

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

JUL 23 2013

by
State Corporation Commission
of Kansas

In the Matter of the Investigation of **KC Granite & Cabinetry, LLC, of Lenexa, Kansas**, Regarding the Violation of the Motor Carrier Safety Statutes, Rules and Regulations and the Commission's Authority to Impose Penalties, Sanctions and/or the Revocation of Motor Carrier Authority.)
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Docket No. 13-TRAM-698-PEN

**JOINT MOTION FOR APPROVAL OF
STIPULATED SETTLEMENT AGREEMENT**

The Staff of the State Corporation Commission of the State of Kansas (Staff and Commission respectively) and KC Granite & Cabinetry, LLC, (Respondent) file this Joint Motion requesting the Commission issue an order approving the attached Stipulated Settlement Agreement. In support of its Motion, Staff and Respondent state as follows:

1. On or about April 22, 2013, Commission Staff (Staff) Special Investigator Larry Baumchen conducted a safety compliance review of the Respondent's motor carrier operations. As a result of this investigation, Investigator Baumchen identified six (6) apparent violations of the motor carrier safety rules and regulations.

2. On June 12, 2013, the Commission issued a Penalty Order, assessing Respondent a \$3,000 civil penalty.

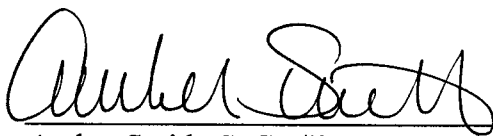
3. On or about June 27, 2013, Michael Van Aken, Truck Manager of KC Granite & Cabinetry, LLC, and Amber Smith, Litigation Counsel for Staff (Staff), informally discussed the possibility of a settlement. During the informal discussions, Staff and Respondent were able to reach mutually agreeable terms 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.

4. The resulting signed Stipulated Settlement Agreement is attached hereto as Attachment "A" and is hereby incorporated by reference. This Agreement resolves all issues in this proceeding between Staff and Respondent. The parties believe that the Agreement represents a reasonable and fair resolution of this matter and that the Commission should approve the Agreement.

5. Should the Commission accept the terms of the attached Stipulated Settlement Agreement, the parties waive their respective rights to cross-examine witnesses and present oral arguments or written briefs to the Commission. The parties also waive their rights to request reconsideration of the Commission order approving the Agreement and waive their rights to seek judicial review of said order.

WHEREFORE, for the reasons set forth herein, Staff and KC Granite & Cabinetry, LLC, request this Joint Motion be granted, and that the attached Stipulated Settlement Agreement be approved.

Respectfully Submitted,

By: 

Amber Smith, S. Ct. #23911
Litigation Counsel
Kansas Corporation Commission
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Attorney for Commission

By: 

Michael Van Aken, Truck Manager
KC Granite & Cabinetry, LLC
10045 Lackman Rd
Lenexa, KS 66219
Phone: 913-888-0003

Respondent

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

In the Matter of the Investigation of **KC Granite & Cabinetry, LLC, of Lenexa, Kansas**, Regarding the Violation of the Motor Carrier Safety Statutes, Rules and Regulations and the Commission's Authority to Impose Penalties, Sanctions and/or the Revocation of Motor Carrier Authority.)
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) Docket No. 12-TRAM-698-PEN
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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 KC Granite & Cabinetry, LLC (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. 2012 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. 2012 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. 2012 Supp. 66-1,129a, 66-1,130 and 66-1,142b, 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. Pursuant to the above jurisdiction and authority, on or about April 22, 2013, Commission Staff (Staff) Special Investigator Larry Baumchen conducted a safety compliance review on the motor carrier operations of Respondent. As a result of the review, Investigator Baumchen identified six (6) apparent violations of the motor carrier safety rules and regulations.

5. On June 12, 2013, the Commission issued a Penalty Order assessing a \$3,000 civil penalty against Respondent.

6. On or about June 27, 2013, Michael Van Aken, Truck Manager of Respondent, and Amber Smith, 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. During informal discussions with Staff, Staff explained the definition of commercial motor vehicle and further explained the different types of vehicles and combination vehicles which would meet this definition. Respondent affirmed its understanding of what constitutes a commercial motor vehicle and indicated it no longer owned any commercial motor vehicles, and did not intend to operate commercial motor vehicles in the future.

11. Based on Respondent no longer operating commercial motor vehicles in Kansas, Staff agrees to recommend that the fine set out in the Penalty Order of \$3,000 be stayed, subject to the conditions set forth in ¶12 and ¶13, below.

12. It is the agreement of the parties and Respondent understands and agrees that Respondent is not to drive a commercial motor vehicle in Kansas, and if it is found doing so, the fine set out in the Penalty Order of \$3,000 will be reinstated and Respondent will become obligated to pay the amount in full.

13. If Respondent wishes to resume commercial motor vehicle operations in Kansas, Respondent must notify the Commission's Director of Transportation, in writing, prior to engaging in future commercial motor vehicle operations. Respondent agrees that prior to resuming commercial motor carrier operations under any name or in any manner, it will consult the Commission's Director of Transportation and resolve the safety concerns as documented in the June 12, 2013, Penalty Order, and will pay the fine set out in the Penalty Order of \$3,000.

14. Staff agrees to recommend to the Commission that this Agreement be approved. Staff further agrees that upon approval by the Commission, this Agreement shall constitute a final resolution of this matter.

IV. RESERVATIONS

15. 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.

16. 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.

17. 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.

18. 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.

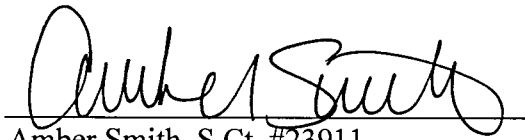
19. If the Commission approves this Agreement in its entirety and incorporates the same into a final order in this docket, the parties agree to be bound by its terms and the

Commission's order incorporating its terms as to all issues addressed herein, and will not appeal the Commission's order.

20. 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.

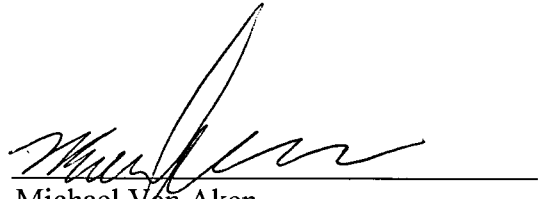
By:



Amber Smith, S.Ct. #23911
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Attorney for Commission

By:



Michael Van Aken
KC Granite & Cabinetry, LLC
10045 Lackman Rd
Lenexa, KS 66219
Phone: 913-888-0003

Respondent

CERTIFICATE OF SERVICE

13-TRAM-698-PEN

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing Joint Motion for Approval of Stipulated Settlement Agreement was placed in the United States mail, postage prepaid, or hand-delivered this 24th day of July, 2013, to the following:

AMBER SMITH, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604-4027
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MICHAEL VAN AKEN, TRUCK MANAGER
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michael.vanaken@yahoo.com



Vicki Jacobsen