



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

IN REPLY PLEASE
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January 13, 2014

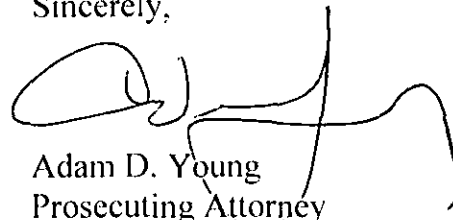
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Pennsylvania Public Utility Commission, Bureau of Investigation
and Enforcement v. 903 Rentals, Inc.
C-2013-2371641

Dear Ms. 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
Prosecuting Attorney
Attorney ID No. 91822

Enclosure

cc: As per Certificate of Service

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PENNSYLVANIA PUBLIC UTILITY
COMMISSION, BUREAU OF
INVESTIGATION AND ENFORCEMENT** :

v. :

**903 RENTALS, INC.
1358 STATE ROUTE 903
JIM THORPE, PA 18229** :

**Docket No.
C-2013-2371641**

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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 903 Rentals, Inc. "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, 903 Rentals, Inc., who maintains its principle place of business at 1358 State Route 903, Jim Thorpe, PA 18229.

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 May 17, 2007, at A-00123351.

3. Pursuant to its enforcement responsibilities, I&E initiated the above-captioned complaint against Respondent seeking a \$300 total civil penalty for (1) failing to have consumer info decal on the vehicle (\$50), and (2) having not obtained a criminal record for the driver (\$250). These constitute violations of 52 Pa. Code § 29.318 and 52 Pa. Code §505(a), respectively.

4. Respondent filed a timely Answer to the Complaint admitting the allegations, but providing a brief in support of its Answer explaining the attending circumstances.

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. I&E will withdraw Count 1 of the Complaint for the missing consumer info decal.

- C. Respondent agrees to pay a civil penalty in the amount of \$150.00 for Count 2 of the Complaint for the failure to conduct the criminal background check.
- 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.

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 this case involves a missing consumer decal and failure to obtain a criminal background check on a driver. Respondent had recently purchased a new vehicle, and did not have consumer decals on-hand at the time of inspection. A Commission enforcement officer provided the decal, and it was immediately affixed to the vehicle. Similarly, failing to obtain a criminal

background check on a driver appears to be a technical oversight; one which was remedied immediately. Thus, 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 not of a serious nature. The Commission takes seriously a carrier's obligation to ensure its drivers have successfully passed a criminal background check. In this case, the oversight was remedied immediately, and the results of the background check were provided to the enforcement officer.

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.

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. Respondent took the appropriate corrective action in this case, and there is no indication that similar conduct will occur in the future.

14. The fifth standard in the Policy Statement deals with the number of customers affected and the duration of the violation. These violations affected no customers, and it were remedied immediately.

15. The Policy Statement's sixth standard is a consideration of the compliance history of the entity. Respondent has paid civil penalties two (2) times for various violations over the past six years. Both fines paid were for \$100 for minor violations. Overall, Respondent's compliance history is very good with no serious alleged 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 One Hundred and Fifty Dollars (\$150.00) 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 this case, 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.

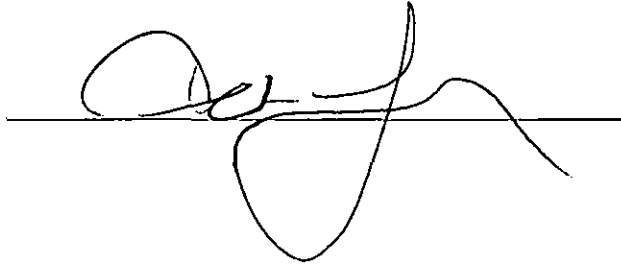
25. This Settlement Agreement is conditioned upon the Commission's approval without modification.

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 _____ day of _____ 2014.

FOR THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:



Prosecutor
Title

1/13/2014
Date

FOR 903 RENTALS, INC.



Vice Pres
Title

1/7/2014
Date

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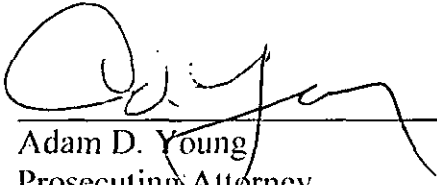
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CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the foregoing documents 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:

903 Rentals, Inc.
1358 State Route 903
Jim Thorpe, PA 18229



Adam D. Young
Prosecuting Attorney
Attorney ID # 91822

P.O. Box 3265
Harrisburg, PA 17105-3265
(717) 787-5000

Dated: January 13, 2014

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