

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 19,596

IN THE MATTER OF:

Served November 2, 2021

ESPOIR LLC, Trading as ESPOIR, )  
Suspension and Investigation of )  
Revocation of Certificate No. 2985 )

Case No. MP-2019-015

This matter is before the Commission on respondent's failure to respond to Order No. 18,432, served October 16, 2019.

**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>

Certificate No. 2985 was rendered invalid on February 20, 2019, when the \$1.5 million primary WMATC Insurance Endorsement on file for respondent terminated without replacement. Order No. 18,041, served February 21, 2019, noted the automatic suspension of Certificate No. 2985 pursuant to Regulation No. 58-12, directed respondent to cease transporting passengers for hire under Certificate No. 2985, 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. 2985.

Respondent paid the late fee and submitted a \$1.5 million replacement WMATC Endorsement on February 22, 2019, and the suspension was lifted on February 25, 2019, in Order No. 18,044. However, because the effective date of the new endorsement was February 21, 2019, instead of February 20, 2019, leaving a 1-day gap in required insurance coverage, the order gave respondent 30 days in accordance with Regulation No. 58-14(a) to: (1) verify cessation of operations as of February 20, 2019; and (2) produce copies of respondent's pertinent business records from December 1, 2018, to February 25, 2019.

In response to Order No. 18,044, on March 7, 2019, as supplemented on March 25, 2019, respondent produced statements of its president, Ambroise Agosse, and copies of various business records, including: (a) copies of respondents trip logs for the period beginning February 7, 2019, and ending February 19, 2019; (b) copies of respondent's bank

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

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

statements for the period beginning December 1, 2018, and ending February 28, 2019; and (c) copies of Uber trip reports for the period beginning November 30, 2018, and ending March 3, 2019.

While this proceeding was pending, on August 16, 2019, respondent filed an application seeking voluntarily termination of Certificate No. 2985. The Commission granted the application and Certificate No. 2985 was voluntarily terminated effective October 25, 2019.<sup>3</sup>

In Order No. 18,432, we found that the record supports a finding that respondent operated on four days while Certificate No. 2985 was suspended but respondent was adequately insured. Specifically, the Uber trip reports contain entries showing 36 trips were performed for "Black" or "Black SUV" service during the period from February 21, 2019, to February 24, 2019, including trips on each of those four days. Respondent's bank statements reflect corresponding deposits from Uber and gasoline purchases within the Metropolitan District around this time. Order No. 18,432 accordingly directed respondent to show cause why the Commission should not assess a civil forfeiture against respondent, and/or suspend or revoke Certificate No. 2985, for knowingly and willfully conducting operations under an invalid/suspended certificate of authority. Respondent has yet to respond.

## **II. ASSESSMENT OF FORFEITURE**

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 term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.<sup>5</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>6</sup>

In situations similar to this one - operating while suspended but not while uninsured - the Commission has assessed a civil forfeiture of \$250 for each day of unauthorized operations and placed carriers on probation for one year.<sup>7</sup> We shall follow the same course here and assess a forfeiture against respondent in the amount of \$250 per day for four days, or \$1,000, for knowingly and willfully operating while suspended,

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<sup>3</sup> *In re Espoir LLC, t/a Espoir*, No. AP-19-127, Order No. 18,456 (Oct. 25, 2019).

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

<sup>5</sup> *In re J T E Inc.*, No. MP-16-047, Order No. 16,621 at 3 (Oct. 17, 2016).

<sup>6</sup> *Id.*

<sup>7</sup> *In re A & W Servs., LLC*, No. MP-16-120, Order No. 17,101 (July 17, 2017) at 3-4.

but adequately insured. Probation is unnecessary in this case however, because as noted above, respondent's authority already stands terminated.

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 \$1,000 for knowingly and willfully violating Article XI, Section 6(a), of the Compact and Regulation No. 58 on four separate days.

2. That respondent is hereby directed to pay to the Commission within 30 days of the date of this order, by money order, certified check, or cashier's check, the sum of one thousand dollars (\$1,000).

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



Jeffrey M. Lehmann  
Executive Director