

FILE

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

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2010 DEC -9 PM 3:17
PUCO

In the Matter of Mame D. Diouf/KAD : Case No. 10-1255-TR-CVF
Transport, Notice of Apparent : (CR10H041)
Violation and Intent to Assess :
Forfeiture.

SETTLEMENT AGREEMENT

I. Introduction

Pursuant to Rule 4901:2-7-11 of the Ohio Administrative Code (O.A.C.), Mr. Mame D. Diouf dba KAD Transport (Respondent) and the Staff of the Transportation Department of the Public Utilities Commission of Ohio (Staff) enter into this Settlement Agreement and urge the Public Utilities Commission of Ohio (Commission) to adopt the same.

It is understood by the Respondent and the Staff that this Settlement Agreement is not binding upon the Commission. This agreement, however, is based on the Respondent's and the Staff's desire to arrive at a reasonable result considering the law, facts, and circumstances. Accordingly, the Respondent and the Staff believe that the Commission should adopt this Settlement Agreement.

This Settlement Agreement is submitted on the condition that the Commission adopts the agreed upon terms. In the event the Commission rejects any part of the Settlement Agreement, or adds to, or otherwise materially modifies its terms, each party

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shall have the right, within thirty days of the date of the Commission's entry or order, to file an application for rehearing that includes a request to terminate and withdraw from the Settlement Agreement. Upon the application for rehearing and request to terminate and withdraw from the Settlement Agreement being granted by the Commission, the Settlement Agreement shall immediately become null and void. In such event, the parties shall proceed to a hearing as if this Settlement Agreement had never been executed.

II. Procedural History

- A. On February 2, 2010, a compliance review of the Respondent was conducted by Staff at the Respondent's facility located in Euclid, Ohio. The inspection resulted in the discovery of the following alleged violations: (1) using a driver not medically examined and certified during the preceding 24 months in violation of 49 C.F.R. § 391.45(b)(1); (2) failing to maintain a driver qualification file on each driver in violation of 49 C.F.R. § 391.51(a); (3) false reports of records of duty status in violation of 49 C.F.R. § 395.8(e); and (4) using a CMV not periodically inspected in violation of 49 C.F.R. § 396.17(a).
- B. The Staff timely served the Respondent with a notice of preliminary determination in accordance with O.A.C. Rule 4901:2-7-12 for Case No. CR10H041. The total forfeiture assessed the Respondent by the Staff was \$1,900.00 for the alleged violations.

- C. The Respondent made a timely formal request for an administrative hearing pursuant to O.A.C. Rule 4901:2-7-13.
- D. The parties have negotiated this Settlement Agreement, which the parties believe resolves all of the issues raised in the notice of preliminary determination.

III. Settlement Agreement

The parties hereto agree and recommend that the Commission find as follows:

- A. The Staff and the Respondent agree that the Respondent will pay a civil forfeiture in the amount of \$1,330.00. The reduction is based on remedial actions taken by the Respondent. Specifically, the Respondent submitted documentation indicating that the Respondent obtained the necessary medical certificate and vehicle inspection after the compliance review was conducted, as well as documentation showing that the Respondent has elected to close his business.
- B. The Staff and the Respondent agree that the citations may be included in the Respondent's Safety-Net record and history of violations insofar as they may be relevant for purposes of determining future penalty actions.
- C. The Respondent shall make payment of the civil forfeiture of \$1,330.00 in twelve consecutive monthly payments. The twelve consecutive monthly payments shall be made in installments of \$110.83 for each of the first eleven months and \$110.87 for the twelfth month. The consecutive

monthly payments shall commence within thirty days from the effective date of this Settlement Agreement. Each of the twelve consecutive monthly payments shall be made using a certified check or money order payable to "Treasurer State of Ohio" and mailed to PUCO Fiscal, 180 E. Broad St., 4th Floor, Columbus, Ohio 43215-3793. The inspection number (CR10H041) should be written on the certified check or money order.

D. This Settlement Agreement shall not become effective until adopted by the Commission. The date of the entry or order of the Commission adopting the Settlement Agreement shall be considered the effective date of the Settlement Agreement.

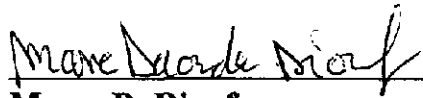
E. This Settlement Agreement is made in settlement of all factual or legal issues in this case. It is not intended to have any effect whatsoever in any other case or proceeding.

IV. Conclusion

This Settlement Agreement, which is subject to the rules of the Commission, constitutes the entire agreement of the parties. The signatory parties agree that this Settlement Agreement is in the best interest of all parties, and urge the Commission to adopt the same. The undersigned respectfully request that the Commission issue an entry or order in accordance with the terms set forth in this Settlement Agreement.

The parties have manifested their consent to the Settlement Agreement by affixing their signatures below on this 9th day of ^{December}~~November~~, 2010.


On behalf of the Respondent:



Mame D. Diouf

17620 Lake Shore Blvd. #305
Cleveland, Ohio 44119
(216) 394-7788

On behalf of the Staff of the Public
Utilities Commission of Ohio:



Sarah J. Parrot

Assistant Attorney General
Public Utilities Section
180 East Broad Street, 6th Floor
Columbus, Ohio 43215-3793
(614) 466-4396