



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE  
REFER TO OUR FILE

June 6, 2011

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

Re: Pennsylvania Public Utility Commission, Bureau of Transportation and  
Safety v. Dafix Enterprises, Inc.  
Docket No. C-2010-2132722

Dear Secretary Chiavetta:

Enclosed please find an original and three (3) copies of the Settlement Agreement in the above referenced matter. The parties respectfully request that the hearing scheduled for June 7, 2011 at 10:00 a.m. be cancelled.

Copies have been served on the parties of record in accordance with the Certificate of Service.

Very truly yours,

Stephanie M. Wimer  
Assistant Counsel

Enclosures

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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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PENNSYLVANIA PUBLIC UTILITY  
COMMISSION, BUREAU OF  
TRANSPORTATION AND SAFETY

Docket No. C-2010-2132722

v.

DAFIX ENTERPRISES, INC.

SETTLEMENT AGREEMENT

**THIS AGREEMENT** is by the Pennsylvania Public Utility Commission's (Commission) Law Bureau, through Assistant Counsel Stephanie M. Wimer, representing the Commission's Bureau of Transportation and Safety (BTS), and Dafix Enterprises, Inc. (Respondent), in the above-captioned proceeding. Pursuant to this Agreement, the Law Bureau and Respondent stipulate as follows:

**I. Background and Summary of Proceedings**

1. The parties to this Settlement Agreement are BTS, represented by the Law Bureau, P.O. Box 3265, Harrisburg, PA 17105-3265, and Respondent, Dafix Enterprises, Inc., who maintains a principal place of business at P.O. Box 18587. Respondent is represented by Louis W. Emmi, Esq., 201 Lebanon Shops, 300 Mt. Lebanon Boulevard, Pittsburgh, PA 15234.

2. On the date of the alleged violation in this Complaint, Respondent held a certificate of public convenience issued by this Commission. Respondent was issued a

certificate of public convenience on August 22, 2007, at Application Docket No. A-00122357.

3. On August 14, 2009, Respondent performed a household goods move for Vera Imburgia and her daughter Janet Daugherty. Ms. Imburgia and Ms. Daugherty currently reside at 137 Westminster Drive, Pittsburgh, PA 15229.

4. On September 28, 2009, BTS received a complaint from Ms. Imburgia and Ms. Daugherty alleging that Respondent provided poor service, damaged household items as well as the building's interior during the move and underestimated the cost of the move, which resulted in an over-charge.

5. Ms. Imburgia's and Ms. Daugherty's complaint led to a BTS investigation.

6. Pursuant to its enforcement responsibilities, BTS initiated the above-captioned Complaint against Respondent on June 10, 2010. The Complaint alleged that Respondent violated the following provisions in the Public Utility Code and Commission regulations:

- 52 Pa. Code § 31.122(a)(2) by using a trade name not registered with the Commission on the estimated cost of services;
- 52 Pa. Code § 31.122(a)(8) by failing to include the signature of the shipper and the date and time the estimate was provided on the estimated cost of services;
- 52 Pa. Code § 31.132(a)(1) by using a trade name that is not registered with the Commission on the bill of lading;
- 52 Pa. Code § 31.122(a) by failing to furnish the shipper with the estimated costs of service form 48 hours prior to the move;
- 52 Pa. Code § 31.27(b), 66 Pa. C.S. § 1303 and 66 Pa. C.S. § 501(c) by charging a rate higher than the approved rate for a fuel surcharge;

- 52 Pa. Code § 31.123 by failing to relinquish goods upon payment of the estimated amount plus 10% over the estimate or \$25 (whichever is greater);
- 52 Pa. Code § 31.124 by failing to submit an underestimate report, wherein the charges exceeded the estimate by more than 10%, with an explanation for the reason for the variance;
- 52 Pa. Code § 31.134(a) by permitting three employees to provide moving services in a shipper's dwelling without having first obtained a criminal history from the Pennsylvania State Police; and
- 52 Pa. Code § 31.134(c) by permitting a disqualified employee to provide moving services in a shipper's dwelling.

7. BTS requested a civil penalty in the amount of three thousand nine hundred dollars (\$3,900.00) for the alleged violations described above.

8. On June 28, 2010, Respondent filed an Answer to the Complaint.

Respondent denied violating all allegations set forth in the Complaint except for section 31.124 of the Commission's regulations, 52 Pa. Code § 31.124. Respondent admitted that it failed to file a report of underestimates with the Commission.

9. In its Answer, Respondent requested that the Complaint be dismissed.

10. The parties conducted informal discovery. Further investigation revealed that Respondent provided Ms. Imburgia and Ms. Daugherty with an estimated cost of service form more than forty-eight hours prior to the move; however this form was not signed by Ms. Imburgia or Ms. Daugherty. Respondent's certificated name appears on the bill of lading and Respondent charged the approved rate of fuel surcharge. Additionally, Ms. Imburgia and Ms. Daugherty did not request to defer payment of the full cost of the move. Rather, they paid in full for the move on August 14, 2009. Further, Anthony Cottom's criminal charges were related to a personal matter between him and

his girlfriend. Mr. Cottom addressed the issues that attributed to his criminal background, including participation in anger management classes. Consequently, Respondent asserts that he is not disqualified from employment.

## **II. Settlement Terms**

11. The Law Bureau, representing BTS, and Respondent, intending to be legally bound and for consideration given, desire to conclude this litigation and agree to stipulate to the following terms:

- A. In recognition of the cost of further litigation, the time and expense of holding a hearing, and the merits of the parties' respective positions, the parties have entered into negotiations and have agreed to settle the Complaint according to the terms and conditions set forth herein.
- B. Respondent agrees that it failed to file a report of underestimates with the Commission pursuant to 52 Pa. Code § 31.124. Respondent, therefore, agrees to pay a civil penalty in the amount of one hundred dollars (\$100.00) for this violation.
- C. Respondent agrees that it employed Nemesio T. Guzman, Harry Lee Beckwith and Anthony Cottom before obtaining a criminal records check from the Pennsylvania State Police, in violation of 52 Pa. Code § 31.134(a). Respondent, therefore, agrees to pay a civil penalty in the amount of seven hundred fifty dollars (\$750.00) for this violation.
- D. While Respondent understands that Anthony Cottom's criminal charges are serious, the charges arose from a domestic situation.

Respondent agrees to pay five hundred dollars (\$500.00) for permitting Mr. Cottom to perform moving services in a shipper's dwelling, in violation of 52 Pa. Code § 31.134(c).

- E. Respondent also agrees to pay Ms. Imburgia and Ms. Daugherty a total of two hundred dollars (\$200.00) as compensation for the damage to their household items and interior of their home.
- F. In the future, Respondent agrees that it will show shippers the estimated cost of service form and ask for their signatures.
- G. Respondent also agrees that within sixty (60) days of the Commission order approving the settlement, it will include its certificated name "Dafix Enterprises, Inc." on all of its paperwork and vehicles or, in the alternative, register its trade name, Deily Moving and Storage, on its certificate of public convenience. Within sixty (60) days of the Commission order approving the settlement, Respondent shall show BTS its revised paperwork with its certificated name, or, in the alternative, its request to register its trade name on its certificate of public convenience.
- H. Respondent agrees that within sixty (60) days of the Commission order approving the settlement, it will revise its Bill of Lading to include a notification that advises shippers that, in the event that the cost of the move is over the estimated amount, they have the right to defer full payment and pay the estimate plus 10% or twenty-five dollars (\$25),

whichever is greater. Respondent shall provide BTS with a copy of its revised Bill of Lading.

- I. Respondent agrees that it will comply with the Public Utility Code and the Commission's regulations and orders in the future, and take appropriate steps to alleviate future misconduct and/or noncompliance with the Public Utility Code and the Commission's regulations and orders.

### **III. Statement in Support of Settlement Agreement**

12. Pursuant to the Commission's Regulations at 52 Pa. Code § 5.231, it is the Commission's policy to promote settlements. However, the Commission must review proposed settlements to determine whether the terms are in the public interest.

*Pennsylvania Public Utility Commission v. Philadelphia Gas Works*, M-00031768 (Order entered January 7, 2004).

13. 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. The Commission subsequently determined that all violations of the Public Utility 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). BTS and Respondent submit that this Settlement Agreement does not violate the requirements for settlements found in *Rosi* and that the terms of the Agreement are in the public interest.

14. The parties further assert that approval of this Settlement is consistent with the Commission's Policy Statement regarding factors and standards for evaluating litigated and settled proceedings at 52 Pa. Code § 69.101.<sup>1</sup> Under this Policy Statement, while many of the same factors and standards may still be considered in both litigated and settled cases, the Commission specifically recognized that in settled cases, the parties "will be afforded flexibility in reaching amicable resolutions to complaints and other matters so long as the settlement is in the public interest." 52 Pa. Code § 69.1201(b). The ten factors of the Policy Statement, as applied to this case, are as follows:

15. The first factor to be considered under the Policy Statement is whether Respondent's actions amounted to willful fraud or misrepresentation, or were merely administrative or technical errors. 52 Pa. Code § 69.1201(c)(1). Respondent's violations, failing to file a report of underestimates and obtaining criminal background checks prior to hiring employees, constitute administrative or technical errors. Further, Respondent permitted Mr. Cottom to perform a household good move despite his criminal history because Respondent was satisfied that Mr. Cottom took measures to correct the behavior that led to his criminal record. As such, Respondent's actions did not rise to the level of willful fraud or misrepresentation.

16. The second factor to be considered under the Policy Statement is whether the resulting consequences of Respondent's actions were of a serious nature. 52 Pa. Code

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<sup>1</sup> This Policy Statement became effective upon publication in the Pennsylvania Bulletin on December 22, 2007, at 37 Pa. Bull. 6755.

§ 69.1201(c)(2). When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty. *Id.* In this case, Ms. Imburgia and Ms. Daugherty sustained damage to their household goods and the interior of their residence. Respondent agrees to pay two hundred (\$200.00) to Ms. Imburgia and Ms. Daugherty for the damage it caused during the move.

17. The third factor to be considered under the Policy Statement is whether Respondent's conduct was intentional or negligent. 52 Pa. Code § 69.1201(c)(3). As noted above, Respondent's actions constituted administrative or technical oversights and were not intentional.

18. The fourth factor to be considered under the Policy Statement is whether Respondent has made efforts to change its practices and procedures to prevent similar conduct in the future. 52 Pa. Code § 69.1201(c)(4). Respondent has agreed to conduct a criminal background check prior to hiring an employee and submit a report of underestimates. Respondent has also agreed to ensure that its customers sign the estimated cost of service form and are advised of their right to defer full payment in the event that the cost of the move is over the estimated amount. Additionally, Respondent agreed to include its certificated name, instead of using only its trade name, on paperwork that customers review, or, in the alternative, to register its trade name on its certificate of public convenience.

19. The fifth factor to be considered under the Policy Statement relates to the

number of customers affected by Respondent's actions and the duration of the violation. 52 Pa. Code § 69.1201(c)(5). Respondent's actions affected two customers and the violations occurred on one day.

20. The sixth factor to be considered under the Policy Statement relates to Respondent's compliance history. 52 Pa. Code § 69.1201(c)(6). The present Complaint is the first complaint to be issued against Respondent. Therefore, Respondent's compliance history has been satisfactory.

21. The seventh factor to be considered under the Policy Statement relates to whether Respondent cooperated with the Commission's investigation. 52 Pa. Code § 69.1201(c)(7). Respondent fully cooperated with BTS and Prosecutory Staff, returning all phone calls promptly and answering all questions completely.

22. The eighth factor to be considered under the Policy Statement is the amount of the civil penalty or fine necessary to deter future violations. 52 Pa. Code § 69.1201(c)(8). "The size of the utility may be considered to determine an appropriate penalty amount." *Id.* The Law Bureau submits that Respondent's payment of the agreed upon civil penalty of one thousand three hundred fifty dollars (\$1350.00) constitutes a reasonable and appropriate resolution of the merits of the proceeding and is intended to secure future compliance. Additionally, Respondent's payment of two hundred dollars (\$200.00) to Ms. Imburgia and Ms. Daugherty constitutes a good faith effort to reimburse the customers for the damage that was sustained during the move.

23. The ninth factor to be considered under the Policy Statement relates to past Commission decisions in similar matters. 52 Pa. Code § 69.1201(c)(9). This Agreement

is consistent with prior decisions and is appropriate based upon the circumstances of this case.

24. The tenth factor in the Policy Statement examines other relevant factors. 52 Pa. Code § 69.1201(c)(10). In this case, the civil penalty would arise from a settlement reached prior to a hearing and will save the parties the time and expense of holding a hearing.

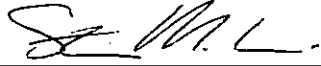
25. The Respondent and BTS, represented by the Law Bureau, believe that their efforts have resulted in a fair and equitable Settlement that is in the public interest and adequately addresses the issues set forth in the Complaint. Therefore, the parties respectfully request that this Settlement Agreement be approved as being in the public interest.

26. This Agreement is expressly conditioned upon the Judge's and Commission's approval under applicable public interest standards without modification, addition, or deletion of any term or condition herein. If the Office of Administrative Law Judge or Commission fails to approve this Agreement, by tentative or final order, or any of the terms or conditions set forth herein, without modification, addition, or deletion, then either Party may elect to withdraw from this Agreement by filing a response to the tentative or final order within fifteen (15) days of the date that the tentative or final order is entered. None of the provisions of this Agreement shall be considered binding upon the Parties if such a response is filed.

WHEREFORE, because the Agreement addresses and attempts to remedy all allegations raised in this matter, BTS, the Law Bureau and Respondent request that the

Office of Administrative Law Judge and Commission approve the terms of this  
Settlement Agreement as being in the public interest.

Date: 6-3-2011



Stephanie M. Wimer  
Law Bureau  
Pennsylvania Public Utility Commission

Date: 6-2-2011



Louis W. Emmi, Esquire  
Counsel for Dafix Enterprises, Inc.

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## CERTIFICATE OF SERVICE

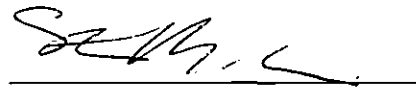
I hereby certify that I am this day serving the foregoing document, Settlement Agreement, upon the persons listed and in the manner indicated below, which satisfies the requirement of 52 Pa.Code § 1.54 (relating to service by a participant):

### Service by First Class Mail:

The Honorable Mark A. Hoyer  
Pennsylvania Public Utility Commission  
Office of Administrative Law Judge  
301 Fifth Avenue  
Piatt Place, Suite 220  
Pittsburgh, PA 15222

Louis W. Emmi, Esquire  
201 Lebanon Shops  
300 Mt. Lebanon Blvd.  
Pittsburgh, PA 15234

Dated: June 6, 2011

  
Stephanie M. Wimer  
Assistant Counsel

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