

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 18,436

IN THE MATTER OF:

Served October 16, 2019

PREMIER CARE SERVICES, LLC, Trading )  
as CARE FARE, Suspension and )  
Investigation of Revocation of )  
Certificate No. 2864 )

Case No. MP-2019-094

This matter is before the Commission on the response of respondent to Order No. 18,325, served August 19, 2019, reinstating Certificate No. 2864 and directing respondent to submit a statement verifying whether it ceased operations as of June 17, 2019, and to corroborate the statement with copies of respondent's pertinent business records.

**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. 2864 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. 2864 was automatically suspended on June 17, 2019, pursuant to Regulation No. 58-12, when the \$1.5 million primary WMATC Insurance Endorsement on file for respondent terminated without replacement. Order No. 18,215, served June 17, 2019, noted the automatic suspension of Certificate No. 2864, directed respondent to cease transporting passengers for hire under Certificate No. 2864, 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. 2864.

Respondent did not respond, and Certificate No. 2864 was revoked in Order No. 18,274, on July 19, 2019, pursuant to Regulation No. 58-15(a). Respondent thereafter submitted the necessary WMATC

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

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

Insurance Endorsement, paid the late fee, and filed a timely application for reconsideration of Order No. 18,274, and Certificate No. 2864 was reinstated on August 19, 2019, in Order No. 18,325, in accordance with Regulation No. 58-15(b).

However, because the effective date of the replacement endorsement is August 9, 2019, instead of June 17, 2019, leaving a 53-day gap in insurance coverage, the reinstatement order gave respondent 30 days in accordance with Regulation No. 58-14(a) to: (1) submit a statement verifying whether it ceased operations on and after June 17, 2019; and (2) produce copies of respondent's pertinent business records for the period from April 1, 2019, to August 19, 2019.

## **II. RESPONSE TO ORDER NO. 18,325 AND PRELIMINARY FINDINGS**

On September 16, 2019, respondent submitted a statement and copies of business records, including: (a) respondent's bank statements for the period beginning March 30, 2019, and ending August 30, 2019; (b) respondent's calendar and appointments for the period beginning April 1, 2019, and ending August 29, 2019; and (c) payments and invoices for the period beginning April 1, 2019, and ending September 4, 2019.

Respondent's statement filed September 16, 2019, does not expressly address whether respondent conducted any operations in the Metropolitan District during the period that respondent's certificate was suspended or revoked. However, respondent's request for reconsideration filed August 14, 2019, prior to the issuance of Order No. 18,325, admitted respondent did not cease operations until July 18, 2019.

Furthermore, respondent's calendar and invoices show respondent transported passengers on 15 different days between June 17, 2019, and July 18, 2019, while respondent was uninsured and Certificate No. 2864 was suspended.<sup>3</sup> Deposits into respondent's bank account reflect payments consistent with the invoices for trips during that time.

In assessing respondent's response, it is important to note that Commission precedent distinguishes between carriers operating without authority and without adequate insurance, on the one hand, and carriers operating without authority but with adequate insurance, on the other.<sup>4</sup> The Commission metes out stiffer sanctions for operating without adequate insurance.<sup>5</sup> For operating unlawfully but with the requisite WMATC Endorsement(s) on file, the Commission normally assesses a civil forfeiture of \$250 for each day of unauthorized

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<sup>3</sup> The dates are June 17, 20, 21, 25, 27, 28, and July 2, 4, 5, 6, 10, 11, 12, 15, and 16, of this year.

<sup>4</sup> *In re Am. Eagle Limo. & Travel Serv., Inc.*, No. MP-16-013, Order No. 16,490 (July 21, 2016).

<sup>5</sup> *Id.*

operations.<sup>6</sup> The Commission assesses \$500 per day when a carrier operates without the requisite WMATC Endorsement(s) on file.<sup>7</sup>

In its request for reinstatement filed August 14, 2019, respondent implies it was unaware that its insurance had expired. According to respondent:

This letter is a formal request for reinstatement for Certificate of Authority No. 2864 due to lapse/expiration of auto insurance last June 17, 2019. We were not informed by our insurance agent verbally aside from an email that was sent early June that unfortunately went to [spam] and was not read until we reached out to our agent in July 18, 2019. From that time, we immediately terminated any and all operations and worked on immediately securing coverage.

It was never our intention to operate without appropriate insurance coverage.

However, the record shows that the suspension order, Order No. 18,215, was sent to respondent by email on June 17, 2019, and was also delivered to respondent by the U.S. Postal Service on June 19, 2019. That order stated that respondent's WMATC Insurance Endorsement had expired on June 17, 2019, and directed that "respondent shall not transport passengers for hire under Certificate No. 2864, unless and until otherwise ordered by the Commission."

Furthermore, under Regulation No. 58-11:

When a WMATC carrier's insurance has terminated or is about to terminate the carrier must contact the Commission to ascertain whether the necessary WMATC Insurance Endorsement has been filed before continuing to operate on and after the termination date. Proof a WMATC carrier has satisfied its duty to verify shall consist of contemporaneous written verification from the Commission.

The Commission has no record of any inquiry from respondent prior to June 17, 2019, and respondent has not produced any such written verification. If respondent was unaware its insurance had terminated, it was only because respondent neglected to read its email, its mail, and neglected to comply with Regulation No. 58-11.

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<sup>6</sup> *In re Burlington Brew Tours, LLC*, No. MP-16-136, Order No. 16,854 (Mar. 1, 2017) at 3.

<sup>7</sup> *Id.* at 3.

### III. ORDER TO SHOW CAUSE

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>8</sup> Each day of the violation constitutes a separate violation.<sup>9</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>10</sup>

The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.<sup>11</sup> The terms "willful" and "willfully" do not mean with evil purpose or criminal intent; rather, they describe conduct marked by careless disregard of whether or not one has the right so to act.<sup>12</sup> Employee negligence is no defense.<sup>13</sup> "To hold carriers not liable for penalties where the violations . . . are due to mere indifference, inadvertence, or negligence of employees would defeat the purpose of" the statute.<sup>14</sup>

Respondent shall have 30 days to show cause why the Commission should not assess a \$7,500 civil forfeiture against respondent, and/or suspend or revoke Certificate No. 2864, for knowingly and willfully transporting passengers for hire between points in the Metropolitan District while suspended and uninsured on 15 separate days in June and July 2019.

THEREFORE, IT IS ORDERED:

1. That respondent shall have 30 days to show cause why the Commission should not assess a civil forfeiture against respondent, and/or suspend or revoke Certificate No. 2864, for knowingly and willfully violating Article XI, Section 6(a), of the Compact, Regulation No. 58, and the orders issued in this proceeding.

2. That respondent may submit within 15 days from the date of this order a written request for oral hearing, specifying the grounds

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<sup>8</sup> Compact, tit. II, art. XIII, § 6(f)(i).

<sup>9</sup> Compact, tit. II, art. XIII, § 6(f)(ii).

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

<sup>11</sup> *In re Jonathan Lee Gerity Sr, t/a Riverside Transp.*, No. MP-16-036, Order No. 16,574 at 5 (Sept. 15, 2016), *recon. denied*, Order No. 16,710 (Nov. 30, 2016).

<sup>12</sup> *Id.* at 5.

<sup>13</sup> *Id.* at 5.

<sup>14</sup> *United States v. Illinois Cent. R.R.*, 303 U.S. 239, 244, 58 S. Ct. 533, 535 (1938).

for the request, describing the evidence to be adduced and explaining why such evidence cannot be adduced without an oral hearing.

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



Jeffrey M. Lehmann  
Executive Director