

STATE OF NEW YORK
JOINT COMMISSION ON PUBLIC ETHICS

540 Broadway
Albany, New York 12207

IN THE MATTER OF JAMES BREEN,

Former Tax Audit Administrator,
NYS Department of Taxation and Finance.

SUBSTANTIAL BASIS INVESTIGATION REPORT
AND SETTLEMENT AGREEMENT

Case No. 15-086

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, James Breen ("Respondent") was employed by the New York State Department of Taxation and Finance ("DTF") as a Tax Audit Administrator 3 from January 22, 2002 until his retirement on September 25, 2010;

WHEREAS, on June 15, 2015, DTF, Office of Internal Affairs ("OIA"), after an investigation, referred this matter to the Commission for its consideration;

WHEREAS, on October 29, 2015, a letter was sent to Respondent alleging potential violations of Public Officers Law §§ 73 (8) (a) (i) and (ii) which afforded Respondent fifteen (15) days in which to respond and Respondent provided a written response, through counsel, on November 13, 2015;

WHEREAS, on December 15, 2015, the Commission voted to commence an investigation into this matter;

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 and further agree that this Settlement Agreement satisfies all potential Public Officers Law violations which the Commission's investigation has identified;

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

1. Beginning in December 2010, after Respondent retired from the DTF, through and including May 2015, Respondent rendered services on behalf of a tobacco distribution company in relation to tobacco tax refund claims filed with the DTF. Respondent arranged for another individual to contract with the tobacco company to assist Respondent in filing such claims with DTF from 2010 until 2012. In or around

November of 2014, the tobacco company paid Respondent for invoiced services, and Respondent shared some of the compensation with the other individual.

2. Respondent agrees that he violated Public Officers Law § 73 (8) (a) (i) which provides, in relevant part, that no person who has served as a State employee shall within a period of two years after the termination of such employment appear or practice before such state agency or receive compensation for any services rendered by such former employee on behalf of any person, firm, corporation or association in relation to any case, proceeding or application or other matter before such agency.
3. Respondent agrees to pay the Commission the amount of thirty thousand dollars (\$30,000.00) within thirty (30) days of the execution of this agreement. Said sum representing the entirety of any civil penalty or forfeiture being sought by the Commission.
4. The Commission has agreed to the terms of this Agreement based on, among other things, the representations made by Respondent to the Commission. 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.
5. If Respondent fails to timely perform any conditions set forth in this Agreement, Respondent shall be in breach of the Agreement.
6. 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.
7. 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 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 Notice of Substantial Basis Investigation and Hearing or enforcement action by the Commission pursuant to this paragraph, 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.
8. Respondent shall upon request by the Commission provide all documentation and information reasonably necessary for the Commission to verify compliance with this

Agreement.

9. Respondent understands and acknowledges that the Commission may investigate any other conduct by Respondent that is not covered by this Agreement, and take any appropriate action.
10. 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.
11. 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.
12. Respondent consents to the jurisdiction of the Commission in any proceeding to enforce this Agreement.
13. 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).
14. 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.
15. Any amendment or modification to this Agreement shall be in writing and signed by both parties.
16. This Agreement shall become effective upon execution by the Commission or its designee.
17. 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.
18. 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. Electronic and facsimile signatures shall be deemed originals for the purpose of this Agreement. This Agreement may be executed in two or more counterparts, each of which shall be deemed original, but all of which together shall constitute one and the same instrument. Respondent was represented by Michael P. McDermott, of O'Connell & Aronowitz.

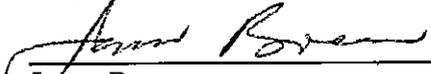
Dated: ^{February} January 27, 2019


Seth Agata

Executive Director
New York State Joint Commission on Public Ethics

ACCEPTED AND AGREED TO
THIS 13 DAY OF ~~JANUARY~~, 2019
FEBRUARY, 2019

Respondent:


James Breen

Approved:

Michael K. Rozen
Chair

Robert Cohen
James E. Dering
Colleen C. DiPirro
William P. Fisher
Julie A. Garcia
Daniel J. Horwitz
Marvin E. Jacob
George H. Weissman
James Yates
Members

Gary J. Lavine
David J. McNamara
Absent