16,606 and 16,854. The application requests that the Commission reinstate Certificate No. 2534, reduce the \$5,500 forfeiture to \$1,200, and reverse the denial of DC Brew Tours' transfer application.

The application for reconsideration is supported by a new \$1.5 million WMATC Insurance Endorsement with an effective date of July 30, 2016, and a termination date of July 30, 2017, which has the effect of closing the 22-day gap in required coverage underpinning the sanctions meted out against Burlington Brew Tours in Order No. 16,854 and the denial of DC Brew Tour's transfer application.

The application for reconsideration is further supported by a check made payable to the Commission in the amount of \$1,200.

### III. ORDER TO REOPEN PROCEEDING

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>3</sup> The application must state specifically the errors claimed as grounds for reconsideration.<sup>4</sup> The Commission must grant or deny the application within 30 days after it has been filed.<sup>5</sup> If the Commission does not grant or deny the application by order within 30 days, the application shall be deemed denied.<sup>6</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>7</sup>

Order No. 16,854 represents the final order of the Commission in this combined proceeding. Applicant's request for reconsideration of Order No. 16,854 was timely filed on March 27, 2017, but the request does not allege any specific error on the part of the Commission with respect to said order. 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." Inasmuch as the application for reconsideration was timely filed, and considering that certain material facts have substantially changed since the issuance of Order No. 16,854, we find that the record supports reopening this proceeding.<sup>8</sup>

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

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

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

<sup>6</sup> Compact, tit. II, art XIII, § 4(c).

<sup>7</sup> Compact, tit. II, art XIII, § 4(d).

<sup>8</sup> See *In re Med. Transp. Sys. (MTS) LLC*, No. MP-16-121, Order No. 16,814 (Jan. 26, 2017) (reopening proceeding after insurance gap closed); *In re Angel Enter. Inc., t/a The Angels*, No. MP-09-049, Order No. 12,118 (Aug. 18, 2009) (same); *In re Westview Med. & Rehab. Servs., P.C. Inc.*, No. MP-07-070, Order No. 11,002 (Dec. 13, 2007) (same).

#### **IV. REDUCTION OF CIVIL FORFEITURE**

As noted above, Order No. 16,854 assessed a civil forfeiture of \$250 per day for 12 days of operations while Certificate No. 2534 was suspended/revoked but respondent was properly insured (or \$3,000) and \$500 per day for five days of operations while Certificate No. 2534 was suspended and respondent was not properly insured (or \$2,500), for a combined forfeiture of \$5,500. Now that the 22-day gap in required coverage has been closed, the five days assessed at a rate of \$500 per day shall be reassessed at a rate of \$250, for a reduction in the combined total forfeiture from \$5,500 to \$4,250.

After applying respondent's \$1,200 payment, the net amount due is \$3,050.

#### **V. REINSTATEMENT OF CERTIFICATE**

In cases where the Commission has revoked a carrier's operating authority because of operations conducted during a gap in required insurance coverage, the Commission has later reinstated that authority and placed the carrier on probation for one year upon a finding that the gap has been closed.<sup>9</sup> Accordingly, we find that reinstatement with probation is appropriate on the record before us.

#### **VI. APPROVAL OF CERTIFICATE TRANSFER**

Article XI, Section 11(a), of the Compact provides: "A person may not transfer a Certificate of Authority unless the Commission approves the transfer as consistent with the public interest."

Applicant verifies that: (1) applicant owns or leases, or has the means to acquire through ownership or lease, one or more motor vehicles meeting the Commission's safety requirements and suitable for the transportation proposed in this application; (2) applicant owns, or has the means to acquire, a motor vehicle liability insurance policy that provides the minimum amount of coverage required by Commission regulations; and (3) applicant has access to, is familiar with and will comply with the Compact, the Commission's rules, regulations and orders, and Federal Motor Carrier Safety Regulations as they pertain to transportation of passengers for hire.

Normally, such evidence would establish a transfer applicant's fitness,<sup>10</sup> and thereby that the transfer is consistent with the public interest,<sup>11</sup> but Order No. 16,854 denied the transfer of Certificate No. 2534 to DC Brew Tours because DC Brew Tours is controlled by

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<sup>9</sup> See Order No. 16,814 (reinstating authority after gap closed, subject to one year's probation); Order No. 12,118 (same); Order No. 11,002 (same).

<sup>10</sup> *In re Miles Away Charter, LLC*, No. AP-16-156, Order No. 16,747 (Dec. 15, 2016); *In re A-Fair Transp. Inc.*, No. AP-16-158, Order No. 16,725 (Dec. 7, 2016).

<sup>11</sup> See Order No. 16,747 at 2 (finding transfer consistent with public interest based on finding applicant fit); Order No. 16,747 (same).

Mr. Brodsky, and Mr. Brodsky was the person at the center of the violations committed by Burlington Brew Tours.

Inasmuch as we herein approve the reinstatement of Certificate No. 2534 to Burlington Brew Tours with Mr. Brodsky at the helm, his status as CEO of DC Brew Tours is no longer objectionable, provided that the net forfeiture of \$3,050 assessed against Burlington Brew Tours is timely paid, and subject to DC Brew Tours serving a one-year period of probation.

Based on the evidence in this record, and in consideration of the terms of probation prescribed herein, the Commission finds DC Brew Tours to be fit, willing, and able to perform the proposed transportation properly and to conform with applicable regulatory requirements and, therefore, that the transfer of Certificate No. 2534 to DC Brew Tours is consistent with the public interest.

THEREFORE, IT IS ORDERED:

1. That the civil forfeiture assessed in Order No. 16,854 is hereby reduced to \$4,250.

2. That in recognition of the \$1,200 payment tendered by respondent on March 27, 2017, respondent shall pay to the Commission within 30 days, by check or money order, the sum of three thousand fifty dollars (\$3,050).

3. That Certificate of Authority No. 2534 is hereby reinstated subject to a one-year period of probation.

4. That the application of DC Brew Tours, LLC, in Case No. AP-2017-026 is approved.

5. That upon applicant's timely compliance with the requirements of this order, Certificate of Authority No. 2534 shall be reissued to DC Brew Tours, LLC, 1 Grove Street, #1, Watertown, MA 02472-2047.

6. That applicant may not transport passengers for hire between points in the Metropolitan District pursuant to this order unless and until Certificate No. 2534 has been reissued in accordance with the preceding paragraph.

7. That applicant is hereby directed to file the following documents and present its revenue vehicle(s) for inspection within the 180-day maximum permitted in Commission Regulation No. 66: (a) evidence of insurance pursuant to Commission Regulation No. 58; (b) an original and four copies of a tariff or tariffs in accordance with Commission Regulation No. 55; (c) a vehicle list stating the year, make, model, serial number, fleet number, license plate number (with jurisdiction) and seating capacity of each vehicle to be used in revenue operations; (d) a copy of the for-hire vehicle registration

card, and a lease as required by Commission Regulation No. 62 if applicant is not the registered owner, for each vehicle to be used in revenue operations; (e) proof of current safety inspection of said vehicle(s) by or on behalf of the United States Department of Transportation, the State of Maryland, the District of Columbia, or the Commonwealth of Virginia; and (f) original Certificate No. 2534.

8. That applicant shall be placed on probation for a period of one year commencing with the issuance of a certificate of authority in accordance with the terms of this order and that a willful violation of the Compact, or of the Commission's rules, regulations or orders thereunder, by applicant during the period of probation shall constitute grounds for immediate suspension and/or revocation of applicant's operating authority without further proceedings, regardless of the nature and severity of the violation.

9. That the grant of authority herein shall be void and the application shall stand denied upon applicant's failure to timely satisfy the conditions of issuance prescribed herein.

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



William S. Morrow, Jr.  
Executive Director