

DEC 05 2017

SUBSTANTIAL BASIS INVESTIGATION REPORT  
AND SETTLEMENT AGREEMENT

Case No. 17-060

WHEREAS, the Joint Commission on Public Ethics ("Commission") is authorized by Executive Law § 94 to conduct an investigation to determine whether a substantial basis exists to conclude that any violations of the Public Officers Law have occurred, to issue a report of its findings of fact and conclusions of law, and to impose penalties for any violation;

WHEREAS, Gudeswar Persaud ("Respondent") was employed as an Elevator & Escalator Superintendent at the Metropolitan Transportation Authority ("MTA") New York City Transit, from October 6, 2014 until his resignation on June 16, 2017;

WHEREAS, the MTA Office of the Inspector General referred this matter to the Commission for its consideration;

WHEREAS, on July 18, 2017, a letter was sent to Respondent alleging violations of Public Officers Law § 73-a which afforded Respondent fifteen (15) days to respond;

WHEREAS, Respondent and the Commission, the parties to this Settlement Agreement ("Agreement"), have agreed to resolve this matter in a manner that avoids additional administrative and/or adjudicatory proceedings;

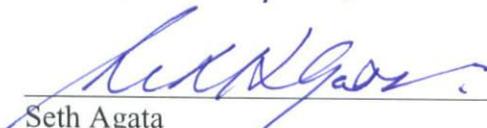
NOW THEREFORE, in consideration of the mutual covenants made herein, as the final settlement of this matter, the parties stipulate and agree that:

1. Whereas Respondent admits that while employed at the MTA, he obtained outside employment with an elevator consulting company in 2015 and 2016. Respondent continued his outside employment despite his agency's instruction in 2016 to discontinue.
2. Respondent admits that he failed to disclose his outside income in his annual Financial Disclosure Statements ("FDS") for the year 2015 and he failed to disclose his outside employment and outside income in his FDS for the year 2016 in violation of Public Officers Law § 73-a.
3. Respondent agrees to pay to the Commission the amount of four thousand dollars (\$4,000.00) in settlement of said violation as follows: \$1,000 at signing of this agreement and the remaining \$3,000.00 within six (6) months of the signing of the agreement. Respondent shall send the payments described in this Paragraph to the Commission at 540 Broadway, Albany, New York 12207, or other address

- designated by the Commission. Respondent will execute a confession of judgement simultaneous with the execution of this Agreement.
4. Respondent has filed with the Commission accurate and complete amended FDSs for the years 2015 and 2016.
  5. The Commission has agreed to the terms of this Agreement based on, among other things, the representations made to the Commission by Respondent. To the extent that representations made by Respondent are later found by the Commission to be materially incomplete or inaccurate, Respondent shall be in breach of this Agreement.
  6. If the Respondent fails to timely perform any conditions set forth in the Agreement, Respondent shall be in breach of this Agreement.
  7. Respondent agrees not to take any action or to make, permit to be made, authorize, or agree to any public statement denying, directly or indirectly, any finding in this Agreement or creating the impression that this Agreement is without factual basis. Nothing in this paragraph affects Respondent's: (a) testimonial obligations; or (b) right to take legal or factual positions in defense of litigation or other legal proceedings to which the Commission is not a party. A violation of this Paragraph constitutes a breach of this Agreement by Respondent.
  8. Upon a breach of this Agreement, the Commission shall have sole discretion to deem the Agreement null and void in its entirety, issue a new Notice of Substantial Investigation and Hearing which may include additional charges against Respondent, proceed with an enforcement action, and then issue a new Substantial Investigation Report; or to deem the Respondent in breach of this Agreement and pursue, in court, any other remedy to which the Commission is entitled at law or in equity, including, but not limited to, specific performance or injunction. As to any new Substantial Basis Investigation Report or enforcement action by the Commission pursuant to this paragraph: (1) Respondent waives any claim that such action is time-barred by a statute of limitations or any other time-related defenses; and (2) Respondent expressly acknowledges and agrees that the Commission may use any statements herein, or any other statements, documents or materials produced or provided by Respondent prior to or after the date of this Agreement, including, but not limited to, any statements, documents, or materials, if any, provided for the purposes of settlement negotiations or in submissions by Respondent or by counsel on behalf of Respondent, in any proceeding against Respondent relating to the allegations herein.
  9. Respondent shall upon request by the Commission provide all documentation and information reasonably necessary for the Commission to verify compliance with this Agreement.
  10. Respondent understands and acknowledges that the Commission may investigate any other conduct not covered by this Agreement by Respondent and take any appropriate action.

11. Respondent waives the right to assert any defenses or any challenges to this Agreement, as well as any right to appeal or challenge the determination or conduct of the Commission relating to this matter in any forum.
12. This Agreement and any dispute related thereto shall be governed by the laws of the State of New York without regard to any conflict of laws principles.
13. Respondent consents to the jurisdiction of the Commission in any proceeding to enforce this Agreement.
14. It is understood that this Agreement is not confidential and will be made public within 45 days of its execution in accordance with Executive Law § 94(14) & (19).
15. This Agreement constitutes the entire agreement between the parties and supersedes any prior communication, understanding, or agreement, whether oral or written, concerning the subject matter of this Agreement. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Agreement has been relied upon by any party to this Agreement.
16. Any amendment or modification to this Agreement shall be in writing and signed by both parties.
17. This Agreement shall become effective upon execution by the Commission or its designee.
18. In the event that one or more provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement.
19. By signing below, Respondent acknowledges reading this Agreement in its entirety, understanding all terms and conditions of this Agreement, and having done so, knowingly, voluntarily, and freely enters into this Agreement.

Dated: Dec. 6, 2017

  
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Seth Agata  
Executive Director  
New York State Joint Commission on Public Ethics

ACCEPTED AND AGREED TO  
THIS 1<sup>st</sup> DAY OF December, 2017

Respondent  
By:   
\_\_\_\_\_  
Name: Gudeswar Persaud

Approved:

Michael K. Rozen  
Acting Chair

James E. Dering  
Marvin E. Jacob  
Seymour Knox, IV  
Gary J. Lavine  
J. Gerard McAuliffe, Jr.  
Barry C. Sample  
Dawn L. Smalls  
George H. Weissman  
James A. Yates

Members