

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF
COLORADO

Proceeding No. 14G-0433CP

Civil Penalty Assessment Notice No. 109385

PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO,

Complainant,

v.

MKBS LLC D/B/A METRO TAXI &/OR TAXIS FIESTA,

Respondent.

STIPULATION AND SETTLEMENT AGREEMENT

Staff of the Public Utilities Commission (“Staff”) and Respondent MKBS LLC d/b/a Metro Taxi &/or Taxis Fiesta, (“Respondent”) (collectively, the “Parties”) enter into this Stipulation and Settlement Agreement (“Agreement”) in the above-referenced proceeding as a complete and final resolution of all issues that were or could have been raised in this proceeding. Robert McBride is the owner of Respondent and has the authority to enter into this settlement on behalf of Respondent.

Background

On May 5, 2014, the Commission issued Respondent Civil Penalty Assessment Notice No. 109385-CPAN (the “CPAN”) seeking civil penalties of \$354,750 (or \$177,375 if paid within 10 days). The CPAN alleged 129 violations of

drivers' hours of service exceeding 80 hours in any rolling eight consecutive day period, in violation of 4 Code of Colorado Regulations 723-6, Rule 6103(d)(II)(D). The CPAN was personally served by Staff on May 6, 2014.

The Parties reached settlement and executed a Settlement Agreement on May 22, 2014. In Commission Decision No. R14-1036 issued September 15, 2014, the Commission granted the Joint Motion to Approve Stipulation and Settlement Agreement filed by the Parties on May 22, 2014. To the extent not inconsistent with the Decision, the Stipulation and Settlement Agreement was incorporated by reference and made an order of the Commission by Commission Decision No. R14-1036. As a result of granting the Joint Motion, a civil penalty in the amount of \$354,750 was imposed for 129 violations of 4 Colo. Code Regs. 723-6, Rule 6103(d)(II)(D) of the Commission's Rules Regulating Transportation by Motor Vehicle. However, the entire civil penalty assessed was suspended pending a subsequent audit by Staff required to be conducted prior to December 12, 2014.

In October 2014, Staff conducted an audit of Respondent, as provided in the Settlement Agreement. Staff's audit found that Respondent had more than 66 violations, which was greater than the 6 percent threshold set in the Settlement Agreement. Based on the finding that Respondent violated the Settlement Agreement and the suspended penalty became due and payable. In Commission Decision No. R16-0857, the Commission ordered "any remaining balance of the penalty assessed in the amount of \$354,750 for 129 violations of 4 Code of Colorado

Regulations (CCR) 723-6-6103(d)(II)(D) shall be due and payable to the Commission within 90 days.”

On October 20, 2016, Respondent filed exceptions to Commission Decision R16-0857. Staff filed its response to exceptions on November 17, 2016. As of this date, Respondent’s exceptions are pending before the Commission.

Settlement Agreement

Staff and Respondent hereby stipulate and agree as follows:

1. Respondent admits liability to all the violations in the CPAN.
2. Respondent agrees to comply with all Colorado and federal statutes and rules concerning drivers' hours of service exceeding 80 hours in any rolling eight consecutive day period, in violation of 4 Colo. Code Regs. 723-6, Rule 6103(c)(II)(C).¹
3. The Agreement herein has been reached in the spirit of compromise and in light of the uncertainties of trial. The Agreement has also been reached to avoid the costly expense of litigation. The Agreement promotes administrative efficiency by avoiding the time and expense that would be necessarily devoted to hearing this matter. The public interest is served by requiring the payment by Respondent of a civil penalty in the amount of \$140,000 under the terms in this Agreement. In reducing the penalty, Staff considered the following mitigating factors pursuant to Commission Rule 1302(b):

- a. Respondent acknowledges wrongdoing.

¹ The rule regulating hours of service has been relocated from 4 Colo. Code Regs. 723-6, Rule 6103(d)(II)(D) to its current location 4 Colo. Code Regs. 723-6, Rule 6103(c)(II)(C).

- b. Respondent admits the maximum level of culpability for all violations in the CPAN.
- c. Respondent contacted staff immediately after the CPAN was initially served to discuss settlement.
- d. Although Respondent contested Staff's method of calculating hours of service, after the Administrative Law Judge found in Staff's favor, Respondent agreed to discuss potential settlement.
- e. Respondent agrees to work with Staff and Respondent's engineers to confirm Respondent will capture each driver's hours of service per Commission Rule, as Staff has calculated the hours of service for at least 15 years.
- f. Respondent's co-owner recently passed away and Respondent is working through this difficult situation.
- g. Respondent has implemented a dispatch/GPS system which monitors drivers' hours of service. Respondent, its engineer, and Staff will work together to ensure Respondent's system is accurately capturing each driver's hours of service.
- h. Respondent now has a dedicated person assigned to monitor drivers' hours of service and address any violations immediately.
- i. Respondent is implementing additional policies to require drivers to stay in compliance and ramifications for any violations.
- j. Assessing Respondent a civil penalty of \$140,000 under the terms herein is sufficient motivation for Respondent to remain in compliance with the Public Utilities Laws and Commission Rules on a going-forward basis.

4. In consideration of Respondent's admission of liability, and for the reasons expressed above, Staff agrees reducing the amount of the civil penalty from \$354,750 to \$140,000 is appropriate and in the public interest. This \$140,000

settlement amount consists of a \$127,273 penalty, plus a ten-percent surcharge of \$12,727 pursuant to section 24-34-108(2), C.R.S.

5. Respondent shall pay the total amount of \$140,000 in eleven (11) monthly installments. The first installment of \$12,725 is due within fifteen (15) days of the Commission's final order approving this settlement agreement. The subsequent nine (9) monthly installment payments of \$12,725 each, shall be due on the same day of the month as the initial payment. The final payment of \$12,750 shall be due on the same day of the month as the preceding installment payments.

6. If Respondent fails to make any of the installment payments when due, Respondent shall be liable for the full civil penalty amount of \$354,750 less any payments made, which amount will be due immediately.

7. All matters that were raised or could have been raised in this proceeding relating to the issues specifically identified and addressed herein have been resolved by this Agreement. This Agreement may be executed in counterparts, each of which when taken together shall constitute the entire Agreement of the Parties, and no further modification of this Agreement is allowed, except in writing by the parties, and further agreed to in an order issued by the Commission.

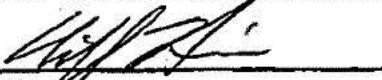
8. Respondent's failure to complete its payment obligations as set forth in this Agreement shall also be deemed a waiver by Respondent of any and all rights to file exceptions and/or a request for rehearing, reargument, and reconsideration, or to file any other form of appeal.

9. In the event that this Agreement is modified or not approved in its entirety, either Party, at that Party's option, may withdraw from this Agreement by filing a notice with the Commission in this proceeding within seven days of entry of such Order. In that event, this Agreement shall be void and this matter shall be set for hearing.


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Executed this 5th day of April, 2017.

**STAFF OF THE COLORADO
PUBLIC UTILITIES COMMISSION**

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