

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 19,788

IN THE MATTER OF:

Served June 7, 2022

EMERALD EXECUTIVE TRANSPORTATION,)
INC., Suspension and Investigation)
of Revocation of Certificate)
No. 1975)

Case No. MP-2019-162

This matter is before the Commission on respondent's response to Order No. 19,597, served November 2, 2021.

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

Commission Regulation No. 58 requires respondent to insure the revenue vehicles operated under Certificate No. 1975 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. 1975 was rendered invalid on October 8, 2019, when the \$1.5 million primary WMATC Insurance Endorsement on file for respondent terminated without replacement. Order No. 18,413, served October 8, 2019, noted the automatic suspension of Certificate No. 1975 pursuant to Regulation No. 58-12, directed respondent to cease transporting passengers for hire under Certificate No. 1975, 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. 1975.

Respondent thereafter paid the late fee and submitted a \$1.5 million primary WMATC Insurance Endorsement, and the suspension was lifted in Order No. 18,489, served November 12, 2019. However, because the effective date of the new endorsement is November 8, 2019, instead of October 8, 2019, leaving a 31-day gap in required insurance coverage, the order gave respondent 30 days to verify cessation of operations from October 8, 2019, to November 12, 2019, in accordance with Regulation

¹ Compact, tit. II, art. XI, § 6(a).

² Compact, tit. II, art. XI, § 7(g).

No. 58-14(a). The statement was to be corroborated by copies of respondent's pertinent business records from July 1, 2019, through November 12, 2019. Respondent failed to respond.

Therefore, pursuant to Regulation No. 58-14(b), Order No. 18,564, served December 16, 2019, 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. 1975.

Respondent then produced a statement indicating respondent "ceased all operations in the Metropolitan Area from October 8, 2019, through November 12, 2019" along with copies of Uber weekly earnings reports and respondent's bank statements. However, respondent's bank statements showed more than \$400 in purchases at gasoline stations and more than \$3,000 in deposits from Uber during the 35-day suspension period, which did not appear consistent with a halt in operations. Furthermore, the Uber weekly earnings reports produced by respondent did not cover the full period from July 1, 2019, to November 12, 2019, as directed in Order No. 18,489.

Accordingly, Order No. 19,597 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. 1975, for knowingly and willfully conducting operations under an invalid/suspended certificate of authority and failing to produce documents as directed.

II. RESPONSE TO ORDER NO. 19,597

On November 24, 2021, respondent produced a statement of its president, Luis Morales, asserting that the income reflected on respondent's bank statements during the suspension period were payments for trips provided by Mr. Morales while driving under an UberX account held in his name. The statement is supported by Uber payment statements corresponding to each of the deposits from Uber during the suspension period. The statements detail the time, category of Uber service, base fare, and additional charges for each trip for which payment was received. All of the trips on the payment statements fell into the categories of UberX or Uber Comfort service.

III. BONA FIDE TAXICAB SERVICE EXEMPTION

Article XI, Section 6(a), of the Compact generally provides that no person may engage in transportation subject to the Compact unless there is in force a Certificate of Authority issued by the Commission authorizing the person to engage in that transportation. However, Article XI, Section 3(f) of the Compact, in conjunction with Article XI, Section 1(b), of the Compact, excludes from the Commission's licensing jurisdiction "taxicabs and other vehicles that perform a bona fide taxicab service."³

³ Although a WMATC Certificate of Authority is not required to perform bona fide taxicab service, under Article XI, Section 1(b) of the Compact, the Commission's regulatory jurisdiction encompasses the rates, charges,

We find that the UberX and Uber Comfort trips furnished by respondent meet the definition of bona fide taxicab service in Regulation No. 51-09(b) and a WMATC certificate is not required to render such service. Therefore, furnishing these trips did not violate the Compact, despite the fact that respondent's WMATC Certificate of Authority was suspended at the time.

Regulation No. 51-09 defines bona fide taxicab service as follows:

51-09. (a) Other vehicles that perform a bona fide taxicab service means vehicles other than taxicabs used to perform a service that is:

(i) transportation intended in good faith to be provided only between points selected at will by the person or persons hiring the vehicle in which such transportation is provided;

(ii) conducted in a vehicle subject to the exclusive use of the passenger or single party of passengers hiring the vehicle for the entire time such vehicle is under hire;

(iii) priced at rates based on the duration and/or distance of the transportation rendered;

(iv) conducted in a vehicle engaged solely in rendering or performing transportation as described in subparagraphs (i), (ii), and (iii) above; and

(v) conducted in a vehicle having a seating capacity of nine persons or less, including the driver.

(b) Notwithstanding subsection (a), vehicles with a seating capacity of nine persons or less, including the driver, are performing a bona fide taxicab service when they are used in affiliation with a transportation network company as defined by and duly authorized by Maryland or Virginia, or a private-vehicle-for-hire company as defined by and duly authorized by the District of Columbia.

Regulation No. 51-09(b) operates independently of Regulation No. 51-09(a). Hence, transportation service meeting the definition of

regulations, and minimum insurance requirements where the vehicle used to perform bona fide taxicab service has a seating capacity of 9 persons or less, including the driver, and provides interstate transportation within the Metropolitan District.

Regulation No. 51-09(b) qualifies as bona fide taxicab service even if it does not meet the definition of Regulation No. 51-09(a).⁴

We take official notice that Uber Technologies, Inc., or its affiliate, Rasier, LLC, is duly authorized as a transportation network company in Maryland and Virginia, and duly authorized to provide digital dispatch service for private-vehicle-for-hire service in the District of Columbia. We find that the UberX and Uber Comfort service furnished by respondent in October and November 2019 was performed in affiliation with Uber and that the vehicle in respondent's possession at the time had a seating capacity of nine persons or less, including the driver. Therefore, these trips were bona fide taxicab service exempt from the certification requirements under the Compact.⁵

IV. FINDINGS

Inasmuch as the record shows the only trips provided by respondent while Certificate No. 1975 was suspended were bona fide taxicab service, which is exempt from the Commission's licensing requirements, we find that respondent has shown good cause why Certificate No. 1975 should not be suspended or revoked for willfully conducting operations under an invalid/suspended certificate of authority.

But respondent offers no explanation for failing to verify whether it ceased operations from October 8, 2019, to November 12, 2019, and failing to produce its business records on or before the December 12, 2019, deadline established in Order No. 18,489. We find that respondent's failure to timely respond to Order No. 18,489 warrants assessment of a civil forfeiture in the amount of \$250.⁶

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. 18,489.

⁴ *In re Rulemaking to Amend Reg. Nos. 51-09 & 58-02(b)*, No. MP-15-198, Order No. 16,416 at 4 (June 9, 2016).

⁵ We note a distinction between these services and Uber Black and Uber Black SUV service, which is performed by commercially-insured companies meeting local livery regulations. See *In re Espoir LLC, t/a Espoir*, No. MP-19-015, Order No. 19,596 (Nov. 2, 2021) (assessing forfeiture for performing Uber "Black" and "Black SUV" service while WMATC certificate was suspended); *In re A & W Servs., LLC*, No. MP-16-120, Order No. 17,101 (July 17, 2017) (assessing forfeiture for performing Uber "Black Car," "SUV," and "uberXL" service while WMATC certificate was suspended.)

⁶ See *In re Buma Med. Transp. LLC*, No. MP-18-014, Order No. 18,434 (Oct. 16, 2019) (assessing \$250 civil forfeiture for failing to produce documents in timely fashion).

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).

BY DIRECTION OF THE COMMISSION; COMMISSIONERS RICHARD AND LOTT:



Jeffrey M. Lehmann
Executive Director