

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 05G-031CP

2005 APR 28 AM 11:52

SUPPLEMENTAL AFFIDAVIT OF ROBERT LAWS

COLORADO PUBLIC UTILITIES COMMISSION,

Complainant,

v.

RDSM TRANSPORTATION, LTD. D.B.A. Yellow Cab Company of Colorado Springs, et.al.

Respondent.

I, Robert Laws, declare:

1. I am over twenty-one years of age, and if I am called to testify as a witness in the above-captioned matter, I could and would competently testify as to the matters set forth below.
2. I am a Senior Investigator employed by the Colorado Public Utilities Commission (Commission), 1580 Logan Street, Denver, Colorado 80203.
3. I am familiar with the above-captioned proceeding regarding the Commission issuing Respondent RDSM Transportation, Ltd., dba Yellow Cab Company of Colorado Springs, et.al. (Respondent), Civil Penalty Assessment Notice (CPAN) No. 73216 seeking civil penalties of \$8,200 (or \$4,100 if paid within 10 days).
4. I supervise Commission Staff Investigator Paul Hoffman, who issued Respondent CPAN No. 73216 on January 14, 2005.
5. As the Commission is aware, CPAN No. 73216 cited Respondent with 41 violations of the Commission's *Rules Regulating Safety for Motor Vehicle Carriers and Establishing Civil Penalties*, 4 Code of Colorado Regulations (CCR) 723-15 (*Safety Rules*). Specifically, CPAN No. 28540 cited Respondent for:

4 violations of 4 CCR 723-15-2.1 and Title 49, *Code of Federal Regulations* (CFR), Part 391.23(c) and (a)(2) for failure to

investigate/document three years previous employment history [Violation No. 1] and ;

25 violations of 4 CCR 723-15-2.1 and Title 49, CFR, Parts 395.8(a) for no record of duty status [Violation No.2];

2 violations of 4 CCR 723-15-2.1 and Title 49, CFR, Part 396.3(b)(1) for failure to properly identify vehicle maintenance records for two vehicles [Violation No.3];

5 violations of 4 CCR 723-15-2.1 and Title 49, CFR, Part 396.3(b)(2) [Violation No. 4] for failure to have means to indicate nature and due date of periodic services for five vehicles; and

5 violations of 4 CCR 723-15-2.1 and Title 49, CFR, Part 396.3(b)(3) for failure to maintain record of inspection, repairs and maintenance for five vehicles [Violation No.5].

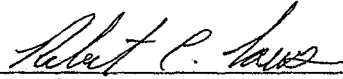
6. As the Commission is aware, on April 16, 2004, Respondent acknowledged liability with regard to all of the violations except for four of the 25 violations in Violation No. 2 and paid the Commission \$3700.00. Respondent also requested a hearing on the four remaining violations included in alleged Violation No. 2.
7. Accordingly, since Commission Rule 4 CCR 723-15-2.1 allows for a penalty of up to \$200 per violation, Respondent could be subject to a maximum penalty of \$800.00 after a contested hearing.
8. However, Staff and Respondent (collectively Parties) agreed to settle this matter pursuant to the Stipulation and Settlement Agreement (Stipulation) filed concurrently with this affidavit
9. The Stipulation had been reached in the spirit of compromise and in light of the uncertainties of trial, to avoid the costly expense of litigation, and to promote administrative efficiency by avoiding the time and expense that would be necessarily devoted to hearing this matter in Colorado Springs, Colorado, which is a considerable distance from the Commission's headquarters in Denver, Colorado.
10. I believe entering into the Stipulation assessing Respondent \$400.00 is in the public interest for the reasons that follow.
11. First, with regard to Violation No.2 for Respondent's failure to have on file complete and accurate record of duty status reports for four of its drivers, it was apparent during the course of settlement negotiations between Respondent and Staff that Staff, as a courtesy to Respondent, gave Respondent a incorrect representative sample of drivers who failed to properly complete their record of

duty status reports, which was then improperly relied upon by Respondent. Staff recognized that some of the drivers listed on the representative sample were incorrect. Respondent agreed that many more individual violations of the proper recording measures had taken place than were cited by Staff in the CPAN because the Commission Rules and the Code of Federal Regulations do not allow citations for more than 25 violations of particular regulation. A review of the duty status reports of thirteen drivers by Staff Investigator Hoffman showed 247 individual violations of the proper reporting of duty status regulation, which evidence would have been produced at hearing. It became apparent during the course of settlement negotiations between Respondent and Staff that Respondent made a good faith effort to comply with the applicable Commission regulations. However, at the time Staff Investigator Hoffman conducted his investigation, Respondent was remiss in maintaining and instructing its drivers on the proper methods of completing record of duty reports in a timely manner. Notwithstanding, through the course of settlement discussions, I learned that Respondent has an adequate procedure in place to maintain duty status of its drivers, but did not follow its own internal procedures to insure driver compliance on a daily basis. This problem seems to have been corrected by Respondent.

12. Staff believes entering into the Stipulation assessing Respondent \$400 is in the public interest because CPAN No. 73216 the *Safety Rules* are very specific in nature and, despite Respondent's good faith effort to comply with the *Rules*, Respondent's noncompliance with a component of a *Rule* resulted in the issuance of a violation for the *Rule*. Based on the circumstances here, Staff believes a \$400 assessment is sufficient to motivate Respondent to comply with all components of the Commission's *Safety Rules* on a going-forward basis. In conclusion, Staff believes these mitigating factors, together with the reasons expressed in paragraph 9, above, sufficiently justify settling this matter for a reduced civil penalty in the amount of \$400.

FURTHER THE AFFIANT SAYETH NOT.

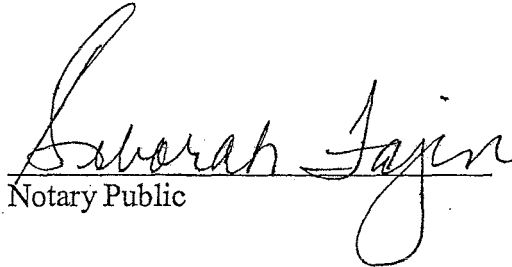
DATED this 5th day of April 2005.



Robert C. Laws
Senior Compliance Investigator

State of Colorado)
) ss.
County of Denver)

SUBSCRIBED AND SWORN TO BEFORE ME this 5th day of April 2005.


Notary Public