

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

Docket No. 12G-1187HHG
Civil Penalty Assessment Notice No. 104705

STIPULATION AND SETTLEMENT AGREEMENT

COLORADO PUBLIC UTILITIES COMMISSION,

Complainant,

v.

67th INC. DOING BUSINESS AS 67TH AVENUE MOVERS, INC. AND/OR NEIGHBORS MOVING AND/OR FATHER AND SONS MOVING AND/OR 67TH AVENUE LOGISTICS, INC.,

Respondent.

Staff of the Public Utilities Commission (Staff) and 67th Inc. Doing Business As 67th Avenue Movers, Inc. And/Or Neighbors Moving And/Or Father And Sons Moving And/Or 67th Avenue Logistics, Inc. (Respondent) (collectively Parties) enter into this Stipulation and Settlement Agreement (Agreement) in the above-referenced Docket as a complete and final resolution of all issues that were or could have been raised in this proceeding.

Background

On November 5, 2012, the Commission issued Respondent a Civil Penalty Assessment Notice No. 104705 (the CPAN) seeking civil penalties of \$2,420.00 (or \$1,210.00 if paid within 10 days). The CPAN alleged one violation of § 40-10.1-105(1), C.R.S. and 4 *Code of Colorado*

Regulations (CCR) 723-6-6608(c)¹. A brief explanation of the violation described as, “Failure to provide shipper a copy of contract prior to commencing moving services” is set forth in the CPAN in the “Nature of Violation” column. The amount of the civil penalty was doubled from \$1100.00 to \$2100.00 pursuant to § 40-7-113.3(3), C.R.S. because Respondent had received a civil penalty assessment for a violation of subsection § 40-7-113(1), C.R.S. within the year prior to the civil penalty assessment that is the subject of this proceeding.²

Settlement Agreement

Staff and Respondent hereby stipulate and agree as follows:

1. Respondent admits liability to the violation set forth in the CPAN.
2. Respondent agrees to immediately cease and desist from failure to provide shippers a copy of contract prior to commencing moving services.
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 Parties note that the Agreement promotes administrative efficiency by avoiding the time and expense that would be necessarily devoted to hearing this matter. The Parties submit the public interest is served by assessing Respondent a reduced civil penalty of \$1,400.00 under the terms herein. In reducing the penalty, the Parties considered the following mitigating factors pursuant to Commission Rule 1302(b):
 - a. Respondent acknowledges wrongdoing.
 - b. Respondent admits the maximum level of culpability for the violation set forth in the CPAN.

¹ On January 7, 2013, Staff filed a Motion to Amend Civil Penalty Assessment Notice, seeking to change the reference to the cited Commission Rule from 4 CCR 723-6-6608(b) to 4 CCR 723-6-6608(c). The motion has not yet been ruled upon.

² In Docket No. 11G-1030HHG, the CPAN was issued on December 23, 2011.

- c. Mr. Mike Sarris is Respondent's new general manager. Mr. Sarris was hired to resolve issues within the company.
- d. Mr. Sarris has identified numerous problems with Respondent's processes and procedures and is implementing training to address these issues and to increase customer service and responses to issues that may arise.
- e. Mr. Sarris has taken measures to ensure consumers receive estimates which are complete and that the final contract will not be more the 110 percent of the estimate, as required by 4 CCR 723-6-6608(b).
- f. Mr. Sarris asserts that Respondent is determined to be in compliance with all relevant PUC Rules.
- g. Mr. Sarris fully cooperated with Staff in resolving this matter without the need for a litigated evidentiary proceeding.
- h. Assessing Respondent a civil penalty of \$1,400.00 under the terms herein is sufficient to motivate Respondent to remain compliant with the Public Utilities Laws and Commission Rules on a going-forward basis.

4. In consideration of Respondent's admission of liability in paragraph 1 and agreement in paragraph 2, and for the reasons expressed in paragraph 3, Staff agrees reducing the amount of the civil penalty from \$2,240.00 to \$1,400.00 is appropriate and in the public interest.

5. The \$1,400.00 settlement amount includes a 10% surcharge pursuant to § 24-34-108, C.R.S. and the breakout is as follows: \$1,260.00 is the civil penalty and \$140.00 is the 10% surcharge.

6. Respondent agrees to pay the settlement amount within ten (10) days after the Commission's approval of this Agreement becomes final. For purposes of this Agreement, a final Commission decision shall mean the date when the Recommended Decision of the administrative law judge approving or modifying this Agreement becomes a decision of the Commission.

7. Respondent agrees the failure to timely pay the settlement amount as provided herein will result in Respondent being liable for the full civil penalty less payments made without any further hearing or administrative or adjudicatory process.

8. Respondent agrees and stipulates the 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 any other form of appeal. This result will mean neither the Commission nor Staff will incur additional time and expense to prosecute the full civil penalty.

9. Respondent further agrees that if, during any investigation(s) conducted by Staff within twelve months of the date of a Commission final order in this Docket, in addition to any civil penalties for violations of the Count in which Respondent admitted liability is found, Respondent shall be liable for the full civil penalty, less payments made. In this event, the remaining full civil penalty will be due immediately. Respondent and Staff agree the specific intent of this provision is to prevent further violations of the Public Utilities Laws and Commission Rules.

10. The Parties agree all matters that were raised or could have been raised in this Docket 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.

11. 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 Docket within seven (7) 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 21st day of January 2013.

STAFF OF THE COLORADO
PUBLIC UTILITIES COMMISSION

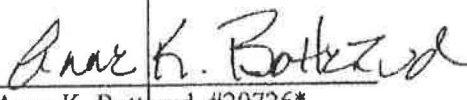
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