

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 7457

IN THE MATTER OF:

Served October 7, 2003

CENTRAL AFRICAN WOMEN EMPOWERMENT )  
ORGANIZATION CORP., Trading as )  
CAWEO TRANSPORTATION SERVICES, )  
WMATC No. 558, Investigation of )  
Tariff and Lease Violations )

Case No. MP-2003-65

This investigation was initiated to determine whether respondent violated the Compact and Commission regulations by providing contract passenger service in the Metropolitan District using non-owned vehicles without having filed any contract tariffs and without having filed any leases. The investigation has revealed more serious violations.

**I. BACKGROUND**

Commission Regulation No. 58 requires respondent to insure the revenue vehicles operated under Certificate No. 558 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.

On June 6, 2002, the Commission received a \$4 million excess WMATC Insurance Endorsement in respondent's name to accompany the \$1 million primary already on file. When questioned as to why respondent had obtained \$5 million in liability coverage when the minimum required under Regulation No. 58 is only \$1.5 million, respondent's vice president, Emma Osong, replied that respondent was under a contractual commitment to one of its clients, LogistiCare,<sup>1</sup> to maintain the higher level of insurance. Commission staff advised respondent to file the LogistiCare contract as a tariff.<sup>2</sup> Respondent did not reply.

On July 24, 2002, Commission staff wrote to respondent advising respondent that the DC Medical Assistance Administration had informed the Commission that respondent was transporting passengers under a contract with the Mental Retardation and Developmental Disabilities Administration. Commission staff advised respondent to promptly file a contract tariff. Respondent did not reply.

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<sup>1</sup> LogistiCare Solutions, LLC, WMATC Carrier No. 524, has a contract with the Washington Metropolitan Area Transit Authority to operate a transportation service for disabled passengers under the name "MetroAccess." LogistiCare primarily operates a reservation system and subcontracts the bulk of the transportation function to other carriers.

<sup>2</sup> Article XI, Section 14, of the Compact and Commission Regulation No. 55, require each WMATC carrier to charge only those rates and fares specified in a tariff filed by the carrier under the Compact and in effect at the time.

On August 7, 2002, Commission staff wrote to respondent advising respondent that the Commission had been informed that respondent was transporting passengers under a contract with AMERIGROUP. Commission staff advised respondent to promptly file a contract tariff. Respondent did not reply.

On December 16, 2002, the Commission received a list of carriers operating under contracts with LogistiCare. Respondent's name was on the list. Commission staff advised respondent to file a contract tariff, and any applicable leases,<sup>3</sup> no later than January 10, 2003. Respondent's president, Gerald Nkwako, filed a LogistiCare contract tariff on January 13, 2003. The tariff was rejected as incomplete on January 16, 2003. Over five months went by with no further filing. This investigation ensued.

Order No. 7278, served June 30, 2003, directed respondent to immediately bring its operations into compliance with the Compact and Commission regulations and produce within thirty days any and all records and documents in its possession, custody or control relating to transportation of passengers for hire between points in the Metropolitan District during the period beginning June 1, 2002, and ending on June 30, 2003.<sup>4</sup> The order also gave respondent thirty days to present its vehicles for inspection.<sup>5</sup>

## II. THE RECORD

### A. Documents Produced by Respondent's President

On July 23, 2003, Mr. Nkwako filed what purports to be a contract tariff between "T/A CAWEO TRANSPORTATION SERVICES" and "LOGISTICARE, INC." The underlying contract, however, states that it is between "CAWEO MC" and "LogistiCare Solutions, LLC."

On August 1, 2003, Mr. Nkwako filed what purports to be a vehicle lease between "CAWEO TRANSPORTATION" and "LOGISTICARE, INC."

Also on August 1, 2003, Mr. Nkwako filed what purports to be a contract tariff between "CAWEO TRANSPORTATION SERVICES" and "DEPARTMENT OF HUMAN SERVICES (MRDDA)." The underlying contract is actually between "CAWEO Transportation Services, Inc.", located at 3115 Georgia Avenue, N.W., #4, Washington, DC 20010, and "Department of Human Services, Mental Retardation and Developmental Disabilities Administration."

On August 29, 2003, after timely requesting an extension of the response deadline to August 31, 2003, Mr. Nkwako produced manifests

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<sup>3</sup> In most cases, LogistiCare furnishes the vehicles. Regulation No. 62-02 requires each WMATC carrier to file a lease with the Commission for each non-owned vehicle.

<sup>4</sup> See Compact, tit. II, art. XIII, § 1(c), (e) (Commission may investigate whether a person has violated the Compact and for the purpose of an investigation may "require the production of books, papers, correspondence, memoranda, contracts, agreements, or other records or evidence which the Commission considers relevant to the inquiry"); art. XII, § 1(b) (Commission shall have access at all times to accounts, records, and memoranda of any carrier for inspection purposes).

<sup>5</sup> See Compact, tit. II, art. XII, § 1(b) (Commission shall have access at all times to equipment of any carrier for inspection purposes).

for June 2002 showing trips under the MRDDA contract,<sup>6</sup> manifests for November 2002 showing trips under the LogistiCare contract, and manifests for February and June 2003 showing trips under both.<sup>7</sup>

### **B. Other Documents**

On August 4, 2003, the Commission obtained an unofficial record from the District of Columbia Department of Consumer and Regulatory Affairs (DCRA) showing that on October 17, 2000, approximately six months after incorporating respondent in Maryland, Mr. Nkwako formed a corporation in DC by the name of "CAWEO Transportation Services, Inc."<sup>8</sup> The registered office is 3115 Georgia Ave., N.W., #4, Washington, DC 20010.

On September 12, 2003, the Commission obtained records from the Taxpayer Services Division of the Maryland State Department of Assessments and Taxation, showing that respondent forfeited its Maryland charter on October 7, 2002, for failure to file a property return for 2001.

In addition, on March 14, 2003, the Commission received a WMATC Insurance Endorsement in the name of "CAWEO Transportation Svcs Inc" of 3115 Georgia Ave., NW, #4, Washington DC 20010.<sup>9</sup> On August 6, 2003, the Commission received a copy of a primary replacement insurance endorsement in the name of "CAWEO Corp. T/A Caweo Transportation Services, Inc.," of 3115 Georgia Ave., NW, #4, Washington DC 20010. On August 7, 2003, the Commission received an excess replacement insurance endorsement in the name of "CAWEO Corp. T/A Caweo Transportation Services, Inc.," of 3115 Georgia Ave., NW, #4, Washington DC 20010.

## **III. FINDINGS**

### **A. Uncertificated Operations**

It appears from the record that respondent performed few, if any, of the trips reflected in the manifests produced by Mr. Nkwako. First, respondent's name appears on neither contract submitted by Mr. Nkwako for filing as a tariff under Certificate No. 558. Second, the name and address on the MRDDA contract match those of Mr. Nkwako's DC corporation. Third, the DC corporation appears to have an insurable interest in for-hire passenger vehicles. Fourth, under Maryland law,

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<sup>6</sup> These manifests also showed some minor activity in accordance with respondent's tariff under the DC Medicaid program, which is administered by District of Columbia Department of Health, Medical Assistance Administration.

<sup>7</sup> The Commission's general counsel met with respondent on July 23, 2003, and suggested that production be limited to these four months initially as supplemented by a statement that the other months in the investigation period would show substantially the same activity. Mr. Nkwako also presented fifteen vehicles for inspection over the course of several days in August 2003. Several of these vehicles were presented for re-inspection in September 2003.

<sup>8</sup> The DCRA record shows this corporation to be active as of the date the record was obtained.

<sup>9</sup> A replacement endorsement was subsequently filed for the same policy in respondent's name with respondent's Clarksville, MD, address, but the policy was cancelled when the insurance company discovered that respondent was not headquartered in DC.

respondent ceased to exist upon forfeiture of its charter on October 7, 2002, and all of its assets were transferred by operation of law to its directors.<sup>10</sup>

#### **B. Uninsured Operations**

Even if respondent could somehow establish that it performed the transportation shown in the manifests, there is the matter of uninsured operations while Certificate No. 558 was suspended.

The \$1 million primary and \$4 million excess WMATC Insurance Endorsements on file for respondent terminated on February 4, 2003. Order No. 7021, served February 5, 2003, noted the automatic suspension of Certificate No. 558 under Regulation No. 58-02 and directed respondent not to transport passengers for hire under Certificate No. 558 unless and until otherwise ordered by the Commission.<sup>11</sup> The suspension was lifted March 19, 2003, after the Commission received an acceptable \$1.5 million primary WMATC Insurance Endorsement in respondent's name.<sup>12</sup> The period of coverage under the new endorsement was February 26, 2003, to February 26, 2004. This created a gap of twenty-two days -- from February 4 through February 26 -- when no insurance coverage was available for operations under Certificate No. 558.

The MRDDA/Medicaid manifests produced by respondent's president show evidence of operations on twenty dates in February 2003 while Certificate No. 558 was suspended.<sup>13</sup> The LogistiCare manifests produced by respondent's president show evidence of operations on twenty-three dates in February 2003 while Certificate No. 558 was suspended.<sup>14</sup> Moreover, these manifests show evidence of operations on twenty of the twenty-two days when no insurance coverage was available under Certificate No. 558. Therefore, even if it could be said that respondent conducted these trips, respondent did so while suspended and uninsured.<sup>15</sup>

#### **IV. CONCLUSION**

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

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<sup>10</sup> Cloverfields Improvement Ass'n, Inc., v. Seabreeze Properties, Inc., 362 A.2d 675 (Md. Ct. Spec. App. 1976), aff'd, 373 A.2d 935 (Md. 1977). Of course, contracts "done in the name of the corporation while the charter was void" may be validated by reviving the charter, if otherwise within the charter's scope. MD. CORPS. & ASS'NS CODE ANN. § 3-512(1) (2003). Respondent's charter, however, has not been revived, and Mr. Nkwako did not execute either contract in respondent's name.

<sup>11</sup> In re Central African Women Empowerment Org. Corp., t/a CAWEO Transp. Servs., Inc., No. MP-03-10, Order No. 7021 (Feb. 5, 2003).

<sup>12</sup> In re Central African Women Empowerment Org. Corp., t/a CAWEO Transp. Servs., Inc., No. MP-03-10, Order No. 7097 (Mar. 19, 2003).

<sup>13</sup> February 4-8, 10-15, 19-22, and 24-28.

<sup>14</sup> February 4-15 and 18-28.

<sup>15</sup> Copies of "CAWEO" invoices received from DC Medicaid likewise show trips performed on February 12, 20 and 24, plus trips performed on March 3, 11 and 17.

transportation.<sup>16</sup> A person may not transfer a certificate of authority unless the Commission approves the transfer as consistent with the public interest.<sup>17</sup> A person other than the person to whom an operating authority is issued by the Commission may not lease, rent, or otherwise use that operating authority.<sup>18</sup> A certificate of authority is not valid unless the holder is in compliance with the insurance requirements of the Commission.<sup>19</sup>

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>20</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>21</sup>

CAWEO Transportation Services, Inc., and respondent's directors must immediately cease any and all operations requiring a certificate of authority.

CAWEO Transportation Services, Inc., and respondent's directors shall have thirty days to show cause why the Commission should not assess a forfeiture for knowingly and willfully violating the Compact, Article XI, Sections 6 and 11, by transporting passengers for hire between points in the Metropolitan District under the color of Certificate No. 558.

Respondent's directors shall have thirty days to show cause why Certificate No. 558 should not be revoked for willful failure to comply with the Compact, Article XI, Sections 6, 7 and 11, and Order No. 7021 by transferring Certificate No. 558 without Commission approval and conducting uninsured operations while Certificate No. 558 was suspended.

In the meantime, no operations may be conducted under Certificate No. 558 inasmuch as respondent has forfeited its charter and no longer exists.

THEREFORE, IT IS ORDERED:

1. That CAWEO Transportation Services, Inc., and respondent's directors shall immediately cease any and all operations requiring a certificate of authority.

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<sup>16</sup> Compact, tit. II, art. XI, § 6(a).

<sup>17</sup> Compact, tit. II, art. XI, § 11(a). This includes transfer by reason of forfeiture of corporate charter. In re Junior's Enterprises, Inc., No. MP-01-103, Order No. 6479 (Jan. 3, 2002) (citing In re Atlantic Valet, Inc., t/a Atlantic Transp., & Atlantic Servs. Group, Inc., No. AP-01-34, Order No. 6254 (June 15, 2001)).

<sup>18</sup> Compact, tit. II, art. XI, § 11(b).

<sup>19</sup> Compact, tit. II, art. XI, § 7(g).

<sup>20</sup> Compact, tit. II, art. XIII, § 6(f).

<sup>21</sup> Compact, tit. II, art. XI, § 10(c).

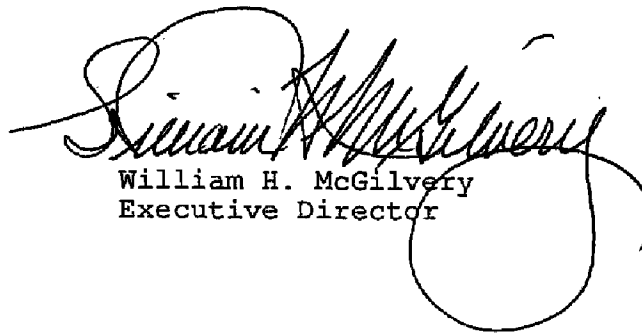
2. That CAWEO Transportation Services, Inc., and respondent's directors shall have thirty days to show cause why the Commission should not assess a forfeiture for knowingly and willfully violating the Compact, Article XI, Sections 6 and 11.

3. That respondent's directors shall have thirty days to show cause why Certificate No. 558 should not be revoked for willful failure to comply with the Compact, Article XI, Sections 6, 7 and 11, and Order No. 7021.

4. That no operations may be conducted under Certificate of Authority No. 558 unless and until otherwise ordered by the Commission.

5. That CAWEO Transportation Services, Inc., and respondent's directors may file within 15 days from the date of this order a 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 YATES, MILLER, AND MCDONALD:



William H. McGilvery  
Executive Director