



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

IN REPLY PLEASE
REFER TO OUR FILE

October 13, 2011

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

Re: Pennsylvania Public Utility Commission, Bureau of Investigation
and Enforcement v. Adam Jared Findon, t/a Friendly Movers,
Docket No. C-2010-2148797

Dear Secretary Chiavetta:

Enclosed please find an original and three (3) copies of the Settlement Agreement being filed on behalf of the Commission's Bureau of Investigation and Enforcement in the above-captioned proceeding.

If you have further questions regarding this matter, please do not hesitate to contact me at (717) 787-5000.

Sincerely,

R. K. Smith
Prosecuting Attorney

Enclosures

cc: Per Certificate of Service

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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Pennsylvania Public Utility Commission, :
Bureau of Investigation & Enforcement :

Complainant :

v. :

Adam Jared Findon, t/a :
Friendly Movers :

Respondent :

Docket No. C-2010-2148797

SETTLEMENT AGREEMENT

THIS AGREEMENT is by the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement (BI&E) through Prosecuting Attorney R. K. Smith, Jr. and Mark G. Moynihan, Esquire, representing Adam Jared Findon, t/a Friendly Movers, (Respondent), in the above-captioned proceeding. This complaint was initiated by the Commission's Bureau of Transportation and Safety on July 23, 2010. On August 11, 2011, all prosecutorial functions of the Bureau of Transportation and Safety were transferred to the newly created Bureau of Investigation and Enforcement. In pursuance of this Agreement, BI&E and Respondent stipulate as follows:

I. Background and Summary of Proceedings

1. The parties to this Settlement Agreement are BI&E, P.O. Box 3265, Harrisburg, PA 17105-3265, and Respondent, Adam Jared Findon, t/a Friendly Movers,

who maintains his principal place of business at 351 Spring Street, New Kensington Pa. 15068.

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

3. Pursuant to its enforcement responsibilities, on July 23, 2010, the Commission's then Bureau of Transportation and Safety (BTS), now BI&E, initiated the above captioned complaint against Respondent. Respondent filed an Answer to the complaint.

4. At paragraph 3 of the complaint it was alleged that Respondent, on March 5, 2010, held himself out to move "Ronald Lawry's" (undercover PUC Enforcement Officer Andrew Rosenberger) household goods from 250 Stevens Drive, Ross Township, Allegheny County, PA to 355 Kendall Avenue, Bell View, Allegheny County, PA for \$270.00 in compensation. At paragraph 4 of the complaint it was alleged that On December 15, 2009, Respondent held himself out to provide transportation by advertising in the Craig's List on line, soliciting business, while not holding a certificate of public convenience issued by this Commission.

II Settlement Terms

5. Respondent and BI&E intending to be legally bound, desire to conclude this litigation and agree to stipulate as to the following terms:

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.

a. Respondent agrees that it violated 66 Pa. C.S. Section 1101 by holding out to transport household goods for compensation between points in the Commonwealth of Pennsylvania while not then holding a certificate of public convenience issued by this Commission.

b. Respondent agrees to pay a civil penalty of \$300.00 to satisfy this complaint and will comply with the Public Utility Code and the Commission's regulations in the future.

6. Respondent and BI&E believe that this Agreement is in the public interest, and therefore will request that the Commission approve this Settlement Agreement as in the public interest. 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.

III. Statement in Support of Settlement

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).

7. In *Joseph A. Rosi v. Bell-Atlantic-Pennsylvania, Inc.*, C-00992409 (March 16, 2000), the Commission adopted standards that are to be applied in determining the amount of civil penalties in slamming cases. The Commission subsequently determined that all violations of the Public Utility Code and Commission regulations shall be subject to review under the standards enunciated in *Rosi. Pa. P.U.C. v. NCIC Operator Services*, M-00001440 (December 21, 2000). BI&E and Respondent submit that this Settlement Agreement complies with the requirements set forth in *Rosi* and that the terms of this Agreement are in the public interest.

8. 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 § 69.1201.¹ 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:

9. The first factor to be considered under the policy statement is whether Respondent's actions amounted to willful fraud or misrepresentation, or were merely

¹ This policy statement became effective upon publication in the Pennsylvania Bulletin on December 22, 2007, at 37 Pa. Bull. 6755.

administrative or technical errors. 52 Pa. Code § 69.1201(c)(1). The violation committed by Respondent in this case should not be deemed willful fraud or misrepresentation.

10. 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). The resulting consequences were not of a serious nature because Respondent has assured the Commission, both at the evidentiary hearing held before Administrative Law Judge Mark A. Hoyer on September 27, 2011 and in this Settlement Agreement, that he will comply with the Public Utility Code and the Commission's regulations in the future.

11. 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). "This factor may only be considered in evaluating litigated cases." *Id.* The violations in this case should be deemed unintentional.

12. The fourth factor to be considered under the policy statement is whether Respondent has made efforts to change his practices and procedures to prevent similar conduct in the future. 52 Pa. Code § 69.1201(c)(4). At the evidentiary hearing held before Administrative Law Judge Mark A. Hoyer, Respondent introduced into evidence a revised Craig's List advertisement that he is now utilizing that states that his company does not offer or provide transportation services to the public but only packing and loading/unloading services. Attached to this Settlement Agreement is Respondent's most recent Craig's List advertisement, modified after the evidentiary hearing, that makes it

absolutely clear that under no circumstances will Respondent offer or provide services to the public other than the labor service of packing and loading/unloading of the truck that will be provided by and driven by the individuals that require Respondent's services. Furthermore, Respondent testified at the evidentiary hearing held before Administrative Law Judge Mark A. Hoyer on September 27, 2011 that prior to the events giving rise to the complaint only five percent (5%) of his business activities included the provision of transportation services, but that ninety five percent (95%) of his business activities constituted merely labor involving the packing and loading/unloading of a truck not operated or owned by Respondent. Respondent has assured the Commission, both at the evidentiary hearing and in this Settlement Agreement, that after the events giving rise to the complaint, Respondent has changed his business practices so that zero percent (0%) of his business activities have included the provision of transportation services and that one hundred percent (100%) of his business activities have constituted labor involving the packing and loading/unloading of a truck not operated or owned by Respondent.

13. 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 violations. 52 Pa. Code § 69.1201(c)(5). No customer was involved in this proceeding because the case was limited to a holding out to provide services to an undercover PUC Enforcement Officer on March 5, 2010.

14. 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 not violated the Public Utility Code and the Commission's regulations in the past.

15. The seventh factor to be considered under the policy statement relates to whether Respondent cooperated with the Commission. 52 Pa. Code §69.1201(c)(7). Respondent fully cooperated with the Commission's staff in this proceeding during the investigation stage and throughout settlement discussions. Consistent civil penalties are a reliable method for bringing utilities into compliance with the Public Utility Code and Commission regulations. The primary purpose of a fine is to secure future compliance. Respondent has demonstrated to BI&E that he is now in compliance with the Commission's rules and regulations. Furthermore, Respondent testified before Judge Hoyer that he will apply for authority from the Commission if in the future he decides to offer a household goods transportation service to the public. BI&E submits that Respondent's payment of the agreed upon \$300.00 civil penalty constitutes a reasonable and appropriate resolution of the merits of this proceeding.

16. The ninth factor to be considered under the policy statement relates to past Commission decisions in similar matters. This Agreement is consistent with prior decisions because it is appropriate based upon the circumstances of this case.

WHEREFORE, because the Agreement addresses and attempts to remedy all allegations raised in this matter, BI&E and Respondent request that the Commission adopt an order approving the terms of this Agreement as being in the public interest.

Date: October 13, 2011

Date: 10/11/11

R. K. Smith, Jr.
Prosecuting Attorney
R. K. Smith, Jr.,

Mark G. Moynihan, Esquire
For

Bureau of Investigation & Enforcement

Adam Jared Findon, t/a Friendly Movers.

ATTACHMENT A

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Date: 2011-09-29, 9:04AM EDTReply to: ajf91179@yahoo.com [Errors when replying to ads?]

FRIENDLY MOVERS

Friendly Movers (FM) can provide you with moving labor help. We are professional movers, with 10+ yrs experience that can help with any type of move. FM has been serving the Pittsburgh, WV and eastern Ohio areas since June 2006. FM knows how stressful moving can be so let us take the stress out of your move.

Services offered:

We can help you with the packing of your belongings. We will load your truck for your one way moves out of the area/state and unload your truck when moving into the area. We also offer local/in-town moves were we will come out load the truck and unload at your new destination. **UNDER NO CIRCUMSTANCES WILL WE SUPPLY THE TRUCK OR DRIVE YOUR TRUCK.** We are competitively priced. There is a minimum requirement of 2 hours. FM's rates are as follows:

-Load/Unload:

-2 man crew = \$60/hr + \$40 travel fee

-3 man crew = \$85/hr + \$40 travel fee

-4 man crew = \$100/hr + \$40 travel fee

-Friendly Movers will supply furniture pads, dollies and tie downs for all local moves.

-References available upon request.

-You can reach us at 724-889-5565 or send an email to ajf91179@gmail.com. We operate 7 days a week. FM does offer same day service upon availability. Give FM a call to book your next move. Hope to hear from you soon. Thanks!!

- Location: pittsburgh/surrounding
- it's NOT ok to contact this poster with services or other commercial interests

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CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the foregoing document in accordance with the requirements of 52 Pa. Code § 1.54 *et seq.* (relating to service by a participant).

Notification by first class mail addressed as follows:

Honorable Mark A. Hoyer
Administrative Law Judge
Pennsylvania Public Utility Commission
Suite 2200 Piatt Place
301 Fifth Avenue
Pittsburgh, PA 15222

Mark G. Moynihan, Esquire
Moynihan Law
707 Grant Street, Suite 1119
Pittsburgh, PA 15219



R. K. Smith
Prosecuting Attorney
Attorney ID #14879

Pennsylvania Public Utility Commission
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