

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 19,786

IN THE MATTER OF:

Served June 7, 2022

TRANZ TRANSPORTATION SERVICES,)
INC., Suspension and Investigation)
of Revocation of Certificate)
No. 3195)

Case No. MP-2020-105

This matter is before the Commission on the response of respondent to Order No. 19,017, served October 1, 2020, directing respondent to submit a statement verifying whether it ceased operations from June 20, 2020, to October 1, 2020, 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."¹ A certificate of authority is not valid unless the holder is in compliance with the Commission's insurance requirements.²

During the period relevant to this proceeding, Commission Regulation No. 58 required respondent to insure the revenue vehicles operated under Certificate No. 3195 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. 3195 was rendered invalid on June 20, 2020, when the \$1.5 million primary WMATC Insurance Endorsement on file for respondent terminated without replacement. Order No. 18,884, served June 22, 2020, noted the automatic suspension of Certificate No. 3195 pursuant to Regulation No. 58-12, directed respondent to cease transporting passengers for hire under Certificate No. 3195, 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. 3195.³

¹ Compact, tit. II, art. XI, § 6(a).

² Compact, tit. II, art. XI, § 7(g).

³ The 30-day response period was tolled until September 21, 2020, and expired October 21, 2020. See *In re Comm'n Operations in Exigent Circumstances Caused by the COVID-19 Pandemic*, Gen. Order No. 26 (Sept. 21, 2020).

Respondent thereafter paid the late fee and submitted a \$1.5 million primary WMATC Insurance Endorsement, and the suspension was lifted in Order No. 19,017. However, because the effective date of the new endorsement is September 11, 2020, instead of June 20, 2020, leaving an 83-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 from June 20, 2020, to October 1, 2020; and (2) produce copies of respondent's pertinent business records from April 1, 2020, to October 1, 2020.

II. RESPONSE TO ORDER NO. 19,017 AND PRELIMINARY FINDINGS

On October 30, 2020, respondent submitted a statement asserting that it ceased operations from June 1, 2020, to October 28, 2020, and also produced copies of bank statements for the period beginning June 1, 2020, to September 30, 2020.

Respondent's assertion that it ceased operations is contradicted by its bank statements, which show numerous deposits for transportation services and purchases at gas stations throughout the period respondent's WMATC authority was suspended.

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.⁴ The Commission metes out stiffer sanctions for operating without adequate insurance.⁵ 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.⁶ The Commission assesses \$500 per day of unauthorized operations and revokes a respondent's certificate of authority when a carrier operates without the requisite WMATC Endorsement(s) on file.⁷

Respondent's bank statements show that during the period from June 20, 2020, to September 10, 2020, when respondent's WMATC authority was suspended and respondent was uninsured, respondent received seven separate payments for transportation services totaling \$6,315.95 and made three purchases at gas stations totaling \$108.81. Furthermore, the bank statements show that from September 11, 2020, to September 30, 2020, when respondent was properly insured but still suspended pursuant to

⁴ *In re Premier Care Servs., LLC, t/a Care Fare*, No. MP-19-094, Order No. 18,436 (Oct. 16, 2019).

⁵ *Id.*

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

⁷ *Id.* at 3-4. *But see In re Ceepco Contracting, LLC*, No. MP-17-136, Order No. 17,616 at 4 (May 17, 2018) (recognizing exception and declining to revoke certificate of authority of carrier that operated while suspended and underinsured but maintained primary insurance coverage throughout the suspension period).

Order No. 18,884, respondent received five payments for transportation services totaling \$13,509.90 and made five purchases at gas stations totaling \$171.56. Therefore, the record supports a finding that respondent operated on at least seven days while suspended and uninsured and at least five days while suspended but properly insured. Respondent has produced no other business records as directed, including calendars, itineraries, and invoices that would cast a different light on this evidence. In addition, respondent has failed to produce all business records as directed by Order No. 19,017, including bank statements for the period April 1, 2020, to May 31, 2020, and credit card statements for the account used to pay the insurance late fee in this proceeding. Carriers that failed to produce business records in similar situations have been assessed a \$250 civil forfeiture.⁸

III. INTERIM DEVELOPMENTS

While this proceeding was pending, respondent allowed its WMATC Insurance Endorsement to terminate without replacement once again, and Certificate No. 3195 was revoked in a separate proceeding in accordance with Regulation No. 58-15(a) when respondent did not replace it or pay a \$100 late fee within 30 days.⁹

IV. 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.¹⁰ Each day of the violation constitutes a separate violation.¹¹

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.¹²

The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.¹³ 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

⁸ See, e.g., *In re Khulon 1 Enters., Inc.*, No. MP-08-208, Order No. 11,934 at 4 (Apr. 9, 2009).

⁹ *In re Tranz Transp. Servs., Inc.*, No. MP-22-005, Order No. 19,745 (Apr. 22, 2022).

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

¹¹ Compact, tit. II, art. XIII, § 6(f)(ii).

¹² Compact, tit. II, art. XI, § 10(c).

¹³ *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).

has the right so to act.¹⁴ Employee negligence is no defense.¹⁵ "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.¹⁶

The revocation of Certificate No. 3195 dispenses with the issue of whether respondent's certificate should be suspended or revoked, but it does not dispense with the issue of whether the Commission should assess a civil forfeiture in this proceeding.

Respondent shall have 30 days to show cause why the Commission should not assess civil forfeitures against respondent totaling \$5,000 for knowingly and willfully transporting passengers for hire between points in the Metropolitan District on seven separate days while suspended and uninsured during the period from July to September 2020 and on five separate days while suspended but properly insured in September 2020, and for failing to produce documents as directed.¹⁷

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 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 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 RICHARD AND LOTT:



Jeffrey M. Lehmann
Executive Director

¹⁴ *Id.* at 5.

¹⁵ *Id.* at 5.

¹⁶ *United States v. Illinois Cent. R.R.*, 303 U.S. 239, 244, 58 S. Ct. 533, 535 (1938).

¹⁷ See *In re Emerald Exec. Transp., Inc.*, No. MP-19-162, Order No. 19,597 (Nov. 2, 2021) (directing carrier to show cause where documents showed carrier operated while suspended).