

MAY 22 1997

Decision 97-05-048 5/21/97

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's)
 own motion into the operations)
 and practices of David Moshe, an)
 individual, doing business as)
 David's Auto For Hire,)
 Respondent.)

I.95-12-005
 (Filed December 6, 1995)

ORIGINAL

David Moshe, respondent, for himself.
Joseph DeUlloa, Attorney at Law, and
 Lou Ann Smith, for the Safety and
 Enforcement Division.

O P I N I O N1. Summary

The Commission approves a Settlement Agreement (settlement) between respondent David Moshe, a charter-party carrier of passengers doing business as David's Auto For Hire, and the Commission's Safety and Enforcement Division (staff).¹ Under the settlement, respondent agrees not to contest the allegations of violations made in the order instituting investigation (OII). Respondent shall serve a 24-month probation and pay, in installments, a punitive fine of \$10,000 of which \$4,000 is held in forbearance unless he violates the terms of the settlement. During the probation period, respondent shall fulfill specified reporting requirements.

¹ Under a reorganization plan announced on September 10, 1996, the Safety and Enforcement Division ceased to exist. Many of its duties were assigned to the Rail Safety/Carriers Division. Where the settlement refers to the Safety and Enforcement Division, such reference will be deemed to include the Rail Safety/Carriers Division.

2. Background

Respondent operates pursuant to a Charter-Party P permit (TCP 7061-P) issued September 13, 1992. Staff opened an investigation into respondent's operations on October 10, 1994 after receiving complaints that he did not have workers' compensation insurance while engaging employees and that his employees were not enrolled in the Department of Motor Vehicles (DMV) pull notice program. Following an audit of respondent's records which staff conducted on January 11, 1995 and which covered the period August through October 1994, staff concluded that respondent had committed certain violations of the Public Utilities Code and General Order (GO) 157-B. Staff then issued Citation Forfeiture No. F-4940 for \$2,500 on May 24, 1995. Respondent denied the citation on June 6, 1995.

The results of the staff investigation led the Commission to issue the OII. One of the purposes of the investigation is to determine whether respondent:

- "a. violated Paragraph 5.02 of General Order 157-B, by failing to enroll his drivers in the Pull Notice Program;
- "b. violated Section 5378.1 of the Public Utilities Code by failing to have workers' compensation insurance coverage on file for his employees;
- "c. violated Section 5386 of the Public Utilities Code by failing to show his TCP number on his advertisement;
- "d. violated Paragraph 4.01 of General Order 157-B, by failing to report to the Commission vehicles used in his charter party operations within ten days of placing those vehicles into service;
- "e. violated Paragraph 3.01 of General Order 157-B, by failing to show the required information on his waybills; and,
- "[f.] violated Section 421 of the Public Utilities Code by underreporting revenue to the Commission and underpaying [Public Utilities

Commission Transportation Reimbursement Account
(PUCTRA)] fees in 1994."

In addition to determining whether respondent had violated the specified statutes and regulations, the investigation was instituted "for the purpose of determining whether Respondent's operating authority should be suspended, cancelled, or revoked, or whether a fine of up to \$5,000 should be imposed pursuant to Public Utilities Code Section 5378, or whether a fine of up to \$5,000 for each violation should be imposed pursuant to Public Utilities Code Section 5413.5." (OII, Ordering Paragraph 2, p. 6.)

A duly noticed telephone prehearing conference was held on May 20, 1996. Hearing was held on July 8, 1996 at San Pedro. No comments on the proposed decision of the Administrative Law Judge were filed. We adopt without modification the findings and order made therein.

3. Hearing

Staff offered four exhibits: an April 27, 1995 "Operations Analysis Report" of investigator Lou Ann Smith; a May 13, 1996 declaration by Smith; a supplemental declaration by Smith dated June 17, 1996; and the settlement, which the parties entered into at the outset of the hearing. Smith sponsored the investigative reports and the settlement. Staff also called respondent to confirm that he understood the terms and conditions of, and accepted, the settlement.

Key terms and conditions of the settlement, a copy of which is attached to this decision, include the following:

1. Respondent agrees not to contest the allegations made in the OII. Respondent further agrees that in any future enforcement or licensing proceeding involving respondent, staff may introduce the alleged violations and the violations will not be contested.
2. Respondent shall immediately cease operations until he has received written notice from the Director of the Safety and Enforcement Division that he is in compliance with the Commission's pull notice and workers' compensation requirements and that his operating authority is renewed.

3. Respondent shall serve a 24-month probation beginning with the date of approval of the settlement. During the probation period, respondent shall prepare and present quarterly progress reports to staff and provide other documents and reports, including Employment Development Department Form DE3, workers' compensation reports. Respondent agrees not to allow any unlicensed driver to operate any company vehicle and to fully comply with the DMV pull notice program. Should the Commission find that respondent operated in violation of the pull notice program or driver licensing requirements before the probation period is over, respondent stipulates to the automatic and immediate revocation for cause and with prejudice of his operating authority. In the event respondent violates the terms of the settlement, the Commission may reopen the proceeding to reconsider the terms of the settlement.
4. Respondent agrees to pay a punitive fine of \$10,000 of which \$4,000 is held in forbearance unless he violates the terms or conditions of the settlement. Respondent may pay the fine in installments beginning with a payment of \$2000 due on or before the first of the month following adoption of the settlement. Remaining installments of \$220 shall be due on or before the first of each subsequent month for the next 18 months, except that the 18th installment shall be in the amount of \$4,260. Within 60 days prior to completion of probation, respondent may apply to the Commission to be excused from \$4,000 of the 18th installment. In the event that respondent has fully complied with the terms of the settlement, the staff will not oppose such application. No interest is payable with respect to the punitive fine agreed to in the settlement.
5. Within 30 days after signing the settlement, respondent shall provide staff with a complete list of all of his current drivers and their driver's-license numbers, and evidence of his pull notice compliance. Respondent will comply with the provisions of California Vehicle Code Section 1808.1, and the Public Utilities Code,

and GO 157-C which require him to enroll all his drivers in the DMV pull notice program.

6. Within 30 days after signing the settlement, respondent shall provide staff with a complete list of all of his current employees, and evidence of his compliance with workers' compensation regulations. Respondent will comply with the provisions of Public Utilities Code Section 5378.1 which require him to file with the Commission evidence of workers' compensation coverage for all of his employees.
7. Within 30 days after signing the settlement, respondent will pay PUCTRA fees due pursuant to Public Utilities Code Section 405 in the amount of \$695.31, including penalty for delinquent payments. Respondent will comply with the provisions of Public Utilities Code Sections 421 and 423 which require him to report to the Commission and pay fees on his gross intrastate revenue.

In addition, respondent agrees that he will comply with the provision of GO 157-C, that he will be in compliance with the terms of the settlement immediately upon its adoption by the Commission, and that the settlement is intended only to resolve the instant regulatory matter affecting him that is before the Commission.

4. Discussion

By entering into the settlement, respondent agreed not to contest the allegations made in the OII. Where a respondent who is not represented by counsel has entered into a settlement with the staff, we must be assured that respondent was under no undue sense of obligation to settle in lieu of contesting the allegations at issue. Respondent testified that staff explained to him the nature of an administrative hearing and his due process rights. He further testified he understood each of the terms and conditions of the settlement and his rights and obligations thereunder. We are satisfied that respondent entered into the settlement of his own accord and with a full understanding of the effects of doing so.

We appreciate respondent's commitment to do his best to comply with the settlement.

The settlement represents an effective and efficient disposition of the issues raised in the OII. Among other things, the settlement is in the public interest because it helps to ensure that respondent's operations will be brought expeditiously into compliance with statutes and regulations that affect public safety² and welfare of respondent's employees through workers' compensation coverage. The settlement is fair to respondent because it allows him to continue operations during probation and demonstrate his willingness and ability to comply with our requirements under staff monitoring, and because it allows him to avoid paying a significant portion of the \$10,000 fine by complying with our requirements and the terms and conditions of the settlement. We believe that the amount of the fine is reasonable in light of the violations alleged.

In Decision (D.) 92-12-019 we had occasion to consider the role of settlements in disposing of the Commission's responsibilities. In that decision we enunciated a standard by which future "all party" settlements would be measured or evaluated. We stated that:

"As a precondition to our approval the Commission must be satisfied that the proposed all party settlement:

- "a. commands the unanimous sponsorship of all active parties to the instant proceeding;
- "b. that the sponsoring parties are fairly reflective of the affected interests;

² In particular, the pull notice program is designed to ensure that only qualified carriers using properly licensed drivers are authorized to operate passenger vehicles in regulated service.

- "c. that no term of the settlement contravenes statutory provisions or prior Commission decisions; and,
- "d. that the settlement conveys to the Commission sufficient information to permit us to discharge our future regulatory obligations with respect to the parties and their interests." (Re San Diego Gas and Electric Company (1992) 46 CPUC2d 538, 550-551.)

We are satisfied that the settlement meets each of the above criteria, and should be approved. It was entered into by and between staff and respondent, the only parties to this investigation. We have found no provision of the settlement that would contravene any statutory provision over which the Commission has jurisdiction, or any Commission decision. To the contrary, we find that it allows us to fulfill our duties in this proceeding to protect the public interest. The settlement is clear with respect to the rights and obligations of the parties thereunder and thus includes the information necessary for us to discharge our responsibilities. Based on the foregoing, we will approve it.

Findings of Fact

1. The settlement is reasonable in light of the whole record, consistent with the law, and in the public interest.
2. Respondent agreed not to contest the allegations made in the OII by entering into the settlement.
3. Respondent demonstrated that he understands the terms and conditions of the settlement and his rights and obligations thereunder.

Conclusions of Law

1. The settlement meets the criteria for approval of all-party settlements set forth in D.92-12-019.
2. The motion for approval of the settlement should be granted.

3. This order should be made effective on the date signed to provide timely disposition of this matter.

O R D E R

IT IS ORDERED that:

1. The motion for approval of the Settlement Agreement (Appendix A) is granted.
2. Respondent David Moshe shall comply with the terms and conditions of the settlement.
3. This proceeding is closed.

This order is effective today.

Dated May 21, 1997, at Sacramento, California.

P. GREGORY CONLON
President
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
RICHARD A. BILAS
Commissioners

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's)
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Respondent.)

I.95-12-005
(Filed December 6, 1995) 17
Exhibit
CPUC Proceeding I.95-12-005
Sponsor/Witness SYC / Smith
Date Ident. 7/2/96 Recd. 7/2/96
Mark S. Weizell
Administrative Law Judge 11/16

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into by and between the Safety and Enforcement Division of the California Public Utilities Commission (Staff) and David Moshe, an individual, doing business as Davi's Auto For Hire (Davi's).

Background

On December 6, 1996, the California Public Utilities Commission (Commission) issued an Order Instituting Investigation (OII) into the operations and practices of David Moshe, an individual, doing business as Davi's Auto For Hire. The OII sought to determine whether David Moshe:

- a. Failed to enroll his drivers in the Pull Notice Program;
- b. Failed to obtain worker's compensation and file proof of insurance with the Commission;
- c. Failed to show his TCP number on advertisements;
- d. Failed to report his equipment within ten days of placing into service;
- e. Failed to show required information on waybills; and
- f. Failed to properly report revenue and pay PUCTRA fees.

On May 20, 1996, Administrative Law Judge (ALJ) Mark Wetzell held a pre-hearing conference and scheduled hearings for this matter on July 8 and 9, 1996. David Moshe has been served with Staff's Citation Forfeiture Report prepared by Lou Ann Smith, Associate Transportation Representative, dated April 27, 1995; Declaration of Lou Ann Smith, dated May 13, 1996; and Supplemental Declaration of Lou Ann Smith dated June 17, 1996.

Terms and Conditions

In consideration for the mutual promises set fourth herein, the parties agree as follows:

1. In order to effectuate a Settlement of this matter before the Commission, David Moshe, doing business as Davi's Auto For Hire, shall not contest the allegations made in OII 95-12-005. David Moshe agrees that CPUC Staff can, in any future enforcement or licensing proceeding involving either Davi's Auto For Hire or David Moshe, introduce the alleged violations and the violations will not be contested.

2. Notwithstanding any other provision of this Settlement Agreement, David Moshe shall immediately cease operations until he has received written notice from the Director of Safety and Enforcement Division that:

(a) Davi's is in compliance with the Commission's Pull Notice and Worker's Compensations requirements; and

(b) Moshe's operating authority is renewed.

3. Probation

David Moshe shall serve a twenty-four month probation which shall begin on the date this Settlement Agreement is approved and adopted by the Commission. During probation, David Moshe is subject to the following terms and conditions:

(a) Progress Reports

During probation, David Moshe, doing business as Davi's Auto For Hire, shall prepare and present to the Safety and Enforcement Division quarterly reports of his compliance with Commission regulations. The quarters will correspond to the four quarters of the calendar year. The quarterly report shall include:

(1) a list of the drivers engaged by David Moshe for the prior quarter;

(2) the drivers' license number of each driver listed in 3.(a)(1) above;

(3) evidence of compliance with Section 1808.1 of the Vehicle Code which would include the Pull Notice and DMV printouts;

(4) income and expense statements for the prior quarter.

The report shall be due on the 15th day after the beginning of each quarter for the previous quarter's operations. The first report shall be due the 30th day after the beginning of the

quarter immediately following the Commission's adoption of this Settlement Agreement. David Moshe shall continue to provide these reports until completion of probation.

(b) Employment Development Department (EDD) Form DE3

David Moshe shall provide the Safety and Enforcement Division with copies of the quarterly EDD Form DE3 filed with the EDD. David Moshe shall provide these reports within 15 days of filing them with the EDD and shall continue to provide the reports until completion of probation.

(c) Worker's Compensation Reports

During probation, David Moshe shall, under oath, file annually a report indicating the number, classification, and compensation of all employees and owner-operator drivers hired or engaged during the reporting period. The Commission staff will provide a copy of the report to the administrator of the carrier's workers' compensation self-insurance plan if the carrier is self-insured, or to the carrier's workers' compensation insurer if the carrier's workers' compensation protection is provided by a policy or policies of insurance. The first such report shall be filed within thirty days after the effective date of the Commission order adopting this Settlement Agreement. Each subsequent annual report shall be filed twelve months after the previous report is filed. The reports will be submitted to the Enforcement Section, Safety and Enforcement Division of the Commission.

(d) Driver Retention, Licensing, DMV Pull Notice Program

David Moshe further agrees not to allow any unlicensed driver to operate any company vehicle and shall fully comply with the Department of Motor Vehicles Driver Pull Notice Program. Should the Commission find that Moshe operated in violation of the Pull Notice requirements or driver licensing requirements before the twenty-four month period is over, Moshe stipulates to the automatic and immediate revocation for cause and with prejudice of his operating authority.

(e) Further Proceedings

In the event that David Moshe violates the terms of this Settlement Agreement, the Commission may reopen this proceeding to

reconsider the terms of this Settlement Agreement, including, without limitation, adopting findings of violations of applicable rules and regulations and those sanctions that have been or should be imposed for any past, present or future acts or omissions with respect to David Moshe's performance of his charter party operations.

4. Monetary Payment

David Moshe, doing business as Davi's Auto For Hire, agrees to pay a punitive fine of \$10,000 with \$4,000 held in forbearance unless Davi's Auto For Hire violates the terms or conditions of this Settlement Agreement. David Moshe agrees to pay this amount in nineteen installments as follows: The first installment of \$2,000 shall be due on or before the first of the month following the Commission's adoption of this Settlement Agreement. The remaining installments shall be due on or before the first of each subsequent month for the next eighteen months. Each installment shall be in the amount of \$220 except the eighteenth installment, which shall be in the amount of \$4,260. Within 60 days prior to completion of probation, David Moshe may apply to the Commission to be excused from \$4,000 of the eighteenth installment, making the amount due \$260. In the event that David Moshe, doing business as Davi's Auto For Hire, has fully complied with the terms of this Settlement Agreement, the Safety and Enforcement Division will not oppose this application. No interest is payable with respect to the punitive fine agreed to in this Settlement.

5. DMV Pull Notice Program Requirements

David Moshe, doing business as Davi's Auto For Hire, will provide to Safety & Enforcement Division staff a complete list of all of his current drivers and their driver's license numbers, and evidence of his Pull Notice compliance within 30 days after the signing of this Settlement Agreement. David Moshe will comply with the provisions of California Vehicle Code Section 1808.1 and of the Public Utilities Code and Commission General Order 157-B which require him to enroll all his drivers in the DMV Pull Notice Program.

6. Worker's Compensation Coverage Requirements

David Moshe, doing business as Davi's Auto For Hire, will provide to Safety & Enforcement Division staff a complete list of all of his current employees, and evidence of his compliance with worker's compensation regulations within 30 days after the signing of this Settlement Agreement. David Moshe will comply with the provisions of P.U. Code Section 5378.1 which require him to file with the Commission evidence of worker's compensation coverage for his employees.

7. Payment of Delinquent PUCTRA Fees

David Moshe, doing business as Davi's Auto For Hire, will pay the PUCTRA fees due pursuant to P.U. Code Section 405, in the amount of \$695.31 including penalty for delinquent

payment, within 30 days after the signing of this Settlement Agreement. David Moshe will comply with the provisions of P.U. Code Sections 421 and 423 which require him to report to the Commission and pay fees on his gross intrastate revenue.

8. Compliance With General Order 157-BC
David Moshe, doing business as Davi's Auto For Hire,
will comply with the provisions of Commission General Order 157-
B. *DA* *DM*

9. David Moshe agrees that immediately upon the Commission adoption of this Settlement Agreement he will be in compliance with the terms of this Settlement Agreement.

10. David Moshe agrees that this Settlement Agreement is intended only to resolve the instant regulatory matter affecting him that is before the Commission.

11. The parties agree jointly by executing and submitting this Settlement Agreement that the relief requested herein is just, fair and reasonable and in the public interest, and that the terms are binding when approved by the Commission. The parties respectfully request that the Commission adopt findings and conclusions consistent with this Settlement Agreement and that the instant proceeding be terminated upon such order of the Commission.

IN WITNESS WHEREOF, the parties hereto have executed this Settlement Agreement on the date set forth opposite their respective signatures.

Dated: 7-8-96DAVI'S AUTO FOR HIRE
David MosheBy: *David Moshe*David Moshe, Owner
Davi's Auto For Hire.Dated: 7-8-96STAFF OF THE CALIFORNIA
PUBLIC UTILITIES COMMISSIONBy: *Joseph DeUlla*Joseph DeUlla,
Staff CounselAttorney for Safety and
Enforcement Division

(END OF APPENDIX A)