UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

HEARTLAND CHARTERS & TOURS	*	
USDOT 1460491,	*	
	*	
BERTHA MUZQUIZ	*	**Order No.: OK-2012-5000-IMH**
Individually, and	*	
	*	
GENARO MUZQUIZ	*	
Individually.	*	
	*	
RESPONDENTS.	*	

NOTICE OF FAILURE TO COMPLY WITH THE TERMS AND CONDITIONS OF AGREEMENT AND STIPULATED ORDER ON CONSENT FOR RECISSION OF IMMINENT HAZARD ORDER BASED ON REMEDIAL ACTION AND CONDITIONAL GRANT OF NEW REGISTRATION AND ORDER TO CEASE ALL OPERATION IN INTERSTATE AND INTRASTATE COMMERCE

Effective March 23, 2013 at 12:01 A.M.

EFFECTIVE MARCH 23, 2013 AT 12:01 A.M., HEARTLAND CHARTERS & TOURS, BERTHA MUZQUIZ AND GENARO MUZQUIZ MUST CEASE ALL COMMERCIAL MOTOR VEHICLE OPERATIONS INCLUDING ALL INTERSTATE AND INTRASTATE TRANSPORTATION OF PROPERTY AND/OR PASSENGERS FROM ALL DISPATCHING LOCATIONS OR TERMINALS

I. Background.

HEARTLAND CHARTERS & TOURS is a motor carrier of passengers and conducts or has conducted operations in interstate commerce pursuant to operating authority registration issued by FMCSA under 49 U.S.C. § 13902. HEARTLAND CHARTERS & TOURS transports passengers "between a place in … a State and a place in another State" and is subject to FMCSA's jurisdiction at 49 U.S.C. § 13501(1)(A).

On or about April 4, 2012 FMCSA conducted a Compliance Review of HEARTLAND CHARTERS & TOURS, based on passenger complaints, uncovering violations of the Federal Motor Carrier Safety Regulations (FMCSR) so widespread as to demonstrate a continuing, blatant and flagrant general disregard for compliance with the FMCSR and a management philosophy indifferent to motor carrier safety.

As a result of the April 4, 2012 Compliance Review, HEARTLAND CHARTERS & TOURS was found to have committed violations including 49 C.F.R. § 382.301(a) using a driver before the motor carrier has received a negative pre-employment controlled substance test result; 49 C.F.R. § 382.305(i)(2) failing to ensure that each driver selected for random alcohol and controlled substance testing has an equal chance of being selected each time selections are made; 49 C.F.R. § 382.305(i)(3) failing to ensure that drivers are tested within the selection period; 49 C.F.R. § 391.23(e)(1) failing to investigate the driver's alcohol and controlled substance history for the previous 3 years; 49 C.F.R. § 391.51(a) failing to maintain driver qualification file on each driver employed; 49 C.F.R. § 391.51(b)/391.51(a) failing to maintain driver qualification file in accordance with 49 C.F.R. § 391.51(b); 49 C.F.R. § 391.51(b)(2) failing to maintain inquiries into driver's driving record in driver qualification files; 49 C.F.R. § 395.5(a)(1) requiring or permitting a passenger-carrying commercial motor vehicle driver to drive more than 10 hours; 49 C.F.R. § 395.5(a)(2) requiring or permitting a passenger-carrying commercial motor vehicle driver to drive after having been on duty 15 hours; 49 C.F.R. § 395.8(e) false reports of records of duty status; 49 C.F.R. § 395.8(i) failing to require driver to forward within 13 days of completion the original of the record of duty status; 49 C.F.R. § 395.13(c)(1) requiring or permitting a driver declared out-of-service to operate a motor vehicle before prescribed off duty (or sleeper berth) time has been accumulated; 49 C.F.R. § 396.11(a) failing to require driver to prepare driver vehicle inspection report; and 2 out of the carrier's 3 buses were declared to be out-of service having mechanical defects rendering them unfit for operation.

On or about April 4, 2012, FMCSA issued an Imminent Hazard Operations-Out-of-Service Order ("Imminent Hazard Order") to HEARTLAND CHARTERS & TOURS. Pursuant to the Imminent Hazard Order, HEARTLAND CHARTERS & TOURS was ordered to cease all commercial motor vehicle operations in interstate and intrastate commerce, including all interstate and intrastate transportation of passengers and property by drivers from all dispatching locations or terminals. 49 U.S.C. § 521(b)(5) and 49 C.F.R. § 386.72.

On or about May 8, 2012, HEARTLAND CHARTERS & TOURS submitted its request for rescission of the Imminent Hazard Order. Attached to this request was HEARTLAND CHARTERS & TOURS's Safety Management Plan.

II. Agreement and Stipulated Order on Consent for Rescission of Imminent Hazard Order Based on Remedial Action and Conditional Grant of New Registration ("Stipulated Order").

On or about July 24, 2012 HEARTLAND CHARTERS & TOURS, BERTHA MUZQUIZ, and GERARO MUZQUIZ ("RESPONDENTS") and the Field Administrator for the Southern Service Center "FA," executed an Agreement and Stipulated Order on Consent for Rescission of Imminent Hazard Order Based on Remedial Action and Conditional Grant of New Registration ("Stipulated Order").

Pursuant to the Stipulated Order RESPONDENTS agreed to successfully comply with 49 C.F.R. Parts 382, 391, 395 and 396. Successful compliance with 49 C.F.R. Parts 382, 391, 395 and 396 was defined as follows: at the conclusion of any investigation, including any review of documents and information submitted pursuant to Stipulated Order, conducted within the two (2) years from the date of execution of the Stipulated Order, no violation(s) discovered of acute regulations, or critical regulations at a violation rate equaling or exceeding 10% in 49 C.F.R. Parts 382, 391, 395 and 396. Discovery of a violation of an acute regulation in 49 C.F.R. Parts 382, 391, 395 and 396 during any investigation, including but not limited to compliance review, roadside inspection and/or on or off-site investigation, is a failure to comply with the terms and conditions of the Stipulated Order. Discovery of a violation of a critical regulation in 49 C.F.R. Parts 382, 391, 395 and 396 at a critical violation rate during any investigation, including but not limited to compliance review, roadside inspection and/or on or off-site investigation, is a failure to comply with the terms and conditions of the Stipulated Order. A violation rate that equals or exceeds 10% for critical regulations will constitute a critical violation rate.

In the Stipulated Order RESPONDENTS agreed that failure to comply with the terms and conditions of the Stipulated Order establishes that **RESPONDENTS ARE NOT FIT AND/OR NOT WILLING OR ABLE TO COMPLY** with: 1) the statutory and regulatory registration requirements; 2) applicable safety regulations including the FMCSR; 3) the commercial motor vehicle safety requirements of employers and employees set forth in 49 U.S.C. § 31135; 4) the safety fitness requirements set forth in 49 U.S.C. § 31144; and 5) minimum financial responsibility requirements established under 49 U.S.C. §§ 13906 and 31138.

Accordingly, and pursuant to the Stipulated Order, upon RESPONDENTS' failure to comply with the Stipulated Order, FMCSA makes this FMCSA's Final Determination to reject RESPONDENTS' application for operating authority/registration.

III. Failure to Comply with Terms and Conditions of Stipulated Order.

On or about March 1, 2013, the Oklahoma Division conducted a review of RESPONDENTS ("Review") to determine RESPONDENTS' compliance with the FMCSR and RESPONDENTS' compliance with the Stipulated Order. The Review found RESPONDENTS operating commercial motor vehicles (CMV) at a 60% out-of-service rate; 3 vehicles were found out-of-service out of 5 vehicle inspections reviewed. Respondents violated 49 C.F.R. 396.3(b) at a critical level for failure to maintain records of inspection and vehicle maintenance; 49 C.F.R. 396.11(a) at a critical level for failing to require drivers to prepare driver vehicle inspection reports; and 49 C.F.R. 396.9(c)(2), at an acute level, for operating CMVs declared "out-of-service" before repairs were made to the CMVs. In addition, non-critical violations were found in Parts 382, 391 and 395.

RESPONDENTS continue to demonstrate a pattern and practice of disregarding FMCSR. RESPONDENTS have failed to ensure that RESPONDENTS' commercial motor vehicles are properly inspected, maintained, and tested in accordance with the Stipulated Order and the commercial motor vehicle inspection and maintenance requirements.

IV. Order to Cease all operation in interstate and intrastate commerce

Pursuant to the Stipulated Order, and under 49 U.S.C. § 13902 and 49 C.F.R. Part 365, RESPONDENTS reapplied for operating authority registration as a passenger carrier under its existing USDOT number by submitting a new form OP-1(P) Application for Motor Passenger Carrier Authority and paying the associated application fees to FMCSA.

RESPONDENTS have failed to have a safety management system in place and exercise safety management controls to ensure its motor carrier operation is fit, willing and able to comply with Federal motor carrier statutes and regulations.

RESPONDENTS have failed to ensure compliance with 49 C.F.R. Parts 382, 391, 395 and/or 396. The Review found violations of acute or critical regulations at a violation rate equaling or exceeding 10% in 49 C.F.R. Part 396. A critical violation rate is determined by dividing the number of violations discovered by the number of documents examined. Acute and critical violations are listed in 49 C.F.R. Part 385, Appendix B, section VII. Discovery of violations of critical regulations in 49 C.F.R. Part 396 at a critical violation is a failure by RESPONDENTS to comply with the terms and conditions of the Stipulated Order.

RESPONDENTS' failure to comply with the terms and conditions of the Stipulated Order establishes that it is not fit and/or not willing or able to comply with: 1) the statutory and regulatory registration requirements; 2) applicable safety regulations including the FMCSR; 3) the commercial motor vehicle safety requirements of employers and employees set forth in 49 U.S.C. § 31135; 4) the safety fitness requirements set forth in 49 U.S.C. § 31144; and 5) minimum financial responsibility requirements established under 49 U.S.C. §§ 13906 and 31138.

ACCORDINGLY, FMCSA DOES HEREBY REJECT HEARTLAND CHARTERS & TOURS' APPLICATION FOR OPERATING AUTHORITY/REGISTRATION.

RESPONDENTS, WITHIN 48 HOURS OF THIS WRITTEN DETERMINATION, MUST CEASE ANY AND ALL OPERATION OF COMMERCIAL MOTOR VEHICLES IN INTERSTATE AND INTRASTATE COMMERCE.

RESPONDENT MUST CEASE ANY AND ALL OPERATION OF COMMERCIAL MOTOR VEHICLES ON <u>MARCH 23, 2013 AT 12:01 A.M.</u>

V. Administrative Review of Rejection and Denial of Application for Operating Authority/Registration.

Pursuant to 49 C.F.R. § 365.111, an applicant may appeal FMCSA's rejection of an application. The appeal must be filed with FMCSA within 10 days of the date of the written notice of rejection of the application. The appeal must be sent to:

Office Director, Monitoring and Enforcement
Federal Motor Carrier Safety Administration
1200 New Jersey Avenue, S.E.
Washington D.C. 20590

VI. Enforcement of this Order.

1. This is an Order of the USDOT and the FMCSA which is enforceable by FMCSA.

2. In accordance with 49 U.S.C. §§ 507, 521, 14702, and 14704, FMCSA may request an action be brought to enforce an Order of the Agency and/or to penalize violations of an Order of the Agency.

3. Any forbearance by FMCSA in exercising any right or remedy under this Order or provided by law, will not act as a waiver of or preclude the exercise of any right or remedy hereunder or otherwise available by law, nor will it in any way affect the validity of this Agreement and Order or any part thereof. Forbearance by FMCSA in seeking enforcement of this Agreement and Order pursuant to its terms with respect to any instance or provision will not be construed as a waiver to such enforcement with regard to any other instance(s) or provision(s).

4. RESPONDENTS have ongoing responsibility for compliance with all applicable provisions of Federal statute and regulations, including the Federal Motor Carrier Safety Regulations. The duties imposed by this Order are in addition to the duties imposed by applicable statute and regulations. Nothing in this Order is to be construed to waive or modify any Federal statutory or regulatory requirement and compliance with the terms and conditions of this Order will not excuse any failure by RESPONDENTS to comply with any such requirement.

5. This Order is binding upon, and enforceable against RESPONDENTS, HEARTLAND CHARTERS & TOURS, its principals, agents, employees, and assigns.

6. This Order is binding upon any and all successors and/or assigns of RESPONDENTS, HEARTLAND CHARTERS & TOURS and its principals, including any subsequent purchasers, transferees, successor entities, and any entity established and/or used by HEARTLAND CHARTERS & TOURS and/or its principals to conduct motor carrier operations in which any principal of HEARTLAND CHARTERS & TOURS has a financial interest or position as a principal.

VII. Penalties for Violations

A. Penalty provisions for violations of federal statutes and regulations are separate and distinct from the assignment of a safety rating. Nothing in this Order may be interpreted to limit, in any way, the authority of FMCSA to assess penalties for violations discovered during any investigation, including the compliance review underlying this Order, and/or take any action authorized by law to enforce federal statutes and regulations.

B. This Order is in addition to, and does not supersede, amend, or modify, any other orders or notices in any other case or proceeding. FMCSA may assess penalties for violations of federal statutes and regulations, including the FMCSR, as well as for violations of FMCSA Orders and prohibitions. Penalties may be assessed for violations previously discovered, discovered after this order and/or discovered during subsequent investigations.

SO ORDERED this the 20th day of March, 2013.

Darrell L. Ruban
Field Administrator
Southern Service Center
United States Department of Transportation
Federal Motor Carrier Safety Administration
1800 Century Blvd., NE, Suite 1700