

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 7012

IN THE MATTER OF:

Served January 24, 2003

PARAMED MEDICAL TRANSPORTATION,)
INC., WMATC No. 206, Investigation)
of Violation of Regulation No. 61)

Case No. MP-2002-50

This matter is before the Commission to determine whether the Commission should assess a civil forfeiture against respondent, and/or revoke Certificate of Authority No. 206, for respondent's knowing and willful violation of Commission Regulation No. 61 and Commission Order No. 6721.

I. BACKGROUND

This investigation was initiated on June 27, 2002, in Order No. 6721 for the purpose of determining whether respondent was in violation of Regulation No. 61. Regulation No. 61 requires each WMATC carrier to display on both sides of each revenue vehicle the vehicle owner's name and the carrier's name and WMATC number. The markings must be legible from a distance of fifty feet. The order explained that a Commission staff member had observed respondent operating a van without proper markings, that staff directed respondent to present its revenue vehicles for inspection and that respondent did not comply.

Order No. 6721 directed respondent to produce all revenue vehicles for inspection by Commission staff within thirty days and ordered respondent not to operate any vehicle that failed inspection unless and until such vehicle passed re-inspection by staff. The order further provided that Certificate No. 206 would stand suspended and be subject to revocation without further notice upon respondent's failure to timely comply with the order's requirements.

Respondent furnished a list of eleven vehicles on July 17, 2002, but only presented five vehicles for inspection within the thirty-day period. Another five were presented thereafter. None were in compliance with Commission Regulation No. 61, as described below. Moreover, a list of vehicles obtained from respondent's insurance company showed respondent actually in possession of twenty-three revenue vehicles.

The Commission responded by issuing Order No. 6799 on September 3, 2002. The order declared that because respondent had failed to timely comply with Order No. 6721, Certificate No. 206 stood suspended and because of that failure and the failure of respondent's vehicles to pass inspection, respondent would have thirty days to show

cause why Certificate No. 206 should not be revoked and why the Commission should not assess a civil forfeiture.

II. RESPONSE TO ORDER NO. 6799

The response to Order No. 6799 consists of respondent's explanation of its failure to produce all vehicles for inspection, the presentation of fourteen vehicles for inspection, and a request for waiver of Regulation No. 61 with respect to a portion of respondent's fleet. Respondent also produced a lease covering vehicles leased from LogistiCare Solutions, LLC, and a tariff for transportation under contract with LogistiCare.

A. Explanation of Failure to Produce All Vehicles

Respondent explains that eleven of the twenty-three vehicles listed on respondent's insurance policy are not respondent's vehicles. According to respondent, they are owned by "LogistiCare and Washington Metropolitan Area Transit Authority [WMATA] and operated by PARA-MED under a contract to perform MetroAccess service."

The MetroAccess program is WMATA's means of complying with the Americans with Disabilities Act of 1990,¹ which in pertinent part prohibits discrimination against the disabled by public transportation providers. LogistiCare Solutions, LLC, WMATC Carrier No. 524, has a contract with WMATA to operate a reservation system for the benefit of disabled individuals participating in the MetroAccess program and to ensure that program participants receive timely and adequate transportation service.

LogistiCare subcontracts much of the transportation service to other WMATC carriers, including respondent. One feature of the subcontracts is that LogistiCare furnishes the vehicles. The subcontractors assume responsibility for operating and insuring the vehicles and thus require WMATC authority.

Respondent claims it was not aware its MetroAccess vehicles were covered by Order No. 6721. Respondent also claims that the failure to present all of its non-MetroAccess vehicles was the result of "clerical or administrative error."

B. Vehicle Inspections and Request for Waiver

The latest round of inspections included two of respondent's eleven MetroAccess vehicles and all of respondent's twelve non-MetroAccess vehicles. Seven of respondent's non-MetroAccess vehicles passed inspection.² The other five,³ and the two MetroAccess vehicles,

¹ 42 U.S.C. § 12101, et. seq. (1999).

² Vehicle nos. 4, 7, 8, 9, 10, 12, & 14.

³ Vehicle nos. 2, 6, 11, 15, & 16. Each of these vehicles now complies with Regulation No. 61, but each failed for one of the following reasons: not complying with Regulation No. 62 (no lease on

did not. Respondent requests a waiver of Regulation No. 61 as it pertains to the MetroAccess vehicles.

III. RULING ON REQUEST FOR WAIVER OF REGULATION NO. 61

As noted above, Regulation No. 61 requires each WMATC carrier to display on both sides of each revenue vehicle the vehicle owner's name and the carrier's name and WMATC number. The markings must be legible from a distance of fifty feet. Commission precedent holds that two-inch lettering does not meet that standard.⁴

The two MetroAccess vehicles inspected by staff were found not to fully comply with Regulation No. 61. Staff's inspection revealed that these vehicles displayed respondent's WMATC number, a shortened version of respondent's name ("PARAMED"), and a shortened version of the vehicle owner's name ("LOGISTICARE"). The names were displayed at a height of approximately one inch. "WMATC 206" was displayed at or near a height of two inches. Respondent concedes that the markings on its other MetroAccess vehicles are substantially the same.

In ruling on the waiver request, we must consider the purposes behind Regulation No. 61. The markings required by Regulation No. 61 help assign responsibility, and facilitate recovery of compensation, for damage and injuries caused by carriers operating under WMATC authority. Such markings facilitate the processing of customer complaints, as well. The Federal Motor Carrier Safety Administration (FMCSA) has this to say on the importance of vehicle markings.

The FMCSA believes it is important that [vehicles] be properly marked before they are placed into service on the highway. Such markings will assist State officials conducting roadside inspections and accident investigations in attributing important safety data to the correct motor carrier. It will also ensure the public has an effective means to identify motor carriers operating in an unsafe manner.

65 Fed. Reg. 35287, 35288 (June 2, 2000).

These purposes must be balanced against other considerations. One consideration is commercial viability. The Commission routinely waives the application of Regulation No. 61 to limousines and sedans because such markings likely would adversely affect the ability of WMATC limousine and sedan operators to compete with their non-WMATC rivals. Non-WMATC limousine and sedan operators generally are not subjected to such vehicle marking requirements by the other limousine

file), lacking proof of current safety inspection, displaying private license plates instead of for-hire license plates.

⁴ In re Great American Tours, Inc., & The Airport Connection, Inc. II, & Airport Baggage Carriers, Inc., No. MP-96-54, Order No. 5007 (Jan. 23, 1997).

and sedan licensing agencies in the local area.⁵ While not a consideration in the instant case, this example illustrates the Commission's approach to this issue.

Another consideration, and one which applies in this case, is whether the markings might generate customer confusion. Respondent's MetroAccess vehicles display the MetroAccess name, logo, color scheme and fleet number. MetroAccess customers expect to see these markings. They do not necessarily expect to see other markings. Other markings on a MetroAccess vehicle, especially the prominent markings of an unfamiliar carrier, understandably might tend to make some MetroAccess customers apprehensive.

Under the circumstances, we do not believe it would be inappropriate to grant a partial waiver of Regulation No. 61 as it pertains to vehicles operated under the MetroAccess program, as follows. The vehicle owner's name may be displayed at its current height. Respondent's WMATC number and name, either respondent's legal name or a registered trade name approved by the Commission,⁶ shall be displayed at a height of not less than two and one-half inches.

IV. SHOW CAUSE FINDINGS

We find that respondent should be assessed civil forfeitures for knowingly and willfully violating Commission Regulation No. 61 with respect to respondent's non-MetroAccess vehicles and Commission Order No. 6721. We further find that revocation of Certificate No. 206 is not warranted at this time.

A. Assessment of Civil 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.⁷

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

⁵ Regulation No. 61 does not apply to sedans and limousines meeting the criteria specified in Regulation No. 51-09. Such vehicles may operate in the Metropolitan District under local licenses instead of WMATC's regional certificate of authority.

⁶ Respondent may use a shortened version of its name for display on vehicles it operates, provided it files an application to add the shortened version to its certificate of authority as a trade name, as supported by proof of registration of the trade name with the Maryland State Department of Assessments and Taxation.

⁷ Compact, tit. II, art. XIII, § 6(f)(i).

⁸ In re Washington Exec. Sedan, Inc., & Global Express Limo. Serv., Inc., No. MP-02-03, Order No. 6772 (Aug. 13, 2002).

"willfully" does not mean with evil purpose or criminal intent; rather, it describes conduct marked by careless disregard whether or not one has the right so to act.⁹

We will assess a forfeiture of \$250 against respondent for knowingly and willfully violating Regulation No. 61 as it pertains to respondent's non-MetroAccess vehicles.¹⁰ Respondent offers no explanation of why its non-MetroAccess vehicles displayed an incomplete carrier name when first inspected by staff.

We will assess a forfeiture of \$250 against respondent for knowingly and willfully violating Order No. 6721.¹¹ Respondent's claim that the failure to present all vehicles was the result of clerical or administrative error does not help respondent. Employee negligence is no defense.¹² "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 Act.¹³

B. Stay of Revocation

We shall refrain from revoking Certificate No. 206 at this time for the following reasons. First, with respect to respondent's non-MetroAccess vehicles, a majority have passed inspection, and we have assessed civil forfeitures for respondent's violations of Order No. 6721 and Regulation No. 61. Second, with respect to respondent's MetroAccess vehicles, we have granted a partial waiver of Regulation No. 61.

V. CONCLUSION

We shall lift the suspension of Certificate No. 206 and allow respondent to commence operations in respondent's MetroAccess vehicles and those non-MetroAccess vehicles that have passed inspection. Respondent may operate the non-MetroAccess vehicles that have not passed inspection once they are brought into compliance with Commission requirements, as verified in writing by Commission staff. Respondent shall have sixty days to bring its MetroAccess vehicles into compliance with this order and present them for inspection by Commission staff. Respondent shall have thirty days to pay a combined

⁹ Id.

¹⁰ Cf., id. (assessing \$250 for violation of advertising regulation); In re OAO Corp., t/a BMG Limo. Serv., Lockheed Martin Corp., & BMG Limo. and Jet Serv., LLC, No. MP-02-17, Order No. 6760 (Aug. 5, 2002) (same).

¹¹ See In re Junior's Enterprises, Inc., No. MP-01-103, Order No. 6549 (Feb. 21, 2002) (assessing \$250 for disobeying Commission order).

¹² Order No. 6772.

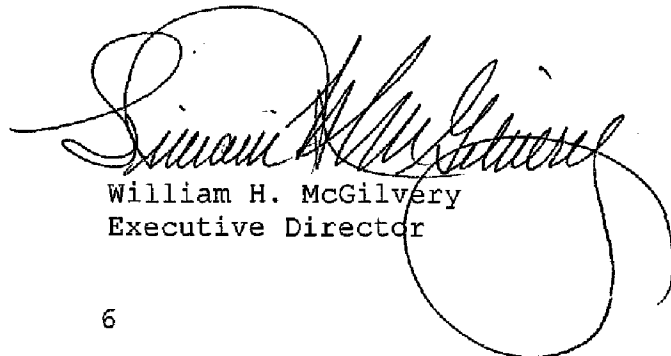
¹³ United States v. Illinois Cent. R.R., 303 U.S. 239, 243, 58 S. Ct. 533, 535 (1938).

forfeiture of \$500 for knowingly and willfully violating Regulation No. 61 and Order No. 6721.

THEREFORE, IT IS ORDERED:

1. That the suspension of Certificate No. 206 is lifted.
2. That the markings on MetroAccess vehicles operated by respondent shall comply with Regulation No. 61; provided, that the vehicle owner's name shall be displayed at a height of not less than one inch and that respondent's WMATC number and name, either respondent's legal name or a registered trade name approved by the Commission, shall be displayed at a height of not less than two and one-half inches.
3. That within sixty days respondent shall bring its MetroAccess vehicles into compliance with this order and present those vehicles for inspection by Commission staff.
4. That respondent may recommence operations in its MetroAccess vehicles and in the following non-MetroAccess vehicles: vehicle nos. 4, 7, 8, 9, 10, 12, and 14.
5. That respondent may not recommence operations in its non-MetroAccess vehicles numbered 2, 6, 11, 15, and 16, unless and until they pass staff inspection, as verified in writing by Commission staff.
6. That the Commission hereby assesses a civil forfeiture against respondent in the amount of \$500 for knowingly and willfully violating Commission Regulation No. 61 and Order No. 6721.
7. That respondent is hereby directed to pay to the Commission within thirty days of the date of this order, by money order, certified check, or cashier's check, the sum of five hundred dollars (\$500).
8. That Certificate of Authority No. 206 shall stand suspended, and be subject to revocation without further notice, upon respondent's failure to timely comply with the requirements of this order.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS YATES, MILLER AND MCDONALD:



William H. McGilvery
Executive Director