

LAW OFFICES
SEGAL, BERK, GAINES & LISS
THE WINDSOR
PENTHOUSE SUITE
1700 BENJAMIN FRANKLIN PARKWAY
PHILADELPHIA, PA 19103
www.sbgllaw.com

GERALD S. SEGAL
STEVEN BERK*
WILLIAM ALAN GAINES

IRIS S. PINCUS*
PATRICIA J. COONEY
DEREK S. LISS
STEPHEN ERNST*
ADAM J. TALIAFERRO*

*MEMBER PA & N.J. BARS

215-569-4600
FAX (215) 569-3930

PHILIP A. LISS
1941-1998
GABRIEL BERK
1911-2003

August 9, 2010

Email: sernst@sbglaw.com

Via **FEDERAL EXPRESS**

PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265
Attention: James J. McNulty - Secretary

RECEIVED

AUG 09 2010

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Re: **LeRoy Mickens, III, t/a Date Time's Night Train**
A-00121227
C-2010-2163673

Dear Secretary McNulty:

Enclosed herewith please find the original and three (3) copies of the Supplement to Petition for Reinstatement.

Please be advised that all outstanding assessments and fines have been paid by the Petitioner, and we would ask that you act on this Petition as soon as possible.

If you have any questions or need any additional information, please do not hesitate to contact me.

Very truly yours,


STEPHEN ERNST

SE/dam

Enclosures

cc: Bureau of Transportation and Safety (w/enclosure) **Via Federal Express**

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PENNSYLVANIA PUBLIC UTILITY
COMMISSION

v.

LEROY MICKENS, III
T/A BIG TIME'S NIGHT TRAIN
5824 MALVERN AVENUE
PHILADELPHIA, PA 19131

A-00121227
C-2010-2163673

RECEIVED

AUG 09 2010

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

**SUPPLEMENT TO
PETITION FOR REINSTATEMENT**

Petitioner, Leroy Mickens, III, t/a Big Time's Night Train, by his undersigned attorney, hereby supplements its Petition for Reinstatement as follows:

1. The Answer filed by the Bureau of Transportation and Safety (BTS) was not timely filed and should therefore be stricken.
2. If the Answer filed by BTS is nevertheless accepted, Petitioner hereafter addresses certain items contained therein.
3. In paragraph 19(a) BTS indicates that Petitioner has been issued complaints for failure to maintain evidence of insurance and for operating while insurance coverage has lapsed.
4. Attached hereto as Exhibit "A" is a copy of the Opinion and Order that was entered in approval of a Settlement Agreement.
5. As indicated in the second paragraph of page two of the Opinion, Petitioner did in fact have insurance during that period of time BTS alleged that there had been a lapse of insurance coverage.
6. This perceived lapse was caused by Petitioner's insurance carrier's error in identifying

the Petitioner's business name, which caused the insurance filing to be rejected.

7. As indicated in the third paragraph of page two of the Opinion, Petitioner admitted it had operated while their operating rights were suspended, but as stated above, Petitioner never had a lapse of insurance coverage so its operating rights should not have been suspended.


8. In paragraph 19(b) BTS indicates that Petitioner does not have an acceptable tariff on file.

9. This omission has been corrected and an acceptable tariff is now on file.

WHEREFORE, Petitioner hereby requests that the Commission reinstate his Certificate of Public Convenience.

Respectfully submitted,

SEGAL, BERK, GAINES & LISS

A handwritten signature in black ink, appearing to read 'STEPHEN ERNST', is written over a horizontal line. The signature is stylized and somewhat cursive.

STEPHEN ERNST, ESQ.
ATTORNEY I.D. No.: 79729
SEGAL, BERK, GAINES & LISS
1700 Benjamin Franklin Parkway, 24th Floor
Philadelphia, PA 19103
(215) 569-4600
sernst@swbgl.com

Attorney for Petitioner

RECEIVED

AUG 09 2010

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

EXHIBIT "A"

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

Public Meeting held July 25, 2007

Commissioners Present:

Wendell F. Holland, Chairman
James H. Cawley, Vice Chairman
Terrance J. Fitzpatrick
Tyrone J. Christy
Kim Pizzingrilli

Pennsylvania Public Utility Commission,
Bureau of Transportation and Safety

A-00121227C0602

v.

Leroy Mickens, III, t/a
Big Time's Night Train

OPINION AND ORDER

BY THE COMMISSION:

Before us for consideration and disposition is a request for approval of a Settlement Agreement (Agreement) entered into between the Commission's Bureau of Transportation and Safety represented by the Law Bureau (BTS) and Leroy Mickens, III, t/a Big Time's Night Train (Respondent) for resolution of allegations regarding Respondent's violations of the Public Utility Code (Code), 66 Pa. C.S. §§ 101, *et seq.*, and the Commission's Regulations, 52 Pa. Code §§ 1.1, *et seq.*

History of the Proceeding

Respondent was issued a Certificate of Public Convenience (Certificate) to provide limousine service on March 3, 2005. On December 8, 2006, BTS initiated a Complaint against Respondent at the above-captioned docket number in which it alleged that the Respondent's operating rights were suspended on July 7, 2006, for failure to maintain evidence of insurance on file with the Commission. The suspension was lifted on September 21, 2006. A lapse of insurance coverage occurred from July 7, 2006, through September 20, 2006. (Complaint at ¶ 3). The Complaint further alleged that the Respondent transported passengers for compensation between points in Pennsylvania while under suspension for failure to maintain evidence of insurance on file with the Commission for the following periods in 2006: July 5-7, 10-13, 18-20, 24-25, 30-31, August 1-4, 7-9, 11-18, 21-25, 28, September 11-14, 18-20. (Complaint at ¶ 4). BTS requested a civil penalty of \$42,000 for the violations.

On February 20, 2007, the Respondent filed an Answer to the Complaint. On May 7, 2007, the Northland Insurance Company filed an Amended Form E on Respondent's behalf which certified that Respondent did, in fact, have insurance from July 7, 2006, through September 20, 2006, the time period during which BTS alleged that there had been a lapse of insurance coverage.

On June 7, 2007, the Parties filed a Settlement Agreement and urged the Commission to approve the terms of the Agreement as being in the public interest. The Settlement Agreement notes that Respondent admits that, by performing 101 trips within the Commonwealth during the period its operating rights were suspended due to its failure to maintain evidence of insurance on file with the Commission, it violated Section 501(c) of the Code, 66 Pa. C.S. § 501(c). (Settlement at ¶ 4). Respondent also agrees that, henceforth, it will comply with the Code, the Commission's Regulations and the

Commission's orders and that it will take appropriate steps to avoid future misconduct and/or noncompliance.

Based on the foregoing factors, BTS and Respondent have agreed to a civil penalty of \$1,000.00. (Settlement at ¶ 5).

Discussion

The Parties assert that the Settlement Agreement should be approved for several reasons. The Respondent admitted to the violations outlined in the Complaint. BTS, for its part, agrees to a reduction in the amount of the requested penalty to \$1,000.00 for the resolution of the Complaint at issue herein. Adoption of the Settlement by the Commission would avoid the cost of further litigation of this matter.

Thus, the Respondent and BTS have agreed to the terms and conditions summarized below:

1. Provided that the final Opinion and Order adopts the terms of the agreement, the Respondent knowingly and voluntarily waives a hearing in this proceeding, as well as the right to seek judicial review of the final Opinion and Order.
2. The Respondent consents to be bound by the terms of the Settlement Agreement, as incorporated in the instant Opinion and Order.
3. The Respondent agrees to comply with the Code, the Commission's Regulations and the Commission's orders regarding necessity of its having evidence of current insurance on file with the Commission.

4. BTS consents to the terms of the Settlement Agreement, as incorporated in the instant Opinion and Order.

5. BTS and the Respondent agree that the terms of the Settlement Agreement shall become effective only upon the entry of the instant Opinion and Order, which adopts and incorporates the terms of the Settlement Agreement.

After a review of the terms of the Settlement Agreement, we are satisfied that the Agreement is in the public interest. In *Joseph A. Rosi v. Bell-Atlantic-Pennsylvania, Inc.*, C-00992409 (March 16, 2000), the Commission adopted standards to be applied to determine the amount of the civil penalty in slamming cases. We have subsequently determined that all violations of the Code and Commission Regulations, not just slamming cases, shall be subject to review under the standards enunciated in *Rosi. Pa. P.U.C. v. NCIC Operator Services*, M-00001440 (December 21, 2000).

The standards for developing a civil penalty that are set forth in *Rosi* are as follows:

1. Whether the violation was intentional or negligent. If the violation is intentional, the Commission should start with the presumption that the penalty will be in the range of \$500.00 to \$1,000.00 per day. If the violation is negligent, the Commission should start with the presumption that the penalty will be in the range of zero dollars to \$500.00 per day. The precise penalty amount per day will be arrived at by applying the following additional standards, while recognizing that the Commission retains broad discretion in determining a total civil penalty amount that is reasonable on an individual case basis.
2. Whether the regulated entity promptly and voluntarily took steps to return the customer to the appropriate carrier and credited the customer's account.

3. Whether the regulated entity initiated procedures to prevent future slamming.
4. The number of customers affected and the duration of the violation.
5. Whether the penalty arises from a settlement or a litigated proceeding.
6. The compliance history of the regulated entity which committed the violation.
7. Whether the regulated entity cooperated with the Commission.
8. The amount necessary to deter future violations.
9. Past Commission decisions in similar situations.
10. Other relevant factors.

The first standard raises the question as to whether the Respondent's actions, which gave rise to the Complaint herein, were intentional or negligent. BTS contends that the violation committed by Respondent should be deemed unintentional. (Settlement at ¶ 7). We agree that the Respondent's violation, which was operating during a period in which it failed to maintain evidence of insurance on file with the Commission, should be deemed unintentional. Accordingly, we conclude that the \$1,000.00 civil penalty, agreed upon by the Parties, is appropriate.

The second and third *Rosi* standards do not apply to the present case because they are applicable to slamming cases.

The fourth standard concerns the number of customers affected and the duration of the violation. An unspecified number of passengers were transported in the course of the 101 trips performed by the Respondent during the time there was no

evidence of the Respondent's insurance on file with the Commission. We note, however, that the safety of those passengers was not adversely affected because the Respondent ultimately established that there was no lapse of insurance coverage during the relevant time period. (Settlement at ¶ 10).

The fifth *Rosi* standard is whether the penalty arises from a settlement or a litigated proceeding. In this case, the civil penalty arises from a settlement reached prior to the matter being litigated before an Administrative Law Judge. (Settlement at ¶ 11). BTS notes that the Respondent cooperated with Commission Staff in reaching the Settlement. (Settlement at ¶ 13).

The sixth *Rosi* standard relates to Respondent's compliance history. BTS posits that the Respondent has an average compliance history. (Settlement at ¶ 12).

All of the remaining *Rosi* standards were considered in the process of negotiating the Settlement Agreement. We believe that a penalty is necessary in this case and, given that the Respondent is a small company with limited financial resources, the penalty amount settled upon by the Parties is sufficient to deter future violations.

Conclusion

It is the Commission's policy to promote settlements. 52 Pa. Code § 5.231. The Parties herein have provided the Commission with sufficient information upon which to thoroughly consider the terms of the instant Settlement Agreement. The Settlement effectively addresses the issues which arose during the course of this proceeding and avoids the expense of litigation and the possibility of appeals. The Respondent agrees that, in the future, it will take all appropriate steps to avoid misconduct and noncompliance with the Code and the Commission's Regulations. Accordingly, we find

that the proposed Settlement Agreement entered into between BTS and the Respondent is in the public interest and merits approval; **THEREFORE,**

IT IS ORDERED:

1. That the Settlement Agreement entered into between the Commission's Bureau of Transportation and Safety, represented by the Law Bureau, and Leroy Mickens, III, t/a Big Time's Night Train, filed on June 7, 2007, which resolves the above-captioned Complaint, is approved.

2. That the Complaint filed on December 8, 2006, at Docket No. A-00121227C0602 is sustained to the extent outlined in this Opinion and Order.

3. That, pursuant to Sections 3301 and 3315 of the Public Utility Code, 66 Pa. C.S. §§ 3301 and 3315, Leroy Mickens, III, t/a Big Time's Night Train, shall pay a civil penalty of one thousand dollars (\$1,000.00) within thirty (30) days after the date of entry of this Opinion and Order, by sending a certified check or money order to:

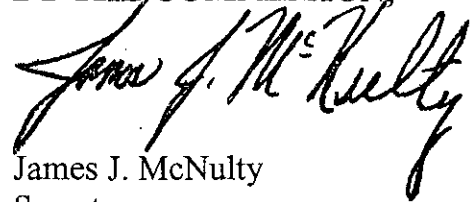
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

4. That Leroy Mickens, III, t/a Big Time's Night Train, shall cease and desist from any further violations of the Public Utility Code, 66 Pa. C.S. §§ 101, *et seq.*, or this Commission's Regulations, 52 Pa. Code §§ 1.1, *et seq.*

5. That a copy of this Opinion and Order shall be served upon the Financial and Assessments Chief, Office of Administrative Services.

6. That upon payment of the civil penalty assessed in this matter, the relevant docket shall be marked closed.

BY THE COMMISSION



James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: July 25, 2007

ORDER ENTERED: JUL 27 2007

VERIFICATION

I, Stephen Ernst state that the facts above set forth are true and correct to the best of my knowledge, information and belief. I expect to be able to prove the same at any hearing held in this matter.

I understand that the statements herein are made subject to the penalties of 18 Pa.C.S.A. § 4904, relating to unsworn falsification to authorities.

A handwritten signature in black ink, appearing to be 'S. Ernst', written over a horizontal line.

STEPHEN ERNST

RECEIVED

AUG 09 2010

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

CERTIFICATE OF SERVICE

I, Stephen Ernst, Esquire, certify that I served, by Federal Express, a true and correct copy of this Supplement upon:

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

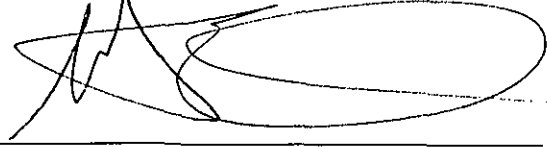
Bureau of Transportation and Safety
P.O. Box 3265
Harrisburg, PA 17105-3265

RECEIVED

AUG 09 2010

**PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU**

SEGAL, BERK, GAINES & LISS



STEPHEN ERNST

Dated: 8/9/10

FedEx ExpressSM US Airbill

FedEx Tracking Number

8717 8144 2667

Form ID No.

0215

Recipient's Copy

SP113

1 From This portion can be removed for Recipient's records.

Date 8-9-10 FedEx Tracking Number 871781442667

Sender's Name Stephen Ernst, Esq Phone 215 569-8600

Company SEGAL, BERK, GAINES

Address 1700 BEN FRANKLIN PKWY - 24th FL

City PHILADELPHIA State PA ZIP 19103-2735

2 Your Internal Billing Reference

3 To

Recipient's Name James J. McNulty - Secretary Phone _____

Company PA Public Utility Commission

Address 400 North Street

City Harrisburg State PA ZIP 17120

0416172441

RECIPIENT: PEEL HERE

fedex.com 1800.GoFedEx 1800.463.3339



8717 8144 2667

4a Express Package Service * To most locations. Packages up to 150 lbs.

FedEx Priority Overnight Next business morning. * Friday shipments will be delivered on Monday unless SATURDAY Delivery is selected.

FedEx Standard Overnight Next business afternoon. * Saturday Delivery NOT available.

FedEx First Overnight Earliest next business morning delivery to select locations. * Saturday Delivery NOT available.

FedEx 2Day Second business day. * Thursday shipments will be delivered on Monday unless SATURDAY Delivery is selected.

FedEx Express Saver Third business day. * Saturday Delivery NOT available.

4b Express Freight Service ** To most locations. Packages over 150 lbs.

FedEx 1Day Freight Next business day. * Friday shipments will be delivered on Monday unless SATURDAY Delivery is selected.

FedEx 2Day Freight Second business day. * Thursday shipments will be delivered on Monday unless SATURDAY Delivery is selected.

FedEx 3Day Freight Third business day. * Saturday Delivery NOT available.

5 Packaging * Declared value limit \$500.

FedEx Envelope* FedEx Pak* Includes FedEx Small Pak, FedEx Large Pak, and FedEx Sturdy Pak

FedEx Box FedEx Tube Other

6 Special Handling and Delivery Signature Options

SATURDAY Delivery NOT available for FedEx Standard Overnight, FedEx First Overnight, FedEx Express Saver, or FedEx 3Day Freight.

No Signature Required Package may be left without obtaining a signature for delivery.

Direct Signature Someone at recipient's address may sign for delivery. Fee applies.

Indirect Signature If no one is available at recipient's address, someone at a neighboring address may sign for delivery. For residential deliveries only. Fee applies.

Does this shipment contain dangerous goods? One box must be checked.

No Yes As per attached Shipper's Declaration. Yes Shipper's Declaration not required. Dry Ice Dry-ice, 9, UN 1845 _____ x _____ kg

Dangerous goods (including dry ice) cannot be shipped in FedEx packaging or placed in a FedEx Express Drop Box. Cargo Aircraft Only

7 Payment Bill to:

Sender Acct. No. in Section 1 will bill.

Recipient Third Party Credit Card Cash/Check

Total Packages _____ Total Weight _____ Credit Card Auth. _____

*Our liability is limited to \$100 unless you declare a higher value. See the current FedEx Service Guide for details.

553