

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF ELVIR HAMZIC,
NOTICE OF APPARENT VIOLATION AND
INTENT TO ASSESS FORFEITURE.

CASE NO. 18-1052-TR-CVF
(OH1564000084D)

FINDING AND ORDER

Entered in the Journal on February 20, 2019

I. SUMMARY

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

II. DISCUSSION

{¶ 2} R.C. 4923.04(A)(1) mandates that the Commission 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.

{¶ 3} On April 27, 2018, a commercial motor vehicle operated by Transtrade, Inc. and driven by Elvir Hamzic (Respondent) was inspected within the state of Ohio. As a result of the inspection, on June 14, 2018, Respondent was served with a Notice of Preliminary Determination (NPD) pursuant to Ohio Adm.Code 4901:2-7-12. The NPD cited an out-of-service violation of the FMCSR and assessed Respondent a civil forfeiture of \$2,500 for the alleged violation.

{¶ 4} On June 26, 2018, Respondent requested an administrative hearing pursuant to Ohio Adm.Code 4901:2-7-13.

{¶ 5} Subsequently, the June 14, 2018 NPD was rescinded by Staff; and, on July 26, 2018, a new Notice of Apparent Violation and Intent to Assess Forfeiture (NIF) was timely issued to Respondent. The July 26, 2018 NIF notified Respondent that Staff intended to assess a civil forfeiture of \$2,500 for violation of Ohio Adm.Code 4901:2-5-07(D), operating a motor vehicle that has been declared out of service. A second NPD was not reissued, but the parties pursued settlement discussions according to the violation stated in the July 26, 2018 NIF.

{¶ 6} A prehearing conference was conducted on November 20, 2018.

{¶ 7} On January 17, 2019, Staff and Respondent filed a settlement agreement that, in the parties' opinion, resolves the issue raised in this case. Because a second NPD was not issued in the case, the parties request a waiver of the Commission's NPD requirements. Upon motion and for good cause shown, Ohio Adm.Code 4901:2-7-02(B) permits the Commission to waive any requirement of Ohio Adm.Code Chapter 4901:2-7 not mandated by statute. Given the parties' mutual request and the fact that the Commission's NPD requirements are not statutorily mandated, the Commission finds that the request for waiver is reasonable and should be granted.

{¶ 8} The following is a summary of the conditions agreed to by the parties as set forth in the January 17, 2019 settlement agreement; it is not intended to replace or supersede the same.

- A. Respondent agrees that the violation listed in the July 26, 2018 NIF may be included in his history of violations insofar as it may be relevant for purposes of determining penalty actions by the Ohio Bureau of Motor Vehicles, including but not limited to the disqualification of Respondent's commercial driver's license, or for future violations.

- B. Staff agrees to reduce the amount of the civil forfeiture from \$2,500 to \$1,750, an amount which Respondent agrees to pay in order to resolve the case. Specifically, Respondent shall pay the \$1,750 civil forfeiture in ten consecutive monthly installments of \$175 per installment commencing 30 days after the Commission's order approving the settlement agreement. Payments shall be made payable to "Treasurer, State of Ohio," be mailed to PUCO, Attn: CF Processing, 180 E. Broad St., 4th Floor, Columbus, OH 43215-3793, and display the case number (OH1564000084D) on the face of each check or money order.
- C. The settlement agreement shall not become effective until adopted by the Commission. The date of the Commission's order shall be the effective date of the settlement agreement. The settlement agreement is intended to resolve only factual or legal issues raised in this case.

{¶ 9} 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

{¶ 10} It is, therefore,

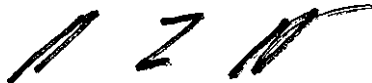
{¶ 11} ORDERED, That the parties' request for waiver of the Commission's NPD requirements be granted. It is, further,

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

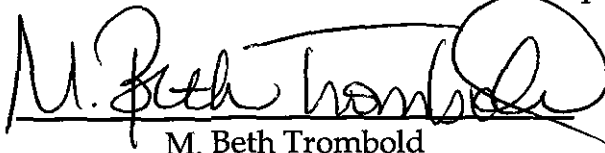
{¶ 13} ORDERED, That Respondent pay the civil forfeiture of \$1,750 in accordance with the settlement agreement. The total forfeiture shall be paid in ten consecutive monthly payments of \$175 per installment by check or money order payable to the "Treasurer, State of Ohio" and mailed or delivered to PUCO Attn: CF Processing, 180 E. Broad St., 4th Floor, Columbus, Ohio 43215-3793. In order to ensure proper credit, Respondent is directed to write the case number (OH1564000084D) on the face of the check or money order. Payments shall commence 30 days after the Commission's order approving the settlement agreement. It is, further,

{¶ 14} 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



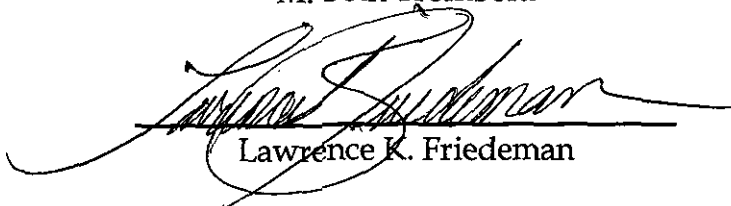
Asim Z. Haque, Chairman



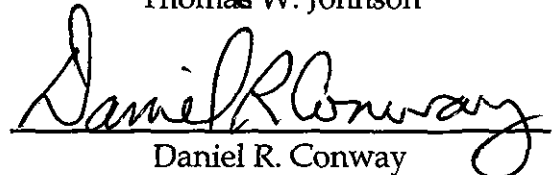
M. Beth Trombold



Thomas W. Johnson



Lawrence K. Friedeman



Daniel R. Conway

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Entered in the Journal

FEB 20 2019



Tanowa M. Troupe
Secretary