

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 7621

IN THE MATTER OF:

Served December 18, 2003

AMNA O. ABUGUSSEISA, Trading as)
AB & B TRANS, Suspension and)
Investigation of Revocation of)
Certificate No. 697)

Case No. MP-2003-50

This matter is before the Commission on the response of respondent to Commission Order No. 7373, served August 27, 2003, which gave respondent thirty days to furnish proof of having ceased operations as of May 20, 2003.

I. BACKGROUND

Under the Compact, a certificate of authority is not valid unless the holder is in compliance with the Commission's insurance requirements.¹ Commission Regulation No. 58 requires respondent to insure the revenue vehicles operated under Certificate No. 697 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. 697 became invalid on May 20, 2003, when the \$1.5 million WMATC Insurance Endorsement filed by Liberty Mutual Insurance Company on respondent's behalf expired without replacement. A \$1.5 million replacement endorsement previously submitted by Progressive Casualty Insurance Company on April 24, 2003, with an effective date of April 4, 2003, had not been accepted for filing because the carrier name and address on the endorsement did not match the carrier name and address on file with the Commission.² Order No. 7205, served May 21, 2003, noted the automatic suspension of Certificate No. 697 pursuant to Regulation No. 58-02 and gave respondent thirty days to replace the expired Liberty Mutual endorsement or face revocation of Certificate No. 697. Respondent submitted a corrected Progressive Casualty endorsement on May 22, 2003.³ It too was rejected for filing because, although the name was

¹ Compact, tit. II, art. XIII, § 7(g).

² See In re Handi-Pro Transp., Inc., No. MP-03-32, Order No. 7133 (Apr. 15, 2003) (WMATC Endorsement unacceptable because address on endorsement did not match address on file for carrier); In re Nile Express Transport, Inc., No. MP-03-29, Order No. 7113 (Mar. 28, 2003) (WMATC Endorsement unacceptable because issued in wrong name).

³ A duplicate was filed the following day.

correct this time, the address still was not.⁴ No further filings were made within the allotted time, and Certificate No. 697 was revoked in Order No. 7277, served June 30, 2003. Respondent then sought reconsideration of Order No. 7277.

Under Title II of the Compact, Article XIII, Section 4(a), an application for reconsideration of a Commission order must be filed within thirty days of its publication and state specifically the errors claimed as grounds for reconsideration. Respondent timely filed the application for reconsideration on July 17, 2003, but the application did not allege any error on the part of the Commission. Accordingly, we denied reconsideration, but given that respondent had timely filed a satisfactory replacement endorsement on July 28, 2003, we decided to invoke our discretionary authority to reopen this proceeding under Commission Rule No. 26-04 and consider reinstating Certificate of Authority No. 697.⁵

Reinstatement, however, is not an option if the record demonstrates that the carrier continued operating while uninsured or underinsured.⁶ In this case, the Commission was in receipt of correspondence from the staff of the District of Columbia Department of Health, Medical Assistance Administration (DC Medicaid), indicating that respondent continued providing passenger transportation services between points in the Metropolitan District for clients of DC Medicaid while Certificate No. 697 was invalid. Order No. 7373 gave respondent thirty days to contradict that evidence.

II. RESPONSE AND FINDINGS

Respondent admits operating under an invalid certificate of authority from May 20, 2003, to June 30, 2003. Indications from DC Medicaid officials are that respondent continued operating through July 7, 2003. Respondent claims it was not aware of the suspension of its authority until after June 30, 2003. But the record shows that the Commission sent a copy of Order No. 7205 to respondent via certified mail on May 21, 2003, that the Postal Service notified respondent of its arrival on May 22, 2003, and again on May 30, 2003, and that respondent simply failed to sign for it, causing it to be returned to the Commission on June 11, 2003. We will not allow respondent -- or any carrier, for that matter -- to defeat the delivery of certified mail by not signing for it and then plead

⁴ This is not an inconsequential matter. Several carrier names are similar to others. Compare V.I.P. Tours and V.I.P Transportation Service; Sunrise Transport and Sunshine Transportation Company. Some are basically identical to others. Compare AAA Transport, Inc. and AAA Transport; Best Transportation Services, Inc. and Best Transportation Services; D.C. Tours, Inc. and D C Tours Inc. The sure sign of exactly whose operations are covered by a WMATC Insurance Endorsement, therefore, is not simply a matter of whose name is on the endorsement. The carrier address is just as important.

⁵ See In re Orpel Tucker, t/a Jamarl Transp., No. MP-03-59, Order No. 7444 (Oct. 3, 2003) (reopening proceeding and reinstating certificate of authority); In re Metro Homes, Inc., No. MP-02-117, Order No. 7044 (Feb. 21, 2003) (same); In re Capital Tours & Transp., Inc., t/a Suburban Airport Shuttle, No. MP-95-88, Order No. 4765 (Feb. 13, 1996) (same).

⁶ See e.g., In re ACEP Group Inc., No. MP-02-128, Order No. 7137 at 2 & n.5 (Apr. 18, 2003).

ignorance of its contents.⁷ Likewise, a carrier may not terminate coverage under one policy, obtain coverage under a new policy, fail to confirm with Commission personnel that an acceptable replacement WMATC Insurance Endorsement has been filed for the new policy and then claim she was unaware of her failure to comply with Commission insurance requirements.

On the other hand, the record shows that respondent's operations were fully insured throughout the period of invalidation. We further note that respondent's name was properly spelled on the May 22 endorsement and that additional documentation filed by the insurance company that same day shows the underlying policy was issued to respondent at the address on file with the Commission, even though the endorsement for some reason was not. The May 22 endorsement therefore should have been enforceable in any court of law for any claims arising during the invalidation period.⁸ Under these circumstances, although suspension was clearly warranted, we find that revocation of Certificate No. 697 is not.

Of course, we cannot condone respondent's unauthorized operations. 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.⁹ Each day of the violation constitutes a separate violation.¹⁰ "Knowingly" means with perception of the underlying facts, not that such facts establish a violation.¹¹ "Willfully" does not mean with evil purpose or criminal intent; rather, it describes conduct marked by careless disregard.¹² Employee negligence is no defense.¹³

Respondent was careless in not checking with the Commission to verify that the necessary filing had been made after she switched insurance companies.¹⁴ We shall assess a forfeiture of \$250 per day¹⁵

⁷ See In re Diamond Tours, Inc., No. MP-82-06, Order No. 2347 (June 24), aff'd on reconsideration, Order No. 2354 (Aug. 5, 1982) (failure to read mail no defense).

⁸ By its own terms, a WMATC Insurance Endorsement applies to claims "resulting from the operation, maintenance, or use of a motor vehicle in performing transportation subject to certification under the Compact." This language makes clear that the key issue is whether the transportation required a WMATC certificate without regard to the carrier's actual authority at the time the claim arose.

⁹ Compact, tit. II, art. XIII, § 6(f).

¹⁰ Compact, tit. II, art. XIII, § 6(f)(ii).

¹¹ In re Chika Transport Serv., Inc., No. MP-02-124, Order No. 7173 (May 7, 2003).

¹² Id.

¹³ Id.

¹⁴ See Order No. 4765 (same).

¹⁵ See In re ACEP Group Inc., No. MP-02-128, Order No. 7069 (Mar. 4, 2003). (assessing civil forfeiture at \$250 per day for operating under invalid certificate of authority).

for forty days of unauthorized operations from May 20, 2003, to July 7, 2003,¹⁶ or \$10,000. We will suspend all but \$750 in recognition of respondent having filed a WMATC Insurance Endorsement on May 22, 2003, that clearly was enforceable as to invalidation period claims, even though the address on the endorsement was incorrect. Once respondent has paid the \$750 we will reinstate Certificate No. 697 subject to a one-year period of probation.

THEREFORE, IT IS ORDERED:

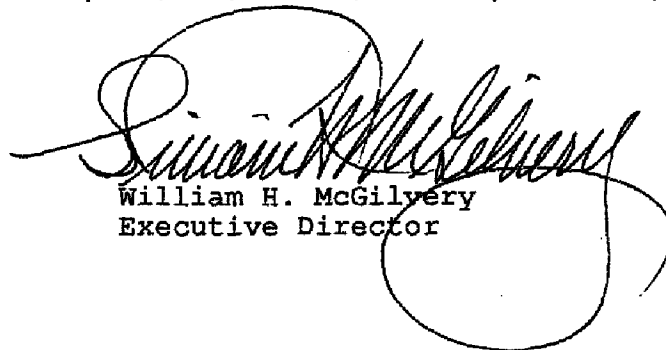
1. That pursuant to Article XIII, Section 6(f), of the Compact, the Commission hereby assesses a civil forfeiture against respondent in the amount of \$10,000 for knowingly and willfully violating Article XI, Section 6(a), of the Compact, by transporting passengers for hire between points in the Metropolitan District on forty separate days from May 20, 2003, through July 7, 2003, while Certificate No. 697 was invalid; provided, that all but \$750 is suspended for the reasons stated.

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 seven hundred fifty dollars (\$750).

3. That upon respondent's failure to timely pay the net forfeiture of \$750, the full forfeiture of \$10,000 shall be automatically reinstated and become immediately due and payable.

4. That upon timely compliance with the requirements of this order, the Commission shall issue an order reinstating Certificate No. 697, subject to a one-year period of probation, such that a willful violation of the Compact, or of the Commission's rules, regulations or orders thereunder, during the period of probation shall constitute grounds for immediate suspension and/or revocation of Certificate No. 697 without further proceedings, regardless of the nature and severity of the violation.

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



William H. McGilvery
Executive Director

¹⁶ According to Commission records obtained in other investigations the DC Medicaid program does not schedule transportation service for Sundays and holidays.