

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

Before Commissioners: Pat Apple, Chairman
Shari Feist Albrecht
Jay Scott Emler

In the Matter of the Investigation of **Gerber Moving**)
& Storage, Inc. of Bonner Springs, Kansas,)
Regarding the Violation of the Motor Carrier Safety) Docket No. 17-TRAM-468-PEN
Statutes, Rules 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

1. Commission Staff conducted a Safety Compliance Review on Gerber Moving & Storage, Inc. (Respondent) on April 17, 2017, wherein Special Investigators Wade Patterson and Jared Smith discovered eight (8) violations of the motor carrier safety statutes, rules and regulations.

2. On May 2, 2017, the Commission issued a Penalty Order assessing Respondent a \$9,500 civil penalty.

3. On or about May 10, 2017, Celeste Noland, Office Manager of Gerber Moving & Storage, Inc. and Ahsan Latif, Litigation Counsel for Staff, discussed the possibility of settlement. As a result of 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.

4. The parties signed a Stipulated Settlement Agreement and submitted a Joint Motion for its approval to the Commission on May 18, 2017. In the Stipulated Settlement Agreement, Respondent stipulates to the violations as set out in the Commission's Penalty Order. Respondent further agrees to pay the total penalty of \$9,500 in installments. The first payment of \$3,500 will be due by May 15, 2017, and the remaining two payments of \$3,000 will be due on June 15, 2017, and July 15, 2017, respectively. Respondent understands and agrees that failure to make one (1) payment will result in the entire remaining balance becoming due in full at that time, and in the immediate suspension of its authority without further notice. Respondent acknowledges that if operations resume, it is to be available for a follow up safety compliance review within 18 months of the date of this Order.

5. In signing the Stipulated Settlement Agreement, the parties agree that the Agreement constitutes a reasonable and fair resolution of the outstanding issues raised in this proceeding.

II. FINDINGS AND CONCLUSIONS

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

7. 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.

8. The Commission further concludes that pursuant to K.S.A. 2016 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. 2016 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 2016 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.

9. The Commission has reviewed the Stipulated Settlement Agreement attached hereto 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 Gerber Moving & Storage, Inc. and Staff is hereby granted. The terms of the Stipulated Settlement Agreement are approved and are hereby incorporated by reference.

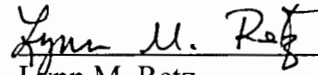
B. The parties have fifteen (15) days, plus three (3) days if service of this order is by mail, from the date this order was received in which to petition the Commission for reconsideration of any issue or issues decided herein. K.S.A. 66-118b; K.S.A. 2016 Supp. 77-529(a)(1).

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.

Apple, Chairman; Albrecht, Commissioner; Emler, Commissioner

Dated: MAY 23 2017



Lynn M. Retz
Secretary to the Commission

AL/vj

Order Mailed Date

MAY 24 2017

**THE STATE CORPORATION COMMISSION
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Before Commissioners: Pat Apple, Chairman
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 Jay Scott Emler

In the Matter of the Investigation of **Gerber**)
Moving & Storage, Inc., of Bonner Springs,)
Kansas, Regarding the Violation of the Motor)
Carrier Safety Statutes, Rules and Regulations) Docket No. 17-TRAM-468-PEN
and the 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 Gerber Moving & Storage, Inc., (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. 2015 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. 2015 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. 2015 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

1. Under the above jurisdiction and authority, on April 17, 2017, Commission Staff (Staff) Special Investigators Wade Patterson and Jared Smith conducted a compliance review on Respondent's motor carrier operations. As a result of the review, Investigators Patterson and Smith identified eight (8) violations of the Motor Carrier Safety Regulations

2. On May 2, 2017, the Commission issued a Penalty Order in this docket assessing a \$9,500 civil penalty against Respondent.

3. To date, Respondent's unpaid balance on the civil penalty assessed in the above Penalty Order is \$9,500

4. On Wednesday, May 10, 2017, Celeste Noland, Office Manager of Gerber Moving & Storage, Inc. 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

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

6. 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.

7. Respondent agrees to pay fines totaling \$9,500 for the above violations. Staff agrees to extend the timeline for total payments due to July 15, 2017, to be repaid as follows: Respondent will make a total of three (3) payments beginning May 15, 2017. The payments will consists of an initial payment of \$3,500 on or before May 15, 2017 followed by payments of \$3,000 on or before June 15, 2017 and July 15, 2017. All payments shall be due on the 15th day of each month until paid in full. 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 (17-TRAM-468-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.

8. Respondent acknowledges that if operations resume, 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.

9. Respondent understands that failure to pay the stipulated civil penalty as set out in ¶ 7 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.

10. 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. 2015 Supp. 77-520, as described in ¶ 14 above, this Agreement shall constitute a final resolution of this matter.

IV. RESERVATIONS

11. 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.

12. 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.

13. 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.

14. 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.

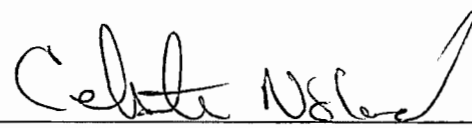
15. If the Commission approves this Agreement in its entirety and incorporates the same into a final order in this docket, the parties agree to be bound by its terms and the Commission's order incorporating its terms as to all issues addressed herein, and will not appeal the Commission's order.

16. 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.C.#24709
Litigation Counsel
Kansas Corporation Commission
1500 S.W. Arrowhead Road
Topeka, Kansas 66604-4027
Phone: 785-271-3118
Fax: 785-271-3124
Email: a.latif@kcc.ks.gov

Attorney for Commission Staff

By: 
Celeste Noland
Office Manager
Gerber Moving & Storage, Inc.
2222 S. 138th Street
Bonner Springs, Kansas 66012

Respondent

CERTIFICATE OF SERVICE

17-TRAM-468-PEN

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of first class mail/hand delivered on **MAY 23 2017**.

CELESTE NOLAND, OFFICE MANAGER
GERBER MOVING & STORAGE, INC.
2222 S 138TH ST
BONNER SPRINGS, KS 66012
Fax: 913-441-8552
cnoland@gerbermoving.com

AHSAN LATIF, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604-4027
Fax: 785-271-3354
a.latif@kcc.ks.gov

/S/ DeeAnn Shupe

DeeAnn Shupe

Order Mailed Date

MAY 24 2017