

**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 **Custom Tree**)
Care, Inc., of Topeka, KS, Regarding the Violation)
of the Motor Carrier Safety Statutes, Rules and)
Regulations and the Commission's Authority to) Docket No. 20-TRAM-119-PEN
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. On August 21, 2019, Commission Staff (Staff) Special Investigators Jared Smith and Verna Jackson conducted a compliance review on Respondent's motor carrier operations. As a result of the review, Investigators Smith and Jackson identified two (2) violations of the Motor Carrier Safety Regulations.

2. On September 17, 2019, the Commission issued a Penalty Order in this docket assessing a \$2,500 civil penalty against Respondent.

3. On November 18, 2019 through electronic mail correspondence, Greg Gathers, President of Custom Tree Care, 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.

4. The parties signed a Stipulated Settlement Agreement and submitted a Joint Motion for its approval to the Commission on November 21, 2019. In the Stipulated Settlement Agreement, Staff agreed to extend the timeline for total payments due to September 1, 2020. Respondent agrees to make ten payments of \$250, each due on the first day of the month beginning December 1, 2019 and ending September 1, 2020.

II. FINDINGS AND CONCLUSIONS

5. 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.

6. 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.

7. The Commission further concludes that pursuant to K.S.A. 2017 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. 2017 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. 2017 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.

8. 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 Custom Tree Care, Inc.. 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: 11/26/2019



Lynn M. Retz
Executive Director

AAL

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

CERTIFICATE OF SERVICE

20-TRAM-119-PEN

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of first class mail and electronic service on 11/27/2019.

GREG GATHERS, PRESIDENT
CUSTOM TREE CARE, INC.
3722 SW SPRING CREEK LN
TOPEKA, KS 66610
Fax: 785-478-4195
ggathers@customtreecare.com

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

/S/ DeeAnn Shupe
DeeAnn Shupe