

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF CLV, INC., NOTICE
OF APPARENT VIOLATION AND INTENT
TO ASSESS FORFEITURE.

CASE NO. 17-1765-TR-CVF
(CR201704040184)

FINDING AND ORDER

Entered in the Journal on December 20, 2017

I. SUMMARY

{¶ 1} The Commission finds reasonable and approves the settlement agreement filed between Staff and CLV, Inc., regarding a violation of the Commission's transportation rules.

II. DISCUSSION

{¶ 2} R.C. 4923.04 provides that the Commission shall adopt rules applicable to the transportation of persons or property by motor carriers operating in interstate and intrastate commerce. Pursuant to Ohio Adm.Code 4901:2-5-03(A), the Commission adopted the Federal Motor Carrier Safety Regulations (FMCSR) for the purpose of governing transportation by motor vehicle in the state of Ohio. Further, R.C. 4923.99 authorizes the Commission to assess a civil forfeiture of up to \$25,000 per day, per violation, against any person who violates the safety rules adopted by the Commission. Ohio Adm.Code 4901:2-7-20 requires that, at the hearing, Staff prove the occurrence of a violation by a preponderance of the evidence.

{¶ 3} On April 4, 2017, Staff conducted a compliance review of a facility belonging to CLV, Inc. (Respondent) within the state of Ohio. The inspection resulted in the discovery of the violation of 49 C.F.R. 395.8(e)(1), for making or permitting a driver to make, a false report regarding duty status and 49 C.F.R. 383.37(a) allowing, requiring, permitting, or authorizing a driver to operate a Commercial Motor Vehicle (CMV) during any period in which the driver does not have a current Commercial Learner's Permit

(CLP) or Commercial Driver's License (CDL) or does not have a CLP or CDL with the proper class or endorsements.

{¶ 4} CLV, Inc. was timely served with a Notice of Preliminary Determination (NPD), pursuant to Ohio Adm.Code 4901:2-7-12, on July 14, 2017. The NPD assessed Respondent a civil forfeiture of \$1,000 for the violation of 49 C.F.R. 383.37(a).

{¶ 5} On July 31, 2017, Respondent requested an administrative hearing, pursuant to Ohio Adm.Code 4901:2-7-13.

{¶ 6} A prehearing conference was conducted on September 26, 2017.

{¶ 7} On November 8, 2017, Staff and Respondent filed a settlement agreement which, in the parties' opinion, resolves the issue raised in the NPD. The following is a summary of the conditions agreed to by the parties and is not intended to replace or supersede the settlement agreement.

- (a) Respondent and Staff agree that the forfeiture for the violation of 49 C.F.R. 172.301(a)(1) should be reduced to \$500 as evidence shows that Respondent has provided adequate information that its driver relied on documents provided by a shipper that contained inaccurate and misleading load weight, causing him to operate a vehicle weighing more than his endorsement would otherwise permit. Respondent has also provided information that its driver had no opportunity, prior to the inspection, to verify the information provided by the shipper.
- (b) Respondent shall pay the \$500 civil forfeiture within 30 days of the Commission's order approving the settlement agreement.

- (c) Respondent and Staff agree that nothing in the settlement agreement shall prevent Staff from assessing civil forfeitures pursuant to Oho Adm.Code Chapter 4901:2-7, as the result of future compliance reviews or roadside inspections.
- (d) The settlement agreement shall not become effective until adopted by an order of the Commission. The date the Commission adopts the settlement agreement shall be considered the effective date of the settlement agreement.
- (e) The settlement agreement is made in settlement of all factual or legal issues of only this case. It is not intended to have any effect whatsoever in any other case or proceeding.

{¶ 8} The Commission finds that the settlement agreement submitted in this case is reasonable. Therefore, the settlement agreement shall be approved and adopted in its entirety.

III. ORDER

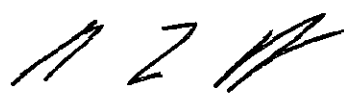
{¶ 9} It is, therefore,

{¶ 10} ORDERED, That the settlement agreement submitted in this case be approved and adopted in its entirety. It is, further,

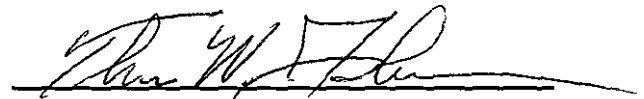
{¶ 11} ORDERED, That Respondent pay the civil forfeiture of \$500, in accordance with the settlement agreement. Payment shall be made by check or money order payable to the "Treasurer, State of Ohio" and mailed or delivered to PUCO Finance, 180 East Broad Street, 4th Floor, Columbus, Ohio 43215-3793. In order to assure proper credit, Respondent is directed to write Case No. 17-1765-TR-CVF and inspection number CR201704040184 on the face of the check or money order. It is, further,

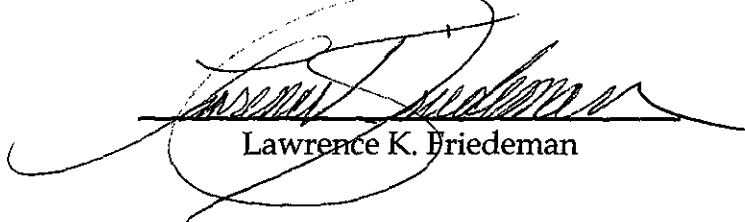
{¶ 12} ORDERED, That a copy of this Finding and Order be served upon Respondent and all other interested parties of record.

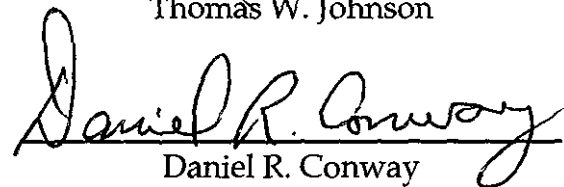
THE PUBLIC UTILITIES COMMISSION OF OHIO


Asim Z. Haque, Chairman


M. Beth Trombold

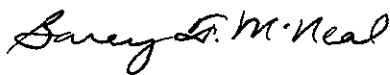

Thomas W. Johnson


Lawrence K. Friedeman


Daniel R. Conway

SEC/sc

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DEC 20 2017



Barcy F. McNeal
Secretary