

**THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

Before Commissioners: Dwight D. Keen, Chairman
 Shari Feist Albrecht
 Susan K. Duffy

In the Matter of the Investigation of **Oscar**)
Hernandez, of Garden City, KS, Regarding the)
Violation of the Motor Carrier Safety Statutes, Rules) Docket No. 20-TRAM-118-PEN
and Regulations and the Commission's Authority to)
Impose Penalties, Sanctions and/or the Revocation of)
Motor Carrier Authority.)

ORDER APPROVING STIPULATED SETTLEMENT AGREEMENT

The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration. Having examined its files and records, and being duly advised in the premises, the Commission finds and concludes as follows:

I. BACKGROUND

On August 16, 2019, Commission Staff (Staff) Special Investigator Penny Fryback conducted a compliance review on Oscar Hernandez's (Respondent's) motor carrier operations. As a result of the review, SI Fryback identified four (4) violations of the Motor Carrier Safety Regulations.

1. On September 17, 2019, the Commission issued a Penalty Order in this docket assessing a \$1,300 civil penalty against Respondent.

2. On November 26, 2019 through electronic mail correspondence, Olivia Hernandez, Co-Owner of Oscar Hernandez, and Ahsan Latif, Litigation Counsel for Staff (Staff), informally discussed the possibility of a settlement. During the informal discussions, Staff and Respondent were able to reach mutually agreeable terms in anticipated settlement of the issues. It was agreed that Staff would subsequently reduce the terms to writing and forward the draft to Respondent for approval and signature.

3. The parties signed a Stipulated Settlement Agreement and submitted a Joint Motion for its approval to the Commission on November 26, 2019. In the Stipulated Settlement Agreement, Staff agreed to extend the timeline for total payments due to April 15, 2020. Respondent agrees to make five payments of \$260, each due on the fifteenth day of the month beginning December 15, 2019 and ending April 15, 2020.

II. FINDINGS AND CONCLUSIONS

4. The Commission finds that the terms and provisions of the Stipulated Settlement Agreement and the dismissal of the civil penalty contained therein constitute a reasonable and appropriate final resolution of this matter.

5. The Commission concludes that settlements are favored by the law. *Bright v. LSI Corp.*, 254 Kan. 853, 869 P.2d 686 (1994). A settlement of issues, all or part, with or without unanimous agreement, will be entertained by the Commission.

6. The Commission further concludes that pursuant to K.S.A. 2018 Supp. 66-1,108b, 66-1,111, 66-1,112, 66-1,114, 66-1,114b and 66-1,115, the Commission is given full power, authority and jurisdiction to supervise and control motor carriers, as defined in K.S.A. 2018 Supp. 66-1,108b, doing business or procuring business in Kansas, and is empowered to do all things necessary and convenient for the exercise of such power, authority and jurisdiction. The Commission may fine, sanction, suspend, cancel or revoke a carrier's authority in accordance with K.S.A. 2018 Supp. 66-1,129a, 66-1,130 and 66-1,142b. Further, the Commission has the authority to investigate a party in accordance with K.A.R. 82-1-237.

7. The Commission has reviewed the Stipulated Settlement Agreement attached to the Joint Motion for Approval of Stipulated Settlement Agreement of the parties and concludes

that the terms and provisions therein are an appropriate and reasonable disposition of this matter. The Commission therefore adopts and incorporates by reference the terms of the Agreement.

THE COMMISSION THEREFORE ORDERS THAT:

A. The Joint Motion to Approve the Stipulated Settlement Agreement entered into by Oscar Hernandez and Staff is hereby granted. The terms of the Stipulated Settlement Agreement are approved and are hereby incorporated by reference.

B. Any party may file and serve a petition for reconsideration pursuant to the requirements and time limits established by K.S.A. 77-529(a)(1).¹

C. The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further order or orders as it may deem necessary.

BY THE COMMISSION IT IS SO ORDERED.

Keen, Chair; Albrecht, Commissioner; Duffy, Commissioner

Dated: 12/03/2019



Lynn M. Retz
Executive Director

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¹ K.S.A. 66-118b; K.S.A. 77-503(c); K.S.A. 77-531(b).

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the Violation of the Motor Carrier Safety)
Statutes, Rules and Regulations and the) Docket No. 20-TRAM-118-PEN
Commission's Authority to Impose Penalties,)
Sanctions and/or the Revocation of Motor)
Carrier Authority.)

STIPULATED SETTLEMENT AGREEMENT

This Stipulated Settlement Agreement (Agreement) is entered into by and between the Staff of the Corporation Commission of the State of Kansas (Staff and Commission, respectively), and Oscar Hernandez (Respondent). Its effective date will be the date the Commission enters an order approving or amending the terms of the Agreement.

I. JURISDICTION

1. Pursuant to K.S.A. 2018 Supp. 66-1,108b, 66-1,111, 66-1,112, 66-1,114, 66-1,114b and 66-1,115, and amendments thereto, the Commission is given full power, authority and jurisdiction to supervise and control motor carriers, as defined in K.S.A. 2018 Supp. 66-1,108, doing business or procuring business in Kansas, and is empowered to do all things necessary and convenient for the exercise of such power, authority and jurisdiction.

2. Pursuant to K.S.A. 2018 Supp. 66-1,129a, 66-1,130 and 66-1,142b, and amendments thereto, the Commission may suspend operations, revoke or amend certificates, and initiate sanctions or fines against every motor carrier and every person who violates any provision of

Kansas law in regard to the regulation of such motor carriers and persons, or who fails to obey any order, decision or regulation of the Commission.

3. The Commission has the authority, pursuant to K.A.R. 82-1-237, to investigate a party under its jurisdiction.

II. BACKGROUND

4. Under the above jurisdiction and authority, August 16, 2019, Commission Staff (Staff) Special Investigator Penny Fryback conducted a compliance review on Respondent's motor carrier operations. As a result of the review, SI Fryback identified four (4) violations of the Motor Carrier Safety Regulations.

5. On September 17, 2019, the Commission issued a Penalty Order in this docket assessing a \$1,300 civil penalty against Respondent.

6. On November 26, 2019 through electronic mail correspondence, Olivia Hernandez, Co-Owner of Oscar Hernandez, and Ahsan Latif, Litigation Counsel for Staff (Staff), informally discussed the possibility of a settlement. During the informal discussions, Staff and Respondent were able to reach mutually agreeable terms in anticipated settlement of the issues. It was agreed that Staff would subsequently reduce the terms to writing and forward the draft to Respondent for approval and signature.

III. TERMS OF THE STIPULATED SETTLEMENT AGREEMENT

7. The parties agree that the Commission has jurisdiction and authority over this matter.

8. The parties also agree that adoption of this Agreement is in the public interest and that the Commission should approve the stipulations as set forth below.

9. Respondent stipulates to the violations as listed in the Commission's Penalty Order, which are hereby incorporated by reference.

10. Respondent stipulates that it has submitted a corrective action plan to bring the motor carrier operation into compliance with both state and federal motor carrier safety regulations and will maintain such compliance into the future.

11. Respondent, therefore, agrees to pay fines totaling \$1,300 for the above violations. Staff agrees to extend the timeline for total payments due to April 15, 2020, to be repaid as follows: Respondent will make five payments of \$260, each due on the fifteenth day of the month beginning December 15, 2019 and ending April 15, 2020. Payments shall be made payable to the Kansas Corporation Commission and mailed to the Kansas Corporation Commission, Legal Division, 1500 S.W. Arrowhead Road, Topeka, Kansas, 66604-4027. ***Respondent shall include the docket number of these proceedings (20-TRAM-118-PEN) in the memo field of the payment.*** Respondent understands and agrees that failure to make the payment will result in the entire remaining balance becoming due in full at that time, as well as the immediate suspension of the carrier's operating authority (if then applicable) without further notice.

12. Respondent acknowledges that at least one safety compliance review will be conducted within 18 months from the date this Agreement is approved or amended pursuant to entry of an order by the Commission. Staff will contact Respondent at a later date to determine an appropriate time for this review.

13. Respondent attended a Commission-sponsored safety seminar on July 29, 2019.

14. Respondent understands that failure to pay the stipulated civil penalty as set out in ¶11 above, could result in the suspension of its authority without further notice and the Commission could submit the matter for judicial enforcement or enforcement through the Kansas Attorney General's Office.

15. Staff agrees to recommend to the Commission that this Agreement be approved. Staff further agrees that upon approval by the Commission, and barring default proceedings pursuant to K.S.A. 2017 Supp. 77-520, as described in ¶11 above, this Agreement shall constitute a final resolution of this matter.

IV. RESERVATIONS

16. This Stipulated Settlement Agreement fully resolves issues specifically addressed between the parties. The terms of this Agreement constitute a fair and reasonable resolution of the issues addressed herein.

17. The terms and provisions of this Agreement have resulted from negotiations between the signatories and are interdependent. In the event the Commission does not approve the terms of the Agreement in total, any party has the option to terminate this Agreement and, if so terminated, none of the signatories hereto shall be bound by, prejudiced, or in any way affected by any of the terms or provisions hereof, unless otherwise provided herein.

18. Unless (and only to the extent) otherwise specified in this Agreement, the signatories to this Agreement shall not be prejudiced, bound by, or affected in any way by the terms of this Agreement: (1) in any future Commission or court proceeding; (2) in any proceeding currently pending before the Commission under a separate docket; and/or (3) in this proceeding, if the Commission decides not to approve this Agreement in total or in any way conditions its approval of the same. This paragraph is not meant to limit future enforcement of this Agreement, should either party fail to fulfill all terms and provisions.

19. Unless (and only to the extent) otherwise specified in this Agreement, this Agreement does not prejudice or waive any party's legal rights, positions, claims, assertions or

arguments in any proceedings in this docket, or any other proceeding before the Commission or in any court.

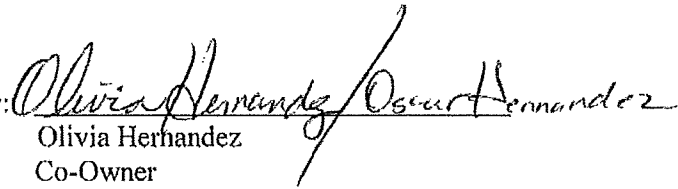
20. If the Commission approves this Agreement in its entirety and incorporates the same into a final order in this docket, the parties agree to be bound by its terms and the Commission's order incorporating its terms as to all issues addressed herein, and will not appeal the Commission's order.

21. This Stipulated Settlement Agreement shall be binding on all parties upon signing.

IN WITNESS WHERETO, the parties hereby execute and approve this Stipulated Settlement Agreement by subscribing their signatures below.

By: 
Ahsan A. Latif S.Ct. #24709
Litigation Counsel
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1500 S.W. Arrowhead Road
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Phone: 785-271-3118
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Attorney for Commission Staff

By: 
Olivia Hernandez
Co-Owner
Oscar Hernandez
6060 Weldon Road
Garden City, Kansas 67846
Phone: 620-277-5122
Email: ohernandez@gcksschools.com

Respondent

CERTIFICATE OF SERVICE

20-TRAM-118-PEN

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of
12/04/2019
first class mail/hand delivered on _____.

AHSAN LATIF, LITIGATION COUNSEL
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/S/ DeeAnn Shupe

DeeAnn Shupe