

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of a Settlement Agreement)
between the Public Utilities Commission of)
Ohio and Davis Tours, Inc.)

Case No. 10-0141-TR-CVF
CR08C257

FINDING AND ORDER

The Commission finds:

- (1) Sections 4919.79 and 4921.04, Revised Code, authorize the Commission to adopt safety rules applicable to interstate and intrastate highway transportation and the offering for transportation of hazardous materials. Pursuant to this authority, the Commission adopted in Rule 4901:2-5-02, Ohio Administrative Code (O.A.C), the provisions of the Federal Motor Carrier Safety Regulations and Hazardous Material Regulations of the U.S. Department of Transportation contained in Title 49, Parts 40, 382, 383, 385, 387, 390 through 397, and Parts 171 through 180, Code of Federal Regulations (CFR). Sections 4905.83, 4919.99 and 4921.99, Revised Code, authorize the Commission to assess forfeiture against any person who violates these rules. Pursuant to this authority, the Commission adopted the civil forfeiture and compliance proceeding rules contained in Rules 4901:2-7-01 through 4901:2-7-22, OAC. This action is brought pursuant to those rules and regulations.
- (2) On April 28, 2008, Staff conducted a compliance review of a facility operated by Davis Tours, Inc. (Davis) located at Canton, Ohio.
- (3) During the compliance review, staff discovered apparent violations of the Code of Federal Regulations including:

49 CFR § 382.301(a)	Using a driver before the carrier has received a negative pre-employment drug test result.	\$700.00
49 CFR § 391.45(b)(1)	Using driver not medically examined and certified.	\$500.00
49 CFR § 395.8(e)	Failing to require driver to forward record of duty status	\$3500.00
	(2 violations)	\$1200.00

49 CFR § 396.11(a)	Failing to keep/require driver to prepare driver vehicle inspection report	\$950.00
	(2 violations)	\$625.00

The results of the compliance review were forwarded to Compliance staff for assessment. The original amount of civil forfeitures for the alleged violations set forth above was \$7475.00.

- (4) Respondent requested a conference pursuant to Rule 4901:2-7-10, OAC. On August 5, 2008, a settlement was conducted and the matter was discussed. The Respondent had a full opportunity to present any evidence that the violations did not occur as alleged, mitigating circumstances regarding the amount of the forfeiture and any other information relevant to the action proposed to be taken by Staff. At conference, Davis stated that following the compliance review at issue, the company was sold to another passenger carrier. The new owner (A&M Transit) has medically examined all of its drivers as well as those coming over from Davis. A&M drivers have always been required to prepare vehicle inspection reports and complete logbooks. Former Davis drivers who now work for A&M have received proper training relative to these issues. Finally, A&M stated that it does not have a history of violations in Ohio. As a result of these corrective actions and because the carrier met Commission policy and was otherwise eligible, staff offered to hold half of the assessed forfeiture amount in abeyance if the carrier agreed to pay the other half and agreed to a follow up audit within 12 months.
- (5) As a result of this conference, Staff and Respondent entered into a settlement agreement to resolve this case. Among the terms of the settlement agreement, the Respondent agreed to make payment of a civil forfeiture of \$3737.50. Davis requested that it be allowed to make ten consecutive monthly payments of \$373.75 in order to satisfy this obligation. Staff consented to this arrangement.
- (6) Respondent further agrees to grant consensual access to the Staff to conduct compliance reviews, without notice, of all its facilities located in the state of Ohio, at any time during the period of one year from the effective date of this settlement agreement. In the event that the Respondent fails to fulfill its obligations under this agreement or in the event that compliance reviews conducted during the period of one year following the effective date of this agreement reveal a pattern of violations of the Hazardous Materials Regulations, 49 CFR

Parts 171-180, or the Federal Motor Carrier Safety Rules, 49 CFR Parts 382, 383, 387, 390-397, by the Respondent, the Respondent agrees to make payment of an additional civil forfeiture of \$3737.50.

- (7) Rule 4901:2-7-11(C), O.A.C, provides that settlement agreements providing for the payment of civil forfeitures of one thousand dollars or more for any violation shall not be effective until approved by and made the order of the Commission.
- (8) The settlement agreement entered into between Staff and Respondent represents an equitable settlement of the matter and should be approved and adopted by the Commission.

It is, therefore,

ORDERED, That the terms and conditions of the settlement agreement entered into between Staff and Davis Tours, Inc. be approved and adopted by the Commission by this Finding and Order. It is, further,

ORDERED, That Davis Tours, Inc. pay a total civil forfeiture of \$3737.50, with an initial payment due within 30 days after the effective date of this Finding and Order and the remaining payments made as set forth in the settlement agreement. Payments should be made payable to "Treasurer, State of Ohio" and mailed to the PUCO, Attention Fiscal Division, 4th Floor, 180 East Broad Street, Columbus, Ohio 43215-3793. In order to assure proper credit, the Davis Tours, Inc. is directed to write the compliance review number (CR08C257) on the face of the check. It is, further,

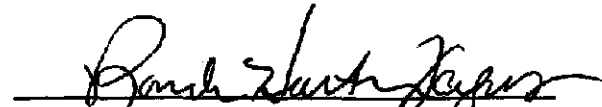
ORDERED, That Davis Tours, Inc. pay an additional civil forfeiture of \$3737.50 should it fail to fulfill its obligations under this settlement agreement as set forth in Finding 6 above. It is, further,

ORDERED, That the Commission's Docketing Division serve a copy of this Finding and Order on Davis Tours, Inc.

THE PUBLIC UTILITIES COMMISSION OF OHIO


Alan R. Schriber, Chairman


Paul A. Centolella


Ronda Hartman Fergus


Valerie A. Lemmie


Cheryl L. Roberto

REM:js

Entered in the Journal

FEB 24 2010


Renee J. Jenkins

Renee J. Jenkins
Secretary