

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 19,635

IN THE MATTER OF:

Served December 8, 2021

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. 18,436, 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."¹ A certificate of authority is not valid unless the holder is in compliance with the Commission's insurance requirements.²

Certificate No. 2864 was automatically suspended on June 17, 2019, 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 pursuant to Regulation No. 58-12, directed respondent to cease transporting passengers for hire under Certificate No. 2864, 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. 2864. Respondent failed to comply, and Certificate No. 2864 was revoked in Order No. 18,274, on July 19, 2019, pursuant to Regulation No. 58-15(a).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 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, respondent's replacement endorsement did not take effect until August 9, 2019, instead of June 17, 2019, leaving a 53-day gap in required insurance coverage. Order No. 18,325 accordingly directed respondent to verify cessation of operations as of June 17, 2019, 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 April 1, 2019, to August 19, 2019.

¹ Compact, tit. II, art. XI, § 6(a).

² Compact, tit. II, art. XI, § 7(g).

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, did 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.

We found in Order No. 18,436 that respondent's calendar and invoices showed that 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.³ Accordingly, Order No. 18,436 gave respondent 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 conducting operations under a suspended certificate of authority and violating Regulation Nos. 58 and the orders in this proceeding.

While this proceeding was pending, respondent allowed its WMATC endorsement to terminate without replacement once again, and Certificate No. 2864 was revoked in a separate proceeding in accordance with Regulation No. 58-15(a) when respondent did not replace it within 30 days.⁴

II. RESPONSE TO ORDER NO. 18,436 AND FINDINGS

Respondent does not dispute our preliminary finding in Order No. 18,436 that respondent transported passengers on 15 days while respondent was uninsured and Certificate No. 2864 was suspended. Instead, respondent's legal counsel submitted a statement on November 1, 2019, as supplemented on December 6, 2019, asserting that respondent "unknowingly experienced a lapse in coverage of their vehicle insurance policy in June 2019 due to the email reminders from the insurance company going unread as they were filtered into a spam email folder." The response further states that "[t]here was no 'knowingly and willfully' neglect to renew the policy. Once they learned of the ineffective policy, they ceased all business (7/17/2019-8/19/2019) until they got confirmation that their policy was once again effective and that they had been reissued their certification to operate." The response is accompanied by copies of email correspondence from respondent's insurer.

³ The dates are June 17, 20, 21, 25, 27, 28, and July 2, 4, 5, 6, 10, 11, 12, 15, and 16, 2019.

⁴ *In re Premier Care Servs., LLC, t/a Care Fare*, No. MP-20-070, Order No. 19,063 (Oct. 22, 2020).

The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.⁵ 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.⁶ "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.⁷

Under Regulation No. 58-12: "Failure to replace a WMATC Insurance Endorsement prior to termination shall result in immediate, automatic suspension of a carrier's WMATC operating authority. The carrier must suspend operations immediately and may not recommence operations unless and until otherwise ordered by the Commission." 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.

There is no evidence in the record indicating that respondent contacted the Commission to ascertain whether the necessary WMATC Insurance Endorsement had been filed before continuing to operate on and after June 17, 2019. Respondent's unauthorized operations are thus deemed knowing and willful.⁸

Furthermore, the record shows that Order No. 18,215, which 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," was sent to respondent by email on June 17, 2019, and was also delivered to respondent's address of record by certified mail on June 19, 2019. We therefore find that respondent's unlawful passenger carrier operations on 15 days from June 17, 2019, to July 16, 2019, were knowing and willful within the meaning of the Compact and subject to a civil forfeiture.⁹

⁵ *In re Swift Sedans LLC*, No. MP-16-015, Order No. 16,855 at 2 (Mar. 3, 2015).

⁶ *Id.* at 2.

⁷ *United States v. Illinois Cent. R.R.*, 303 U.S. 239, 243, 58 S. Ct. 533, 535 (1938).

⁸ See *In re Exquisite Limo. Serv. LLC*, No. MP-15-152, Order No. 16,153 at 3 (Jan. 22, 2016) (unauthorized operations deemed knowing and willful where there was no evidence in the record indicating respondent had contacted the Commission to ascertain whether necessary WMATC Insurance Endorsement had been filed before continuing to operate).

⁹ See *In re Royal Limo. LLC*, No. MP-15-119, Order No. 16,289 at 3 (Apr. 4, 2016) (unlawful passenger carrier operations found knowing and willful where

III. 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.¹⁰

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.¹¹

In setting the daily forfeiture amount, we take into consideration Commission precedent that distinguishes carriers operating without authority and without adequate insurance, on the one hand, from carriers operating without authority but with adequate insurance, on the other.¹² The Commission metes out stiffer sanctions for operating without adequate insurance. 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 operations.¹³ The Commission assesses \$500 per day when a carrier operates unlawfully without the requisite WMATC Endorsement(s) on file.¹⁴

Accordingly, we shall assess a forfeiture against respondent in the amount of \$500 per day for 15 days, or \$7,500, for knowingly and willfully operating while Certificate No. 2864 was suspended and respondent's vehicles were uninsured.¹⁵ Normally, we would also revoke Certificate No. 2864¹⁶ but respondent's certificate already stands revoked.

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 \$7,500 for knowingly and willfully violating Article XI, Section 6(a), of the Compact, Regulation No. 58-12, and Order No. 18,215.

suspension order directing respondent to cease WMATC operations was delivered by certified mail.)

¹⁰ Compact, tit. II, art. XIII, § 6(f).

¹¹ Compact, tit. II, art. XI, § 10(c).

¹² Order No. 16,289 at 3-4.

¹³ *Id.* at 4.

¹⁴ *Id.* at 4.

¹⁵ See *id.* (assessing \$500 forfeiture per day against carrier that operated while suspended and uninsured).

¹⁶ See *id.* (revoking certificate of authority of carrier that operated while suspended and uninsured).

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 seven thousand five hundred dollars (\$7,500).

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



Jeffrey M. Lehmann
Executive Director