

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 17,238

IN THE MATTER OF:

Served October 4, 2017

PRIMO EXECUTIVE TRANSPORTATION ) Case No. MP-2017-044  
SERVICES, LLC, Suspension and )  
Investigation of Revocation of )  
Certificate No. 2728 )

This matter is before the Commission on respondent's failure to respond to Order No. 17,111, served July 20, 2017.

**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. 2728 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. 2728 was automatically suspended on April 27, 2017, when the \$1.5 million primary WMATC Insurance Endorsement on file for respondent expired without replacement. Order No. 16,973, served April 27, 2017, noted the automatic suspension of Certificate No. 2728 pursuant to Regulation No. 58-12, directed respondent to cease transporting passengers for hire under Certificate No. 2728, 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. 2728.

Respondent filed the necessary insurance endorsement(s) on May 10, 2017, but failed to pay the late fee, and Certificate No. 2728 was revoked in Order No. 17,033 on June 8, 2017, pursuant to Regulation No. 58-15(a). Respondent thereafter paid the late fee and filed a timely application for reconsideration of Order No. 17,033, and Certificate of Authority No. 2728 was reinstated in Order No. 17,053, in accordance with Regulation No. 58-15(b).

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

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

However, respondent's replacement Endorsement did not take effect until May 10, 2017, instead of April 27, 2017, the expiration date of the prior Endorsement, thereby creating a gap in required coverage.<sup>3</sup> Order No. 17,053 accordingly directed respondent to submit a statement verifying cessation of operations as of April 27, 2017, 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 from February 1, 2017, through June 19, 2017. Respondent did not respond.

## **II. ORDER TO SHOW CAUSE**

Regulation No. 58-14(b) states that upon the failure of a carrier to comply timely with the requirements of Regulation No. 58-14(a), "the Executive Director shall issue an order directing the carrier to show cause why a civil forfeiture should not be assessed against the carrier and/or why the carrier's operating authority should not be suspended or revoked."

Pursuant to Regulation No. 58-14(b), Order No. 17,111 gave respondent until August 21, 2017, to show cause why the Commission should not assess a civil forfeiture against respondent and/or suspend or revoke Certificate No. 2728. Respondent has yet to respond.

## **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>4</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>5</sup>

The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.<sup>6</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>7</sup>

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<sup>3</sup> A second WMATC Endorsement was filed on June 7, 2017, with an effective date of April 28, 2017, instead of May 10, 2017, thereby reducing the gap in required coverage from 13 days to one day.

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

<sup>5</sup> Compact, tit. II, art. XI, § 10(c).

<sup>6</sup> *In re Fon Pius Nde, t/a Piusmed World Transp.*, No. MP-07-187, Order No. 11,362 (May 15, 2008).

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

Because respondent has failed to respond to Order No. 17,053 and has offered no explanation for this failure, we find that respondent has failed to show cause why the Commission should not assess a civil forfeiture of \$250<sup>8</sup> and revoke Certificate No. 2728.<sup>9</sup>

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 Order No. 17,053.

2. That pursuant to Article XI, Section 10(c), of the Compact, Certificate of Authority No. 2728 is hereby revoked for respondent's willful failure to comply with Order No. 17,053.

3. That within 30 days from the date of this order respondent shall:

- a. pay to the Commission by check or money order the sum of two hundred fifty dollars (\$250);
- b. remove from respondent's vehicle(s) the identification placed thereon pursuant to Commission Regulation No. 61;
- c. file a notarized affidavit and supporting photograph(s) with the Commission verifying compliance with the preceding requirement; and
- d. surrender Certificate No. 2728 to the Commission.

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



William S. Morrow, Jr.  
Executive Director

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<sup>8</sup> See *id.* (same).

<sup>9</sup> See *id.* (same)