

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 8726

IN THE MATTER OF:

Served May 19, 2005

CHEEKS & SON TRANSPORTATION, INC., )  
Suspension and Investigation of )  
Revocation of Certificate No. 415 )

Case No. MP-2004-195

This matter is before the Commission on respondent's response to Order No. 8650, served April 14, 2005, which directed respondent to show cause why the Commission should not assess a civil forfeiture against respondent, and/or revoke Certificate No. 415, for conducting operations under an invalid/suspended certificate of authority in violation of Article XI, Section 6(a), of the Compact and Commission Order No. 8346.

**I. BACKGROUND**

Under the Compact, a WMATC carrier may not engage in transportation subject to the Compact if the carrier's certificate of authority is not "in force."<sup>1</sup> A certificate of authority is not valid unless the holder is in compliance with the Commission's insurance requirements.<sup>2</sup>

Commission Regulation No. 58 requires respondent to insure the revenue vehicles operated under Certificate No. 415 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. 415 became invalid on October 21, 2004, when the \$1.5 million WMATC Insurance Endorsement on file for respondent terminated without replacement. Order No. 8346, served October 22, 2004, noted the automatic suspension of Certificate No. 415 pursuant to Regulation No. 58-02, directed respondent to cease transporting passengers for hire under Certificate No. 415, and gave respondent thirty days to replace the expired endorsement or face revocation of Certificate No. 415. Respondent submitted a \$1.5 million replacement endorsement on November 22, 2004. The effective date of the new endorsement was October 29, 2004.<sup>3</sup> This means that respondent was without insurance coverage for eight days, from October 21, 2004, through October 28, 2004.

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<sup>1</sup> Compact, tit. II, art. XI, § 6(a).

<sup>2</sup> Compact, tit. II, art. XI, § 7(g).

<sup>3</sup> The WMATC Insurance Endorsement on file for respondent has been cancelled an additional four times since this proceeding began. Coverage under the current endorsement is set to terminate May 18, 2005, under the terms of the most recent cancellation notice. Coverage has so far remained continuous since October 29, 2004, however, under three replacement endorsements filed during the interim.

Order No. 8522 gave respondent thirty days to furnish proof of having ceased operations as of October 21, 2004. Inasmuch as respondent's only tariff was 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. According to DC Medicaid's agent for processing carrier invoices, ACS State Healthcare, respondent submitted claims for service rendered on ten separate days last November and December 2004 while Certificate No. 415 was suspended.<sup>4</sup>

Respondent explained that it continued providing transportation while suspended under the belief that a "new insurance certificate" obtained on October 28 through a new broker "voided the original suspension." But Order No. 8346 clearly instructed respondent not to "transport passengers for hire under Certificate No. 415, unless and until otherwise ordered by the Commission." (Emphasis added).

Respondent further explained that it "did not receive any correspondence from the WMATC" concerning this matter "until January 2005." But the record in this proceeding shows that one of respondent's employees signed for Order No. 8346 on October 25, 2004. Indeed, respondent's defense is not that it was unaware of the suspension but that it believed the suspension had been voided.

In any event, the record discloses that respondent's WMATC Insurance Endorsement was cancelled for non-payment of premium. If a carrier fails to make the premium payments necessary to maintain coverage under the WMATC Endorsement, the onus is on that carrier to ascertain when coverage will terminate and refrain from operating thereafter until such time as the carrier has obtained confirmation from the Commission that a replacement WMATC Insurance Endorsement has been filed and accepted.<sup>5</sup>

It is against this background that Order No. 8650 was issued.

## **II. RESPONSE TO ORDER NO. 8650**

The response does not take issue with the number of days the record indicates respondent operated without authority, which according to DC Medicaid was ten. The response also acknowledges that "some sort of disciplinary action" is warranted.

In a similar situation - operating while suspended but not while uninsured - the Commission assessed a civil forfeiture of \$250 for each day of unauthorized operations and placed the carrier on

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<sup>4</sup> According to ACS records, respondent submitted claims for services rendered on Nov. 1, 9, 15, 16, 18, 23, 24, and 30, and on Dec. 1 and 9, 2004.

<sup>5</sup> See In re Anna O. Abugusseisa, Trading as AB & B Trans, No. MP-03-50, Order No. 7621 (Dec. 18, 2003) (carrier may not terminate policy, obtain new policy, fail to ensure timely filing of replacement endorsement and claim ignorance of noncompliance with Commission insurance requirements); In re Capital Tours & Transp., Inc., t/a Suburban Airport Shuttle, No. MP-95-88, Order No. 4765 (Feb. 13, 1996) (respondent careless for not ascertaining whether new insurance certificate had been filed with Commission).

probation for a period of one year.<sup>6</sup> We shall follow the same course here.

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 \$2,500 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 ten separate days in November and December of 2004 while Certificate No. 415 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 five hundred dollars (\$2,500).

3. That upon timely compliance with the requirements of this order, and provided respondent is in compliance with Commission Regulation No. 58, the Commission shall issue an order reinstating Certificate No. 415, 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. 415 without further proceedings, regardless of the nature and severity of the violation.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS YATES AND MILLER:



William S. Morrow, Jr.  
Executive Director

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<sup>6</sup> See In re Amna O. Abucusseisa, Trading as AB & B Trans, No. MP-03-50, Order No. 7621 (Dec. 18, 2003).