

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 8844

IN THE MATTER OF:

Served July 22, 2005

NEW ERA MEDICAL TRANSPORT)
SERVICES, Suspension and)
Investigation of Revocation of)
Certificate No. 712)

Case No. MP-2005-07

This matter is before the Commission on respondent's response to Order No. 8612, served March 29, 2005, which directed respondent to furnish proof that it ceased operations as of January 17, 2005, with corroboration from respondent's clients the Montgomery County Department of Transportation (MCDOT) and the District of Columbia Department of Health, Medical Assistance Administration (DC Medicaid).

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."¹ A certificate of authority is not valid unless the holder is in compliance with the Commission's insurance requirements.² Commission Regulation No. 58 requires respondent to insure the revenue vehicles operated under Certificate No. 712 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. Regulation No. 58-02 provides for automatic suspension of authority in the event a carrier fails to comply.

Certificate No. 712 became invalid on January 17, 2005, when the \$1.5 million WMATC Insurance Endorsement on file for respondent terminated without replacement. Order No. 8512, served January 18, 2005, noted the automatic suspension of Certificate No. 712, directed respondent to cease transporting passengers for hire, and gave respondent thirty days to replace the expired endorsement. Respondent submitted a \$1.5 million WMATC Insurance Endorsement on February 7, 2005, with an effective date of January 20, 2005, leaving a three-day gap in coverage from January 17, 2005, through January 19, 2005.

Because of the gap in coverage, Order No. 8612 gave respondent thirty days to furnish proof that it ceased operations as of January 17, 2005, along with corroboration from its customers MCDOT and DC Medicaid.

II. RESPONSE TO ORDER NO. 8612

According to MCDOT and DC Medicaid, respondent continued operating on and after January 17, 2005, while suspended. Indeed,

¹ Compact, tit. II, art. XI, § 6(a).

² Compact, tit. II, art. XI, § 7(g).

respondent admits operating from January 17 to January 19, 2005. Respondent's insurance company, on the other hand, has filed a revised replacement endorsement that eliminates the three-day gap in coverage. Eliminating the gap, however, does not make respondent's three days of operations from January 17 to January 19 lawful. It merely reduces the severity of the violation. The question we are faced with at this point then is whether that violation was knowing and willful.³

Respondent denies that it acted knowingly and willfully, explaining that it did not receive Order No. 8512 until January 19, 2005. We do not find this explanation persuasive.

First, the term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.⁴ 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.⁵

Second, the fact that Order No. 8512 may not have reached respondent until January 19 is not dispositive. Suspension under Regulation No. 58 is automatic the moment a carrier is no longer in compliance with the Commission's insurance filing requirements.⁶ The Commission notified respondent that its insurance filing had been canceled well in advance of the effective date. Once that notice was received, the onus was on respondent to contact the Commission to confirm that a new WMATC Insurance Endorsement had been filed so as to avoid operating while automatically suspended.⁷ Indeed, respondent should have been particularly careful having been suspended three times previously for the same insurance infraction.⁸

In similar situations in the past -- 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

³ 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; each day of the violation constitutes a separate violation. Compact, tit. II, art. XIII, § 6(f). 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. Compact, tit. II, art. XI, § 10(c).

⁴ In re Anna O. Abugusseisa, Trading as AB & B Trans, No. MP-03-50, Order No. 7621 (Dec. 18, 2003).

⁵ Order No. 7621.

⁶ Commission Regulation No. 58-02.

⁷ 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).

⁸ In re New Era Med. Transp. Servs., No. MP-04-148, Order No. 8214 (Aug. 9, 2004); In re New Era Med. Transp. Servs., No. MP-04-84, Order No. 7937 (Apr. 12, 2004); In re New Era Med. Transp. Servs., No. MP-03-37, Order No. 7232 (June 4, 2003).

on probation for a period of one year.⁹ 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 \$750 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 three separate days in January 2005 while Certificate No. 712 was suspended/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 seven hundred fifty dollars (\$750).

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. 712, 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. 712 without further proceedings, regardless of the nature and severity of the violation.

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



William S. Morrow, Jr.
Executive Director

⁹ See In re Cheeks & Son Transp., Inc., No. MP-04-195, Order No. 8726 (May 19, 2005); Order No. 7621.

