

FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of Urban Express (Eastern) Case No. 10-1459-TR-CVF
Horizon, Inc.) Notice of Apparent Violation) (CR10C272)
And Intent Assess Forfeiture.)

SETTLEMENT AGREEMENT

I. Introduction

Pursuant to Rule 4901:2-7-11 of the Ohio Administrative Code (O.A.C.), Eastern Horizon, Inc., dba Urban Express Transportation (Eastern Horizon or Respondent) and the Staff of the Transportation Department of the Public Utilities Commission of Ohio (Staff) enter into this agreement to resolve all issues in the above captioned case.

It is understood by Eastern Horizon and the Staff that this Settlement Agreement is not binding upon the Public Utilities Commission of Ohio (Commission). This agreement however, is based on the parties' desire to arrive at a reasonable result considering the law, facts, and circumstances. Accordingly, Eastern Horizon and the Staff encourage and recommend that the Commission adopt this Settlement Agreement.

This Settlement Agreement is submitted on the condition that the Commission adopts the agreed upon terms. In the event the Commission rejects any part of the Settlement Agreement, or adds to, or otherwise materially modifies its terms, each party shall have the right, within thirty (30) days of the date of the Commission's entry or

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order, to file an application for rehearing that includes a request to terminate and withdraw from the Settlement Agreement. Upon the application for rehearing and request to terminate and withdraw from the Settlement Agreement being granted by the Commission, the Settlement Agreement shall immediately become null and void. In such event, the parties shall proceed to a hearing as if this Settlement Agreement had never been executed.

II. History

- A. On July 7, 2010, a compliance review was conducted by Staff at Respondent's facility located at 1640 E. 5th Avenue, Columbus, OH 43219.
- B. As a result of the compliance review, Eastern Horizon was timely served with a notice of preliminary determination in accordance with Rule 4901:2-7-12, O.A.C. The preliminary determination assessed Eastern Horizon \$23,300.00 for violations of 49 C.F.R. §382.211 Using a driver who refused to take drug/alcohol test (\$1,000.00), §387.31(a) Bus – inadequate or no financial responsibility (\$1,000.00), §329.9a(a)(1) Operating without the required operating authority (\$3,600.00), §382.301(a) Failing to have driver undergo pre-employment drug test (\$900.00), §382.303(a) Failing to do post accident alcohol and/or drug test (\$400.00), §382.303(b) Failing to conduct a post accident testing on driver for controlled substances (\$400.00), §383.23(a) Operating a CMV without a valid CDL (\$1,100.00), §391.23(a)(2) Failing to investigate a driver's previous employment record

(\$700.00), §391.23(a)(2) Failing to investigate driver's previous employment record (\$600.00), §391.45(a) Using a driver not medically examined and certified (\$700.00), §391.51(b)(3) Failing to maintain road test certificate in DQ file (\$0.00), §391.51(b)(3) Failing to maintain road test certificate in DQ file (\$0.00), §391.45(a) Using a driver not medically examined and certified (\$0.00), §391.21(a) Using a driver who has not completed and furnished an application (\$0.00) and Ohio Revised Code (R.C.) 4921.11(d) Failing to cease operating when insurance cancelled (\$12,900.00).

- C. Eastern Horizon requested an administrative hearing pursuant to 4901:2-7-13, O.A.C.
- D. The parties have negotiated this Settlement Agreement, which the parties believe resolves all of the issues raised in the notice of preliminary determination.

III. Settlement Agreement

The Staff and Eastern Horizon agree and recommend that the Commission find as follows:

- A. Eastern Horizon admits that the violations occurred as alleged and agrees that the violations of 49 C.F.R. §382.211, §387.31, §329.9a(a)(1), §382.301(a), §382.303(a), §382.303(b), §383.23(a), §391.23(a)(2), §391.23(a)(2), §391.45(a), §391.51(b)(3), §391.51(b)(3), §391.45(a),

§391.21(a) and R.C. 4921.11(d) may be included in Eastern Horizon's Safety-Net Record and history of violations, insofar as it may be relevant for purposes of determining future penalty actions.

- B. Eastern Horizon agrees to pay a civil forfeiture of \$16,310.00. Eastern Horizon further agrees to an additional civil forfeiture of \$6,990.00 (representing the difference between \$23,300.00 and \$16,310.00) to be held in abeyance for eighteen (18) months from the date of the Commission's Opinion and Order adopting and approving this Settlement Agreement. Eastern Horizon agrees to forfeit the total amount held in abeyance if it fails to comply with the payment arrangements in division C below and/or the audit in division D below and/or the payment of the amount owed from a previous case in division F below. Eastern Horizon will be afforded notice and an opportunity to contest any claim of non-compliance with the Settlement Agreement. Staff agrees to the reduction of the civil forfeiture from \$23,300.00 to \$16,310.00, which is conditioned on Eastern Horizon maintaining compliance with the Settlement Agreement, due to improvements to Respondent's business operations and remedial actions taken by Respondent. Respondent is now operating as Affordable Tours & Transportation Inc. d.b.a. Urban Express Transportation (Affordable Tours). Since the investigation and filing of this case, Affordable Tours has cooperated with Staff to bring its operations into compliance with the

applicable law and Commission's rules. Furthermore, Staff conducted an on-site educational seminar with Affordable Tours on July 13, 2011.

- C. Eastern Horizon will pay the civil forfeiture of \$16,310.00 in seventeen (17) consecutive monthly payments of \$906.00, and one payment of \$908.00, commencing within thirty (30) days of the Commission's order approving this Settlement Agreement. The payments shall be made by certified check or money order made payable to "Treasurer State of Ohio," and they shall be mailed to PUCO Fiscal, 180 E. Broad St., 4th floor, Columbus, OH 43215-3793. The case number (CR10C272) should appear on the face of each check. If Eastern Horizon fails to meet a monthly payment deadline as described above, Staff retains the option to pursue the full \$6,990.00 civil forfeiture held in abeyance in this case.
- D. Affordable Tours, which is the successor company to the assets of Eastern Horizon, will be subject to a Staff compliance review six (6) months from the date the Settlement Agreement is adopted and approved by Opinion and Order of the Commission. The Staff's compliance review will cover this six-month period of time. If Staff finds acute and/or critical violations for Affordable Tours during this future compliance review, Staff retains the option to pursue the full \$6,990.00 civil forfeiture held in abeyance in this case. This Settlement Agreement does not preclude the Commission Staff from seeking new forfeitures and/or a revocation of Respondent's current

operating Certificate (Affordable Tours) for any new violations in a separate case pursuant to the Commission's rules and procedures, in addition to the penalties provided in this Settlement Agreement, as a result of Staff's compliance review in this division. In addition, the parties agree that Staff is not precluded from using the violations admitted to by Respondent in this Settlement Agreement as support for any enhanced penalty that is pursued by Staff in a future case against Affordable Tours, based on the results of the compliance review that will be done by Staff pursuant to this division.

- E. Eastern Horizon also agrees to have its Certificate to operate Eastern Horizon Inc., dba Urban Express Transportation, cancelled by the Commission, as part of this Settlement Agreement. Eastern Horizon Inc. received notice that its Certificate was placed under suspension effective April 1, 2010, as a result of a lapse in insurance. But Respondent continued to operate under this entity multiple times without the required operating authority and insurance during this suspension, as admitted by Respondent under division A above. Eastern Horizon and Staff recommend that the Commission grant their request to cancel Eastern Horizon Inc.'s Certificate, as a term of this settlement. Eastern Horizon also agrees to voluntarily have Staff inactivate its current USDOT registration number 883413 with the Federal Motor Carrier Safety Administration (FMCSA) within thirty

days of the Commission adopting and approving this Settlement Agreement. Furthermore, Respondent agrees to voluntarily have Staff reclassify with FMCSA the USDOT registration number 2057382 of Affordable Tours as solely an intrastate carrier within thirty days of the Commission adopting and approving this Settlement Agreement. Finally, Respondent (operating under its Certificate of Affordable Tours) agrees to voluntarily submit a written request to withdraw its application for M.C. number 720111 within thirty days of the Commission adopting and approving the Settlement Agreement.

- F. Eastern Horizon also agrees to pay the remaining forfeiture owed in OHCR000133, which is \$1,000.00. This payment will be made by Respondent no later than thirty days from the Commission's Opinion and Order adopting and approving the Settlement Agreement. Staff retains the option to pursue the full \$6,990.00 civil forfeiture held in abeyance in this case if the \$1000.00 payment is not timely made pursuant to this division.
- G. This Settlement Agreement shall not become effective until adopted by the Commission. The date of the entry or order of the Commission adopting the Settlement Agreement shall be considered the effective date of the Settlement Agreement. This Settlement Agreement is intended to resolve all factual and legal issues in this case. It is not intended to have an effect whatsoever in any other case or proceeding.

IV. Conclusion

The undersigned respectfully request that the Commission adopt the agreement in its entirety.

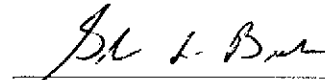
The parties have manifested their consent and authority to enter into the Settlement Agreement by affixing their signatures below on this 14th day of July, 2011.

On Behalf of Eastern Horizon, Inc.
dba Urban Express Transportation



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On Behalf of the Staff of the
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