



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

IN REPLY PLEASE
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May 21, 2013

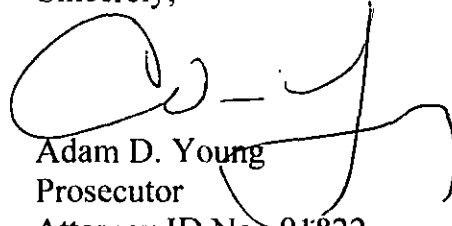
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

**Re: Pennsylvania Public Utility Commission, Bureau of Investigation and
Enforcement v. Jetway Transportation, Inc. T/A Mainline Taxi
Docket No. C-2012-2320322; C-2012-2315590**

Dear Secretary Chiavetta:

Enclosed for filing is the original copy of the Settlement Agreement on behalf of the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission in the above-referenced case. Copies have been served on the parties of record in accordance with the Certificate of Service.

Sincerely,



Adam D. Young
Prosecutor
Attorney ID No. 91822

Enclosure

cc: As 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 AND ENFORCEMENT :

v.

JETWAY TRANSPORTATION, INC. :
T/A MAINLINE TAXI :

Docket Nos.
C-2012-2320322
C-2012-2315590

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SETTLEMENT AGREEMENT

THIS AGREEMENT is between the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement ("I&E") through Prosecutor Adam D. Young, and Jetway Transportation, Inc. t/a Mainline Taxi, ("Respondent"), in the above-captioned proceeding. In pursuance of this Agreement, I&E 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 Bureau of Investigation and Enforcement, P.O. Box 3265, Harrisburg, PA 17105-3265, and Respondent, Jetway Transportation, Inc. t/a Mainline Taxi, who maintains its principle place of business at 908 Dekalb Street, Bridgeport, PA 19405.

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 December 11, 2006, at A-00122951.

3. Pursuant to its enforcement responsibilities, I&E initiated the above-captioned complaints against Respondent seeking a \$450 civil penalty in C-2012-2315590, and a \$600 civil penalty in C-2012-2320322, both for allowing drivers to operate without a valid driver's license, a violation of 52 Pa. Code § 29.502.

4. Respondent filed timely Answers to the Complaints stating that neither Respondent or its insurance carrier were notified by the Department of Transportation that the drivers' licenses had been suspended. Only the drivers themselves received the notification.

II. Settlement Terms

5. I&E 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, 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 to pay a civil penalty in the amount of \$200.00 for each of the two cases, for a total of \$400.

- C. In addition to the civil penalties imposed, starting in 2013, Respondent agrees to obtain a driver history for each of the drivers operating under its authority on a quarterly basis (four times per year). 52 Pa Code § 504(b) requires this be done only once every twelve (12) months. Respondent currently has 83 drivers operating under its authority, and each report costs \$5.00. Each quarter, Respondent will spend \$415.00 on these reports, for a total annual cost of \$1660.00.
- D. Respondent agrees that he 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.

6. In consideration of Respondent's payment of a civil penalty as specified herein, I&E agrees to forbear from prosecuting any formal complaint relating to Respondent's conduct as described in this Settlement Agreement. Nothing contained in this Agreement shall affect the Commission's authority to receive and resolve any formal or informal complaints filed by any affected party with respect to the incident, except that no further civil penalties may be imposed by the Commission for any actions identified herein.

III. Statement in Support of Settlement in Compliance with 52 Pa. Code § 69.1201 and *Rosi v. Bell Atlantic Pennsylvania, Inc.*, 2000 Pa. PUC Lexis 5, C-00992409 (Order entered Feb. 10, 2000)

7. The parties acknowledge that approval of this Settlement Agreement meets the standards set forth in the Commission's policy statement at 52 Pa. Code § 69.1201 and its decision in *Rosi v. Bell Atlantic Pennsylvania, Inc.*, 2000 Pa. PUC Lexis 5, C-00992409 (Order entered Feb. 10, 2000)

8. 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).

9. 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).

10. The first factor considered in this case was whether Respondent’s alleged acts and/or omissions amounted to willful fraud or misrepresentation, or were merely administrative or technical errors. The alleged conduct in these cases involves allowing drivers to operate without valid driver’s licenses. The Pennsylvania Department of Transportation is only required to notify the drivers themselves of a suspended license, not Respondent or its insurance carrier. Respondent was compliant with its obligation to obtain a driver history once a year, per 52 Pa. Code § 29.504(b), but is more or less at the mercy of the drivers to inform Respondent when they are notified of a suspended license. As a result of the drivers’ failure to notify Respondent, Respondent terminated each of the drivers’ leases with the exception of one. The one driver that maintains a lease with Respondent had his license suspended for a child support issue, and the Department of Transportation sent the notice of suspension to an incorrect address. Thus, the driver had no knowledge of the suspended license. In this case, the actions of Respondent are clearly not willful fraud or misrepresentation.

11. The second factor considered in this case was whether the resulting consequences of Respondent’s alleged omissions were of a serious nature. In this case, the results of Respondent’s alleged conduct are of a serious nature. The Commission takes seriously a carrier’s obligation to ensure its drivers possess a valid driver’s license. Respondent, however, took the appropriate corrective action by terminating the leases of

the drivers, and will go beyond the annual regulatory requirement by obtaining driver history reports for each driver under operating under its authority four (4) times per year. Respondent will incur an additional expense on a going forward basis of \$1245/per year.

12. The third factor to be considered in this case, namely, whether Respondent's alleged conduct was intentional or negligent, does not apply to the present case because this proceeding is a settled matter. Insofar as this factor is considered, it does not appear that Respondent's actions were intentional. In these cases, the drivers failed to notify Respondent of their suspended licenses. Their leases were terminated, save one, who had never received notice of his suspension. Respondent seeks to prevent future incidents like these by obtaining driver history reports quarterly.

13. The fourth standard in the Commission's Policy Statement is 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. As stated previously, Respondent intends to obtain driver histories on a quarterly basis to significantly reduce the chances of such a violation occurring again. Respondent took the appropriate action with the offending contractors by terminating their leases.

14. The fifth standard in the Policy Statement deals with the number of customers affected and the duration of the violation. This incident affected no customers, and it was remedied immediately.

15. The Policy Statement's sixth standard is a consideration of the compliance history of the entity. Respondent has paid civil penalties twenty-six (26) times for

various violations over the past seven years. A substantial majority of Respondent's past violations appear to be vehicle inspection related, with some service complaints mixed in. Respondent had one violation in 2008 for the same violation in this Complaint. I&E submits that quarterly driver history checks will prevent any such future violations.

16. The seventh standard in the Policy Statement is whether the regulated entity cooperated with the Commission. Respondent has cooperated throughout all phases of this proceeding.

17. 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 Four Hundred Dollars (\$400.00), in addition to the added annual expense of One Thousand Two Hundred Forty Five Dollars (\$1245.00) is sufficient to deter Respondent from committing any violations in the future.

18. The ninth standard examines past Commission decisions in similar situations. When all relevant factors are taken into account, this settlement is not inconsistent with past Commission decisions, nor is it inconsistent with decisions in litigated matters from the office of administrative law judge. Moreover, since this is a settled matter, it should be considered on its own merits.

19. 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.

20. Both parties' efforts have resulted in a fair and equitable settlement that is in the public interest. The Commission has consistently encouraged settlements to avoid the cost, expense and time of litigation. The parties submit that the Settlement Agreement is in the public interest because it effectively addresses the issues set forth in these Complaints and avoids the time and expense of litigation, which entails hearings, filings of briefs, exceptions, reply exceptions, and possible appeals. Respondent has agreed to pay a fair and equitable penalty for its conduct in these cases, and will make all efforts to comply with the Commission's regulations in the future.

21. Therefore, I&E believes this Settlement Agreement meets the standards set forth in the Commission's policy statement at 52 Pa. Code § 69.1201 and its decision in *Rosi v. Bell Atlantic Pennsylvania, Inc.*, 2000 Pa. PUC Lexis 5, C-00992409 (Order entered Feb. 10, 2000).

22. 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.

23. None of the provisions of the Settlement Agreement or statements herein shall be considered an admission of any fact or culpability. I&E acknowledges that this Agreement is entered into with the express purpose of settling the asserted claims

regarding the specific alleged violations 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.

24. 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.

25. This Settlement Agreement is conditioned upon the Commission's approval without modification. The parties agree that I&E may prepare and submit a tentative order for the Commission's consideration pursuant to 52 Pa. Code § 3.113.

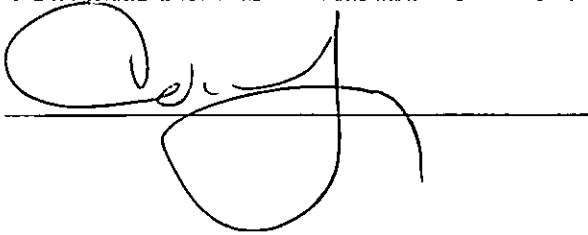
26. The parties agree to waive the exception period, thereby allowing this Settlement Agreement to be presented directly to the Commission for review, pursuant to 52 Pa. Code § 5.232(e). The parties reserve the right to withdraw from this Settlement Agreement if it is modified in any manner, or if any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

WHEREFORE, the I&E and Respondent respectfully request that the Pennsylvania Public Utility Commission adopt an Order approving the terms of the Settlement Agreement.

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

21ST day of May 2013.

FOR THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:



Prosecutor
Title
5/21/13
Date

FOR JETWAY TRANSPORTAION, INC.



Operations Manager
Title
5/14/13
Date

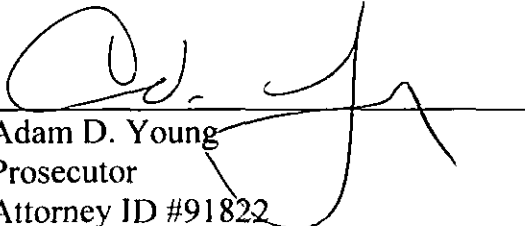
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CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the foregoing document upon the persons listed and in the manner indicated below:

Notification by first class mail addressed as follows:

Jetway Transportation, Inc.
T/A Mainline Taxi
908 Dekalb Street
Bridgeport, PA 19405


Adam D. Young
Prosecutor
Attorney ID #91822
(Counsel for PA Public Utility Commission)

P.O. Box 3265
Harrisburg, PA 17105-3265
(717) 772-8582

Dated: May 21, 2013

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