



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

IN REPLY PLEASE
REFER TO OUR FILE
Bp8# 2070216

August 31, 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. Robert Levan t/a Nite Moves
Docket No. C-2009-2070216

Dear Secretary Chiavetta:

Enclosed please find an original and three (3) copies of the Settlement Agreement in the above referenced matter. Robert Levan t/a Nite Moves (Respondent) changed the language in paragraph 7 on page 3 of the agreement. The Law Bureau, who represents the Bureau of Transportation and Safety (BTS), does not object to this modification of the settlement.

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

The parties respectfully request that the hearing scheduled for September 15, 2011 at 10:00 a.m. be cancelled. Additionally, BTS withdraws the Application for Issuance of a Subpoena that it filed on August 26, 2011.

Very truly yours,

Stephanie M. Wimer
Assistant Counsel

Enclosures

RECORDED
2011 AUG 31 PM 3:11
SECRETARY'S BUREAU
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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PENNSYLVANIA PUBLIC UTILITY	:	
COMMISSION, BUREAU OF	:	
TRANSPORTATION AND SAFETY	:	
	:	Docket No. C-2009-2070216
v.	:	
	:	
ROBERT LEVAN	:	
t/a NITE MOVES	:	

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),¹ and Robert Levan t/a Nite Moves (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, Robert Levan t/a Nite Moves. Respondent resides at 1450 Lehigh Avenue Allentown, PA 18103.

2. On the date of the alleged violation in this Complaint, Respondent did not hold a certificate of public convenience issued by this Commission.

¹ Effective August 11, 2011, the Bureau of Investigation and Enforcement became the successor to BTS' motor carrier enforcement division. *See Implementation of Act 129 of 2008 Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (Order entered August 11, 2011).

3. Pursuant to its enforcement responsibilities, on March 6, 2009, BTS instituted the instant Complaint against Respondent for holding himself out to transport household goods in use between points in the Commonwealth of Pennsylvania, for compensation. In the Complaint, BTS alleged that its motor carrier enforcement officer observed Respondent driving to the shipper's residence in a Budget Rental Truck on September 27, 2008. BTS further averred that Respondent saw the officer in his vehicle and turned the truck around before reaching the shipper's residence. The shipper then had to arrange for a moving truck and finish the move.

4. The Complaint further alleged that BTS obtained a statement from the shipper, which indicated that Respondent had offered to provide the household goods move during the first week of September 2008. Respondent allegedly quoted a rate of \$130 per hour and agreed to provide three men and a driver. BTS alleged that this action violates Section 1101 of the Public Utility Code, 66 Pa. C.S. § 1101, and requested a civil penalty of \$1000.00 for this violation.

5. On March 24, 2009, Respondent, represented by counsel, filed a timely Answer to the Complaint. In his Answer, Respondent denied that he held himself out to transport household goods for compensation. Respondent averred that he agreed to provide a pack and load service wherein Respondent would provide a dolly and packing materials, and arrange for the services of two other persons who would load the shipper's property into the shipper's vehicle.

6. Also in his answer, Respondent stated that he picked up a Budget rental truck for the customer because it was inconvenient for the customer to retrieve the truck

on his own. Respondent admitted that he drove the Budget rental truck to the customer's residence, observed BTS enforcement officers and then returned the vehicle to avoid the appearance of impropriety. Respondent also stated that he received no compensation from the shipper.

7. The parties conducted informal discovery. During discovery, Respondent acknowledged that he held himself out to transport household goods in use at a rate of \$130 per hour. However, Respondent noted that no transportation actually occurred.

Respondent returned the Budget rental truck that he had rented and the shipper arranged for his own transportation. Respondent merely aided the shipper in packing and loading

~~his household goods and, ultimately, did not charge the shipper for this services.~~
Respondent Did Not aid in Packing + Loading the Shipper household goods.
NO Services were performed and shipper was not charged for any services.

II. Settlement Terms

Robert Linn

OK
Stephanie W...

8. 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 as 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 he offered to transport household goods in use between points in the Commonwealth of Pennsylvania, for compensation. Respondent, therefore, agrees to pay a civil penalty of

five hundred dollars (\$500.00) within twenty (20) days of entry of a final Commission Order in this matter.

- C. Respondent agrees that he will cease and desist from committing future violations of the Public Utility Code, and the Commission's regulations and Orders. Respondent is aware that further violations of holding himself out to provide unauthorized transportation of household goods in use for compensation may result in criminal proceedings.

III. Statement in Support of Settlement Agreement

9. Pursuant to our 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).

10. 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.

11. 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 § 69.101.² 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:

12. 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 offered to transport household goods in use for compensation in violation of Section 1101 of the Public Utility Code, 66 Pa. C.S. § 1101. While Respondent's actions were likely willful, Respondent did not actually perform the unauthorized transportation. Given that no transportation of household goods in use actually occurred, the parties agree to settle this matter for five hundred dollars (\$500.00) instead of a greater amount.

13. 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 § 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.*

² This Policy Statement became effective upon publication in the Pennsylvania Bulletin on December 22, 2007, at 37 Pa. Bull. 6755.

Respondent held himself out to provide transportation; however, no actual transportation took place. Respondent's violation did not have lasting consequences. No one was physically harmed and no property was damaged.

14. 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). Respondent's conduct was intentional. However, as stated above, because the violation involved holding himself out to provide unauthorized service and no transportation of household goods actually took place, the parties agree to settle this matter for five hundred dollars (\$500.00) instead of a greater amount.

15. 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 cease and desist from offering transportation of household goods in use service to the public for compensation.

16. 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). The duration of Respondent's violation was brief; he held himself out to provide transportation of household goods in use for compensation during the first week of September 2008 and the move took place on September 27, 2008. Further, the shipper, Mr. Bradley Stiles, and his family were the only customers affected by Respondent's actions.

17. The sixth factor to be considered under the Policy Statement relates to Respondent's compliance history. 52 Pa. Code § 69.1201(c)(6). Respondent has two prior violations of 66 Pa. C.S. § 1101 for holding himself out to transport household goods in use for compensation. The first violation occurred on July 29, 1991 and Respondent paid a two-hundred dollar (\$200.00) civil penalty for this violation. *See Pennsylvania Public Utility Commission v. Robert Levant a/ Night Moves*, C-923814 (Order entered July 22, 1992). The second violation occurred on December 30, 1994 and Respondent paid a five-hundred dollar (\$500.00) civil penalty for this violation. *See Pennsylvania Public Utility Commission, Bureau of Transportation and Safety v. Robert A. Levan t/a Night Moves*, C-00956740 (Order entered October 25, 1995). While Respondent violated 66 Pa. C.S. § 1101 twice prior to the issuance of the present Complaint, his prior violations occurred over a decade ago. Because Respondent did not violate 66 Pa. C.S. § 1101 between 1994 and 2008, the parties assert that five-hundred dollars (\$500.00) constitutes a reasonable amount to settle the instant matter.

18. 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' counsel, returning all phone calls promptly and answering all questions completely.

19. 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 five hundred dollars (\$500.00) constitutes a reasonable and appropriate resolution of the merits of the proceeding.

20. 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.

21. 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.

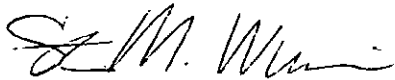
22. Respondent and BTS, represented by the Law Bureau, believe that their efforts have resulted in a fair and equitable Settlement that is in the public interest and adequately addresses the issues set forth in the Complaint. Therefore, the parties request that the Commission approve this Settlement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

23. This Agreement is expressly conditioned upon the Commission's approval under applicable public interest standards without modification, addition, or deletion of any term or condition herein. If the 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.

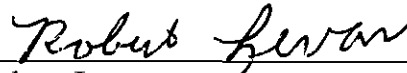
WHEREFORE, because the Agreement addresses and attempts to remedy all allegations raised in this matter, BTS, the Law Bureau and Respondent request that your Honor issue an Initial Decision that approves the terms of this Settlement Agreement as being in the public interest.

Date: 8/31/11

Date: 8/29/11



Stephanie M. Wimer
Law Bureau
Pennsylvania Public Utility Commission



Robert Levan

Note Page 3 # 7
Respondent Did not aid shipper in any packing or loading
No service was performed.

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):

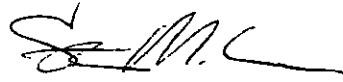
Service by First Class Mail:

Dennis J. Buckley
Administrative Law Judge
Pa Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Robert Levan
t/a Nite Moves
1450 Lehigh Avenue
Allentown, PA 18103

Bradley Stiles
8667 Lockwood Road
Breinigsville, PA 18031

Dated: August 31, 2011



Stephanie M. Wimer
Assistant Counsel

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2011 AUG 31 PM 3:11
PA PUC
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