

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 20,187

IN THE MATTER OF:

Served May 8, 2023

BOSS TRANSPORT & TRUCKING, LLC,)
Trading as BOSS TRANSPORT & FAMILY) Case No. MP-2022-043
SERVICES LLC, Suspension and)
Investigation of Revocation of)
Certificate No. 3350)

This matter is before the Commission on respondent's response to Order No. 20,001, served December 6, 2022, directing respondent to show cause why the Commission should not assess a civil forfeiture against respondent, and/or suspend or revoke Certificate No. 3350.

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. 3350 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. 3350 was rendered invalid on September 11, 2022, when respondent's \$500,000, excess of \$1 million, WMATC Insurance Endorsement expired without replacement. Order No. 19,889, served September 12, 2022, noted the automatic suspension of Certificate No. 3350 pursuant to Regulation No. 58-12, directed respondent to cease transporting passengers for hire under Certificate No. 3350, 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. 3350.

On September 16, 2022, respondent filed a replacement \$500,000 excess endorsement effective September 11, 2022, and expiring September 24, 2022, but respondent failed to pay the insurance late fee and Certificate No. 3350 remained suspended. On September 24, 2022, the

¹ Compact, tit. II, art. XI, § 6(a).

² Compact, tit. II, art. XI, § 7(g).

\$500,000 excess WMATC Insurance Endorsement terminated once again, and Certificate No. 3350 was subsequently revoked on October 13, 2022, in Order No. 19,934.

On October 26, 2022, respondent submitted the necessary excess WMATC Insurance Endorsement, and on November 2, 2022, respondent paid the late fee and filed a timely application for reconsideration of Order No. 19,934, and Certificate No. 3350 was reinstated in Order No. 19,964, served November 4, 2022, in accordance with Regulation No. 58-15(b).

However, because the effective date of respondent's October 26 replacement \$500,000 excess WMATC Insurance Endorsement is October 11, 2022, instead of September 24, 2022, the date on which coverage terminated under the previous excess WMATC Insurance Endorsement, leaving a 17-day gap in required insurance coverage, the reinstatement order gave respondent 30 days to verify cessation of operations from September 11, 2022, to November 4, 2022, in accordance with Regulation No. 58-14(a). The statement was to be corroborated by copies of respondent's pertinent business records from June 1, 2022, to November 4, 2022, and written statements from Access2Care, LLC, and Modivcare Inc., two of respondent's principal clients of record. Respondent did not respond.

Regulation No. 58-14(b) states that upon the failure of a carrier to comply timely with the requirements of Regulation No. 58-14(a), "the Executive Director shall issue an order directing the carrier to show cause why a civil forfeiture should not be assessed against the carrier and/or why the carrier's operating authority should not be suspended or revoked."

In accordance with Regulation No. 58-14(b), Order No. 20,001 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. 3350, 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. 20,001 AND FINDINGS

On January 3, 2023, respondent produced a two-page statement from its general manager, George Odoi, an e-mail from Access2Care, LLC, and trip logs from Modivcare Inc. for the period beginning September 12, 2022, and ending November 4, 2022. In the statement, respondent's general manager admits respondent performed unauthorized operations subject to WMATC jurisdiction. According to the trip logs, respondent transported passengers between points within the Metropolitan District

on 28 days while Certificate No. 3350 was suspended/revoked,³ including 8 days⁴ during the lapse in excess coverage.

III. ASSESSMENT OF FORFEITURE AND PROBATION

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.⁵ Each day of the violation constitutes a separate violation.⁶

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.⁷

The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.⁸ 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.⁹

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.¹⁰ 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.¹¹ The Commission assesses \$500 per day when a carrier operates unlawfully without the requisite WMATC Endorsement(s) on file.¹²

Accordingly, we shall assess a forfeiture against respondent in the amount of \$250 per day for 20 days of operations while suspended/revoked but properly insured (or \$5,000) and \$500 per day for

³ The dates are September 12, 13, 15, 17, 19, 20, 22, 23, 24, 26, 27, 29, October 1, 4, 6, 8, 11, 13, 14, 15, 18, 20, 22, 25, 27, 29, and November 1, 3, 2022.

⁴ The dates are September 24, 26, 27, 29, and October 1, 4, 6, and 8, 2022.

⁵ Compact, tit. II, art. XIII, § 6(f).

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

⁷ Compact, tit. II, art. XI, § 10(c).

⁸ *In re Med-Trans-Inc.*, No. MP-20-113, Order No. 19,429 (July 12, 2021).

⁹ *Id.*

¹⁰ *In re Premier Care Servs., LLC, t/a Care Fare*, No. MP-19-094, Order No. 19,635 at 4 (Dec. 8, 2021).

¹¹ *Id.* at 4.

¹² *Id.* at 4.

8 days of operations while suspended and not properly insured (or \$4,000). Furthermore, because respondent offers no explanation for failing to produce a statement and business records on or before the December 5, 2022, deadline established in Order No. 19,964, we find that respondent's failure to respond to Order No. 19,964 in a timely manner was knowing and willful and warrants assessment of a civil forfeiture in the amount of \$250,¹³ yielding a total forfeiture of \$9,250.

In most cases, operating while suspended and underinsured draws a civil forfeiture and revocation of operating authority.¹⁴ The Commission has, however, previously declined to revoke a certificate of authority when carriers operated unlawfully but maintained \$1 million primary insurance coverage under a WMATC Endorsement throughout the suspension period.¹⁵ In those cases, the Commission assessed a civil forfeiture and placed the carrier on probation but did not revoke the carrier's authority. Because respondent maintained a \$1 million primary WMATC Insurance Endorsement on file throughout the suspension/revocation period, we shall follow that same course of action here and place respondent on probation for one year.

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 \$9,250 for knowingly and willfully violating Article XI, Section 6(a), of the Compact, Regulation No. 58-12, and Order Nos. 19,889 and 19,964.

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 nine thousand two hundred fifty dollars (\$9,250).

¹³ See *In re Mariet & B Transp., LLC*, No. MP-20-065, Order No. 19,787 (June 7, 2022) (assessing \$250 for failing to produce documents in timely fashion); *In re Buma Med. Transp. LLC*, No. MP-18-014, Order No. 18,434 (Oct. 16, 2019) (same); *In re Vanmar, Inc.*, No. MP-17-100, Order No. 17,337 (Dec. 5, 2017) (same).

¹⁴ See e.g., *In re Exquisite Limo. Serv. LLC*, No. MP-15-152, Order No. 16,153 (Jan. 22, 2016) (operating authority revoked where carrier continued operating after primary WMATC Endorsement terminated without replacement).

¹⁵ See *In re Ceepco Contracting, LLC*, No. MP-17-136, Order No. 17,616 (May 17, 2018) (declining to revoke certificate of authority of carrier that operated while suspended and underinsured but maintained \$1 million primary insurance coverage throughout the suspension period); *In re Junior's Enters., Inc.*, No. MP-03-165, Order No. 7878 (Mar. 19, 2004) (same); but see *In re VGA Inc.*, No. MP-09-108, Order No. 12,439 (June 11, 2010) (revoking restricted authority in part for operating vehicles seating more than 15 persons with only \$1.5 million Endorsement on file), *aff'd*, Order No. 12,664 (Dec. 17, 2010).

3. That respondent is hereby placed on probation for a period of one year, such that a willful violation of the Compact, or of the Commission's rules, regulations, or orders thereunder, by respondent during the period of probation shall constitute grounds for immediate suspension and/or revocation of respondent's operating authority regardless of the nature and severity of the violation.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS RICHARD AND LOTT:



Jeffrey M. Lehmann
Executive Director