

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 17,337

IN THE MATTER OF:

Served December 5, 2017

THE VANMAR, INC., Suspension and)
Investigation of Revocation of)
Certificate No. 2893)

Case No. MP-2017-100

This matter is before the Commission on respondent's response to Order No. 17,207, served September 22, 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."¹ A certificate of authority is not valid unless the holder is in compliance with the Commission's insurance requirements.²

Commission Regulation No. 58 requires respondent to insure the revenue vehicles operated under Certificate No. 2893 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. 2893 was rendered invalid on July 19, 2017, when the \$1.5 million primary WMATC Insurance Endorsement on file for respondent terminated without replacement. Order No. 17,109 noted the automatic suspension of Certificate No. 2893 pursuant to Regulation No. 58-12, directed respondent to cease transporting passengers for hire under Certificate No. 2893, 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. 2893.

Respondent paid the late fee and submitted \$1 million primary and \$2 million excess WMATC Insurance Endorsements, and the suspension was lifted in Order No. 17,163. However, because the effective date of the new endorsements is July 21, 2017, instead of July 19, 2017, the order gave respondent until September 20, 2017, in accordance with Regulation No. 58-14(a), to: (1) verify cessation of operations as of July 19, 2017; and (2) produce copies of respondent's pertinent business records from May 1, 2017, to August 21, 2017. Respondent did not respond.

¹ Compact, tit. II, art. XI, § 6(a).

² Compact, tit. II, art. XI, § 7(g).

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."

Order No. 17,207 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. 2893.

II. RESPONSE TO ORDER NO. 17,207

In a statement filed September 29, 2017, respondent's Chief Executive Officer, Marion Parks, states that respondent's sole WMATC vehicle, a 2010 Nissan, was not operated from July 19, 2017, through August 22, 2017.

The statement is corroborated by a vehicle mileage report derived from an analysis of vehicle operations data collected and transmitted on an ongoing basis through a device connected to the onboard diagnostics port of the Nissan.

III. CONCLUSION

On this record, we find that respondent has shown cause for not suspending or revoking Certificate No. 2893.

But we further find that respondent's failure to respond to Order No. 17,163 warrants assessment of a civil forfeiture in the amount of \$250.³ Respondent attempts to blunt this finding by claiming it was unaware of Order No. 17,163 until September 26, 2017, when respondent received Order No. 17,207. The evidence does not support that claim.

Information obtained from the U.S. Postal service website shows that respondent received a copy of the suspension order, Order No. 17,109, on July 21, 2017. That order directed respondent to cease operating "unless and until otherwise ordered by the Commission." As noted above, it was Order No. 17,163 that lifted the suspension of Certificate No. 2893 on August 21, 2017. Respondent's vehicle-monitoring records show that respondent resumed operations in the Nissan in the fourth week of August, which is consistent with respondent becoming aware that Order No. 17,163 had issued. To accept respondent's claim that respondent was unaware of Order No. 17,163 until September 26 would require us to conclude that respondent resumed operations in August without knowledge that the suspension had

³ See *In re Dafre, Inc., t/a Dafre Transp.*, No. MP-16-088, Order No. 17,110 at 3 (July 20, 2017) (assessing \$250 for failing to produce documents in timely fashion); *In re J T E Inc.*, No. MP-16-047, Order No. 16,621 at 3-4 (Oct. 17, 2016) (same).

been lifted. Such a conclusion would go against the weight of the evidence.

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. 17,163.

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

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



William S. Morrow, Jr.
Executive Director