

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 17,726

IN THE MATTER OF:

Served July 16, 2018

AMANUEL TESFAYE, Suspension and)
Investigation of Revocation of)
Certificate No. 2303)

Case No. MP-2018-003

This matter is before the Commission on respondent's response to Order No. 17,516, served March 27, 2018.

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. 2303 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. 2303 was rendered invalid on January 3, 2018, when the \$1.5 million primary WMATC Insurance Endorsement on file for respondent terminated without replacement. Order No. 17,386 noted the automatic suspension of Certificate No. 2303 pursuant to Regulation No. 58-12, directed respondent to cease transporting passengers for hire under Certificate No. 2303, 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. 2303.

Respondent paid the late fee and submitted a \$1.5 million primary WMATC Insurance Endorsement, and the suspension was lifted in Order No. 17,446, served February 7, 2018. However, because the effective date of the new endorsement is February 6, 2018, instead of January 3, 2018, the order gave respondent 30 days in accordance with Regulation No. 58-14(a) to: (1) verify cessation of operations as of January 3, 2018; and (2) produce copies of respondent's pertinent business records from November 1, 2017, to February 7, 2018. Respondent did not respond.

¹ Compact, tit. II, art. XI, § 6(a).

² Compact, tit. II, art. XI, § 7(g).

In accordance with Regulation No. 58-14(b), Order No. 17,516 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. 2303.

II. RESPONSE TO ORDER NO. 17,516 AND FINDINGS

In response to Order No. 17,516, respondent has submitted a statement that says his operations are confined to transporting passengers under a contract with Uber. The statement is supported by Uber "Payment Statements". Respondent has produced no other business records.³

We find respondent's response lacking. The statement is not under oath as required by Commission Rule No. 4-06, and the assertion that respondent works only for Uber is not corroborated by any of respondent's business records as required by Regulation No. 58-14(a) and Order No. 17,446. And because the statement is cast in the present tense as of April 16, 2018, it does not speak to the suspension period at issue in this proceeding.

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.⁴

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.⁵

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

Because respondent has (1) failed to verify whether it ceased operating while suspended and uninsured from January 3, 2018, through February 5, 2018, and while suspended on February 6, 2018; (2) failed to produce all relevant business records as required by Regulation

³ For example, respondent paid the \$100 late insurance fee in this proceeding by check drawn on respondent's Bank of America bank account. But respondent has not produced any bank statements, which have an obvious bearing on whether respondent received payments for transportation during the suspension period from Uber or anyone else.

⁴ Compact, tit. II, art. XIII, § 6(f).

⁵ Compact, tit. II, art. XI, § 10(c).

⁶ *In re Carlos Sedan, LLC*, No. MP-15-223, Order No. 16,836 (Feb. 9, 2017).

⁷ *Id.*

No. 58-14(a) and directed by Order No. 17,446; and (3) offered no explanation for these failures; we find that respondent has failed to show cause why the Commission should not assess a civil forfeiture of \$250⁸ and revoke Certificate No. 2303,⁹ without prejudice to respondent's right to reapply for operating authority after waiting 180 days from the date of this order.¹⁰

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. 17,446.

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).

3. That pursuant to Article XI, Section 10(c), of the Compact, Certificate of Authority No. 2303 is hereby revoked for respondent's willful failure to comply with Regulation No. 58-14(a) and Order No. 17,446.

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

- a. remove from respondent's vehicle(s) the identification placed thereon pursuant to Commission Regulation No. 61;
- b. file a notarized affidavit with the Commission verifying compliance with the preceding requirement; and
- c. surrender Certificate No. 2303 to the Commission.

5. Respondent may reapply for operating authority after waiting 180 days from the date of this order.

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



William S. Morrow, Jr.
Executive Director

⁸ See *id.* (assessing \$250 for failing to produce verification and documents).

⁹ See *id.* (revoking authority for failing to produce verification and documents).

¹⁰ See *id.* (stipulating 180-day application waiting period in insurance gap case).