BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

SCOTT LUELLEN,

Complainant

v. Docket C-2016-2539599

MAROADI TRANSFER & STORAGE, INC.
1801 Lincoln Hwy, North Versailles, PA 15137

Respondent

COMPLAINTANT'S FIRST MOTION FOR JUDGMENT ON THE PLEADINGS

COMES NOW Complainant and moves this Commission make a partial judgment on the pleadings regarding those claims in the formal complaint to which Respondent has, essentially, made an adverse admission in its answers, and in support states:

1. The Commission has jurisdiction to entertain and rule on this motion because its Rules of Administrative Practice and Procedure permit the filing of motions for judgment on the pleadings pursuant to 52 Pa. Code § 5.102, after the pleadings (formal complaint, answer, new matter and reply to new matter) are closed, as they now are.
2. A motion for judgment on the pleadings is properly granted where the pleadings "show that there is no genuine issue as to a material fact and that the moving party is entitled to a judgment as a matter of law." 52 Pa. Code § 5.102(d)(1).
3. Judgment on the pleadings should be granted only in a case where the moving party's right to prevail is so clear that a trial would be a fruitless exercise (See *Nein v. UGI Utilities, Inc.*, PUC Docket No. C-2012-2298099 (Final Order entered November 9, 2012).

4. The Amended Complaint alleged Respondent violated nine (9) regulations and statutes enforced by this Commission in the handling and aftermath of a personal injury caused by Respondent's subcontractor during the loading stage of move of household goods of his and his domestic partner's household goods.
5. In summary, the Amended Formal Complaint alleged consisted of one count of filing knowingly false pleadings in its Answer to the Amended Complaint, and eight counts of violating subsections of § 32.16, all pertaining to the timely, good faith, and honest handling of claims involving insurance.
6. Essentially, the Respondent has conceded that: (a) after swearing in its answer that it had no knowledge of Complainant or his injuries, it confirmed as true and accurate that it received as many as nine electronic letters from the Complainant attempting to investigate and resolve an insurance claim over a one-year period, the acknowledge of which, is an adverse admission to having violated § 1.36(E) as alleged in Count 1 of the Amended Complaint; and, (b) that it refused to identify its insurance carrier at any time, refused to conduct any investigation, made no effort to effectuate a fair and equitable settlement – which constitute four of the nine claims – because it rejects the legal doctrine of *respondeat superior*.
7. For example, Count 3 alleged Respondent failed to acknowledge or promptly respond to written or oral communications in regard to an insurance claim in compliance with § 32.16(2). Respondent acknowledges in its answer to the Amended Complaint that all the Amended Complaint's exhibits are true and accurate copies of communications Respondent received from Complainant regarding his injuries and attempts to investigate and settle an insurance claim (See Formal Amended Complaint, Exhibits A, B, F, G, H). Moreover, in its

answer to interrogatory 21, Respondent concedes it never even responded to any of the communications much less "promptly" as required by § 32.16(2).

8. For example, Count 5 alleged Respondent conducted no reasonable investigation of the claim in compliance with § 32.16(4). Respondent adversely admits in response to interrogatory 9 that, in relevant part, "Respondent did not participate or conduct any investigation of any alleged injury to Complainant..."
9. For example, Count 7 alleged Respondent made no good-faith effort to effectuate a prompt, fair, or equitable settlement in compliance with § 32.16(6). Respondent adversely admits in response to interrogatory 19 that, in relevant part, "Respondent has made no attempt or offer to settle…"
10. Therefore, these facts being reasonably settled, this Commission may now proceed to interpret whether Respondent may avoid compliance with its regulations if the work is performed by contractors or subcontractors. In other words, whether the doctrine of *respondeat superior* applies to this Commission's regulations. Because Respondent has factually conceded in its answers and exhibits that it did not perform the duties required by this Commission in handling at least these claim, then the Commission may make a partial judgment – of the four claims noted herein – without further adjudication of the facts. However, if the doctrine of *respondeat superior* does NOT apply to this Commission's regulations, the Respondent's inaction, and conscious and willful choice to not handle Complainant's claim according to the regulations, was lawful.
11. This question is not only at the crux of this case, it is at the crux of a high-profile multi-district regulatory litigation involving the technology-based ride-sharing company "Uber."[1]

[1] See *Mazaheri v. Doe*, 2014 WL 2155049 (W.D. Okla. May 22, 2014), appeal dismissed (10th Cir. 14-5189) (Nov. 20, 2014) (acknowledging Uber's argument that its driver is not an employee, but declining to address the issue);

12. The doctrine of *respondeat superior* must apply to this Commission's regulations because, if it did not, it would create a loophole allowing all regulated transportation companies in the Commonwealth to avoid regulation by hiring contractors and sub-contractors to do the work, which is against public policy and public safety. Moreover, in doing so, these evasive companies would be unjustly enriched by benefitting from the assets and labor of its contractors and sub-contractors while not being burdened by any liabilities, including regulatory compliance. Avoidance of claims or regulatory compliance by ignoring *respondeat superior* would also leave any harmed party without recourse because evasive companies like Respondent would simply claim, as Respondent does here, that it has neither obligation nor liability because the work, employees, and equipment involved in the cause of action belonged to a contractor or subcontractor, that they were simply the contracting party and "booking agent," just like Uber. In the instant case, the subcontractor is also beyond the reach of Pennsylvania's motor carrier regulations because it is based in New Hampshire, and worse yet, now claims to have gone out of business, leaving an injured party little recourse except through Respondent, the prime contractor contracted and paid do the work that it hired and supervised the subcontractor to perform.
13. If *respondeat superior* doctrine does not apply to the motor carriers regulating by this Commission (as Respondent defensively presumes), it is not only contrary to public policy, and detrimental to the clients that hire them, it is detrimental to the contractors performing the work. Contractors are being deprived of minimum wages and other employee rights

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Search v. Uber Technologies, Inc., 2015 WL 5297508 (D.D.C. Sept. 10, 2015) (citing Uber's argument that it has no respondeat superior liability); Judd, supra note 2; Julie Zauzmer & Lori Aratani, Man Visiting D.C. Says Uber Driver Took him on Wild Ride, WASHINGTON POST (July 9, 2014), http://www.washingtonpost.com/blogs/dr-gridlock/wp/2014/07/09/man-visiting-d-c-saysuber-driver-took-him-on-wild-ride; Jordan Novet, Uber and its driver are sued after fatal New Year's Eve Accident, VENTURE BEAT (Jan. 27, 2014), http://venturebeat.com/2014/01/27/uber-and-its-driver-are-sued-after-fatal-new-years-eveaccident.

required in the Commonwealth when Respondent uses out-of-state contractors to complete work that it coordinates, contracts, and is paid to perform. It is an intentional business strategy of Respondent, and evasive companies like them, to avoid employment laws, public safety regulations, and liabilities while reaping all the benefits of the work.[2]

14. Furthermore, if this Commission were to rule that regulated companies could avoid accountability by holding *respondeat superior* doctrine does not apply in the Commonwealth, it would also likely run afoul of the federal Lanham Act of 1946. Most courts recognize five elements of a Lanham Act false advertising claim: (1) The defendant made a false or misleading statement of fact in a commercial advertisement about a product; (2) the statement either deceived or had the capacity to deceive a substantial segment of potential consumers; (3) the deception is material, in that it is likely to influence the consumer's purchasing decision; (4) the product is in interstate commerce; and (5) the plaintiff has been or is likely to be injured as a result of the statement. (See Courtland Reichman & M. Melissa Cannady, False Advertising Under the Lanham Act, 21 AMERICAN BAR ASSOCIATION FRANCHISE L. J. 187, 187 (2002)).

15. In the instant case, if this Commission were to rule *respondeat superior* doctrine does not apply to the companies it regulates, it would permit all them to do as Respondent has done here. Namely, advertise to the general public that it is a moving, transfer, and storage company, win public business that it coordinates, contracts and is paid to perform, then hire contractors or subcontractors, and if any regulatory or liability issue occurs, allege ignorance of any and all facts or liabilities, while also avoiding all public safety regulations of this

[2] Notably, this Respondent already has a history of its operating license being recently and involuntarily revoked by the Federal Motor Carrier Safety Administration giving this Commission even greater impetus to ensure public safety by not allowing it to avoid its regulations by using contractors and evading accountability by claiming *respondeat superior* does not apply. (See Complaint's First Motion for Sanctions, Exhibit A).

Commission. It would create an instrument to systematically mislead the public and as soon as anyone was harmed doing the work, as occurred here, and the superior company would claim no liability, accountability, or knowledge.

16. Arguably, the legal question of whether *respondeat superior* doctrine requires prime contractors or "booking agents" like Uber, Lyft, or Respondent to follow this Commission's regulations has already been resolved by the Commission and is, therefore, subject to the doctrine of *collateral estoppel*. Notably, this Commission has already taken regulatory enforcement action in the high-profile case against Uber noted earlier herein. Uber has steadfastly claimed it is not subject to the motor carrier regulations of this Commission, as Respondent argues, because it was not the party directly involved in the underlying service, it was only involved as a "booking agent" for contractors and subcontractors. The Commission has rejected Lyft's and Uber's arguments, and fined Lyft $250,000, and Uber $11.4 million on April 21, 2016.

17. While an administrative agency such as the Commission is not, of course, bound by the rule of *stare decisis*, it does have an obligation to render consistent opinions, and should either follow, distinguish or overrule its own precedent. *National Fuel Gas Distribution Corp. v. Pa. Public Utility Comm'n*, 677 A.2d 861 (Pa.Cmwlth. 1996). See, also, *Bell Atlantic-Pennsylvania, Inc. v. Pa. Public Utility Comm'n*, 672 A.2d 352 (Pa.Cmwlth. 1995); *Peco Energy Co. v. Pa. Public Utility Comm'n*, 568 Pa. 39, 791 A.2d 1155 (2002); *Dee-Dee Cab, Inc. v. Pa. Public Utility Comm'n*, 817 A.2d 593 (Pa.Cmwlth. 2003), app. denied, 575 Pa. 698, 836 A.2d 123 (2003).

18. Therefore, this Commission has already repeatedly and recently held in the cases of Uber and Lyft that just because a company is the "booking agent" or prime contractor, it does not relinquish it from adhering to the regulations enforced by this Commission. Prime

contractors, or “booking agents” like Respondent, are accountable to follow the Commission’s regulations, which the Respondent has factually and adversely admitted to having not done in the instance case.

VERIFICATION

I, Scott Luellen, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904.

/s/_____
Scott Luellen

Wednesday, June 29, 2016
Date:

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Belmont, MA 02478
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CERTIFICATE OF SERVICE

I, Scott Luellen, hereby certify that a true and correct copy of the foregoing motion was sent via pre-paid, first-class US Postal Service to John A. Pillar, Esq., Counsel for Respondent MAROADI, 150 Green Commons Drive, Pittsburgh, PA 15243 on or before Tuesday, the 29th day of June 2016.[3]

/s/_____
Scott Luellen
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Wednesday, June 29, 2016
Date:

[3] A courtesy copy was also sent to Mr. Pillar via his electronic mail address found on the pleadings (pillarlaw@verizon.net) and to the General Manager (JMessmer@maroadi.com) and owner (Mary@Maroadi.com) of MAROADI MOVING & STORAGE, Inc.