

PEOPLE OF THE STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL
LABOR BUREAU

IN THE MATTER OF THE INVESTIGATION
OF LETITIA JAMES, ATTORNEY GENERAL
OF THE STATE OF NEW YORK,

OF

CATHAY EXPRESS TRANSPORTATION,
INC. AND NISIM DAVIDOV

ASSURANCE OF
DISCONTINUANCE
PURSUANT TO
EXECUTIVE LAW § 63(15)

AOD No. 19-125

ASSURANCE OF DISCONTINUANCE

In 2017, the Office of Attorney General of the State of New York (the “Attorney General”) commenced an investigation of CATHAY EXPRESS TRANSPORTATION, INC., (“Cathay”) pursuant to New York Executive Law § 63(12) (the “Investigation”). This investigation was later expanded to include Nisim Davydov, Cathay’s operating manager. The Attorney General examined whether Cathay failed to pay its employees certain required wages in violation of Article 6 (regarding payment of wages) and Article 19 (Minimum Wage Act) of the New York Labor Law and the New York Codes, Rules, and Regulations (“N.Y.C.R.R.”), Title 12, Chapter II, Subchapter B, Part 142 (“Miscellaneous Wage Order”).

This Assurance of Discontinuance (“Assurance”) contains the Attorney General’s Findings in connection with the Investigation and the relief agreed to by the Attorney General and Cathay (collectively, the “parties”).

RELEVANT STATUTORY FRAMEWORK

1. The New York Labor Law requires that employers pay workers all wages for all hours worked on a weekly basis. N. Y. Lab. L. § 191(1)(a). Employers are also required to pay covered employees the minimum wage, and to pay covered employees at one and one-half times

an employee's regular rate for hours worked over forty in a week. NYLL § 652; 12 N.Y.C.R.R. § 142.

2. New York Labor Law requires employers to keep accurate records of the hours worked each workday and each workweek by each of their employees who are entitled by State law to receive overtime payments as well as to create and maintain contemporaneous and accurate payroll records for six years showing each employee's regular and overtime rates, deductions, allowances, daily and weekly hours worked, and gross and net wages paid.

FINDINGS

Introduction and Background

3. Cathay is a domestic business corporation that has a principal place of business located at 98-51 Queens Boulevard, #2G, Rego Park, NY, 11374. Cathay is owned by Esya Davydova and is in the ambulette and transportation business. Nisim Davydov is Cathay's operating manager.

Practices Related to Payment of Wages

4. The Attorney General issued a subpoena pursuant to the Investigation on December 20, 2018. The Investigation revealed that from approximately January 1, 2014, through December 31, 2017, Cathay failed to pay its employees minimum wage and the legally-required overtime rate for all hours worked over 40 in a workweek.

5. Based on the foregoing, the Attorney General has concluded that Cathay engaged in persistent and repeated activity in violation of Executive Law § 63(12), the New York Labor Law and implementing regulations, including the Miscellaneous Wage Order.

6. Cathay admits the Findings of the Attorney General set forth in paragraphs 4 through 5 herein.

7. The Attorney General finds the relief and agreements contained in this Assurance appropriate and in the public interest. THEREFORE, the Attorney General is willing to accept this Assurance pursuant to Executive Law § 63(15), in lieu of commencing a statutory proceeding for violations Executive Law § 63(12) and 12 N.Y.C.R.R. § 142, based on the conduct described above during January 1, 2014, through December 31, 2017.

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the parties:

RELIEF

Entities Bound By Assurance

8. This Assurance binds, jointly and severally, Cathay Express Transportation, Inc., its principals, directors, beneficial owners, officers, and shareholders.

Compliance with Wage and Hour Law and Other Laws Governing Employment Practices

9. Cathay hereby acknowledges that it understands and will comply with all applicable federal, state and local laws, including but not limited to the Fair Labor Standards Act, New York State Labor Law, and the Miscellaneous Wage Order. Cathay agrees and acknowledges that any violation of such laws is a violation of the Assurance, and that the Attorney General thereafter may commence the civil action or proceeding contemplated herein, in addition to any other appropriate investigation, action, or proceeding.

Programmatic Relief

10. Cathay will deliver the initial payment described below within ten days of the full execution of this Assurance (the "Effective Date") and continue all subsequent payments from that

date until completion and continue to implement the relief for three years from the Effective Date (the “Effective Period”).

Employee Contact Information

11. Cathay will deliver within thirty days of the Effective Date all contact information for workers employed by the company at any point from January 1, 2014, through December 31, 2017.

Retaliation

12. Cathay agrees that it will comply with New York Labor Law § 215 and will not in any manner discriminate or retaliate against any of its employees, including but not limited to current or former employees who cooperated with or are perceived to have cooperated with the Attorney General’s Investigation. Cathay agrees not to discharge, refuse to hire, or take any adverse action against any of these employees except for legitimate, non-discriminatory reasons unrelated to the Attorney General’s Investigation or to any past, present or future participation in any activities involving the exercise of their legal rights under the New York State Labor Law and New York Codes, Rules, and Regulations.

Posting

13. Cathay agrees to post all notices for employees as required by law, including those setting forth employee rights with respect to wage and hour laws and the right to be free from retaliation.

Recordkeeping

14. Cathay agrees to comply with the six (6) year recordkeeping requirements as set forth in New York Labor Law and 12 N.Y.C.R.R. Part 142. As defined by this Assurance,

“employment documents” means all documents used and maintained by Cathay with respect to the employment of individuals by Cathay within the State of New York, including (a) all documents employees must review and/or complete in order to be employed, including but not limited to required notices, employee manuals and acknowledgements of receipt thereof; (b) documents created by Cathay related to employment practices, including but not limited to payroll records, revenue and expense reports, time records, weekly schedules, records of reimbursed employee expenses, records of distributed gratuities, notices provided to employees regarding paid sick leave, records showing accrual and use of paid sick leave, tax documents, including but not limited to New York State Department of Taxation and Finance NYS-45 Quarterly Combined Withholding, Wage Reporting, and Unemployment Insurance Returns, and proof of purchase of workers’ compensation and disability insurance for all employees; and (c) information concerning employee complaints regarding pay practices, including but not limited to the complaint log and any underlying documents relating to the complaint log.

Compliance Officer

15. Cathay agrees to designate as a compliance officer an employee or agent who has human resources experience as well as familiarity with the Assurance. This designation is subject to the prior approval of the Attorney General. The Compliance Officer must report directly to Nisim Davydov and have managerial responsibility over all of Cathay’s locations in New York State. Should there be any additional future locations that operate or do any business in New York State, the Compliance Officer must also have this same responsibility over them.

16. Cathay agrees that the Compliance Officer will be responsible for implementing all requirements referenced herein, including but not limited to: ensuring that all postings are

appropriately placed in conspicuous areas in all workplaces in accordance with paragraph 12 and updated as needed; and obtaining and maintaining all acknowledgments, and creating and maintaining all required records and providing the same to the Attorney General.

17. Within fifteen days of approval by the Attorney General of such designation of the Compliance Officer, Cathay agrees that they shall provide a written description of the Compliance Officer's job responsibilities to the Compliance Officer, subject to approval of the Attorney General, and the Compliance Officer shall sign a written certification that he or she has read and understands the Assurance and his or her job responsibilities as they relate to the Assurance, including but not limited to (a) drafting, reviewing and updating all relevant documents, including but not limited to employee payroll records, notices for employees, notice acknowledgment forms and complaint records, and weekly revenue records, and (b) upon receipt of a complaint of a violation of the Assurance, conducting confidential interviews with employees outside of the presence of other employees, managers, or owners.

18. On the first day of each 3rd month beginning March 1, 2020 and through the Effective Period, the Compliance Officer shall prepare and submit to the Attorney General, a report describing compliance with the terms of this Assurance. The Compliance Officer's report shall include, inter alia:

- a. an executive summary describing the steps taken to comply with this Assurance, and any violations and efforts to cure such violations identified by the Compliance Officer during the 3-month period;
- b. a description of all documents prepared and reviewed by the Compliance Officer;

- c. electronic copies of all documents created during the 3-month period concerning compliance with the Assurance, including but not limited to all employment documents as defined by this Assurance;
- d. signed certifications from the Compliance Officer that the time and payroll records included in the report are true and correct copies of all original time and payroll records created during the 3-month period, and that he or she personally reviewed such records and found them to be accurate, contemporaneous statements of the hours worked by and wages paid to all employees; and
- e. identification of specific actions or internal policies or procedures that the Compliance Officer determines are necessary to take or adopt in order to comply and assure its ongoing compliance with this Assurance; the NYLL; N.Y.C.R.R.; other federal, state, and local laws; and any other law referred to in this Assurance.

19. Cathay agrees to cooperate with all ongoing requests by the Attorney General for information related to the Investigation and to ensure compliance with this Assurance. During the Effective Period, Cathay agrees that upon five days' notice, the Attorney General shall have full access to employee records and to the contact information of its employees in order to reach them through by mail, telephone, or electronic means.

Penalty for Non-Compliance

20. If an Attorney General inspection shows a material violation of paragraphs 8 through 20 of this Assurance, Cathay agrees to pay \$5,000 in liquidated damages for each violation per day for each day the violation remains uncured, separate and apart from any other penalty or damages associated with the violation, provided that prior to any assessment of liquidated

damages, Cathay shall be notified of the violation in writing, effective two days after mailing via first class mail, after which Cathay shall have fifteen (15) days to cure the violation.

Monetary Payment

21. Cathay agrees to pay \$250,000.00 (the “Settlement Funds”) in resolution of the Attorney General’s investigation, which will be paid directly to the Attorney General and will be used for distribution as restitution to current or former employees.

22. The Settlement Funds shall be paid out as follows:

- a. Cathay shall pay \$100,000.00 within 10 days of the Effective Date of this Assurance (the “initial payment”);
- b. On the first day of each month starting with the first full month after the Effective Date of this Assurance, Cathay shall pay \$12,500 for twelve consecutive months (the “monthly payments”) until the Settlement Funds have been fully paid.

23. Payments from Cathay to the Attorney General must be in the form of a wire transfer, certified check, bank check, money order, or attorney’s check made payable to “The New York State Department of Law,” and forwarded to the Attorney General to the attention of:

Michael Cowles, Assistant Attorney General, Labor Bureau, 28 Liberty Street, Fl. 15, New York, New York, 10005. The payment and all correspondence related to this Assurance must reference “Assurance of Discontinuance # 19-125.”

24. The Attorney General has the sole discretion to determine which employees shall be eligible for restitution and damages and to determine the amount of such restitution and damages. Cathay agrees to provide all contact information in its possession for each employee, as

well as to provide all additional reasonable cooperation necessary to locate current and former employees who may be eligible for restitution.

25. To secure the payment described by paragraphs 21 and 22, Nisim Davydov will execute and deliver, at the time of execution and delivery of this Assurance, the accompanying Affidavit for Judgment by Confession (“Confession of Judgment,” attached hereto as Exhibit A), confessing judgment for the Settlement Funds amount of \$250,000, plus collection fees of twenty two percent (22%) of the Settlement Funds amount for a collection fee total of \$55,000, and statutory costs of \$15, for a total amount confessed of \$305,015 to be reduced by the principal amount of payments made by Cathay Express at the time of any subsequent default.

26. In the event that Cathay defaults or fails to timely and properly make payment as set forth herein, the Attorney General shall provide Cathay thirty (30) days written notice by first class mail to cure such default or failure. Upon the failure of Cathay to cure such default or failure, the Attorney General may file and enter the applicable Confession of Judgment at any time and without further notice, against Cathay less any amounts paid by Cathay pursuant to his Assurance prior to the default.

27. This Assurance will expire three (3) years after the Effective Date, except that the Attorney General may, in its sole discretion, extend the Assurance term to three (3) additional years upon a determination that Cathay has not complied with this Assurance, which non-compliance the Attorney General will discuss and attempt to resolve with Cathay in good faith before making such determination.

MISCELLANEOUS

Representations and Warranties

28. The Attorney General has agreed to the terms of this Assurance based on, among other things, the representations made to Attorney General by Cathay and its counsel and the Attorney General's own factual investigation as set forth herein. Cathay represents and warrants that neither it nor its counsel has made any material representations to the Attorney General that are inaccurate or misleading. If any material representations by Cathay or its counsel are later found to be inaccurate or misleading, this Assurance is voidable by the Attorney General in its sole discretion.

29. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by Cathay in agreeing to this Assurance.

30. Cathay represents and warrants, through the signatures below, that the terms and conditions of this Assurance are duly approved, and execution of this Assurance is duly authorized.

General Principles

31. Unless a term limit for compliance is otherwise specified within this Assurance, the Cathay's obligations under this Assurance are enduring. Nothing in this Agreement shall relieve Cathay of other obligations imposed by any applicable state or federal law or regulation or other applicable law.

32. Nothing contained herein shall be construed to limit the remedies available to the Attorney General in the event that Cathay violates the Assurance after its Effective Date.

33. This Assurance may not be amended except by an instrument in writing signed on behalf of the parties to this Assurance.

34. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable

in any respect, in the sole discretion of the Attorney General, such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

35. Cathay acknowledges that it has entered this Assurance freely and voluntarily and upon due deliberation with the advice of counsel.

36. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

37. The Assurance and all its terms shall be construed as if mutually drafted with no presumption of any type against any party that may be found to have been the drafter.

38. All notices, reports, requests, and other communications to any party pursuant to this Assurance shall be in writing and shall be directed as follows:

From Cathay to the Attorney General:

New York State Office of the Attorney General, Michael Cowles, Assistant Attorney General, Labor Bureau, 28 Liberty Street, Fl. 15 New York, NY 10005, or Michael.cowles@ag.ny.gov.

From the Attorney General to Cathay:

Elizabeth Gorman, Esq. Milber Makris Plousadis & Seiden, LLP, 1000 Woodbury Road, Woodbury, New York 11797, or egorman@milbermakris.com.

Any changes in the person to whom communications should be specifically directed shall be made in writing in advance of the change.

39. This Assurance may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

LETITIA JAMES


Attorney General of the State of New York

By: 

Michael Cowles
Assistant Attorney General
Labor Bureau
28 Liberty Street
New York, New York 10005
Phone: (212) 416-8703

Dated: January 8, 2020

Cathay Express Transportation, Inc.

By: 

Nisim Davydov
Operating Manager, Cathay Express Transportation, Inc.
On behalf of Cathay Express Transportation, Inc.
98-51 Queens Boulevard, Apt./Suite 2G,
Rego Park, NY, 11374

Dated: January 13, 2020

By: 

Esya Davydova
Owner, Cathay Express Transportation, Inc.
98-51 Queens Boulevard, Apt./Suite 2G,
Rego Park, NY, 11374

Dated: January 13, 2020