



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

IN REPLY PLEASE
REFER TO OUR FILE

May 14, 2012

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. J. Randall & Kevin C. Tharan t/a Prime Time Limo Service, Inc.;
C-2010-2171980

Dear Secretary Chiavetta:

The Bureau of Investigation and Enforcement¹ submits this Formal Settlement Agreement for the review of Administrative Law Judge Katrina L. Dunderdale, the presiding officer in this case.

The Commission's regulations at 52 Pa. Code § 5.232(d) provide that a settlement petition will be reviewed by the presiding officer if one has been assigned.

Please accept for filing an original and three copies of the Settlement Agreement in the above captioned proceeding.

Very truly yours,

Heidi L. Wushinske
Counsel for the Bureau of
Investigation and Enforcement

Enclosures

cc: The Honorable Katrina L. Dunderdale
Matthew B. Jordan, Esq., Counsel for Prime Time Limo

¹ Due to the Commission's reorganization, the Bureau of Transportation and Safety is now the Bureau of Investigation and Enforcement.

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PENNSYLVANIA PUBLIC UTILITY
COMMISSION, BUREAU OF
TRANSPORTATION AND SAFETY**

v.

**J. RANDALL THARAN &
KEVIN C. THARAN T/A
PRIME TIME LIMO SERVICE, INC.**

**Docket No.
C-2010-2171980**

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SETTLEMENT AGREEMENT

THIS AGREEMENT is by the Pennsylvania Public Utility Commission's (Commission) Law Bureau Prosecutory Staff (Prosecutory Staff), through Assistant Counsel Heidi L. Wushinske, and Prime Time Limo Service, Inc. ("Prime Time Limo" or "Respondent") through its counsel, in the above-captioned proceeding. In pursuance of this Agreement, the Prosecutory Staff and Respondent stipulate as follows:

I. Background and Summary of Proceedings

1. The parties to this Settlement Agreement are the Pennsylvania Public Utility Commission's Law Bureau Prosecutory Staff, P.O. Box 3265, Harrisburg, PA 17105-3265, and Respondent, Prime Time Limo, who maintains its principle place of business at 53 Tharan Lane, Knox Pennsylvania, 16232.

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

issued a Certificate on June 21, 2000, at A-00116475, F.1, for limousine authority. On June 9, 2006, Respondent was issued a Certificate at A-00116475, F.2, for G&P 16 to 28 passengers.

3. Pursuant to its enforcement responsibilities, the Bureau of Transportation and Safety (BTS) initiated the above-captioned complaint against Respondent.

4. On February 23, 2010, Altoona District Office Supervisor Kimberly Johnston, a duly authorized officer of this Commission, conducted a compliance review on Respondents.

5. On March 2, 2010, a close-out interview was conducted on Randall Tharan, President of Respondent.

6. BTS found that Respondent failed to maintain a complete driver qualification file for its driver Randall Tharan, who drove August 22, 2009. Respondent's file did not contain an annual review of Randall Tharan's driving record and annual certificate of violations of motor vehicle laws.

7. BTS also found that Respondent failed to maintain a complete driver qualification file for its driver James Turk, who drove on October 3, 2009. Respondent's file did not contain an annual review of James Turk's driving record and annual certificate of violations of motor vehicle laws.

8. BTS alleges that Respondent, in performing the acts described in paragraphs 6 and 7, violated the federal regulations regarding driver qualification files ,

49 CFR § 391.51(a) (incorporated by reference into the Commission's regulations at 52. Pa. Code § 37.204(3)).

9. BTS requested that the Commission fine Respondent a total of \$1,000.00 as a result of these violations.

10. On August 11, 2010, Respondent filed a timely answer to the complaint. In its Answer, Respondent alleged that the annual reviews and records of violations were completed; they were just not on the proper forms. Respondent also states that it corrected both driver files the day the review was done, February 23, 2010.

II. Settlement Terms

11. Prosecutory Staff 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 acknowledges that not having complete driver qualification files constitutes a violation of the Code of Federal Regulations at 49 CFR § 391.51(a), incorporated by reference into the Commission's regulations at 52. Pa. Code § 37.204(3)). Respondent therefore agrees to pay a civil penalty in the amount of \$500.00.

- c. 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. Joint Statement in Compliance with the Commission's Policy Statement on Litigated and Settled Proceedings Involving Violations of the Public Utility Code and Commission Regulations

12. The parties acknowledge that approval of this Settlement Agreement is consistent with the Commission's *Policy Statement for Litigated and Settled Proceedings Involving Violations of the Public Utility Code and Commission Regulations* ("Policy Statement"), 52 Pa. Code § 69.1201; *See also Joseph A. Rosi v. Bell-Atlantic-Pennsylvania, Inc.*, C-00992409 (March 16, 2000).

13. Under the Policy Statement, the Commission will consider specific factors when evaluating settlements of alleged violations of the Public Utility Code and the Commission's Regulations. These factors are: (i) Whether the conduct at issue was of a serious nature; (ii) Whether the resulting consequences of the conduct at issue were of a serious nature; (iii) Whether the regulated entity made efforts to modify internal policies and procedures to address the conduct at issue and prevent similar conduct in the future; (iv) The number of customers affected and the duration of the violation; (v) The Compliance history of the regulated entity that committed the violation; (vi) Whether the regulated entity cooperated with the Commission's investigation; (vii) The Amount of the

civil penalty or fine necessary to deter future violations; (viii) Past Commission decisions in similar situations; and (ix) other relevant factors. 52 Pa. Code § 69.1201(c).

14. The Commission will not apply the standards as strictly in settled cases as in litigated cases. 52 Pa. Code § 69.1201(b). While many of the same factors and standards may still be considered, 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).

15. The first factor considered in this case was whether Prime Time Limo's alleged acts and omissions amounted to willful fraud or misrepresentation, or were merely administrative or technical errors. The alleged conduct in this case involves failing to maintain a proper driver qualification file. No evidence indicates that Respondent intended to violate the Commission's regulations regarding vehicle the driver qualification file. In fact, Respondent corrected the violation the same day the Enforcement Officer informed Respondent of it. 52 Pa. Code §29.314(c). Furthermore, Respondent fully cooperated with this investigation.

16. The second factor considered in this case was whether the resulting consequences of Prime Time Limo's alleged actions or omissions were of a serious nature. In this case, Prime Time Limo's alleged conduct did not result in any consequences. There is potential danger when a company does not maintain a proper driver qualification file because annual reviews of driver records may not have taken place. However, in this case, the reviews were completed; the files were merely not updated to reflect the reviews. Therefore, no serious consequences occurred in this case.

17. The third factor to be considered, whether Prime Time Limo's alleged conduct was intentional or negligent, does not apply to the present case because this proceeding is a settled matter. To the extent this factor is to be considered, it appears that Prime Time Limo's conduct was negligent in nature, especially considering that it corrected the violation as soon as Officer Johnston informed Respondent that its files were incomplete.

18. With regard to the fourth standard in the Commission's Policy Statement, whether the entity made efforts to modify internal policies and procedures to address the alleged conduct at issue and to prevent similar conduct in the future, Prime Time Limo corrected the violation the same day it learned of it. Prime Time Limo has not received any violations related to driver qualification files since this violation in 2010.

19. *The fifth standard in the Policy Statement deals with the number of* customers affected and the duration of the violation. No customers were affected and Respondent corrected the violation the same day it learned of it.

20. The Policy Statement's sixth standard is a consideration of the compliance history of the entity. Prime Time Limo received a certificate from this Commission in June 2000 and this is its first and only violation of this nature. Respondent has two other violations at C-2010-2189932 and ? for x. Both of these complaints alleged a failure to file a vehicle list. The complaint at C-2010-2189932 was marked satisfied and closed in February 2011. In response to the complaint at C-2011-2271340, which is still pending, Respondent answers that he did file a vehicle list in December 2010. Respondent's

compliance history compares favorably with the record of other taxi companies in Pennsylvania.

21. The seventh standard in the Policy Statement is whether the regulated entity cooperated with the Commission's investigation. Prime Time Limo has cooperated throughout all phases of this investigation.

22. The amount of the civil penalty or fine necessary to deter future violations is the eighth standard in the Policy Statement. The parties submit that a civil penalty in the amount of Five Hundred Dollars (\$500) is sufficient to deter Prime Time Limo from committing any violations in the future, in part because Prime Time Limo is a small company with limited resources and only one vehicle. For the year 2009, Prime Time Limo reported only \$52,000 in gross revenues. This Settlement Agreement recognizes Prime Time Limo's good faith efforts to comply with the Commission's regulations.

23. The ninth standard examines past Commission decisions in similar situations. Counsel is not aware of any decisions with this precise fact pattern. However, when all relevant factors are taken into account, this settlement is consistent with past Commission actions regarding companies of this size with comparable compliance records. Moreover, since this is a settled matter, it should be considered on its own merits.

24. The parties submit that an additional relevant factor – whether the case was settled or litigated – is of pivotal importance to this Settlement Agreement. A settlement avoids the necessity for the prosecuting agency to prove elements of each allegation. In return, the opposing party in a settlement agrees to a lesser fine or penalty. Both parties

negotiate from their initial litigation positions. The fines and penalties in a litigated proceeding have always been different from those that result from a settlement.

25. This document represents the Settlement Agreement in its entirety. No changes to obligations set forth herein may be made unless they are in writing and are expressly accepted by the parties involved. This Agreement shall be construed and interpreted under Pennsylvania law.

26. None of the provisions of the Settlement Agreement or statements herein shall be considered an admission of any fact or culpability. Prosecutory Staff acknowledges that this Agreement is entered into with the express purpose of settling the asserted claims regarding the specific alleged violation of the Public Utility Code and the regulations promulgated thereunder against, or prejudice to, any position which any party may adopt during any subsequent proceeding of whatever nature.

27. The parties agree that the underlying allegations were not the subject of any hearing or formal procedure and that there has been no order or findings of fact rendered in this matter.

28. This Settlement Agreement is conditioned upon the Commission's approval without modification.

29. The parties agree to waive the exception period, thereby allowing this Settlement Agreement to be presented directly to the Commission for review, pursuant to 52 Pa. Code § 5.232(e). The parties reserve the right to withdraw from this Settlement Agreement if it is modified in any manner, or if any adverse response is filed.

WHEREFORE, Law Bureau Prosecutory Staff and Prime Time Limo respectfully request that the Pennsylvania Public Utility Commission adopt a tentative order approving the terms of the Settlement Agreement.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on this the

May 11 day of 2012.

FOR THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Heidi L. Wushinske
Heidi L. Wushinske
Counsel for the Bureau of Transportation and Safety

5/11/12
Date

FOR PRIME TIME LIMO
Matthew B. Jordan
Matthew B. Jordan
Counsel for Prime Time Limo

5/8/12
Date

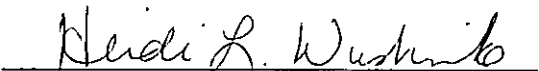
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Notification by first class mail addressed as follows:

The Honorable Katrina L. Dunderdale
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Matthew B. Jorden, Esq.
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Heidi L. Wushinske
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Dated: May 14, 2012

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