

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 17,028

IN THE MATTER OF:

Served May 31, 2017

JEB TRANSPORTATION SERVICES, LLC,)
Suspension and Investigation of)
Revocation of Certificate No. 2705)

Case No. MP-2016-202

Application of JEB TRANSPORTATION)
SERVICES, LLC, for Voluntary)
Termination of Certificate No. 2705)

Case No. AP-2017-046

JEB TRANSPORTATION SERVICES, LLC,)
Suspension and Investigation of)
Revocation of Certificate No. 2705)

Case No. MP-2017-039

The above-captioned cases are being consolidated for the purpose of determining whether Certificate of Authority No. 2705 shall be terminated, and if so, whether by revocation or voluntary termination.

I. BACKGROUND AND PRELIMINARY FINDINGS

A. Case No. MP-2016-202

Certificate No. 2705 was automatically suspended on December 28, 2016, when the \$1.5 million primary WMATC Insurance Endorsement on file for JEB Transportation Services, LLC, (respondent), terminated without replacement. Order No. 16,768, served December 28, 2016, noted the automatic suspension of Certificate No. 2705 pursuant to Regulation No. 58-12, directed respondent to cease transporting passengers for hire under Certificate No. 2705, 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. 2705.

Respondent paid the late fee and submitted a \$1.5 million WMATC Insurance Endorsement from a new insurance company, and the suspension was lifted in Order No. 16,807, served January 17, 2017, but because the effective date of the new endorsement is January 12, 2017, instead of December 28, 2016, the order gave respondent 30 days to verify cessation of operations as of December 28, 2016, and produce business records from October 1, 2016, to January 17, 2017, in accordance with Regulation No. 58-14(a).

Respondent submitted the statement of its owner and director, Mr. Jamal El Byad, on February 10, 2017. Mr. El Byad states that respondent "did not operate or get involved in any kind of passenger Transportation between December the 28th 2016 until January the 31st

2017." Respondent, however, did not produce any documents. Order No. 16,847, served February 21, 2017, accordingly gave respondent 30 days to show cause why the Commission should not assess a civil forfeiture against respondent, and/or suspend or revoke Certificate No. 2705.

On March 3, 2017, Mr. El Byad submitted certain of respondent's TD Bank checking account statements and an advisory statement from respondent's insurance company. The insurance company statement recapitulates respondent's insurance premium payments made in 2015 and 2016. Although these records, by themselves, tend to support Mr. El Byad's statement regarding whether respondent stopped operating on December 28, 2016, it appears that respondent has not produced all relevant records.

According to the insurance company statement, respondent's last premium payment was made electronically in the amount of \$374.32 on September 26, 2016. That transaction does not appear on respondent's checking account statement for that month, just as the premium payment for the new insurance policy issued in January 2017 does not appear on respondent's January checking account statement either. Those payments were made from some other account, an account for which respondent has not produced any records.

A likely candidate would be Mr. El Byad's personal bank account. The record shows that respondent paid the \$100 late fee in Case No. MP-2016-202 by check drawn on an account at PNC Bank in Mr. El Byad's name. The same account was used for paying respondent's 2017 annual fee. Both payments were made during the suspension period and relate directly to respondent's WMATC operations. Under the circumstances, Mr. Byad's checking account statements are highly relevant to the Commission's investigation in Case No. MP-2016-202 and should have been produced in response to Order No. 16,807.

Based on the foregoing, we find that respondent has failed to produce copies of ALL documents relating to the transportation of passengers for hire between points in the Metropolitan District during the period beginning October 1, 2016, and ending January 17, 2017, in accordance with Regulation No. 58-14(a) and as directed by Order No. 16,807.

B. Case No. AP-2017-046

While the show cause order was pending in Case No. MP-2016-202, respondent filed an application for voluntary termination on March 6, 2017. The application is supported by the return of Certificate No. 2705, a statement from Mr. El Byad verifying removal of WMATC markings from respondent's vehicles, and proof of respondent having returned the license plates for said vehicles to the Virginia Department of Motor Vehicles on March 1, 2017. A decision on the

voluntary termination application has been held in abeyance pending resolution of Case No. MP-2016-202.¹

C. Case No. MP-2017-039

While the first two cases were pending, the \$1.5 million primary WMATC Insurance Endorsement filed in Case No. MP-2016-202 terminated without replacement on April 5, 2017, by operation of WMATC Regulation No. 58-07(c).²

Order No. 16,946, served April 13, 2017, noted the automatic suspension of Certificate No. 2705 pursuant to Regulation No. 58-12, directed respondent to cease transporting passengers for hire under Certificate No. 2705, 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. 2705. Respondent has yet to respond to Order No. 16,946.

II. PRELIMINARY PROCEDURAL ISSUE

Order No. 16,847 in Case No. MP-2016-202, contained the following stipulation regarding any request for oral hearing that respondent might care to submit in that proceeding: "[R]espondent may submit within 15 days from the date of this order a written request for oral hearing, specifying the grounds for the request, describing the evidence to be adduced and explaining why such evidence cannot be adduced without an oral hearing."

Mr. El Byad's March 3 statement includes the following two passages:

I travel for work overseas for work at least once a month, upon request I am willing to show you my passport in an oral hearing.

In case that you need more proof and upon request in a Oral hearing I am willing to show you my personal bank account statement that shows that the only payment I get is from my primary job, and my personal account has nothing to do with the business account.

It is not clear from the foregoing whether Mr. El Byad is requesting an oral hearing on respondent's behalf or merely stating

¹ See *In re Chief Limos LLC*, No. AP-13-412, Order No. 14,598 (Feb. 26, 2014) (voluntary termination application held in abeyance pending show cause response); *In re Addis Transp., Inc.*, No. AP-07-232, Order No. 11,112 (Jan. 29, 2008) (same).

² Reg. No. 58-07(c) terminates coverage under a WMATC Endorsement 30 days after a WMATC carrier files an acceptable application for voluntary termination of WMATC authority. Respondent filed such an application on March 6, 2017. See Case No. AP-2017-046. In addition, the Commission received a cancelation notice from the insurance company on March 9, 2017, effective April 13, 2017.

his willingness to disclose personal documents in an oral hearing if requested to do so. Either way, it does not appear that Mr. El Byad's passport is relevant to these proceedings. During the time in question, respondent had two vehicles at its disposal. Mr. El Byad's presence outside the United States during all or some of the suspension period does not rule out the possibility that operations continued with one or both vehicles in his absence. The evidence bearing on that issue may be found in respondent's business records, not Mr. El Byad's personal travel records.

To the extent respondent is requesting an oral hearing for the purpose of producing Mr. El Byad's bank statements, the request is denied for respondent's failure to explain why such records cannot be produced without an oral hearing.

III. DENIAL OF VOLUNTARY TERMINATION

The Commission may terminate a certificate of authority under Title II of the Compact, Article XI, Section 10(b), upon application by the holder. The Commission will not approve such an application, however, if the carrier is not in good standing.³

Because applicant, JEB Transportation Services, LLC, has not paid the \$100 late fee due under Regulation No. 67-03(c) in Case No. MP-2017-039, applicant is not in good standing with the Commission. Because applicant is not in good standing with the Commission, we shall deny the application for voluntary termination.⁴

IV. 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.⁵

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.⁶

The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.⁷ The terms "willful" and "willfully" do not mean with evil purpose or criminal intent;

³ *In re Superior Transit Ltd., t/a Youngtimers Transit & Kool Kids Transp.*, No. AP-12-240, Order No. 13,608 (Nov. 29, 2012).

⁴ See *id.* (denying voluntary termination for failure to pay \$100 late insurance fee).

⁵ Compact, tit. II, art. XIII, § 6(f).

⁶ Compact, tit. II, art. XI, § 10(c).

⁷ *In re Medical Transp. Sys. (MTS) LLC*, No. MP-16-121, Order No. 16,764 (Dec. 23, 2016); Order No. 15,918.

rather, they describe conduct marked by intentional or careless disregard or plain indifference.⁸

Because respondent did not produce all records relevant to the Commission's investigation in Case No. MP-2016-202 as directed by Order No. 16,807 and was late in producing what few records were submitted, we find that respondent has failed to show cause why the Commission should not assess a civil forfeiture of \$250.⁹

And for those reasons and because respondent has yet to replace the WMATC Insurance Endorsement that terminated April 5, 2017, and has yet to pay the \$100 late fee noted in Order No. 16,946 in Case No. MP-2017-039, we find that respondent has failed to show cause why the Commission should not revoke Certificate No. 2705.¹⁰

THEREFORE, IT IS ORDERED:

1. That Case Nos. MP-2016-202, AP-2017-046, and MP-2017-039 are hereby consolidated pursuant to Commission Rule No. 20-02.

2. That to the extent respondent requests an oral hearing, said request is denied for respondent's failure to explain why the evidence to be adduced cannot be produced without an oral hearing.

3. That the voluntary termination application in Case No. AP-2017-046 is hereby denied.

4. 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. 16,807 by failing to produce documents as directed.

5. That pursuant to Article XI, Section 10(c), of the Compact, Certificate of Authority No. 2705 is hereby revoked for respondent's willful failure to comply with Regulation No. 58-14(a) and Order No. 16,807 by failing to produce documents as directed; respondent's willful failure to comply with Regulation No. 58-03 by failing to replace the \$1.5 million primary WMATC Insurance Endorsement filed in Case No. MP-2016-202; and respondent's willful failure to comply with Regulation No. 67-03(c) by failing to pay the \$100 late fee in Case No. MP-2017-039.

⁸ Order Nos. 16,764 & 15,918.

⁹ See Order Nos. 16,764 & 15,918 (assessing \$250 for failure to produce all relevant records).

¹⁰ See Order No. 16,764 (revoking authority for failure to produce documents); Order No. 15,918 (same); Order No. 13,608 (revoking authority for failure to replace WMATC Endorsement and pay late fee).

6. That the \$100 late fee due under Regulation No. 67-03(c) in Case No. MP-2017-039 shall remain due.

7. That within 30 days from the date of this order respondent shall pay to the Commission by check or money order the sum of three hundred fifty dollars (\$350).

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

A handwritten signature in black ink, appearing to read "W. S. Morrow, Jr.", written in a cursive style.

William S. Morrow, Jr.
Executive Director