

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 7899

IN THE MATTER OF:

Served March 25, 2004

ELIJAH JEHOVAH INC., Suspension)
and Investigation of Revocation of)
Certificate No. 731)

Case No. MP-2003-178

This matter is before the Commission on respondent's response to Order No. 7665, served January 14, 2004.

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. 731 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. 731 became invalid on December 29, 2003, when the \$1.5 million WMATC Insurance Endorsement on file for respondent terminated without replacement. Order No. 7643 noted the automatic suspension of Certificate No. 731 pursuant to Regulation No. 58-02, directed respondent to cease transporting passengers for hire under Certificate No. 731, and gave respondent thirty days to replace the expired endorsement or face revocation of Certificate No. 731. Respondent submitted a \$1.5 million replacement endorsement on January 5, 2004. The effective date of the new endorsement is January 5, 2004. This means that respondent was without insurance coverage for seven days, from December 29, 2003, through January 4, 2004.

Under Commission Rule No. 28, respondent is required to verify that he ceased transporting passengers for hire under Certificate No. 731 as mandated by Order No. 7643. Order No. 7665 gave respondent thirty days to furnish proof that he ceased operations as of December 29, 2003. Inasmuch as respondent's only tariff is for service rendered to clients of the District of Columbia Department of Health, Medical Assistance Administration, (DC Medicaid), such proof was to include confirmation from DC Medicaid.

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

II. RESPONSE AND FINDINGS

Respondent has yet to file anything from DC Medicaid confirming that respondent ceased operations as of December 29, 2003. The record, in fact, shows to the contrary that respondent billed DC Medicaid for services rendered on December 30 and 31, 2003, and on January 2, 2004, as well as on January 5-9, and 12, 2004.

Respondent has filed, on the other hand, two statements from its president, Lateef Adekola, a statement from Adeyemi T. Okiji, trading as Auras Transportation Services, WMATC No. 593, and a document signed by Mr. Adekola and Mr. Okiji purporting to be a "General Agreement".

The first Adekola statement, filed January 21, 2004, states that respondent ceased operating from December 29, 2003 through January 4, 2004, and instead referred its "scheduled commuter[s]" to Auras Transportation Services, WMATC No. 593, and SuperShuttle.

The second Adekola statement, filed February 9, 2004, at first repeats the assertions of the first statement, except as to SuperShuttle, but then states that respondent's operations "did not cease."

The Okiji statement asserts that the parties entered into an agreement on December 28, 2003, whereby Auras would transport seven passengers on respondent's behalf from December 29, 2003, through February 29, 2004. The "General Agreement" appears to be that agreement.

We are not convinced that the parties entered into any agreement on December 28, 2003, as respondent would have us believe. The core terms of the "General Agreement" state that the parties "agreed" rather than "agree" or "have agreed", suggesting the alleged agreement was drafted after December 28, 2003. Asserting that SuperShuttle carried passengers for respondent and then withdrawing that claim, and asserting first that respondent's operations ceased on December 29, 2003, and then that they did not, casts further doubt on respondent's credibility.² There is no evidence that Auras performed the alleged agreement, in any event.³

² That SuperShuttle would have agreed to such an arrangement seems dubious at best, and there is no evidence in the record to corroborate that claim, in any case.

³ It would not have been lawful for Auras to transport any DC Medicaid passengers on respondent's behalf, anyway, inasmuch as Auras never filed the agreement as a contract tariff under Commission Regulations Nos. 55 and 56. Failing to ensure that Auras filed the contract prior to commencing any operations would have violated respondent's duty to enforce Commission regulations pursuant to Article XI, Section 5(b), of the Compact. C.f., In re Malek Investment, Inc., t/a Montgomery Airport Shuttle, & Malek Investment

The weight of evidence, therefore, supports a finding that respondent transported passengers for hire under an invalid certificate of authority on nine separate days and that respondent was uninsured on three of those days.

III. SANCTIONS

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.⁴

Under Article XI, Section 10(c), of the Compact, the Commission, after notice and hearing, may suspend or revoke a certificate of authority for a carrier's willful failure to comply with a provision of the Compact or an order, rule or regulation of the Commission. A paper hearing is normally all the statute requires.⁵

The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.⁶ 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.⁷

Respondent does not maintain it was unaware that its insurance was set to terminate on December 29, 2003. On the contrary, Mr. Adekola's January 21, 2004, statement indicates that he was not able to make contact with his insurance agent until January 5, 2004. This is consistent with the new policy's effective date of January 5, 2004. In addition, there would have been no occasion for entering into the alleged Aduas agreement if respondent believed its insurance was still intact.

of Va., Inc., & Assadollah Malekzadeh, No. MP-98-53, Order No. 5707 at 5 n.11 (Sept. 22, 1999) (carrier cannot stand by idly while affiliate operates without tariff).

⁴ Compact, tit. II, art. XIII, § 6(f).

⁵ In re Affordable Airport Charter, Inc., & Bach Vu, t/a Affordable Airport Charter, No. MP-97-76, Order No. 5400 (Aug. 31, 1998).

⁶ In re ACEP Group Inc., No. MP-02-128, Order No. 7069 (Mar. 4, 2003).

⁷ Id.

We shall assess a forfeiture of \$250 per day⁸ for nine days of unauthorized operations, or \$2,250. Additionally, we shall revoke Certificate No. 731.⁹

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 \$2,250 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 nine separate days while Certificate No. 731 was invalid.

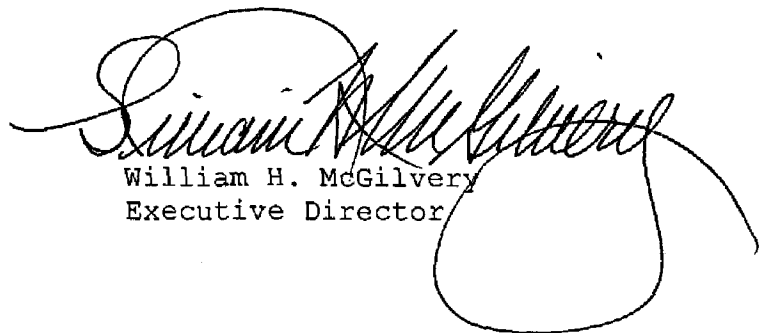
2. That respondent is hereby directed to pay to the Commission within thirty days of the date of this order, by money order, certified check, or cashier's check, the sum of two thousand two hundred fifty dollars (\$2,250).

3. That Certificate of Authority No. 731 is hereby revoked.

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. 731 to the Commission.

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


William H. McGilvery
Executive Director

⁸ See id. (assessing civil forfeiture at \$250 per day for operating under invalid certificate of authority).

⁹ See id. (revoking authority for operating while suspended and uninsured); In re Safe Haven. Inc., No. MP-02-14, Order No. 6762 (Aug. 7, 2002) (refusing to reinstate authority where carrier operated while suspended and underinsured).