

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

2012.04.18 10:14:33
Kansas Corporation Commission
Patrice Petersen-Klein

APR 18 2012

by
State Corporation Commission
of Kansas

In the Matter of the Investigation of **Chad Wende,**)
d/b/a Landmark Landscape, of Topeka, 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.)

Docket No. 12-TRAM-244-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 Chad Wende, d/b/a Landmark Landscape, (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 August 31, 2012, Commission Staff (Staff) Special Investigator Lance Jones conducted a safety compliance review of the Respondent's motor carrier operations. As a result of this investigation, Investigator Jones identified four (4) apparent violations of the motor carrier safety rules and regulations.

2. On November 4, 2011, the Commission issued a Penalty Order, assessing Respondent a \$2,900 civil penalty.


3. On or about March 22, 2012, Chad Wende, Owner of Chad Wende, d/b/a Landmark Landscape, and Amber Whitlock, 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.

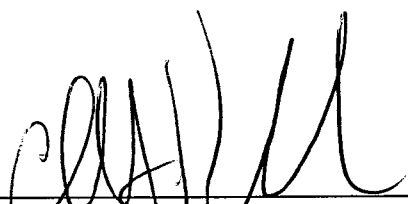

5. Should the Commission accept the terms of the attached Stipulated Settlement Agreement, the parties waive their respective rights to cross-examine witnesses and present oral arguments or written briefs to the Commission. The parties also waive their rights to request reconsideration of the Commission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

WHEREFORE, for the reasons set forth herein, Staff and Chad Wende, d/b/a Landmark Landscape, request this Joint Motion be granted, and that the attached Stipulated Settlement Agreement be approved.

Respectfully Submitted,

By: 
Amber Whitlock, S. Ct. #23911
Litigation Counsel
Kansas Corporation Commission
1500 S.W. Arrowhead Road
Topeka, Kansas 66604-4027
Phone: 785-271-3301
Fax: 785-271-3167
Email: a.whitlock@kcc.ks.gov

Attorney for Commission

By: 
Chad Wende, Owner
Chad Wende, d/b/a Landmark Landscape
PO Box 751131
Topeka, KS 66675


Respondent

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

In the Matter of the Investigation of **Chad Wende,**)
d/b/a Landmark Landscape, of Topeka, Kansas,)
Regarding the Violation of the Motor Carrier Safety) Docket No. 12-TRAM-244-PEN
Statutes, Rules and Regulations 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 Chad Wende, d/b/a Landmark Landscape (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. 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. 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. 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. Pursuant to the above jurisdiction and authority, on or about August 31, 2012, Commission Staff (Staff) Special Investigator Lance Jones conducted a safety compliance review on the motor carrier operations of Respondent. As a result of the review, Investigator Jones identified four (4) apparent violations of the motor carrier safety rules and regulations.

5. On November 4, 2011, the Commission issued a Penalty Order assessing a \$2,900 civil penalty against Respondent.

6. On or about March 22, 2012, Chad Wende, Owner of Respondent, and Amber Whitlock, 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 agrees to pay and Staff agrees to accept fines totaling \$2,900 for the above violations. Respondent agrees to pay and Staff agrees to accept three (3) monthly payments, the first payment due on April 16, 2012, in the amount of \$500 and the remaining two (2) payments in the amount of \$1,200 each, due and payable on the 15th day of each month beginning May 2012. 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 (12-TRAM-244-PEN) in the memo field of the payment.*** 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 the carrier's operating authority without further notice.

11. Respondent acknowledges that at least one safety compliance review will be conducted within 12 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.

12. Respondent further agrees to attend a Commission-sponsored safety seminar within the next ninety (90) days from the date this Agreement is approved or amended pursuant to entry of an order by the Commission. Respondent agrees to provide Staff with written proof of attendance. A schedule of dates and locations for the safety seminar can be found at the Commission's website at http://www.kcc.state.ks.us/trans/safety_meetings.htm.

13. Respondent understands that failure to pay the stipulated civil penalty as set out in ¶ 10 above, could result in the suspension of its authority without further notice and that the

Commission could submit the matter for judicial enforcement or enforcement through the Kansas Attorney General's Office.

14. 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. 77-520, as described in ¶13 above, 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 (Whitlock) Smith
Amber Whitlock, S.Ct. #23911
Litigation Counsel
Kansas Corporation Commission
1500 S.W. Arrowhead Road
Topeka, Kansas 66604-4027
Phone: 785-271-3301
Fax: 785-271-3167
Email: a.whitlock@kcc.ks.gov

Attorney for Commission

By: Chad Wende
Chad Wende
Chad Wende, d/b/a Landmark Landscape
PO Box 751131
Topeka, KS 66675
[REDACTED]

Respondent

VERIFICATION

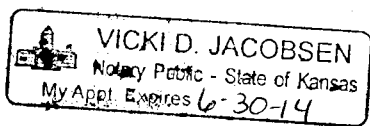
STATE OF KANSAS)
) ss.
COUNTY OF SHAWNEE)

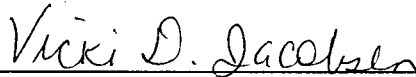
Amber Smith, of lawful age, being duly sworn upon her oath deposes and states that she is Litigation Counsel for the State Corporation Commission of the State of Kansas; that she has read and is familiar with the foregoing *Joint Motion for Approval of Stipulated Settlement Agreement* and attests that the statements therein are true and correct to the best of her knowledge, information and belief.



Amber Smith, S. Ct. #23911
Litigation Counsel
The State Corporation Commission
of the State of Kansas

SUBSCRIBED AND SWORN to before me this 18th day of April, 2012.





Notary Public

My Appointment Expires: June 30, 2014

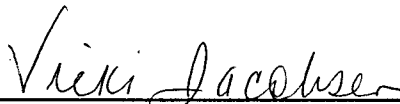
CERTIFICATE OF SERVICE

12-TRAM-244-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 18th day of April, 2012, to the following:

Chad Wende, OWNER
Chad Wende
D/B/A Landmark Landscape
3737 Hodges Rd
Silver Lake, KS 66539

AMBER SMITH, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD ROAD
TOPEKA, KS 66604-4027
Fax: 785-271-3354
a.smith@kcc.ks.gov
Hand Delivered



Vicki Jacobsen