

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 19,636

IN THE MATTER OF:

Served December 8, 2021

HAPPY STAR TRANSPORTATION LLC,)
Suspension and Investigation of)
Revocation of Certificate No. 2169)

Case No. MP-2019-096

This matter is before the Commission on respondent's response to Order No. 18,423, served October 10, 2019, which directed respondent to show cause why the Commission should not assess a civil forfeiture against respondent, and/or suspend or revoke Certificate No. 2169.

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. 2169 was rendered invalid on June 24, 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. 18,223, served June 24, 2019, noted the automatic suspension of Certificate No. 2169, directed respondent to cease transporting passengers for hire under Certificate No. 2169, 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. 2169.

Respondent paid the late fee and submitted an acceptable \$1.5 million primary replacement WMATC Insurance Endorsement on July 24, 2019, and the suspension was lifted on August 6, 2019, in Order No. 18,310. However, because the effective date of the new endorsement was July 23, 2019, instead of June 24, 2019, leaving a 29-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 June 24, 2019; (2) produce copies of respondent's pertinent business records from April 1, 2019, to August 6, 2019; and (3) produce a written statement from Medical Transportation Management, Inc., (MTM), a principal client of record, indicating whether respondent ceased its MTM operations in the Metropolitan District from June 24, 2019, to August 6, 2019.

¹ Compact, tit. II, art. XI, § 6(a).

² Compact, tit. II, art. XI, § 7(g).

In response to Order No. 18,310, on August 23, 2019, respondent produced a statement of its owner, Tsion Mogus, a letter from MTM dated March 13, 2019, and copies of respondent's bank statements for the period beginning April 1, 2019, and ending July 31, 2019.

In Order No. 18,423, we found respondent's response deficient. First, respondent's statement was not signed as required by Commission Rule No. 4-05 or verified under oath as required by Commission Rule No. 4-06. Second, the statement did not clearly address whether respondent transported passengers for hire during the suspension period from June 24, 2019, until August 5, 2019. Third, respondent did not provide copies of bank statements for the period beginning August 1, 2019, and ending August 6, 2019. Fourth, respondent produced a March 2019 letter from MTM, but the letter failed to indicate whether respondent operated for MTM during the suspension period from June 24, 2019, until August 5, 2019.

In accordance with Regulation No. 58-14(b), Order No. 18,423 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. 2169.

While this proceeding was pending, respondent allowed its WMATC Endorsement to terminate without replacement once again, and Certificate No. 2169 was revoked in a separate proceeding in accordance with Regulation No. 58-15(a) when respondent did not replace it within 30 days.³

II. RESPONSE TO ORDER NO. 18,423 AND FINDINGS

On May 6, 2021, respondent filed a statement signed by its owner, Tsion Mogus, belatedly affirming respondent "did not provide transportation for hire since October 2018 and certainly not during the . . . period of April 1, 2019, to August 6, 2019." However, this statement is not corroborated by all the records Order No. 18,310 directed respondent to produce. Accompanying its statement, respondent resubmitted copies of the bank statements previously submitted on August 23, 2019, but again failed to submit copies of bank statements for the period beginning August 1, 2019, and ending August 6, 2019. Respondent also submitted a letter from MTM stating, "[o]ur records show the provider was no longer servicing the DC network on October 19, 2018," but the statement does not address whether respondent operated for MTM during the suspension period from June 24, 2019, until August 5, 2019. This omission is notable because respondent was included on a list of MTM transportation providers submitted by MTM on June 28, 2019, after the suspension of respondent's WMATC authority began, leaving the possibility that respondent may have rejoined the MTM provider network sometime after October 19, 2018. Consequently, respondent has failed to produce all relevant documents as required by Regulation No. 58-14(a) and Order No. 18,310.

³ *In re Happy Star Transp. LLC*, No. MP-19-200, Order No. 18,627 (Jan. 23, 2020).

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.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 failed to produce all corroborating records as required by Regulation No. 58-14(a) and directed by Order No. 18,310, and has offered no explanation for this noncompliance, we find that respondent has failed to show cause why the Commission should not assess a civil forfeiture of \$250.⁸ Normally, we would also revoke Certificate No. 2169⁹ 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 \$250 for knowingly and willfully violating Regulation No. 58-14(a) and Order No. 18,310.

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).

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

⁵ Compact, tit. II, art. XI, § 10(c).

⁶ *In re Ex Sedan Inc.*, No. MP-18-032, Order No. 17,878 (Oct. 23, 2018).

⁷ *Id.*

⁸ See *In re Transit Pro Transp. Servs., LLC*, No. MP-20-093, Order No. 19,456 (July 28, 2021) (assessing \$250 forfeiture for failing to produce all business records).

⁹ See *id.* (revoking certificate of authority for failing to produce documents corroborating verification of suspension compliance).

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

A handwritten signature in blue ink, reading "Jeffrey M. Lehmann". The signature is fluid and cursive, with the first name "Jeffrey" being the most prominent.

Jeffrey M. Lehmann
Executive Director