

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 7332

IN THE MATTER OF:

Served July 24, 2003

ADVANCE CARE SERVICES, INC., )  
WMATC Carrier No. 549, )  
Investigation of Unauthorized )  
Operations and Order to Show Cause)

Case No. MP-2003-46

This investigation was initiated to determine whether respondent operated in the Metropolitan District while Certificate No. 549 was invalid, and if so, whether a civil forfeiture should be assessed, and whether Certificate of Authority No. 549 should be suspended or revoked, as a result.

**I. BACKGROUND**

Article XI, Section 6(a), of the Compact states that a person may not 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. Article XI, Section 7(g), of the Compact states that a certificate of authority is not valid unless the holder is in compliance with the insurance requirements of the Commission.

Commission Regulation No. 58 requires respondent to insure the revenue vehicles operated under Certificate No. 549 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. 549 was rendered invalid on February 4, 2003, when the \$1.5 million primary WMATC Insurance Endorsement on file for respondent expired without replacement. Order No. 7023, served February 6, 2003, directed respondent not to transport passengers for hire under Certificate No. 549, unless and until otherwise ordered by the Commission. Respondent did not replace the expired WMATC Insurance Endorsement until March 13, 2003,<sup>1</sup> and Certificate No. 549 was not reinstated until the next day pursuant to Order No. 7090. Consequently, it would have been unlawful for respondent to operate in the Metropolitan District from February 4, 2003, to March 14, 2003.

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<sup>1</sup> Coverage under the replacement endorsement is effective February 26, 2003.

## II. INVESTIGATION

On April 17, 2003, the Commission received from the District of Columbia Department of Health, Medical Assistance Administration, evidence of claims submitted by respondent for transportation performed in the Metropolitan District during the period Certificate No. 549 was invalid. The specific dates are February 4-8, 10-15, 17-22, and 24-28 of this year.

This investigation followed with the issuance of Order No. 7200, served May 21, 2003. The order gave respondent thirty days to show cause why the Commission should not assess a civil forfeiture against respondent, and/or suspend or revoke Certificate No. 549, for conducting operations under an invalid certificate of authority in violation of Article XI, Section 6(a), of the Compact and Order No. 7023. Respondent was given fifteen days to request a hearing. The record indicates respondent received a copy of Order No. 7200, but the Commission has yet to receive any response.

Thus, as the record stands now, respondent has failed to controvert the evidence of claims submitted to the Medical Assistance Administration for transportation performed by respondent in the Metropolitan District while Certificate No. 549 was invalid. The only question is whether that transportation was conducted in knowing and willful violation of the Compact.

### A. Sanctions for Knowing and Willful Violations

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.<sup>2</sup>

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.<sup>3</sup>

The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.<sup>4</sup> The terms "willful" and "willfully" do not mean with evil purpose or criminal intent; rather, they describe conduct marked by careless disregard whether or not one has the right so to act.<sup>5</sup>

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<sup>2</sup> Compact, tit. II, art. XIII, § 6(f).

<sup>3</sup> Compact, tit. II, art. XI, § 10(c).

<sup>4</sup> In re ACEP Group Inc., No. MP-02-128, Order No. 7069 (Mar. 4, 2003).

<sup>5</sup> Id.

## B. Findings and Conclusions

Certificate of Authority No. 549 carries a bold disclaimer on its face, as all WMATC certificates of authority do, warning that the certificate is not valid unless the holder is in compliance with the Commission's insurance requirements. The record shows that respondent's preexisting vehicle liability insurance policy expired February 4, 2003, and that coverage under the new policy did not commence until February 26, 2003. Respondent could not have reasonably believed it was in compliance with the Commission's \$1.5 million insurance requirement during the twenty-two days it had no insurance at all. Furthermore, once the required coverage had been obtained, respondent was careless in disregarding the need to check with the Commission as to whether the requisite Endorsement had been filed on respondent's behalf as evidence of that coverage before continuing to operate in the Metropolitan District.<sup>6</sup>

We find that respondent knowingly and willfully violated Article XI, Section 6(a), of the Compact, by transporting passengers for hire between points in the Metropolitan District on February 4-8, 10-15, 17-22, and 24-28 of 2003, while Certificate No. 549 was invalid. We shall assess a forfeiture of \$250 per day for twenty-two days of unauthorized operations,<sup>7</sup> or \$5,500.

On the issue of suspension or revocation, we note that when the signatories and Congress approved the Compact, they designated noncompliance with Commission insurance requirements as the single offense that would automatically invalidate a certificate of authority. They could not have sent a clearer message that maintaining proper insurance coverage is of paramount importance under the Compact. Respondent put its passengers and the public at risk of not receiving just compensation for any injuries or property damage respondent might inflict during the period from February 4, 2003, to February 26, 2003. That is completely unacceptable and more than justifies revoking respondent's certificate of authority.<sup>8</sup>

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<sup>6</sup> In re Capital Tours & Transp., Inc., t/a Suburban Airport Shuttle, No. MP-95-88, Order No. 4765 (Feb. 13, 1996).

<sup>7</sup> See Order No. 7069 (assessing civil forfeiture at \$250 per day for operating under invalid certificate of authority).

<sup>8</sup> Id. See In re Baron Transportation, Inc., No. MP-02-42, Order No. 7067 (Mar. 4, 2003) (declining to reinstate authority where respondent was uninsured while operating under invalid certificate); In re Safe Haven. Inc., No. MP-02-14, Order No. 6762 (Aug. 7, 2002) (declining to reinstate authority where respondent was underinsured while operating under invalid certificate); see also In re VGA Enters. Inc., No. AP-02-34, Order No. 6736 (July 22, 2002) (application denied where applicant continued to operate while suspended and uninsured).

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 \$5,500 for knowingly and willfully violating Article XI, Section 6(a), of the Compact, by transporting passengers for hire between points in the Metropolitan District on February 4-8, 10-15, 17-22, and 24-28 of 2003, while Certificate No. 549 was invalid.

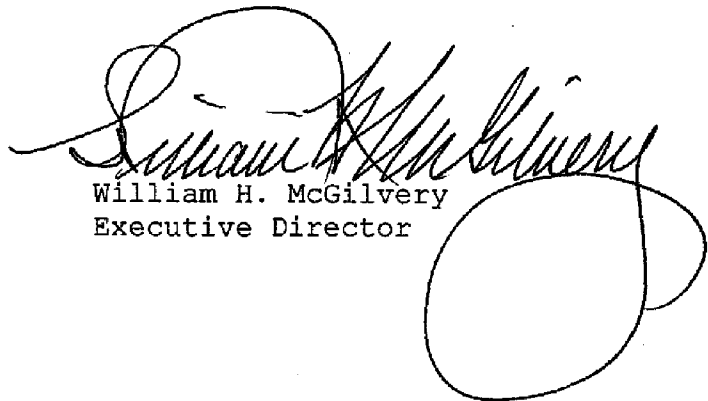
2. That respondent is hereby directed to pay to the Commission within thirty days of the date of this order, by money order, certified check, or cashier's check, the sum of five thousand five hundred dollars (\$5,500).

3. That pursuant to Article XI, Section 10(c), of the Compact, Certificate of Authority No. 549 is hereby revoked for respondent's willful failure to comply with Article XI, Section 6(a), of the Compact while uninsured.

4. That within 30 days from the date of this order respondent shall:

- a. remove from respondent's vehicle(s) the identification placed thereon pursuant to Commission Regulation No. 61;
- b. file a notarized affidavit with the Commission verifying compliance with the preceding requirement; and
- c. surrender Certificate No. 549 to the Commission.

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



William H. McGilvery  
Executive Director