

IN THE MATTER OF Dr. YASHA YI, Assistant Professor,
City University of New York, and College of Staten Island,

Respondent

SUBSTANTIAL BASIS INVESTIGATION REPORT
AND SETTLEMENT AGREEMENT

Case No. JCOPE-162

WHEREAS, the Joint Commission on Public Ethics (the "Commission") has authority pursuant to Executive Law §94 to conduct an investigation to determine whether a substantial basis exists to conclude that a violation of the Public Officers Law has occurred, to issue a report of its finding of a substantial basis to conclude that a violation has occurred, and to impose penalties for such violation as provided for in the Executive Law;

WHEREAS, this Settlement Agreement ("Agreement") is entered into by and between the Commission and Dr. Yasha Yi ("Respondent");

WHEREAS, Respondent serves as an Assistant Professor, in the Department of Engineering Science and Physics, at the City University of New York ("CUNY"), College of Staten Island ("CSI"), from August 2009 to the present;

WHEREAS, Respondent served on the Board of Directors of, and held the title of President of, 3G Institute of Renewable Energy, Inc. ("3G"), as filed in the Articles of Incorporation in the Commonwealth of Massachusetts on October 21, 2010;

WHEREAS, Respondent is subject to the provisions as set forth in Public Officers Law §73 and §74;

WHEREAS, on May 10, 2012, a letter was sent to Respondent alleging violations of Public Officers Law §73(15), and §§74(3)(d)(e)(g) and (h) which afforded Respondent 15 days in which to respond to the allegations in writing;

WHEREAS, the Commission issued a Notice of Substantial Basis Investigation on December 28, 2012;

WHEREAS, in lieu of appearing in an adjudicatory proceeding that could result in the assessment of a civil penalty against Respondent, the parties to this Agreement have agreed to resolve this matter and avoid further investigation and administrative proceedings;

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

- I. Respondent admits that he violated Public Officers Law §73(15), when, as described in paragraphs (i) - (vi) below, he participated in a state contracting decision, involving the purchase in the amount of \$44,831 of the FAST FDTD, a research tool, from 3G, an entity in which he held a financial interest;

- (i) In June 2011, at the request of Respondent, CSI initiated the procurement of a high performance illumination simulation tool, FAST FDTD, from 3G;
 - (ii) On September 16, 2011, Respondent submitted a sole source memorandum, to CUNY and the Dormitory Authority of State of New York ("DASNY"), attesting that "after consultation with most of the available companies and experts, there exists no company other than FAST FDTD [from 3G] that can meet the requirements for our research and it cannot be purchased from another supplier";
 - (iii) Respondent did not evaluate other FDTD providers and did not disclose that he was affiliated with 3G;
 - (iv) In or about March 2012, Respondent caused to be opened a P.O. Box 6770, located at the FDR Station in New York City, in the name of 3G, and this address was used on March 19, 2012, to open a business checking account in the name of "3G Institute of Renewable Energy, Inc.", with Respondent designated as the sole custodian;
 - (v) DASNY issued a payment of \$44,831.00 to 3G, on behalf of CUNY as part of DASNY's Graduate Research and Technology Initiative, which was deposited by Respondent into the 3G bank account identified above on April 3, 2012; and
 - (vi) This was the first and only sale of the FAST FDTD.
- II. Respondent agrees to return the funds that were used to purchase the FAST FDTD in the amount of forty-four thousand eight hundred and thirty-one dollars (\$44,831) to DASNY within 30 days of the execution of this Agreement. The payment shall be made payable to DASNY/PIT General Purpose 2012B.
- III. Respondent agrees to pay to the Commission the amount of twenty thousand dollars (\$20,000) in settlement of said violation within 30 days of the execution of this Agreement. The payment shall be made payable to the Joint Commission on Public Ethics.
- IV. If Respondent fails to timely perform the conditions set forth in Paragraphs II and III of this Agreement, Respondent will be in breach of this Agreement and it shall be in the Commission's sole discretion to deem the Agreement null and void in its entirety, issue a new Substantial Basis Investigation Report, which may include additional charges against Respondent, and proceed with enforcement action. As to any new Substantial Basis Investigation Report or enforcement action 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, provided that such action would not have been time barred if brought on or before the date of this Agreement; and (2) Respondent expressly acknowledges and agrees that the Commission may use any statements herein, or any other statements, documents or other materials produced or provided by Respondent prior to or after the date of this Agreement, including, but not limited to, any statements, documents, or other materials, if any, provided for the purposes of settlement negotiations, or in submissions by Respondent or by counsel on behalf of Respondent, in any enforcement proceeding against Respondent relating to the allegations herein.
- V. 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 to be materially incomplete or

inaccurate, by the Commission, Respondent shall be in breach of this Agreement under Paragraph IV herein.

- VI. Notwithstanding the provisions of this Agreement, Respondent understands and acknowledges that the Commission may investigate other knowing and intentional violations of the Public Officers Law, if any, by Respondent and take any appropriate action.
- VII. Respondent waives any statute of limitations or other time-related defenses applicable to the subject of the Agreement and any claims arising from or relating thereto, as well as any right to appeal or challenge the determination or conduct of the Commission relating to this matter in an article 78 proceeding or by any other means.
- VIII. This Agreement and any dispute related thereto shall be governed by the laws of the State of New York without regard to any conflicts of laws principles.
- IX. Respondent consents to the jurisdiction of the Commission in any proceeding or action to enforce this Agreement.
- X. 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).
- XI. 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 under Paragraph IV herein.
- XII. 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.
- XIII. Any amendment or modification to this Agreement shall be in writing and signed by both parties.
- XIV. This Agreement shall become effective upon execution by the Commission or its designee.
- XV. 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.
- XVI. 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:

5/30/13

Dated:

05/21/2013


JOINT COMMISSION ON PUBLIC ETHICS



New York State
Joint Commission on Public Ethics

Yasha Yi
Respondent