

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 12,095

IN THE MATTER OF:

Served July 17, 2009

ANGEL ENTERPRISE INC, Trading as ) Case No. MP-2009-049  
THE ANGELS, Suspension and )  
Investigation of Revocation of )  
Certificate No. 1312 )

This matter is before the Commission on respondent's response to Order No. 12,061, served June 26, 2009, directing respondent to show cause why the Commission should not assess a civil forfeiture against respondent and/or suspend or revoke Certificate No. 1312.

**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. 1312 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. 1312 was rendered invalid on March 29, 2009, when the \$1.5 million primary WMATC Insurance Endorsement on file for respondent terminated without replacement. Order No. 11,903, served March 31, 2009, noted the automatic suspension of Certificate No. 1312 pursuant to Regulation No. 58-12, directed respondent to cease transporting passengers for hire under Certificate No. 1312, and gave respondent thirty days to replace the terminated endorsement and pay the \$50 late fee due under Regulation No. 67-03(c) or face revocation of Certificate No. 1312. The order also noted that respondent owed a 2009 annual report pursuant to Regulation No. 60-01 and a \$100 late fee pursuant to Regulation No. 67-03(a) for failing to file the annual report on or before February 2, 2009.

Respondent subsequently paid both late fees on April 23, filed a 2009 annual report on May 5, and submitted a \$1.5 million primary WMATC Insurance Endorsement on May 15, and the suspension was lifted in Order No. 12,001, but because the effective date of the new endorsement is April 24, 2009, instead of March 29, 2009, the order

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

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

directed respondent to verify cessation of operations as of March 29, 2009, in accordance with Regulation No. 58-14. And because respondent's only tariff is for service rendered to the public, the order directed respondent to corroborate the verification with copies of respondent's pertinent business records. Respondent did not respond.

Order No. 12,061 accordingly directed respondent to show cause why the Commission should not assess a civil forfeiture against respondent, and/or suspend or revoke Certificate No. 1312, for knowingly and willfully conducting operations under an invalid/suspended certificate of authority and failing to produce documents as directed.

## **II. RESPONSE TO ORDER NO. 12,061**

Respondent has produced invoices showing that respondent did not cease operating on March 29. Respondent's CEO, Ms. Christien Okoroafor, explains she was aware coverage had been canceled effective March 29 but was assured by respondent's insurance broker that coverage would be renewed without any lapse. The only insurance filings in the record, however, show a renewal effective date of April 24, 2009. Furthermore, the record shows respondent received the Commission's cease and desist order, Order No. 11,903, on April 17, 2009, but continued operating anyway.

## **III. FINDINGS, ASSESSMENT OF FORFEITURE AND REVOCATION**

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>3</sup> Each day of the violation constitutes a separate violation.<sup>4</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>5</sup>

The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.<sup>6</sup> 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.<sup>7</sup> Continuing to operate in the face of

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<sup>3</sup> Compact, tit. II, art. XIII, § 6(f)(i).

<sup>4</sup> Compact, tit. II, art. XIII, § 6(f)(ii).

<sup>5</sup> Compact, tit. II, art. XI, § 10(c).

<sup>6</sup> *In re Westview Med. & Rehab. Servs., P.C. Inc.*, No. MP-07-070, Order No. 10,882 (Nov. 2, 2007); *In re Handi-Pro Transp., Inc.*, No. MP-07-060, Order No. 10,817 (Oct. 10, 2007); *In re Sydney Shuttle, LLC*, No. MP-07-064, Order No. 10,792 (Sept. 28, 2007).

<sup>7</sup> Order Nos. 10,882; 10,817; 10,792.

a cease-and-desist order is the epitome of knowing and willful conduct.<sup>8</sup>

Under Regulation No. 58-11:

When a WMATC carrier's insurance has terminated or is about to terminate the carrier must contact the Commission to ascertain whether the necessary WMATC Insurance Endorsement has been filed before continuing to operate on and after the termination date. Proof a WMATC carrier has satisfied its duty to verify shall consist of contemporaneous written verification from the Commission.

There is no evidence in the record indicating that respondent contacted the Commission to ascertain whether the necessary WMATC Insurance Endorsement had been filed before continuing to operate on and after March 29. Moreover the record shows respondent continued operating after receiving the Commission's cease and desist order on April 17. And respondent offers no explanation for its failure to timely produce documents as directed by Order No. 12,001.

We find that respondent has failed to show cause why the Commission should not assess a civil forfeiture for operating while suspended. We shall assess a forfeiture against respondent in the amount of \$250 per day<sup>9</sup> for seventeen days,<sup>10</sup> or \$4,250. We will suspend all but \$1,200 in recognition of respondent's production of inculpatory records.<sup>11</sup> Failure to pay the net forfeiture in a timely fashion shall result in reinstatement of the full \$4,250.

In addition, we will assess a forfeiture of \$250 for respondent's knowing and willful failure to timely produce documents as directed by Order No. 12,001.<sup>12</sup>

As for revocation, when the signatories and Congress approved the Compact, they designated noncompliance with Commission insurance requirements as the single offense that would automatically invalidate a certificate of authority. They could not have sent a clearer message that maintaining proper insurance coverage is of paramount

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<sup>8</sup> Order No. 10,792.

<sup>9</sup> See *In re Yai Med. Transp., L.L.C.*, No. MP-05-09; Order No. 8845 (July 22, 2005) (same).

<sup>10</sup> Respondent's invoices show trips on Apr. 18, 20-25, 28, 30; May 1-2, 4-9.

<sup>11</sup> See 10,792 (suspending 67% of forfeiture where carrier produced inculpatory records); *In re Malek Invest., Inc., t/a Montgomery Airport Shuttle, & Malek Invest. of Va., Inc., & Assadollah Malekzadeh*, No. MP-98-53, Order No. 5707 (Sept. 22, 1999) (suspending 70% of forfeiture where carrier produced inculpatory records).

<sup>12</sup> See *In re Westview Med. & Rehab. Servs., P.C. Inc.*, No. MP-07-070, Order No. 10,882 (Nov. 2, 2007) (assessing \$250 for failure to timely produce documents).

importance under the Compact.<sup>13</sup> Further, this is not the first time respondent has violated the Commission's insurance requirements. Respondent was suspended for insurance infractions once before.<sup>14</sup> Against this backdrop, and considering that respondent operated not only while suspended but while uninsured, we shall revoke Certificate No. 1312.<sup>15</sup>

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 \$4,250 for knowingly and willfully violating Article XI, Section 6(a), of the Compact, Regulation No. 58, and Order No. 11,903; provided, that all but \$1,200 shall be suspended in recognition of respondent's production of inculpatory records.

2. That pursuant to Article XIII, Section 6(f), of the Compact, the Commission hereby assesses a civil forfeiture against respondent in the amount of \$250 for knowingly and willfully violating Order No. 12,001.

3. 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 one thousand four hundred fifty dollars (\$1,450).

4. That the full forfeiture of \$4,500 assessed in this order shall be immediately due and payable if respondent fails to timely pay the net forfeiture of \$1,450.

5. That pursuant to Article XI, Section 10(c), of the Compact, Certificate of Authority No. 1312 is hereby revoked for respondent's willful failure to comply with Article XI, Section 6(a), of the Compact, Regulation No. 58, and Order No. 11,903.

6. 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. 1312 to the Commission.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS CHRISTIE AND BRENNER:

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<sup>13</sup> Order Nos. 10,882; 10,817; 8845.

<sup>14</sup> *In re Angel Enterprise Inc, t/a The Angels*, No. MP-08-048, Order No. 11,165 (Feb. 26, 2008).

<sup>15</sup> See Order No. 10,882 (revoked for operating while underinsured); Order No. 10,817 (revoked for operating while uninsured); Order No. 8845 (revoked for operating while uninsured).

A handwritten signature in black ink, appearing to read 'W.S. Morrow, Jr.', written in a cursive style.

William S. Morrow, Jr.  
Executive Director