

## THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF GREGORY A. THOMAS  
AND WATERS EDGE CANOE LIVERY,  
NOTICE OF APPARENT VIOLATION AND  
INTENT TO ASSESS FORFEITURE.

CASE NO. 17-629-TR-CVF

### ENTRY

Entered in the Journal on March 22, 2017

#### I. SUMMARY

{¶ 1} The Commission grants the request to waive Ohio Adm.Code 4901:2-7-22(B) and directs the Staff to schedule this matter for a Staff conference.

#### II. APPLICABLE LAW

{¶ 2} Ohio Adm.Code 4901:2-7-22(B) provides that payment of the forfeiture shall terminate all further proceedings regarding that violation.

{¶ 3} Ohio Adm.Code 4901:2-7-02 provides that the Commission may waive any requirement of Ohio Adm.Code Chapter 4901:2-7 for good cause shown.

#### III. PROCEDURAL HISTORY

{¶ 4} On March 2, 2017, Gregory A. Thomas and Waters Edge Canoe Livery (respondents) filed a motion to waive Ohio Adm.Code 4901:2-7-22 and schedule this matter for a Staff conference. According to respondents, a forfeiture in the amount of \$3,300 was paid to the Commission prior to having the opportunity to contest alleged violations of the federal motor carrier safety rules (FMCSR) before the Commission. Respondents request the Commission waive Ohio Adm.Code 4901:2-7-22 and schedule this matter for a settlement conference. Respondents also request that the Commission refund the paid civil forfeiture.

{¶ 5} On March 7, 2017, Staff filed a response to Respondents' motion. Staff states that, in October 2016, respondents made full forfeiture payment on their noticed violations following a conference with Staff. Staff indicates that it is its understanding

from speaking with respondents' counsel that the respondents were not represented by counsel at the time of the conference with Staff, never intended to make payment, or waive their request to contest the merits of the alleged violations. Staff further notes that respondents' out of service (OOS) violation was referred by Staff to the Department of Public Safety, Bureau of Motor Vehicles (BMV) for further administrative process to address a suspension of the driver's CDL, related to these alleged violations, which was recently continued to April 19, 2017. Staff states that it has no objection to respondents' motion.

#### IV. CONCLUSION

{¶ 6} Pursuant Ohio Adm.Code 4901:2-7-22(B), the respondents' payment of the forfeiture would constitute admission of the occurrence of violation and terminate any further proceedings. However, based on the specific facts and circumstances in this case, respondents have shown good cause in requesting a waiver of the rule and, as relayed by Staff, respondents have indicated that they never intended to waive their rights to contest the merits of the alleged violations. Accordingly, respondents' request to waive Ohio Adm.Code 4901:2-7-22(B) should be granted and Staff should schedule this matter for further proceedings under chapter 4901-1 Ohio Adm.Code. It should be noted that although we are granting the request for a refund, this does not preclude the Commission from further exercising its jurisdiction to render a decision on the merits of this case, including any forfeiture, should the Commission find based on the evidence that the alleged violations occurred. The Fiscal Division is also directed to issue a refund of the civil forfeiture payment to the respondents.

{¶ 7} It is, therefore,

{¶ 8} ORDERED, That respondents' motion for a waiver of Ohio Adm.Code 4901:2-7-22(B) be granted. It is further,

{¶ 9} ORDERED, That Case No. 17-629-TR-CVF be scheduled for a Staff conference. It is, further,

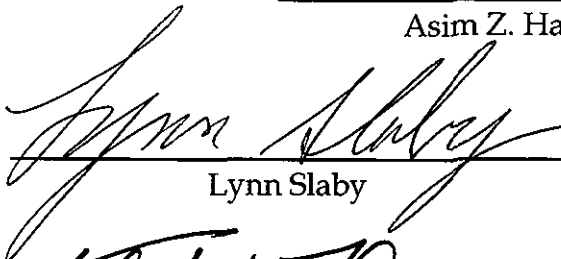
{¶ 10} ORDERED, That the Fiscal Division issue a refund of the civil forfeiture payment to the Respondents. It is, further,

{¶ 11} ORDERED, That a copy of this Entry be served upon each party of record.

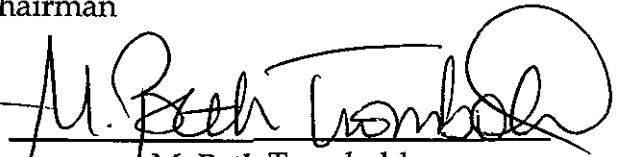
THE PUBLIC UTILITIES COMMISSION OF OHIO



Asim Z. Haque, Chairman



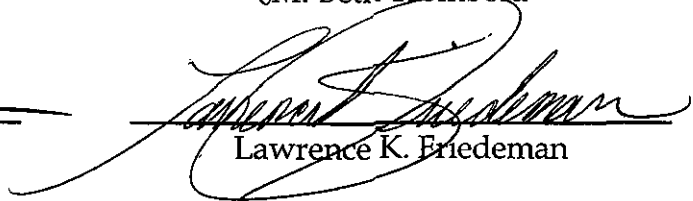
Lynn Slaby



M. Beth Trombold



Thomas W. Johnson



Lawrence K. Friedeman

SEF/dah

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**MAR 22 2017**



Barcy F. McNeal

Secretary